

**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT-II)**

**IA. NO. 2003/ND/2022**

**IN**

**Company Petition No. (IB)-334(ND)/2018**

**IN THE MATTER OF:**

**Ranjit Das & Ors.**

**... Applicant/Financial Creditor**

**Versus**

**M/s. Msx Mall Private Limited**

**... Respondent**

**AND IN THE MATTER OF IA. NO. 2003/ND/2022:**

**Mr. Anil Kumar Jain**

Resolution Professional:  
MSX Mall Private Limited,  
255B, IInd Floor, Block-A-1,  
Lawrence Road, Keshav Puram,  
New Delhi – 110035

**... Applicant**

**VERSUS**

**1. Mr. Madhav Saran Agarwal**

R/o House No. D-88, Sector 26,  
Noida, Gautam Buddha Nagar,  
Uttar Pradesh

**... Respondent No. 1**

**2. Mrs. Alka Agarwal**

R/o House No. D-88, Sector 26,  
Noida, Gautam Buddha Nagar,  
Uttar Pradesh

**... Respondent No. 2**

**3. MSA Developers Private Limited**

Through Resolution Professional,  
Mr. Rabindra Kumar Mintri  
Regd. Off: A-44, Ground Floor,  
Shakarpur, New Delhi – 110092

**Also at:**

JD-18-b, Near Ashiana Chowk,  
Pitampura, New Delhi – 110034

**... Respondent No. 3**

**Order Delivered on: 10.11.2023**

**SECTION: Section 66 of IBC 2016**

**CORAM:**

**SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)**

**SH. L. N. GUPTA, HON'BLE MEMBER (T)**

**PRESENT:**

**For the RP** : Mr. Anil Kumar Jain RP, Adv. Abhishek Anand,  
Adv. Mritunjay Kumar  
**For the Respondent** : Adv. Abhishek Anand for Respondents No. 1  
and 2; Adv. Riya Thomas for Respondent No. 3

**ORDER**

**PER: SH. L. N. GUPTA, MEMBER (T)**

The present IA No. 2003 of 2022 has been filed by Mr. Anil Kumar Jain, Resolution Professional of MSX Mall Private Limited (hereinafter referred to as the '**Applicant**') under Sections 66 and 67 of IBC, 2016, seeking the following reliefs:

- “i) Direct the Respondent to make such contributions to the assets of the Corporate Debtor, to the extent that it may deem fit with respect to all other transactions carried on with the intent to defraud creditors or for any fraudulent purpose, falling under Section 66 of the Code;*
- ii) Issue further directions under Section 67 of the Code;*
- iii) Such other order/s as this Hon'ble Tribunal may deem proper in the facts as circumstances of the instant case and interests of justice.”*

2. To put the facts succinctly, the underlying main Petition CP (IB)-334/ND/2018 was filed by Ranajit Das & Ors. against the Corporate Debtor (CD) namely, M/s MSX Mall Private Limited under Section 7 of IBC, 2016, which was admitted vide Order dated 09.07.2018 of this Adjudicating Authority and the Corporate Insolvency Resolution Process (CIRP) in respect of the CD was initiated. The CD, at present, is represented through its RP Mr. Anil Kumar Jain.

3. We heard the submissions of both parties and perused the documents/pleadings placed on record. The Applicant/RP, through its application as well as arguments during the hearing, has alleged the following Fraudulent Transactions:

Particulars	Name	Relationship	Amount
Loans and advances given to related parties of the Corporate Debtor	MSX Developers (P) Ltd.	Group Company	1,83,10,457/-
	New Wave Hospitality Services (P) Ltd	Group Company	97,45,060/-
	Ashok Singhal	Brother-in-law of Director	15,00,000/-
	Vikas Gupta	Son in law of directors of Company	16,45,352/-
	Garima Gupta	Daughter of Directors	8,76,605/-
	Satya Narayan Gupta	Father in law of Garima Gupta	12,50,000/-
	Sharad Agarwal	Nephew of Director	3,00,000/-
	Arpit Agarwal	Son of Directors	1,72,655/-
Abuse of end use of Loan taken Religare Finvest Limited	Madhav Saran Agarwal & Alka Agarwal	Directors	1,80,00,000/-
Embezzlement of closing cash balance	Madhav Saran Agarwal & Alka Agarwal	Directors	45,30,173/-
Embezzlement of cash collected from Kiosks as rent and from users as maintenance, electricity charges etc	Madhav Saran Agarwal & Alka Agarwal	Directors	65,29,012/-
Unaccounted Cash Receipts	Madhav Saran Agarwal & Alka Agarwal	Directors	380,28,500/-
Multiplicity of Allotment of units of the mall (129 Units)	Madhav Saran Agarwal & Alka Agarwal	Directors	23,11,74,797/-

Particulars	Name	Relationship	Amount
Transfer of shops/units to the creditors of Respondent No. 3	MSA Developers Pvt. Ltd	Group Company	13,55,57,104/-
Transfer of 900 sq. ft. to vendor of Respondent No. 3 without recording in books and without consideration	MSA Developers Pvt. Ltd	Group Company	1,10,29,835/- (Value of work order)
<b>Total</b>			<b>47,86,49,550/-</b>

In support of its contentions, the Applicant has placed on record the Forensic Auditor's Report dated 15.01.2019, indicating the details of such Fraudulent Transactions. Accordingly, we would like to deal with each of the transactions separately.

4. First, we would like to examine the transactions relating to the loans advanced by the CD to its related party companies. It is contended by the Applicant that the CD extended loans worth Rs.280.55 Lakhs prior to the year 2012 to its "related entities", which remains outstanding. It is further alleged that these loans did not carry any interest and were given without any underlying documents/ agreements. The details of the alleged transactions, as stated by the Applicant, read thus:

NAME OF PARTY	RELATION	AMOUNT O/S AS ON JULY 09, 2018 (IN RUPEES)
MSX Developers (P) Ltd.	Group Company	1,83,10,457/-
New Wave Hospitality Services (P) Ltd	Group Company	97,45,060/-
<b>Total: (Rupees Two Crore Eighty Lakhs Fifty-Five Thousand Five Hundred and Seventeen only)</b>		<b>2,80,55,517/-</b>

5. To substantiate its argument, the Applicant/RP has annexed the Forensic Auditor's Report dated 15.01.2019, stating that the aforesaid transactions are Fraudulent. The relevant extracts of the Forensic Audit Report, relied upon by the RP, read thus:

**8.5.3 Loan of Rs. 280.55 lacs given to related entities.**

During audit we noticed that company has given loans to its related entities to the tune of Rs. 280.55 lacs before 2012 and it is still outstanding. Further to this we noticed that no agreements for these loans are produced to us and these loans do not carry any interest for the company.

Name of Party	Relation	Amount O/s Rs on 05-07-18	Remarks
MSX Developers Pvt Ltd.	Group Company	18,310,457	Rs. 17449526 outstanding since 2012 and rest amount i.e. Rs. 860931 was paid during 2012-2014.
New Wave Hospitality Services (P) Ltd	Group Company	9,745,060	Outstanding since 2012
<b>Total</b>		<b>28,055,517</b>	

6. On notice, Respondents No.1 and 2 have filed their replies and Written Submissions and stated the following on these loan transactions:

SL. NO.	PARTICULARS	NAME	RELATIONSHIP	AMOUNT	REPLY
1.	Loans and advances given to related parties of the Corporate Debtor	MSX Developers (P) Ltd. New Wave Hospitality Services (P) Ltd	Group Company Group Company	1,83,10,457/- 97,45,060/-	That the Corporate Debtor availed the services of MSX Developers (P) Ltd. for the construction of MSX Mall. It is further submitted that the Corporate Debtor made the payments towards the construction of the work done by MSX Developers (P) Ltd. and also availed the services of New Wave Hospitality Services (P) Ltd. It is further submitted that the UPSIDC in the year July 2014 issued the completion/provisional completion certificate of MSX Mall (Corporate Debtor), which itself proved that the Corporate Debtor availed the services of MSX Developers (P) Ltd., and the payment was made in respect to the services availed by the Corporate Debtor. <i>[Paragraph No. 22 of the Reply]</i>

7. Thus, regarding the issue of siphoning off funds to M/s MSX Developers Pvt. Ltd and New Wave Hospitality Services Pvt. Ltd., Respondents no.1 and 2 have stated that they availed their services for the construction of MSX Mall, for which the Corporate Debtor made payments to them. According to them, UPSIDC in July 2014 issued the completion certificate to CD, proving that the Corporate Debtor availed services of MSX Developers (P) Limited.

8. It is against this backdrop that we would like to examine the contention of the Respondent **Whether the amount of Rs.2,80,55,517/- extended as loans by the CD to its “related companies” is a Fraudulent Transaction.** To prove its point, the Applicant/RP has annexed the Balance Sheet of the Corporate Debtor as of 31.03.2015 i.e., the period prior to initiation of CIRP, the relevant contents of which reads thus:

MSX MALL PRIVATE LIMITED Notes to financial statements for the year ended March 31, 2015		As at March 31, 2015 (Amount in Rs.)	As at March 31, 2014 (Amount in Rs.)
9	non-current Investment Advance for capital goods	9,500,000	1,500,000
		<u>9,500,000</u>	<u>1,500,000</u>
10	Long term loans & Advances	4,406,769	3,487,127
	Loans & Advances (Security Deposits)	28,065,517	99,293,781
	- Loans and advances to related parties	1,765,000	4,565,000
	- Loans and advances to others	958,288	723,421
	- Prepaid expenses		520,030
	- Advance to Suppliers	<u>35,195,574</u>	<u>108,589,360</u>
11	Trade receivables (Unsecured but considered good)	6,342,966	3,698,358
	Debt Outstanding for a period not exceeding six months	nil	nil
	(A) considered good		
	(B) Others		

From the perusal of the Balance Sheet (ibid), it is seen that the CD had “Loans and advances outstanding/receivable from its Related Parties” worth Rs.2,80,65,517/-. Per Contra, Respondents No.1 and 2 have stated that this amount was a payment to the two companies (MSX Developers Pvt. Ltd and New Wave Hospitality Services Pvt. Ltd.) towards the construction services provided by them to the CD. However, Respondents No.2 and 3 have failed to file or produce either any RA Bills on record to depict that this was an amount paid to the two companies for the construction services rendered by them to the CD or any agreement/ Work order, in consideration of which the said amount was paid by the CD. Moreover, it is seen from the record that Respondents No.2 and 3 have signed the abovementioned Balance Sheet which affirms the admission on their part that the aforesaid amount was given as a loan to the two companies and it could not be a so-called “payment towards construction services.” Hence, we find no force in the contention raised by Respondents No.1 and 2.

Since the loan reflected in the balance sheet of the CD advanced to the related parties was (a) without any agreement/document and interest rate; and (b) no efforts were ever made to recover the said loan amount, Respondent No.1 and 2/ the Directors had acted prejudicial to the interest of the Corporate Debtor and therefore, caused injury to the Corporate Debtor. In our considered view, the debt advanced with no intention to get repayment will constitute a Fraudulent Transaction. **Hence, we find that the amount of Rs.2,80,55,517/- granted as a loan by CD to the related companies viz., MSX Developers Pvt. Ltd. and New Wave Hospitality**

**Services Pvt. Ltd was a Fraudulent Transaction. We accordingly direct Respondents No.1 and 2 to make a contribution of Rs.2,80,55,517/- to the Bank account of the Corporate Debtor.**

9. The Applicant has further added that the CD also diverted funds by way of extending loans and advances to the “related party individuals” to the tune of Rs.57.44 Lakhs, which are still outstanding. The details of such transactions, as submitted by the Applicant, are given overleaf:

NAME OF PARTY	RELATION	AMOUNT O/S AS ON 09-07-18	PAID ON
Ashok Singhal	Brother-in-law of Director	15,00,000/-	Given between September 16 to July 2017
Vikas Gupta	Son in law of directors of Company	16,45,352/-	Rs. 8,00,000/- was given on April 4, 2018 and balance during 2015-2016 & 2017-2018
Garima Gupta	Daughter of Directors	8,76,605/-	Outstanding since March 2017
Satya Narayan Gupta	Father in law of Garima Gupta	12,50,000/-	Given on June 11, 2015 and September 16, 2015 (In the books of accounts these transactions are recorded in some unrelated investor’s account)
Sharad Agarwal	Nephew of Director	3,00,000/-	Rs. 2 lacs given on June 1, 2017 and September 24, 2015 and Rs. 1 lacs (In the books of accounts, one transaction of Rs. One lac is recorded in some unrelated investor’s account)
Arpit Agarwal	Son of Directors	1,72,655/-	Paid in 2018
	<b>Total</b>	<b>57,44,612/-</b>	

To substantiate its argument, the Applicant/RP has annexed the Forensic Auditor’s Report dated 15.01.2019, stating that the aforesaid transactions are Fraudulent. The relevant extracts of the Forensic Audit Report relied upon by the RP, read thus:



**8.5.4 Diversion of funds for Rs. 57.44 Lacs by way of providing loan and advances without any interest and executing any agreement:**

We noticed that company has given loan and advances to related parties. Closing recoverable amount from these individuals is Rs. 57.44 Lacs, standing in accounts as on 09<sup>th</sup> July 2018. Details are given here under:

Name of Party	Relation	Amount O/s as on 09/07/18	Paid on
Ashok Singhal	Brother in law of Director	1,500,000	Given between Sept 16 to July 2017
Vikas Gupta	Son in law of directors of Company	1,645,352	Rs. 800000 was given on 4-4-18 and balance during 15-16 & 17-18
Garima Gupta	Daughter of Directors	876,605	Outstanding since Mar 2017
Satya Narayan Gupta	Father in law of Garima Gupta	1,250,000	Given on 11th June 2015 and 16th Sept 2015
Sharad Agarwal	Nephew of Director	300,000	Given on 01 <sup>st</sup> June 2017 and 24 <sup>th</sup> Sept 2015
Arpit Agarwal	Son of Directors	172,655	Paid in 2018
	<b>Total</b>	<b>5,744,612</b>	

Company does not have any business transaction with these related parties and as per E-Mail confirmation by official of corporate debtor dated 16<sup>th</sup> November 2018, it is confirmed to us that no agreement is entered into with these parties and no interest is received/receivable against these loans. It is clear case of diversion of funds of MSX Mall private limited.

10. Respondents No.1 and 2 in their replies/Written Submissions have stated the following on these loan transactions:

SL. NO.	PARTICULARS	NAME	RELATIONSHIP	AMOUNT	REPLY
1.	Loans and advances given to related parties of the Corporate Debtor	MSX Developers (P) Ltd.	Group Company	1,83,10,457/-	That the Corporate Debtor availed the services of MSX Developers (P) Ltd. for the construction of MSX Mall. It is further submitted that the Corporate Debtor made the payments towards the construction of the work done by MSX Developers (P) Ltd. and also availed the services of New Wave Hospitality Services (P) Ltd. It is further submitted that the UPSIDC in the year July 2014 issued the completion/provisional completion certificate of MSX Mall (Corporate Debtor), which itself proved that the Corporate Debtor availed the services of MSX Developers (P) Ltd., and the payment was made in respect to the services availed by the Corporate Debtor. [Paragraph No. 22 of the Reply]
New Wave Hospitality Services (P) Ltd		Group Company	97,45,060/-		
Ashok Singhal		Brother-in-law of Director	15,00,000/-	It is submitted that as per the Ledger filed by the Applicant in the present Application misses out on the transfer of amount of 15 lakhs dated 05.11.2014 which has been paid to the Corporate Debtor. In view thereof, the amount of 15	

				lakhs is reflected as loan. However, the said loan has already been settled on 05.11.2014. Copy of Ledger of Ashok Singhal is annexed herewith and marked as <u>ANNEXURE R-1</u> .
Vikas Gupta	Son in law of directors of Company	16,45,352/-		It is submitted that as per the audited balance sheet as on March 31, 2015, the amount to Mr. Vikas Gupta is NIL. However, the RP has placed reliance upon unaudited balance sheets whereby, balance of Rs. 16,45,342/- is being shown. Furthermore, the balance against Garima Gupta is also shown to be Rs. 1,62,363/- as against Rs. 8,76,605/- which has been alleged by the RP. The relevant excerpt of the Audited Balance Sheet as on 31.03.2015 is annexed herewith and marked as <u>ANNEXURE R-2</u> .
Garima Gupta	Daughter of Directors	8,76,605/-		
Satya Narayan Gupta	Father in law of Garima Gupta	12,50,000/-		It is submitted that payment made by the Corporate Debtor in the name of Satya Narain Gupta pertains to settlement of the friendly loans and advances given to the Corporate Debtor in previous years for the smooth functioning of the business activities. <i>[Paragraph 23 of the Reply]</i> .
Sharad Agarwal	Nephew of Director	3,00,000/-		It is pertinent to mention herein that certain payments were to Sharad Agarwal towards the technical and consultancy services rendered to the Corporate Debtor which were in ordinary course of business. The said fact can be established from an email dated 11.12.2013 showing that the services were sought. Copy of email dated 11.12.2013 is annexed herewith and marked as <u>ANNEXURE R-3</u> . <i>[Paragraph 23 of the Reply]</i>
Arpit Agarwal	Son of Directors	1,72,655/-		It is pertinent to mention herein that certain payments were to Arpit Agarwal towards the technical and consultancy services rendered to the Corporate Debtor which were in ordinary course of business. <i>[Paragraph 23 of the Reply]</i>

11. As regards the Loan amount of Rs.57,44,612/- given to the “Individual Related Parties”, initially, we would like to deal with the first transaction of Rs.15,00,000/- pertaining to one Mr. Ashok Singhal, who is stated to be Brother-in-Law of the Director. Respondents no.1 and 2 have denied that it

was a Fraudulent Transaction. In their reply dated 06.02.2023, Respondents no.1 and 2 have averred the following:

*“5. That it is pertinent to mention here that the Answering Respondent had given a friendly loan to Ashok Singhal amounting to Rs. 15,00,000/-. It is further submitted that the loan given to Ashok Singhal has been settled from the joint account of Vandana Singhal/Ashok Singhal/Neelam Singhal in the account of the Corporate Debtor.”*

It is further stated by Respondents No.1 and 2 in their Written Submissions that the CD's Ledger fails to reflect the payment of the amount of Rs.15 Lakhs, which was already settled.

12. Per Contra, the Applicant/RP in its Rejoinder has denied the claim of Respondent No.1 and 2 and stated that there are no transactions reflected in the ledger of Mrs. Vandana Singhal's account, hence the question of adjustment of the loan given to Mr. Ashok Singhal from her account does not arise. Further, there is no Ledger of Mrs. Neelam Singhal maintained in the books of Accounts of the CD.

13. It is against this backdrop that we would like to examine the transaction. Accordingly, we refer to the ledger Account of Mr. Ashok Singhal annexed by the Respondent, the Contents of which reads thus:

**MSX Mall Private Limited**  
(Formerly Known As Nitishree Buildcon Pvt. Ltd)  
A-44, Ground Floor, Shakarpur  
East Delhi-110092  
CIN: U45201DL2002PTC115916

**Ashok Singhal(SAM)**  
Ledger Account

1-Apr-2012 to 5-Jan-2019

					Page 1	
Date	Particulars	Vch Type	Vch No.	Debit	Credit	
17-7-2012	Dr Indusind Bank-200003531101 Cheque/DD Ch. No. 517583	RECEIPT 17-7-2012	314	10,00,000.00		
						10,00,000.00
	Cr Closing Balance			10,00,000.00		10,00,000.00
1-4-2013	Dr Opening Balance					10,00,000.00
15-7-2013	Dr Indusind Bank-200003531101 Cheque/DD ch. no. 517598	RECEIPT 15-7-2013	441	3,00,000.00		
						13,00,000.00
	Cr Closing Balance			13,00,000.00		13,00,000.00
1-4-2014	Dr Opening Balance					13,00,000.00
8-7-2014	Cr Indusind Bank-200003531101 Cheque ch. no. 269875	Payment 8-7-2014	2906	13,00,000.00		
				13,00,000.00		13,00,000.00
15-9-2016	Cr Corporation Bank-179601601000240 Cheque	Payment 15-9-2016	1206	5,00,000.00		
				5,00,000.00		5,00,000.00
	Dr Closing Balance					5,00,000.00
1-4-2017	Cr Opening Balance					5,00,000.00
12-6-2017	Cr Kotak Mahindra Bank A/c No.5711797645 Cheque	Payment 12-6-2017	320	5,00,000.00		
				5,00,000.00		5,00,000.00
29-7-2017	Cr Kotak Mahindra Bank A/c No.5711797645 Cheque	Payment 29-7-2017	643	5,00,000.00		
				5,00,000.00		5,00,000.00

From a perusal of the Ledger (ibid), it is observed that the payment has been received on behalf of Mr. Ashok Singhal vide 3 cheques each of Rs.5,00,000/- entered in the Ledger on 15.09.2016, 12.06.2017, and 29.07.2017. However, as noted above, the Applicant/RP has denied such

adjustments even from Ms. Vandana and Neelam Singhal as claimed by the Respondents.

14. However, the Applicant/RP has not denied the receipt of cheques (ibid), and if received, what was the purpose, if the same were not in relation to the payments of the loan amount given to Mr. Ashok Singhal? Moreover, the RP has failed to place or produce on record the Bank Account of the CD pertaining to this transaction. **Hence, there is not adequate material on record to prove beyond doubt that the amount of Rs.15,00,000/- extended to Mr. Ashok Singhal was not paid back to the CD and therefore, in the absence of conclusive evidence, we cannot treat this transaction as a Fraudulent Transaction.**

15. Now, we would like to examine the next transaction of Rs. 16,45,352 stated to be a loan given to Sh. Vikas Gupta, son-in-law of the Director of the CD, and Rs. 8,76,605 stated to be a loan given to Ms. Garima Gupta, daughter of the Director. It is stated by the Respondents in their Written Submissions that as per the Balance Sheet as of 31.03.2015, the amount reflected against Mr. Vikas Gupta is "Nil". The RP has placed reliance on an unaudited balance sheet whereby a balance of Rs. 16,45,342/- has been shown against Mr. Vikas Gupta.

Per Contra, the Applicant/RP in its Rejoinder has stated that there is no Loan Agreement existing in the records of CD for any such Loan Facility extended to Mr. Vikas Gupta and Ms. Garima Gupta. The Applicant has annexed the Ledger Account and the Account Statement of Mr. Vikas Gupta and Ms. Garima Gupta justifying the amounts (ibid) recoverable from them.

It is against this backdrop, that we would like to refer to the extracts of the Audited Balance Sheet of CD as of 31.03.2015 placed by the Respondents on record, which read thus:

**MSX MALL PRIVATE LIMITED**  
Notes to financial statements for the year ended March 31, 2015

	As at March 31, 2015 (Amount in Rs.)	As at March 31, 2014 (Amount in Rs.)
<b>12 Cash and bank balances</b>		
Cash and cash equivalents		627,458
- Balances with banks	1,304,777	2,949,759
- on current accounts	2,182,962	3,577,217
- Cash on hand	3,407,739	
<b>13 - Short-term loans and advances</b>		
a) Loans and advances to related parties		162,363
Vikas Gupta		2,023,850
Garima Agarwal		945,000
(b) Others	857,500	1,416,381
(c) Staff Advance	4,077,667	574,903
(D) Recoverable from Authorities	66,743	
- Other Recoverable	5,001,910	5,122,496.51
<b>14 - Other current assets</b>	1,616,633,459	1,467,559,612
WIP		
	1,616,633,459	1,467,559,612

16. As per the Balance Sheet of the CD (ibid), Short-term loans and advances against Mr. Vikas Gupta and Ms. Garima Gupta are shown to be Nil. It is not the case of the Applicant/RP that the said Balance Sheet was not prepared in a true and fair manner. Even if it was not prepared in a true and fair manner, it is not clear what steps the Applicant/RP took to rectify the Balance Sheet. **Hence, in view of the 'nil' balance appearing in the Balance Sheet as of 31.03.2015 against the names of Mr. Vikas Gupta and Ms. Garima, the RP has failed to establish conclusively, the transactions of Rs. 16,45,352/- and Rs. 8,76,605/- as Fraudulent transactions.**

17. Now, we would like to examine the next transaction pertaining to the loan of Rs.12,50,000/- granted to Sh. Satya Narayan Gupta (Father-in-Law of Garima Gupta). Respondents No. 1 and 2 have contended that the payment made by the CD to Sh. Satya Narayan Gupta pertains to the settlement of friendly loans and advances given by him to the CD in previous years for the smooth functioning of the business activities.

18. From a perusal of the record, it is observed that Respondents No. 1 and 2 have not annexed any bank statements to substantiate that Sh. Satya Narayan Gupta had earlier disbursed any loan/advance to the Corporate Debtor, which was repaid by the CD. Further, this claim of Respondents No. 1 and 2 has not been established through the balance sheets of the CD. **Hence, we find no plausible explanation given by Respondents No. 1 and 2 as to why an amount of Rs.12,50,000/- was disbursed to Sh. Satya Narayan Gupta, and that too without any loan agreement/document. Hence, we find that the aforesaid transaction of Rs.12,50,000/- in favour of Sh. Satya Narayan Gupta from the account of CD as a 'fraudulent transaction'. We accordingly direct Respondents No.1 and 2 to make a contribution of Rs.12,50,000/- to the Bank account of the Corporate Debtor.**

19. Now, we examine the transactions pertaining to the payments of Rs.3,00,000/- (Rs. 1,00,000/- paid on 24.09.2015 and Rs 2,00,000/- paid on 01.06.2017) to Mr. Sharad Aggarwal, the nephew of the Director of the Corporate Debtor. Respondents No. 1 and 2 have stated in their reply/Written Submissions that the payments of Rs.3,00,000/- were made

to Mr. Sharad Aggarwal towards the Technical and Consultancy Services rendered by him to the Corporate Debtor in the ordinary course of business. In order to support their contention, Respondents have relied on the email dated 11.12.2013 sent by Mr. Sharad Aggarwal to the Director of the CD to show that the services were sought by the Respondents from Mr. Sharad Aggarwal. The said e-mail dated 11.12.2013 reads thus:



MSX MALL <director.msx@gmail.com> <sup>17</sup>

### Queries

SHARAD AGARWAL <soppy1@gmail.com>  
To: director.msx@gmail.com

Wed, Dec 11, 2013 at 3:33 PM

In the referred case ,yesterday we have visited MSX Mall P ltd to assess the future income as current emi's including our proposed emi amount comes to Rs 14 lacs approx and met CFO (Mr Adnan).

Also current income was coming around Rs 7 lacs hence DSCR was not met .We have not received some of the critical queries like

1. ITR of Mr M S Aggarwal and Alka Aggarwal for AY 13-14 even though at the time of PD it was informed at the time of PD by Mr Aggarwal that return has been filed
2. MSX Mall P ltd tax audit report alongwith audited financials of AY 13-14 (only Balance sheet has been provided and schedules annexed are not CA attested /audited)
3. FCU is still on hold

I have called up Mr Riyaz (accountant ) and he was not sure whether return of Mr M S aggarwal and Ms Alka has been filed or not so he asked me to call CA Mr R K Tuli and we are structuring the case on income as shown in computation of AY 13-14 which needs to be validated with ITR 's.Also clarification is required that P & L provided for MSX Mall was showing losses whereas as per I Tax return income is being shown as per project completion method.

I was told today to call him around 12 as he was travelling and when I called Mr Tuli ,he asked me to call after half an hour as he was in midst of meeting .

Now my calls are not being answered and I have tried from landline as well as mobile .

20. It is observed that whereas the aforementioned email from Mr. Sharad Aggarwal relied on by the Respondents for providing consultancy services to the CD is of 11.12.2013, the payment of Rs. 1,00,000/- to him was made on 24.09.2015 and of Rs 2,00,000/- was made on 01.06.2017. The long time



gap between the reported consultancy services and payment in lieu thereof raises suspicion. Moreover, neither any Letter of Appointment nor any Consultancy Agreement nor any invoice has been placed or produced by the Respondents on record. Furthermore, no proof of deduction of TDS on this transaction has been placed on record. In the absence of such documents, the contention of the Respondents loses its force. **Therefore, we have no other option but to consider the payment of Rs.3,00,000/- made to Mr. Sharad Agarwal as a “fraudulent transaction”. We accordingly direct Respondents No.1 and 2 to make a contribution of Rs. Rs.3,00,000/- to the Bank account of the Corporate Debtor.**

21. Now, we examine the payment of Rs.1,72,655/- made to Sh. Arpit Agarwal, the son of the Director of the Corporate Debtor. Respondents No. 1 and 2 have contended that this payment was made towards technical and consultancy services rendered by him to the Corporate Debtor in the ordinary course of business.

22. However, we do not see any documentary proof placed or produced on record by the Respondents in their replies or written submissions, which could depict that Sh. Arpit Agarwal was appointed/engaged to render such services to the Corporate Debtor. **Therefore, we have no other option but to treat this payment of Rs.1,72,655/- made to Sh. Arpit Agarwal from the account of the CD as a “fraudulent transaction”. We accordingly direct Respondents No.1 and 2 to make a contribution of Rs. Rs.1,72,655/- to the Bank account of the Corporate Debtor.**

23. Other than the abovementioned loans advanced to the related parties, the Applicant/RP has contended that Respondents No. 1 and 2 misused the loan of Rs.1.80,00,000/- disbursed by Religare Finvest Limited to the CD. The Applicant/RP has submitted the following:

- i. The Corporate Debtor was disbursed with a loan of Rs.300 Lakhs by Religare Finvest Limited on June 16, 2013, vide loan account number 48336/300;
- ii. Religare Finvest Limited submitted its claim amounting to Rs.269.54 lakhs as of July 09, 2018, to the Applicant against the abovementioned loan;
- iii. The Directors of the CD purchased a property out of the disbursed amount in their own name and out of the disbursed amount, Rs.180 Lakhs was transferred directly to the sellers of the said property, Mr. Kunal Arora and Rajat Mohan Pathak, as the purchase consideration; and
- iv. Thus, the suspended Directors of the Corporate Debtor diverted the loan amount fraudulently to acquire a property in their own name at the cost of other creditors and real estate investors of the CD and also created a charge against the loan over the assets of the CD. Since the business of the CD is carried out with the intent to defraud the creditors, the suspended board of directors should be made liable to contribute to the assets of the Corporate Debtor in accordance with Section 66 (1) of the Code.

24. When we refer to the record, it is seen that the Forensic Auditor has given the following observations with respect to this transaction in its report:

**3.5.5 Abuse of end use of Rs. 180 lacs taken as a loan against property from Religare Finvest Limited**

Director & promoters of Corporate Debtor, Mr. M.S. Agarwal and Mrs. Alka Agarwal purchased a residential property bearing address D88, Sector 26, Noida, Gautam Budha Nagar, UP from Mr. Kunal Arora and Mr. Rajat Mohan Pathak. Total sale consideration for purchase of this property was Rs. 200 lacs. An amount of Rs. 180 lacs was paid by Religare Finvest Limited directly to sellers out of loan bearing no. 48336/300 disbursed of Rs. 300 lacs. Religare Finvest Limited has sent its claim against this loan and Rs. 269.54 lacs is still outstanding.

We observed that this loan against property was not availed by the Corporate Debtor for the purpose of purchase of residential unit. Corporate Debtor has taken loan @ 14.5 % per annum interest rate while earlier loans taken from directors and relatives did not carry any interest liability.

As such to camouflage the matter, on 31<sup>st</sup> March 2014, at the time of finalization of books of accounts, this amount paid to seller of property was debited to various accounts of promoters/their relatives to knock off their old balances in the books of Corporate Debtor The details of same are as follows:-

	Amount debited
MS Agarwal	9,506,078
Alka Agarwal	2,434,855
Madhav Sharan Agarwal (Loan)	3,859,067
MS Agarwal HUF	2,075,000
Arpit Agarwal	125,000
<b>Total</b>	<b>18,000,000</b>

25. Per contra, Respondents No. 1 and 2 have submitted that Mr. Madhav Saran Agarwal i.e., Respondent No. 1 availed the loan in his personal capacity and not in the name of the CD. Further, the CD was only a Co-Borrower. Therefore, there is no abuse in the end use of the loan taken from

Religare Finvest Limited. Further, the RP had sent an email dated 10.09.2018 to Religare Finvest Limited, which clearly shows that the Principal Borrower is Mr. Madhav Saran Agarwal and not the CD i.e., MSX Mall Private Limited. Furthermore, a transaction could be called a fraudulent transaction when it is established that the money was kept away from the reach of the Corporate Debtor. The loan availed by Mr. Madhav Saran Agarwal was with respect to a property that was purchased and mortgaged against the loan i.e., the purchased property was a secured Asset. It is further submitted that the Corporate Debtor is a Corporate Guarantor and the claim of Religare Finvest Limited has already been admitted by the RP and Religare Finvest Limited is an assenting Financial Creditor in respect of the Resolution Plan approved by the CoC.

26. On the other hand, the Applicant/RP has denied the submissions made by Respondents No. 1 and 2 and stated that Religare Finvest Ltd. disbursed the loan in favour of the Respondents whereby the purchased property was mortgaged against the loan which is a fraudulent transaction. The Applicant has denied that the Corporate Debtor stood as a Co-guarantor of the said loan and the purchased property was mortgaged against the said loan as a secured asset. The Applicant/RP has submitted that -

- (a) CD was the Co-borrower of the Loan granted by Religare Finvest Ltd.;
- (b) CD did not stand as the Co-guarantor;
- (c) the installments of the Loan were paid from the bank account of the CD,
- (d) but the Property was purchased in the name of the Respondents.

It is further submitted by the Applicant/RP that the claim of Religare Finvest Ltd. was admitted by him because the CD stood as the Co-borrower of the said Loan. It is further submitted that the approval of the Resolution Plan by Religare Finvest Ltd. having a 3.02% voting share in the COC does not overcome the fraud carried out by the Respondents.

27. Now, we would like to examine the contentions of both parties. Accordingly, we refer to the "Disbursal Advice" of Religare Finvest Ltd. placed on record by the Applicant which reads thus:



**Disbursal Advice**

Date :20/Jun/2013

Loan Agreement Number : XMORPNG00048336

Loan Amount ₹	30000000/-	Product	MORTGAGE
Branch	NEHRU PLACE 1525	EMI ₹	131485
Loan Term(Mths)	120	No of Installment	12
Inst Type	EQUATED MONTHLY INSTALLMENT	Installment Mode	ARREAR
No of Adv. EMI	0	Adv. EMI Amt. ₹	0
Disbursal Date	14/Jun/2013		
1st EMI Date			

**Customer Details**

Customer Name	Applicant Type	Age	Constitution	Profession
MR. MADHAV SARAN AGGARWAL	Primary	60	INDIVIDUAL PERSON	
MSX MALL PRIVATE LIMITED	Co-Applicant	0	PVT LIMITED	
MRS. ALKA AGARWAL	Co-Applicant	54	INDIVIDUAL PERSON	
MRS. GARIMA AGARWAL	Co-Applicant	28	INDIVIDUAL PERSON	

**Charge Details**

Processing Fee (Inclusive of all taxes) ₹	252810/-
Other Charges ₹	0

**Disbursement Details**

Mode	Instrument No	Instrument Date	Amount (₹)	In Favour of
Cheque	0	14/Jun/2013	949722	MADHAV SARAN AGARWAL A/C RFL
Cheque	49107	14/Jun/2013	18000000	KUNAL ARORA RAJAT MOHAN PATHAK A/C HDFC BANK A/C

Dealer / Customer Signature

(This is a computer generated letter hence does not require signature)

From the perusal of the aforesaid “Disbursal Advice” of Religare Finvest Ltd., it is seen that Mr. Madhav Saran Aggarwal, the Respondent No. 1 was the primary applicant for the loan and the MSX Mall Pvt. Ltd., the Corporate Debtor was the Co-Applicant along with two other individuals. Further, it is noticed from the “Disbursement Details” given in the Disbursal Advise that the disbursement of Rs. 9,49,722/- was made to Mr. Madhav Saran Aggarwal (R-1) and Rs. 1,80,00,000/- to Mr. Kunal Arora and Rajat Mohan Pathak. Thus, it is found that for the disbursed loan amount of Rs. 9,49,722/- + Rs. 1,80,00,000/- = Rs. 1,89,49,722/-, the Corporate Debtor was not the end user.

28. However, the RP had contended that the loan was disbursed to the Corporate Debtor but it has failed to demonstrate the same by way of any documentary evidence. Further, the Forensic Auditor’s report contains no evidence that this amount was directly disbursed to the Corporate Debtor and not to the Respondents. **However, still, we are of the view that if the Corporate Debtor was not the beneficiary of the loan and any installments are paid from the account of the Corporate Debtor, the same shall be reimbursed by Respondent No. 1 and 2 into the account of the Corporate Debtor. Hence, we direct the RP to ascertain the exact amount of loan that is not utilized by CD but paid from the Bank account of the CD to the Creditor Religare Finvest Limited and take steps to recover the same from Respondent No.1 and 2, to the bank account of the Corporate Debtor.**

29. The next alleged transaction is regarding the embezzlement of the closing cash balance of Rs.45,30,173/- as of 06.06.2018, for which RP has stated the following:

- i. Soon after initiation of the CIRP, the Applicant began the cash determination process with respect to the CD. On finding that the Suspended directors of the Corporate Debtor have engaged in unscrupulous business practices, causing embezzlement of cash balance to the tune of Rs.45,30,173/-, the Applicant wrote an e-mail to the Directors on August 25, 2018 enquiring about the same.
- ii. That the Applicant also filed a Company Application No. 459/2018 before the NCLT, which vide its order dated September 20, 2018 took note of the fact that *“A sum of 45,00,000/- held as cash in hand as on 06.06.2018 has neither been explained nor handed over.”*
- iii. As per the Books of accounts of the Corporate Debtor, a Cash balance of Rs.45,30,173/- was available as on the date of initiation of CIRP. However, as per the officials of the Corporate Debtor, no physical cash was available with the company, depicting that the Directors of the CD had engaged in the embezzlement of funds.

30. In this regard, the Forensic Auditor has observed the following :

8.5.6 Embezzlement of closing Cash balance of Rs. 45.30 lacs:

At the commencement of CIR process, corporate debtor had closing balance of Cash to the tune of Rs. 45,30,173 as per books of accounts whereas it is confirmed to us by the company official that no cash is available in the possession of any of the employees of corporate debtor. Company officials has confirmed us that cash is dealt/kept by directors which clearly shows that directors of the corporate debtor had embezzled the company's fund.

Further we have noticed that corporate debtor was having substantial cash balance from April 2017 onwards. This clearly shows that cash was withdrawn from bank over a period of time. Detail of month end closing balance is given hereunder:

Month	Month End Closing Balance
Apr-17	1,295,854
May-17	2,213,374
Jun-17	2,781,249
Jul-17	3,447,234
Aug-17	3,983,137
Sep-17	3,474,524
Oct-17	3,379,624
Nov-17	3,892,784
Dec-17	4,020,334
Jan-18	4,236,475
Feb-18	4,526,375
Mar-18	3,875,248
Apr-18	3,968,248
May-18	4,210,173
Jun-18	4,530,173
Jul-18	4,530,173

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31. Respondents no.1 and 2, in their response, have denied such transactions, as alleged by the Applicant and Forensic Auditor. They have stated that as per the last audited books of accounts as of 31.03.2015, no such transaction was recorded. The Cash Book annexed on Page 291-296 of Volume 3 of the Application reflects that there was a cash balance of Rs.45,30,173/-, the relevant extracts of which reads thus:



**Msx Mall Pvt. Ltd.**  
(Formerly Known As Nitishree Buildcon Pvt. Ltd)  
B-10, West Jyoti Nagar, Shahdara, Delhi

**Cash**  
Monthly Summary  
1-Apr-2017 to 9-Jul-2018

Page 1

Particulars	Transactions		Closing Balance
	Debit	Credit	
Opening Balance			6,29,684.32 Dr
April	6,69,670.00	3,500.00	12,95,854.32 Dr
May	13,61,520.00	4,44,000.00	22,13,374.32 Dr
June	6,47,875.00	80,000.00	27,81,249.32 Dr
July	6,65,985.00		34,47,234.32 Dr
August	6,10,903.00	75,000.00	39,83,137.32 Dr
September	66,387.00	5,75,000.00	34,74,524.32 Dr
October	1,56,600.00	2,51,500.00	33,79,624.32 Dr
November	5,93,160.00	80,000.00	38,92,784.32 Dr
December	2,27,550.00	1,00,000.00	40,20,334.32 Dr
January	2,16,141.00		42,36,475.32 Dr
February	2,89,900.00		45,26,375.32 Dr
March	48,873.00	7,00,000.00	38,75,248.32 Dr
April	93,000.00		39,68,248.32 Dr
May	2,41,925.00		42,10,173.32 Dr
June	3,20,000.00		45,30,173.32 Dr
July			45,30,173.32 Dr
<b>Grand Total</b>	<b>62,09,489.00</b>	<b>23,09,000.00</b>	<b>45,30,173.32 Dr</b>

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32. We are aware that the CIRP of the CD was initiated on 09.07.2018, whereas the Corporate Debtor had uploaded its Balance Sheet only till 31.03.2015. Respondents No.1 and 2, who were managing the affairs of the Corporate Debtor, did not upload the remaining Balance Sheets. In our view, they cannot take benefit of their own lapse/wrongdoing. Moreover, the Forensic Auditor had indicated transactions from April 2017 to July 2018, which would obviously not have been reflected in the Balance Sheet as of 31.03.2015. Merely the Books of Accounts of the CD were not audited, for the lapse on the part of the ex-management, will not create an escape route for Respondents No.1 and 2 from explaining and accounting for the aforesaid transactions. **Since no just explanation has been given by Respondents No.1 and 2 about the cash balance of Rs. 45,30,173/- appearing in the Books of Accounts of the CD prior to the initiation of CIRP and the fact that the said cash balance was not handed over to**

**RP, we have no other option but to consider the cash of Rs. 45,30,173/- as Fraudulently embezzled and we direct the Respondents No.1 and 2 to contribute this amount to the Bank Account of the CD.**

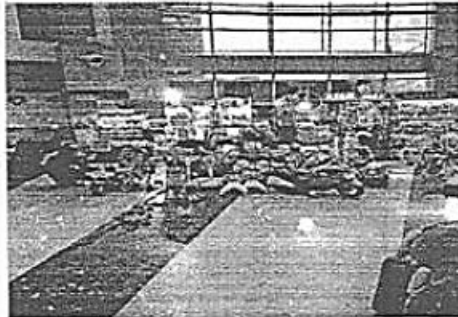
33. Now, we consider the next transaction pertaining to the embezzlement of Cash of Rs. 65.29 Lakhs collected as “rent from the users of Kiosks of CD”. The RP has submitted the following with respect to this transaction:

- i. The Suspended Directors of the CD were engaged in the collection of rent and other charges from the occupants in cash. The RP wrote an email dated 01.08.2018 to the Suspended Directors to stop the same immediately.
- ii. The cash amounting to Rs. 65,29,012/- is not reflected in the records of the CD from April 2017 to June 2018 and the same has been embezzled by the Suspended Directors.
- iii. The month-wise details of collection and bookings in the tally are mentioned in Para No. 1.4(4) on Pg. 13 of the Application.
- iv. Further, as per Clause 8.5.7 of the Forensic Audit Report, a sum of Rs. 13,31,996/- was paid for the personal use of the Director or for purposes other than business operations.

34. The Forensic Auditor has stated the following with respect to the aforesaid transactions -

**8.5.7 Embezzlement of cash collected from Kiosks as rent and from users as CAM maintenance charges to the tune of Rs. 65.29 Lacs :**

During the review of cash collection process, we have been provided monthly cash collection and expense sheet prepared at Mall, on account of common area maintenance charges, electricity charges, rental from Kiosks etc. From analysis of these sheets and verification of corresponding entries in books of account, we observed that company had not recorded Rs. 65,29,012 collected during Apr 2017 to Jun 2018 in books of accounts. Detail from 09<sup>th</sup> July 2016 to 31<sup>st</sup> March 17 was not available in record for examination. Month wise detail of collection and booked in tally is given hereunder:



Year	Month	As per Excel Sheet	Collection as per Tally	Monthly Unrecorded Cash Receipt
2017	Apr	444,317	3,270	441,047
2017	May	450,937	36,520	414,417
2017	Jun	634,045	107,875	526,170
2017	Jul	774,165	46,485	727,680
2017	Aug	148,400	153,673	(5,273)
2017	Sep	138,900	36,387	102,513
2017	Oct	450,989	95,250	355,739
2017	Nov	483,890	108,160	375,730

2017	Dec	490,631	77,550	413,081
2018	Jan	336,027	51,141	284,886
2018	Feb	312,983	29,900	283,083
2018	Mar	469,169	42,773	426,396
2018	Apr	624,888	93,000	531,888
2018	May	576,586	-	576,586
2018	Jun	1,075,069	-	1,075,069
	<b>Total</b>	<b>7,410,996</b>	<b>881,984</b>	<b>6,529,012</b>

Further to this we noticed that as per excel record maintained for Mall, corporate debtor has incurred expenses of Rs. 68,54,396 in cash, out of above referred proceed and same was not booked in Tally except in two cases. We have checked nature of expenses and noticed that Rs.13,31,996 was paid for personal use of director or expense description mentioned in sheet does not seem to be for business transaction of corporate debtor. For other expenses also no supporting was provided to verify the genuineness of expenses. Detail is given in Annexure 1.5.5.

35. Respondents No.1 and 2, in their response, have stated that the CD being a going concern, had to incur various expenses for running the MSX Mall and further, Respondent No.1 and 2 had no knowledge about any entry or non-entry of the cash book. It is further contended by them that since the Books of accounts of the CD were not audited when such expenses were incurred by the CD, the same cannot be called a Fraudulent Transaction.

36. The plea of Respondents No.1 and 2 having no knowledge about the entries made in the books of account itself reflects that they did not act in a prudent manner while managing the affairs of the Corporate Debtor as Directors. Further, as observed earlier too, merely that the Books of Accounts were not audited, does not create an escape route for the Respondents from explaining the transactions. As a matter of fact, Respondents No.1 and 2 have not denied the collection of rent and other charges in cash from the occupants of the Kiosks of the CD. Further, they have failed to bring anything on record that this cash was utilized against any business expenses of the CD. **Hence, in the absence of any just explanation, we have no other option but to conclude that Respondents No.1 and 2 have fraudulently embezzled the cash of Rs. 65.29 Lakhs. We accordingly direct Respondents No.1 and 2 to make a contribution of Rs 65.29 Lakhs to the Bank account of the Corporate Debtor.**

37. Now, we would like to examine the transaction pertaining to “Unaccounted Cash Receipts” of Rs 3,80,25,500/-. The Applicant/RP had stated the following with respect to this transaction:

- i) On verification of records of the Corporate Debtor, it has been observed that cash payments have been received by the Corporate Debtor from a total of 55 parties, as mentioned in the allotment letters/ cash receipts as annexed with the proof of claims submitted to the Applicant and also, as per the cash receipts submitted by the tenants of the Corporate Debtor with regard to the payment of security deposits in cash.
- ii) All Cash Receipts have not been booked/partially booked in the books of accounts of the Corporate Debtor thereby proving that the suspended/ex-directors of the Corporate Debtor engaged in the fraudulent diversion of funds to the tune of Rs. 380.28 Lakhs.

38. From the record it is seen that the Forensic Auditor has observed the following with respect to these transactions along with details as given in Annexure 1.5.6 (reproduced below) of the report:

#### **8.5.8 Unaccounted Cash Receipts for Rs. 380.28 Lacs**

While scrutinizing allotment agreements and payment receipts issued by Corporate Debtor, provided to us by officials of corporate debtor and/or Resolution professional, we observed that cash collected to the tune of Rs. 380.28 lacs was not booked in books of accounts. List of these cases is given in Annexure 1.5.6:

It is a clear case of embezzlement of company's fund to defraud the creditors.

**Xxx**

**xxx**

**xxx**

## List of Allottees who have made full/partial payment in Cash

## Annexure 1.5.6

S. No.	Name of claimant	Cash Claimed by Allottee	Amt. as per Receipt	Date of Receipt	Amt. booked in Tally	Date of Booking
1	Manju Chauhan	1,100,000	1,100,000	28-10-16		
2	Prem Nagpal	544,000	544,000	16-07-11		
3	MUKTA BAXI	24,499	24,499	08-11-14		
4	Ajeet Tomar	16,000	16,000	13-01-11		
5	Savita Kohli	187,223	177,000	16-10-14		
			10,223	15-10-14		
6	Pramod Kumar & Bhupendra Singh	200,000	100,000	18-06-11		
			100,000	06-06-11		
7	Sudhir Kumar Sharma	33,269	33,269	02-01-12		
8	Brijesh Chaudhary	752,000	752,000	26-05-12		
9	Jasleen Kaur & Bhupinder Singh	640,000	320,000	24-01-13		
			320,000	19-12-12		
10	Thomas George & Mrs. Annamma C. Thomas	585,900	585,900	19-04-12		
11	Surabhi Kumar Mishra	2,700,000	700,000	22-07-16		
			1,500,000	30-05-16		
			500,000	20-05-16		
12	Santoshi	398,500	398,500	18-02-13	24,720	19-02-13
13	Sara rai	750,000	750,000	24-05-16		
14	Sanyukta Kuldeepika Rai	2,000,000	2,000,000	20-05-16		
15	Lalit Abhishek & Sudha Baranwal	4,000,000	4,000,000	19-09-07		
16	Nishant Rajput	650,000	650,000	15-12-12	100,000	05-11-12
17	Mukesh Kumar	500,000	500,000	12-12-17		
18	Dharampal & Rahul Tyagi	1,756,800	1,756,800	09-08-11		
19	Ravi Sareen & Yogesh Chandra Sareen	825,200	825,200	01-07-06		
20	Gudia Devi	1,607,445	1,507,445	02-08-13	1,082,445	02-08-13
			100,000	20-06-13		
21	Mohan lal and Sunita Rani	1,684,725	1,684,725	20-04-12		
22	Rama Sharma	635,839	17,450	12-10-11		
			19,389	28-08-11		
			100,000	07-08-11		
			400,000	29-07-11		
			100,000	24-07-11		
23	Nidhi Sharma	630,000	630,000	08-09-12		
24	Gokul Chandra Varshney	1,500,000	1,500,000	30-09-14		
25	Rambha Devi	3,238,587	1,670,873	17-01-15	45,017	10-06-14
			834,949	10-06-14		
			732,765	27-12-13		
26	Renu Devi	791,304	791,304	28-02-14		
27	Pushpa Singh	1,401,700	50,000	03-10-17	17,370	15-02-14
			230,000	27-01-16		
			292,000	04-02-14		
			233,700	15-01-14		
			596,000	18-09-12		
28	Monika sharma	45,000	45,000	29-12-12		
29	Kalawati & Surender Singh	20,000	20,000	08-02-13		
30	Tara Chand	17,000	17,000	06-07-18		
31	Shiv Om Kashvap & Anita	137,589	137,589	28-08-12		
32	Shiv Om Kashvap	125,617	125,617	27-08-12		
33	REKHA SHARDA & ADITYA SHARDA	509,947	93,000	26-04-13	406,480	02-04-12
			10,467	18-05-11		
			406,480	01-10-10		
34	Shiva Prakash Saxena & Manju Saxena	85,439	23,439	11-11-10		
			42,000	16-09-10		
			20,000	18-08-10		
35	Anish Bawa	931,000	931,000	09-07-10		
36	Jagmohan Singh Thakur Jyoti Singh	200,000	200,000	10-11-13	1,837	13-11-13
37	Hema Jain Mukta Jain & Anjna Rani	262,250	262,250	12-01-13		
38	Anshu Jaiswal	27,843	27,843	20-10-11		
39	Neeraj Kumar	263	263	05-06-14		
40	Atul Mittal	220,000	220,000	15-10-13		
41	Meena Rana	352,800	352,800	31-08-13		
42	Vandana Singhal	220,000	220,000	15-10-13		
43	Meena Rana & Rosy Rana	352,800	352,800	18-10-13		

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S. No.	Name of claimant	Cash Claimed by Allottee	Amt. as per Receipt	Date of Receipt	Amt. booked in Tally	Date of Booking
44	Anoop Sharma	531,500	31,500	21-06-10		
			500,000	19-06-10		
45	Digvijay Singh s/o late joginder singh	100,000	100,000	01-11-11		
46	Harvinder Kaur & Kunwar Pal Singh	70,000	70,000	03-12-14		
47	Bhagwan Dass	606,911	21,911	20-01-12		
			285,000	09-01-12		
			200,000	05-01-12		
			100,000	10-12-11		
48	SNEH BANSAL	1,617,000	1,144,000	30-04-10		
			72,000	19-04-10		
			300,000	30-03-10		
			101,000	18-03-10		
49	Seema Sharma	1,000,000	200,000	31-08-17		
			100,000	07-07-17		
			150,000	26-05-17		
			500,000	09-12-16		
			50,000	16-07-16		
50	Jasvinder Kaur	23,000	23,000	01-02-14		
51	Rajpal Singh	210,600	210,600	05-10-11		
52	Jagpreet Singh Sachpreet Kaur Manpreet Singh & Pritpal Kaur	215,800	215,800	10-03-12		
53	Massan & Khan Muhammad	1,500,000	1,500,000	17-08-10		
54	Manju Bala Sharma	795,000	795,000	26-08-13		
55	DS Restaurant and Bar LLP	375,019	375,019	26-06-18		
		39,706,369	39,706,369		1,677,869	

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39. In response, Respondents No.1 and 2 have stated that the Applicant has failed to attach any cogent documentary evidence for the cash payments allegedly received by the Respondents. It is further submitted that the Applicant/RP in the I.A. No. 124 of 2019 has annexed certain allotment letters along with the cash receipts, however, the same is not legible and the annexed documents are not of the creditors of the Corporate Debtor but of MSA Developers.

40. We have perused the documents as placed on record. Though, the RP has claimed an amount of Rs 3,80,25,500/- on the basis of the “unaccounted cash receipts” and the details of the Ledger given by the Forensic Auditor, but it has not placed such cash receipts on record.

However, we notice that Respondents No.1 and 2 have annexed those cash receipts from pages 32 to 75 of their Written Submissions. Though Respondents No.1 and 2 have claimed in their Written Submissions that the same were not legible and belonged to MSA Developers, on perusal we find that the said Cash receipts are quite legible barring one, and are issued by the Corporate Debtor i.e., MSX Mall Pvt. Ltd. and not by MSA Developers. Hence, the explanation given by the Respondents is far from true.

**Since Respondents No.1 and 2 have failed to provide any just explanation for the transactions relating to the unaccounted cash receipts, we have no other option but to treat the transactions as Fraudulent. Accordingly, we direct Respondent No.1 & 2 to contribute the amount of Rs 3,80,25,500/- to the Bank Account of the CD.**

41. Now, we examine the next group of transactions relating to multiple allotments of units worth Rs. 23,11,74,979/-. In this regard, the Applicant/RP has stated that on scrutiny of records of the CD, and on receipt of the proofs of claims from various allottees of the Corporate Debtor, he noticed that the CD has fraudulently allotted 129 units of the MSX Mall to the second or third allottee (i.e., allotment of one unit to multiple allottees) and thus, committed a fraud amounting to Rs.23,11,74,797/-. Since the suspended board of directors of the CD allotted the same space to various investors and carried out the business for fraudulent purposes with an intent to defraud creditors of the CD, the Respondents be asked to contribute towards the loss caused to the creditors due to multiple allotments.



42. From the record, it is seen that on the issue of transactions relating to multiple allotments, the Forensic Auditor has observed the following:

**8.5.1 Allotment of same shops to allottees more than once resulting into fraudulent collection of Rs. 2,311.74 lacs by corporate debtor.**

While scrutinizing the List of Allottees (Control sheet of allotment) of the corporate debtor and validating this sheet with agreements executed between the Corporate Debtor and Allottees for allotment of shop and books of account, we found that same shops are allotted to more than one allottees. On inquiry from the company official, it was confirmed that the duplicate/triplicate allotment was made with an assumption that buyback of units will be done from previous allottees thus shop will become vacant upon exercise of buyback option by allottee. However we found that the corporate debtor had collected Rs. 1,938.75 lacs by way of duplicate/triplicate allotment of same shop without buyback option is exercised by the previous allottees. This is clear evident of cheating with the creditors. Details of these cases are as set out in Annexure 1.5.1.

Shop wise detail of multiple allotments causing allotment of excess area is given in Annexure 1.5.1A.

Further to this, in case of virtual area of Haldiram Restaurant and Honey Money Top retail outlet, shop nos in allotments are not in synchronization, hence we have taken first allotments of total saleable area as legitimate and allotments at later period as duplicate/triplicate allotment. Detail of shops allotted last in addition to total saleable area of Haldiram is given in Annexure 1.5.2 which results in fraudulent allotment for Rs. 196.31 lacs and that of Honey Money Top is given in Annexure 1.5.3 which results in fraudulent allotment for Rs. 176.67 lacs.

For our reporting purpose of duplicate/triplicate allotments, we have not considered cases where allotment was made to allottees of MSA developer Private Limited, as these allotments are referred as preferential payments and corporate debtor has not received any consideration against these allotments.

In case of Kidz Zone and Food Court area allotted other than to allottees of MSA Developer private limited is less than total saleable area, hence we have not considered it as duplicate allotment.

58 cases of separately allocable shops as detailed in Annexure 1.5.1 B, where as per Master list of allotment, same shop is allotted to more than one allottee, but allotment letter of one of the allottee was neither available with corporate debtor nor with IP. In such cases we have not consider it as duplicate allotment.

8 cases of HMT as detailed in Annexure 1.5.3 A, where allotment letter was neither available with corporate debtor nor with IP were not considered in excess allotment reported in Annexure 1.6.3.

The details of the multiple allotment cases are given in Annexures 1.5.1 to 1.6.3 of the Forensic Auditor report.

43. In response, Respondents No.1 and 2 have stated in their Written Submissions that the Resolution Plan approved by the COC provides treatment to all these allottees and the same has been dealt with category-wise. Furthermore, when the allotment letters were issued, it was made clear that the allotments made were provisional in nature. The relevant clause of the Allotment Letter relied by them is reproduced below:

*1(a) The allotment is provisional. Firm allotment shall be made and confirmed by notice on completion of Complex Building whereupon a formal Commercial Premises Buyer's Agreement/Sub Lease Deed or any other deed on Company's standard format containing the terms and conditions contained herein shall be executed by notice and Commercial Premises Buyer's Agreement /Sub Lease Deed is signed and executed there shall be no completed contract"*

44. In our view, the issue of multiple allotments and provision for the allottees by an SRA in the Resolution Plan are two distinct issues. Usually, the SRA is not a Promoter, though in the instant case, the Ex-Directors claiming the CD to be an MSME, have submitted the Resolution Plan. However, the mere submission of the Resolution Plan with a provision for the allottees cannot provide immunity to Ex-Directors i.e., Respondent No.1 and 2 from the wrongdoings or Fraudulent Transactions entered by them in terms of making multiple allotments to the allottees. Apparently, Respondents No.1 and 2 cannot make multiple allotments of a single unit

and then, do the damage control by presenting a Resolution Plan. Further, plea taken by Respondents No.1 and 2 is that allotment was provisional, however, the aforesaid clause nowhere stipulates that the Respondents could have done multiple allotments of the same unit without canceling the earlier unit. By doing multiple allotments of the same unit(s), Respondents No.1 and 2 had played fraud not only on the Corporate Debtor but also on the allottees. **Accordingly, we direct Respondents No.1 and 2 to contribute the amount of Rs. 23,11,74,797 to the bank account of the CD. However, the RP on receipt of this amount shall release the same, as per the records of the CD, to the allottees, who are the victims of such multiple/fraudulent allotments,** since the aforesaid amount being fraudulently collected by the CD through Respondents No.1 and 2, the same cannot be added to the asset pool of the Corporate Debtor and deserves to be returned to the respective victim allottees.

45. Now, we would like to examine the next transaction relating to the Transfer of shops/units to the creditors of Respondent No. 3 being the related party. The following is stated by the Applicant/RP with respect to such transactions:

- i) The promoters of the CD have transferred shops/units (as per the details given in the table by the Forensic Auditor, reproduced below) to the creditors of Respondent No. 3 being a related party, resulting in the fraudulent transaction of Rs. 13,55,57,104/-.
- ii) Respondent No. 3 is a Group company of the CD by virtue of having common Directors as per Master Data of the Corporate

Debtor as well as Respondent No. 3. Respondent No. 3 is engaged in the business of the development of residential flats in Noida/Greater Noida and sold flats in a pre-launch project in the name of MSA Circuit Heights, which was expected to come up at Plot No. GH-54, Jaypee Greens Sports City, SDZ, Sector 25, Gautam Budh Nagar, Uttar Pradesh.

iii) Since Respondent No. 3 failed to offer possession to their investors and defaulted in making payments to their creditors, it hatched a plan along with the CD being part of the same management and fraudulently shifted various investors and creditors of Respondent No. 3 to the CD herein, without or with inadequate consideration. The list of such cases as per the documents filed by the Applicant/RP, where shops/units of the CD herein were transferred to investors/creditors of the Respondent No. 3 is reproduced below:

S. N O.	FLOOR	NAME	AREA ALLOTTED IN (SQ.FT.)	RATE PER SQ.FT.	AMOUNT AS PER ALLOTMENT LETTER	ALLOTMENT DATE
1	First Floor	Himanshu Kumar	175.00	2,746.00	4,80,620/-	03/12/2016
2	First Floor	Akhilesh Verma	190.00	8,187.00	15,55,627/-	31/01/2018

3	First Floor	Ranjeet Singh	190.00	5,786.00	10,99,394/-	27/10/2017
4	First Floor	Narander Kumar Mehindru	190.00	6,500.00	12,35,000/-	03/05/2018
5	First Floor	Narander Kumar Mehindru	190.00	6,500.00	12,35,000/-	03/05/2018
6	First Floor	Zubair Alam	255.00	918.00	2,34,126/-	30/06/2017
7	First Floor	Sushant Agarwal	923.00	1,750.00	16,16,009/-	03/01/2018
8	First Floor	Kajari Das	923.00	2,184.00	20,16,000/-	03/01/2018
9	First Floor	Ramesh Batra	837.00	2,133.00	17,85,599/-	03/01/2018
10	First Floor	Rajni Agarwal	519.00	2,921.00	15,16,000/-	11/01/2018
11	First Floor	Shallu Agarwal	923.00	2,184.00	20,16,000/-	03/01/2018
12	First Floor	Akshit Agarwal	1,099.20	1,834.00	20,16,000/-	03/01/2018
13	First Floor	Anil Nagar	566.00	2,072.00	11,73,223/-	24/11/2017
14	First Floor	Anju Jain	500.00	6,294.00	31,47,110/-	05/07/2017
15	First Floor	Vijay Kumar	400.00	6,196.00	24,78,607/-	27/02/2017
16	First Floor	Akhil Kumar	460.00	4,373.00	20,11,590/-	24/01/2017
17	First Floor	Narendra Singh	550.00	3,856.00	21,21,206/-	11/11/2017
18	First Floor	Zubair Alam	886.00	1,700.00	15,06,840/-	08/06/2017
19	First Floor	Usha Sharma	600.00	5,023.00	30,13,875/-	09/06/2017
20	First Floor	Anil Bharti	450.00	3,233.00	14,55,039/-	10/03/2018
21	First Floor	Noor Un Nabi Khan	700.00	4,785.00	33,50,001/-	11/05/2017
22	First Floor	Anu Agarwal	400.00	2,981.00	11,92,764/-	24/05/2017
23	First Floor	Ranjeet Singh	1,170.00	2,398.00	28,05,870/-	27/10/2017
24	First Floor	Prakash Chander Gulati	390.00	4,974.00	19,40,051/-	29/04/2017
25	First Floor	Robin Tanwar	310.00	4,781.00	14,82,199/-	29/04/2017
26	First Floor	Neetu Gupta	650.00	1,633.00	10,61,595/-	04/11/2017
27	Ground Floor	Geeta Chugh	634.00	1,850.00	11,73,178/-	01/06/2018
28	Ground Floor	Mukesh Kumar Chugh	568.00	1,829.00	10,39,101/-	01/06/2018
29	Ground Floor	Sanjeev Gulati	284.00	1,829.00	5,19,550/-	01/06/2018
30	Ground Floor	Pankaj Sachar	284.00	1,829.00	5,19,550/-	01/06/2018
31	Ground Floor	Satyander Singh Raghov	500.00	3,378.00	16,89,476/-	27/12/2017

32	Ground Floor	Abhijay Singh Rathore	500.00	4,115.00	20,57,626/-	27/12/2017
33	Ground Floor	Ritu Goyal	340.00	3,156.00	10,73,125/-	23/08/2017
34	Ground Floor	Atul Malhotra	602.00	8,000.00	48,16,000/-	22/06/2018
35	Ground Floor	Himanshu Kumar / Abdul Salman	850.00	3,812.00	32,40,315/-	03/12/2016
36	Ground Floor	Sachin Sareen	908.00	4,580.00	41,58,875/-	21/11/2017
37	Ground Floor	Harsh Kumar	928.00	2,172.00	20,16,000/-	23/01/2018
38	Ground Floor	Meera Anand	600.00	2,976.00	17,86,051/-	15/12/2017
39	Ground Floor	Manisha Gupta	928.00	2,172.00	20,16,000/-	30/01/2018
40	Ground Floor	Mithilesh Sharma	550.00	5,122.00	28,17,647/-	03/02/2018
41	Ground Floor	Ritu Tyagi	920.00	8,400.00	77,28,000/-	03/08/2017
42	Ground Floor	Chandan Kumar Pandey	700.00	5,563.00	38,94,750/-	12/12/2017
43	Second Floor	Akhilesh Verma	100.00	5,000.00	5,00,000/-	31/01/2018
44	Second Floor	Narander Kumar Mehindru	100.00	4,540.00	4,54,067/-	03/05/2018
45	First Floor	Ascent Construction s Private Limited	225.00	1,333.33	3,00,000/-	07/10/2017
46	First Floor	Ascent Construction s Private Limited	225.00	1,333.33	3,00,000/-	07/10/2017
47	First Floor	Ascent Construction s Private Limited	225.00	1,333.33	3,00,000/-	07/10/2017
48	First Floor	Ascent Construction s Private Limited	225.00	1,333.33	3,00,000/-	07/10/2017
49	Second Floor	Ascent Buildtech Pvt. Ltd.	115.00	1,739.13	2,00,000/-	07/10/2017
50	Second Floor	Ascent Buildtech Pvt. Ltd.	105.00	1,904.76	2,00,000/-	07/10/2017
51	Second Floor	Ascent Buildtech Pvt. Ltd.	115.00	1,739.13	2,00,000/-	07/10/2017
52	Second Floor	Ascent Buildtech Pvt. Ltd.	115.00	1,739.13	2,00,000/-	07/10/2017
53	Second Floor	Ascent Buildtech Pvt. Ltd.	136.00	2,205.88	3,00,000/-	07/10/2017
54	First Floor	Combine India Home Developers Pvt. Ltd	900.00	NA	1,10,29,835/-	27/10/2017

55	Second Floor	Tarun Gulati	2,500.00	4,000.00	1,00,00,000/-	06/07/2018
56	Second Floor	Ascent Buildtech Pvt. Ltd.	10,150.00	1,822.66	1,85,00,000/-	07/10/2017
57	Ground Floor	Ruchi Sodhani	700.00	4,932.00	34,52,625/-	01/09/2017
58	Second Floor	Sarita Jadaun	700.00	4,614.00	32,29,988/-	29/07/2017
		<b>Total</b>	<b>41,178.20</b>		<b>13,55,57,104/-</b>	

- iv) The above-mentioned investors and creditors of Respondent No. 3, who were maliciously allotted (shifted) an area of 41,178 sq. ft. to the project of the Corporate Debtor Viz., MSX Mall for consideration of Rs.13,55,57,104/- between July 09, 2016 and July 08, 2018 by the suspended board of directors of the CD in connivance with the Respondent No. 3, thereby prejudicing the interests of other creditors of the Corporate Debtor herein.
- v) Further, the consideration amount was adjusted against the outstanding credit balance of Respondent No. 3 as of July 09, 2016. Moreover, the outstanding credit balance of Respondent No. 3 in the books of the CD itself seems to be a fictitious entry without recourse to any prudent accounting policies.
- vi) Thus, the transfers of the abovementioned shops/units to the aforesaid allottees were made without receipt of any consideration in the bank accounts of the CD, and subsequent adjustment of the same against the outstanding credit balance of the Respondent No. 3 amounts to a fraudulent transaction under Section 66 of the Code to the tune of Rs.13,55,57,104/-, which should be reimbursed by the R-3 to the accounts of the CD.

46. From the record, it is seen that the Forensic Auditor has stated the following with regard to this transaction between the CD and R-3:

**8.1.1 Allotment of shops to the creditors of Group Company i.e. M/s MSA Developers Pvt Ltd. resulting into preferential payment of Rs. 1,355.57 lacs.**

Corporate Debtor has allotted 41,178 sq. ft. area in MSX Mall to various allottees of the MSA Developers Pvt. Ltd. (Group Entity) for consideration amounting Rs. 13,55,57,104 /- during 09/07/2016 to 08/07/2018. On scrutinizing the ledger of MSA Developers Pvt. Ltd. (related party) in the books of corporate debtor and master allotment sheet of MSX Mall provided to us by officials of corporate debtor during forensic audit, we found that few current allottees of MSX Mall were transferred from MSA Developers Pvt. Ltd. On inquiry from above said officials, it is confirmed that MSA Developers Pvt. Ltd. had collected sale consideration from its own allottees for allotment of flats in its residential project however later on these allottees were shifted to corporate debtors as the Group Company was not able to fulfil its obligation. We further investigated as to whether

Corporate Debtor has received any payment for these allotments in MSX Mall, we noticed that MSA Developers Pvt Ltd. has not transferred any payment to account of corporate debtor and adjusted this against credit balance outstanding as on 09/07/2016 of Rs. 11,86,25,993/- and payment received during this period. This has resulted into preferential payments by way of transfer of company assets without consideration to the tune of Rs. 1,355.57 lacs. Details of those allotments are given in Annexure 1.1.1.

We further noticed that some allottees of MSX Mall are also shifted to residential units of MSA Developers Pvt. Ltd. In all likelihood, these individuals (original allottees of MSX) may raise claim on Corporate Debtor as project of MSA developer is also not completed and an application under 7 of IBC, 2016 is under consideration with another bench of Hon'ble NCLT for this group entity.

XXX

XXX

XXX



S. No.	Floor	Sheet Ref.	Shifted from	Shop. No.	Name	Area allotted	Rate	Amount as per Allotment Letter	Allotment Date	Shop no. already allotted to some other allottee as well
1	First Floor	Central Market	MSA F-801 & F-901	CM 044	Mr. Himanshu Kumar	175.00	2,746.00	480,620	03-12-16	Yes
2	First Floor	Central Market	MSA D-1702	CM 098	Mr. Akhilesh Verma	190.00	8,187.00	1,555,627	31-01-18	No
3	First Floor	Central Market	MSA A-1105, A1205	CM 099	Mr. Ranjeet Singh	190.00	5,786.00	1,099,394	27-10-17	Yes
4	First Floor	Central Market	MSA A-1106	CM 102	Mr. Narander Kumar Mehindru	190.00	6,500.00	1,235,000	03-05-18	No
5	First Floor	Central Market	MSA A-1106	CM 103	Mr. Narander Kumar Mehindru	190.00	6,500.00	1,235,000	03-05-18	No
6	First Floor	Central Market	MSA A-301	CM 142	Mr. Zubair Alam	255.00	918.00	234,126	30-06-17	Yes
7	First Floor	FF-212	MSA A-1003	F.F 245	Sushant Agarwal	923.00	1,750.00	1,616,009	03-01-18	No
8	First Floor	FF-212	MSA B-902	F.F 246	Kajari Das	923.00	2,184.00	2,016,000	03-01-18	No
9	First Floor	FF-212	MSA A-806	F.F 247	Ramesh Batra	837.00	2,133.00	1,785,599	03-01-18	No
10	First Floor	FF-212	MSA A-702	F.F 249	Rajni Agarwal	519.00	2,921.00	1,516,000	11-01-18	No
11	First Floor	FF-212	MSA A-102	F.F 251	Shallu Agarwal	923.00	2,184.00	2,016,000	03-01-18	No
12	First Floor	FF-212	MSA A-1102	F.F 252	Akshit Agarwal	1,099.20	1,834.00	2,016,000	03-01-18	Yes
13	First Floor	First Floor Showroom	MSA A-1004	F.F 204	Anil Nagar	566.00	2,072.00	1,173,223	24-11-17	Yes
14	First Floor	First Floor Showroom	MSA C-1403	F.F 216A	Anju Jain	500.00	6,294.00	3,147,110	05-07-17	Yes
15	First Floor	First Floor Showroom	MSA C-1601	F.F 216C	Vijay Kumar	400.00	6,196.00	2,478,607	27-02-17	Yes
16	First Floor	First Floor Showroom	MSA B-704	F.F 216C	Akhil Kumar	460.00	4,373.00	2,011,590	24-01-17	Yes
17	First Floor	First Floor Showroom	MSA B-606	F.F 216C	Narendra Singh	550.00	3,856.00	2,121,206	11-11-17	Yes
18	First Floor	First Floor Showroom	MSA A-301	F.F 217	Zubair Alam	886.00	1,700.00	1,506,840	08-06-17	Yes
19	First Floor	First Floor Showroom	MSA B-801	F.F 220B	Mrs. Usha Sharma	600.00	5,023.00	3,013,875	09-06-17	Yes
20	First Floor	First Floor Showroom	MSA B-1204	F.F 226B	Mr. Anil Bharti	450.00	3,233.00	1,455,039	10-03-18	Yes
21	First Floor	First Floor Showroom	MSA B-101	F.F 230A	Mr. Noor Un Nabi Khan	700.00	4,785.00	3,350,001	11-05-17	Yes
22	First Floor	First Floor Showroom	MSA B-401	F.F 231A	Mrs. Anu Agarwal	400.00	2,981.00	1,192,764	24-05-17	No
23	First Floor	First Floor Showroom	MSA A-1105 & A-1205	F.F 236	Mr. Ranjeet Singh	1,170.00	2,398.00	2,805,870	27-10-17	Yes
24	First Floor	First Floor Showroom	MSA F-104	FF 236	Mr. Prakash Chander Gulati	390.00	4,974.00	1,940,051	29-04-17	Yes

S. No.	Floor	Sheet Ref.	Shifted from	Shop. No.	Name	Area allotted	Rate	Amount as per Allotment Letter	Allotment Date	Shop no. already allotted to some other allottee as well
25	First Floor	First Floor Showroom	MSA E-101	F.F 236	Mrs. Robin Tanwar	310.00	4,781.00	1,482,199	29-04-17	Yes
26	First Floor	First Floor Showroom	MSA E-1105	F.F 237	Mrs. Neetu Gupta	650.00	1,633.00	1,061,595	04-11-17	Yes
27	Ground Floor	Gf Virtual shops (Haldiram)	MSA A-103	HL-021	Mrs. Geeta Chugh	634.00	1,850.00	1,173,178	01-06-18	No
28	Ground Floor	Gf Virtual shops (Haldiram)	MSA A-105	HL-022	Mr. Mukesh Kumar Chugh	568.00	1,829.00	1,039,101	01-06-18	No
29	Ground Floor	Gf Virtual shops (Haldiram)	MSA A-205	HL-023	Mr. Sanjeev Gulati	284.00	1,829.00	519,550	01-06-18	No
30	Ground Floor	Gf Virtual shops (Haldiram)	MSA A-205	HL-024	Mr. Pankaj Sachar	284.00	1,829.00	519,550	01-06-18	No
31	Ground Floor	Gf Virtual shops (Haldiram)	MSA B-506	H-028 & 29	Mr. Satyander Singh Raghov	500.00	3,378.00	1,689,476	27-12-17	No
32	Ground Floor	Gf Virtual shops (Haldiram)	MSA B-406	H-030 & 31	Mr. Abhijay Singh Rathore	500.00	4,115.00	2,057,626	27-12-17	No
33	Ground Floor	Gf Virtual shops (Haldiram)	MSA B-502	HL 042	Ritu Goyal	340.00	3,156.00	1,073,125	23-08-17	No
34	Ground Floor	Gf Virtual shops (Honey Money Tool)	MSA 1405,1505 & D-601	G.F-086	Mr. Atul Malhotra	602.00	8,000.00	4,816,000	22-06-18	No
35	Ground Floor	Ground Floor Showroom	MSA F-801 & F-901	G.F-102	Mr. Himanshu Kumar /Mr. Abdul Salman	850.00	3,812.00	3,240,315	03-12-16	Yes
36	Ground Floor	Ground Floor Showroom	MSA B-705 , B-905	G.F-108	Mr. Sachin Sareen	908.00	4,580.00	4,158,875	21-11-17	Yes
37	Ground Floor	Ground Floor Showroom	MSA A-802	G.F 108	Mr. Harsh Kumar	928.00	2,172.00	2,016,000	23-01-18	Yes
38	Ground Floor	Ground Floor Showroom	MSA B-1502	G.F-109	Mrs. Meera Anand	600.00	2,976.00	1,786,051	15-12-17	Yes
39	Ground Floor	Ground Floor Showroom	MSA A-602	G.F 109	Mrs. Manisha Gupta	928.00	2,172.00	2,016,000	30-01-18	Yes
40	Ground Floor	Ground Floor Showroom	MSA B-605 & JS-146	G.F-110	Mrs. Mithlesh Sharma	550.00	5,122.00	2,817,647	03-02-18	
41	Ground Floor	Ground Floor Showroom	MSA F-1406, F-1505	GF-111	Ms. Ritu Tyagi	920.00	8,400.00	7,728,000	03-08-17	Yes
42	Ground Floor	Ground Floor Showroom	MSA C-704 & F-12A06	G.F-131	Mr. Chandan Kumar Pandey	700.00	5,563.00	3,894,750	12-12-17	Yes
43	Second Floor	Janpath Street	MSA D-1702	JS 006	Mr. Akhilesh Verma	100.00	5,000.00	500,000	31-01-18	No
44	Second Floor	Janpath Street	MSA A-1106	SHQP 178	Mr. Narander Kumar Mehindru	100.00	4,540.00	454,067	03-05-18	No

47. Respondents No.1 and 2 have filed their reply stating that the said transactions were against the credit balance of Respondent No.3. Their reply is reproduced below:

Transfer of shops/units to the creditors of Respondent No. 3	MSA Developers Pvt. Ltd.	Group Company	13,55,57,104/-	That the said transactions were against the credit balance of Respondent No. 3 i.e., allottees of the Corporate Debtor were transferred to Respondent No. 3. Further it is pertinent to mention herein that certain creditors have filed their claims in the CIR process of MSA Developers (Respondent No. 3) and their claims have also been admitted. Copy of the list of claims filed before the Resolution Professional of MSA Developers Pvt. Ltd. (Respondent No.3) is annexed herewith and marked as <u>ANNEXURE R-8.</u>
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48. In response to these transactions, RP of the Respondent No. 3 (under CIRP) has filed its reply and stated the following:

- i. It is submitted that Respondent No. 3 namely, MSA Developers Private Limited has been admitted under insolvency by this Adjudicating Authority vide order dated 11.10.2019 bearing *C.P. No. (IB) 806(PB) of 2019* titled "Rabindra Kumar Agarwal & Ors vs. MSA Developers Private Limited". Subsequently, the IRP has filed a Resolution Plan before this Tribunal vide IA bearing No. 1078 of 2022.
- ii. As regards the transfer of shops/ units of the CD to the allottees of Respondent No. 3 for a consideration of approximately Rs. 13,55,57,104/- by the promoters, it is submitted that the same has been done fraudulently by the promoters of the CD (who are R1 & R2 in the present application) and Respondent No. 3 has no role in the same.

iii. It is submitted that Respondent No. 3 is unaware of these alleged transactions and cannot verify the same.

49. The RP of Respondent No.3 has submitted that R-3 i.e., MSA Developers Private Limited has been undergoing the CIR Process before Court-VI in C.P. No. (IB) 806(PB) of 2019 titled "Rabindra Kumar Agarwal & Ors vs. MSA Developers Limited". We are conscious of the fact that Respondent No.1 was also in the management of Respondent No.3. In other words, he was a common Director in Corporate Debtor herein as well as in Respondent No.3.

In their reply, Respondents No. 1 and 2 have admitted that the transactions were against the credit balance of Respondent No. 3, which they have otherwise failed to substantiate, in terms of the absence of any documentary evidence placed on record. Hence, we are of the view that since the Corporate Debtor has diverted or sacrificed its units/assets (being allotted to the creditors of R-3) for a 'Nil' Consideration, we have no hesitation in concluding that the said transactions have caused injury to the Corporate Debtor and are, therefore, of Fraudulent in nature. **We accordingly direct Respondents No.1 and 2 to make a contribution of Rs.13,55,57,104/- to the Bank account of the Corporate Debtor.**

50. Now, we would like to examine the transaction relating to the transfer of 900 sq. ft. of land to the vendor of Respondent No. 3 without consideration. In this regard, the Applicant/RP has stated the following:

- i. Respondent No. 3 had given a work order to Combine India Home Developers Pvt Ltd. on January 28, 2017, for the construction of the RCC Frame structure of its residential complex at GH-G4, 25, SDZ sports complex, Yamuna Expressway, Greater Noida at a total cost of Rs. 5500 lakhs. From time to time, Combine India Home Developers Private Limited raised invoices to Respondent No. 3.
- ii. In order to settle the liability of Respondent No. 3, a related party of the Corporate Debtor, the suspended Directors of the CD herein allotted an area of 900 sq. ft. at Unit no. 212A to R-3 on October 27, 2017.
- iii. Further, the suspended Directors of the CD did not bother to mention the Allotment Value of Unit no. 212A of the MSX Mall in the allotment Letter dated October 27, 2017, issued to Combine India Home Developers Private Limited, and also, the transaction is not recorded in the books of accounts of the Corporate Debtor. Hence, the allotment made to Combine India Home Developers Private Limited without receiving any consideration is a fraudulent transaction.

51. Respondents No.1 and 2 have stated that Combine India Home Developers Pvt. Ltd. was not a creditor of the Corporate Debtor. It was Respondent No. 3, who issued a work order in the name of the Combine India Home Developers Pvt. Ltd. for certain constructions, and pursuant thereto, one unit was allotted to Combine India Home Developers to settle the liability. The Respondents have placed the allotment letter of Unit no. 212A to R-3 dated October 27, 2017 on page nos. 99-109 of their written submissions, which is reproduced below:



उत्तर प्रदेश UTTAR PRADESH

DS 706681

## ALLOTMENT LETTER

**MSX MALL PVT. LTD.**  
6<sup>th</sup> Floor, Ocean Heights Building,  
Plot No. K-4, Sector – 18,  
NOIDA (U.P.)-201301

To,  
M/S. Combine India Home Developers Pvt. Ltd.  
R/o. A-12, Beta-1, Greater Noida, U.P.

Sub: Allotment letter dated 27/10/2017 Shop No 212A in MSX Central Market at MSX Mall at Site-IV, UPSIDC, Greater Noida, and District Gautam Budh Nagar (U.P.)

Dear Sir/ Madam,

This has reference to your application dated 07/10/2017 submitted to the MSX MALL PVT LTD. (hereinafter referred to as 'Company') for allotment of a Shop in the above Multiplex cum Commercial Complex constructed on plot of land No. B-4, First Floor (under the name and style of MSX Central Market at MSX Mall) measuring approximately 17457 sq. mts. in Site-IV, UPSIDC, Greater Noida, District Gautam Budh Nagar, (U.P.) allotted to the Company by U.P. State Industrial Development Corporation Ltd. (hereinafter referred to as 'UPSIDC') on the terms and conditions contained in Lease Deed dated 28.07.2006, registered with sub registrar Gautam Budh Nagar vide Book No. 1, Volume 1275, (Page No. 131-160) registered on 28.07.2006 entered between the Company and UPSIDC.

MSX Mall Pvt. Ltd.


Page - 1 - of 11

TRUE COPY

In response to your application, the Company allots to you (hereinafter referred to as 'the Allottee') Shop No 212A on First Floor having super area of approx. 900 sq. ft. in Multi-Storeyed Multiplex Commercial Cum Complex named as **MSX MALL** constructed on said plot of land No. 0-4, admeasuring 17457 sq. mts., situated at Site-IV, UPSIDC, Greater Noida, and District Gautam Budh Nagar (U.P) of super area 900 Sq ft. The allotment is subject to preliminary terms and conditions as contained in the application form and contained herein below:

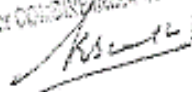
- 1(a) The allotment is Firm. Allotment shall be made and confirmed by notice on completion of Complex Building whereupon a formal Commercial Premises Buyer's Agreement/Sub Lease Deed or any other deed on Company's standard format containing the terms and conditions contained herein shall be executed by and between the parties
  - (b) The area and location of the Commercial Space allotted to the Allottee is tentative and is subject to change at the time of approval of building plans and also on completion of construction.
  - (c) The Allottee has seen the plans, designs, and specifications of the said Commercial Space/Complex and approves the same. He also agrees that Company may make such variations, additions, alterations etc. therein as it may in its sole discretion consider proper for the said Complex or as may be required by UPSIDC or any other authority, Govt. agencies or the Architect.
  - (d) The Allottee has seen the relevant papers and is fully satisfied that the title of the Company to the said plot of land is marketable and that it has right and authority to develop and construct a Multi-storied Multiplex Commercial Complex on the said plot and sell/lease specific spaces thereof to any party(s) under the terms and conditions mentioned in the said Lease Deed dated 28.07.2006, executed by and between UP State Industrial Development Corporation Ltd. and the Company and the right and authority of the Company herein, to book and allot the Commercial Spaces/Units of the Complex and has understood all limitations and obligations in respect thereof and the Allottee accepts and agrees to abide by the same and any subsequent variation made thereof.
- 2(a) Subject to other clauses herein, the Company has allotted to the Allottee Shop Individual Preference Shop No. 212A on the First Floor of the said Complex (hereinafter referred to as the 'said Commercial Space') as per plans and specifications inspected, seen and approved by him having an approximate Super Area of 900 sq. ft. which includes the covered area including walls, cupboards, windows projections and balconies plus proportionate share of area under common passage, staircases, corridor, munity and machine room, common facilities etc. i.e. Super Area. Taking into

MSX Mall Pvt. Ltd.

  
Authorized Signatory

Page - 2 - of 11



For CHAIRMAN/MSX Mall Pvt. Ltd.  
  
B.P. Saha  
Director

account the money already paid by the Buyer to the Developer in terms of the aforesaid Allotment letter dated 27/10/2017.

Payment Details

Drawn On
Against Construction Bill (MSA)

- (a) The price mentioned above is firm and is not subject to any escalation towards cost of construction.
- (b) The total basic price, as aforesaid, shall be paid by the Allottee to the Company in down payment in the manner stated and approved in Annexure 'A'. Developer has leasing rights.
- (c) Basic Sale Price and provision for other charges such as electricity, water and maintenance etc. have been made keeping in view the normal practice/conventions and the statutory requirements as existing today. Should at any time such normal practices/conventions and/or the statutory requirements be altered or otherwise, it becomes necessary to provide for any further equipments/facilities etc., to the said Commercial Space or the Project, then the cost of such provisions/installations and changed statutory requirements as also changed normal practices/conventions shall be proportionately charged on pro-rata basis, to which the Allottee hereby undertakes to never have any objection in any circumstance whatsoever. Similarly, the maintenance charges, which may be enhanced on a pro-rata basis at the sole discretion of the Maintenance Agency to which again the Allottee shall never have any objection whatsoever.
- (d) This Allotment shall always be subject to the condition that there is at present no price control/restrictions from any authorities. In case of any control or any other restrictions on such price being imposed at any time in future by any authority, such allotment will be liable to be cancelled by the Company at its sole discretion and the money deposited by the Allottee will be refunded without any interest within 6 (Six) months of such cancellation. No claim, monetary or otherwise, shall be raised by the Allottee, who hereby undertake, in such eventuality, to accept the decision of the Company, which the Company may, in its sole discretion so take on all matters herein.
- (e) In case the Allottee wants to avail of a loan facility from his employer or financial institutions to facilitate the purchase of the said Commercial Space, the Company shall facilitate the process subject to the following:

MSX Mall Pvt. Ltd.

*MSX*

Authorized Signatory

Page - 3 - of 11

For COMBINE INDUS Home Developers  
*Kundan P. Satish*  
Director

24. The Allottee shall, if resident outside India be solely responsible to comply with necessary formalities as laid down in Foreign Exchange Management Act, 1999 and other applicable laws including that of the remittance of payment(s) and for acquisition of immovable property in India. The Allottee shall furnish required declaration in Company's prescribed format.
25. In case of any dispute or any controversy arising out of or in connection with this allotment, the same shall be resolved through arbitration in accordance with the provisions of Arbitration and Conciliation Act, 1996 including any modification and amendment thereto. The Arbitrator shall comprise of a Sole Arbitrator as appointed by the Company. The venue of the Arbitration shall be in Delhi and the decisions of the Arbitrator shall be final and binding on the parties.
- 26(a) The Allottee shall get his complete address registered with the Company at the time of booking and it shall be his responsibility to inform the Company by Registered AD letter about all subsequent changes, if any, in his address. The address given in the application for allotment of Commercial Space shall be deemed to be the registered address of the Allottee until the same is changed in the manner aforesaid.
- (b) In case of joint Allottees, all communication shall be sent by the Company to the Allottee whose name appear first and at the address given by him shall for all purpose be considered as served on all the Allottee(s) and no separate communication shall be necessary to the other named Allottee(s). The Allottee has agreed to this condition of the Company.
- (c) All letters, receipts, and/or notices issued by the Company or its nominee and dispatched under Certificate of Posting/Regd. A.D/Speed Post to the last address known to it of the Allottee shall be sufficient proof of receipt of the same by the Allottee and shall fully/effectually discharge the Company/nominee.
27. For all intents and purposes singular shall include plural and masculine gender include the feminine gender. These expressions shall also be deemed to have been modified and read suitably wherever Allottee is a joint stock Company or any other body corporate or organization or an association.
28. The terms and conditions contained herein above shall be interpreted in a manner so as to cover the laws and rules prevalent in India and conform to Public Policy or Fair Trade Practices.
29. Courts at Gautam Budh Nagar only shall have jurisdiction of all matters arising out of or in connection with this Allotment.

MSX Mall Pvt. Ltd.

Page - 10 - of 11

For MSX Mall Pvt. Ltd.  
*KALISH* S.P. *Kalish*  
 Director

Authorized Signatory

*TRUE COPY*

XXX

XXX

XXX

XXX

XXX



WITNESSES:

1.

For MSX MALL PVT LTD.

(  
Authorized Signatory  
MSX MALL PVT LTD.  
)

Dated: 27/10/2017

I/We hereby accept the allotment on the terms  
and conditions mentioned hereinabove.

2.

For COMBINE INDIA Home Developers Pvt. Ltd.  
(  
Signature of the Allottee(s)  
Dated: 27/10/2017  
)

It is further submitted by the Respondents that they canceled the allotment due to a dispute raised over the invoice amount. It is further submitted that the Respondents further advised Combine India Home Developers Pvt. Ltd. to file their claim in the CIR process of Respondent No. 3. However, the Resolution Professional of Respondent No. 3 did not admit the claim of Combine India Home Developers Pvt. Ltd.

52. We have gone through the submission made by the Applicant/RP as well as the reply and written submissions filed by Respondents No. 1 and 2. Whereas, in their written submissions, they have enclosed an allotment letter dated October 27, 2017 of the CD and thereby admitted that Unit no. 212A was allotted to the creditor namely, Combine India Home Developers Pvt. Ltd of Respondent No. 3 i.e., MSA Developers Pvt. Ltd. but failed to bring or produce on record any document in support of their averment regarding the cancellation of the said shop. **In the circumstances, we have no other option but to treat the transaction as fraudulent and direct Respondents No. 1 & 2 to contribute an amount of Rs. 1,10,29,835/- to the bank account of Corporate Debtor.**

53. **Accordingly, the IA-2003/2022 stands allowed in terms of the directions contained in paragraphs no. 8, 18, 20, 22, 28, 32, 36, 40, 44, 49 and 52 of this order. Respondents no. 1 and 2 are directed to contribute the amount in terms of the directions contained in the aforesaid paragraphs to the Bank Account of the Corporate Debtor within a period of 30 days of this order, failing which, the Insolvency Professional in-charge of the Corporate Debtor shall take necessary action to recover the amount from Respondents No. 1 and 2 to the Bank account/asset pool of the Corporate Debtor.**

54. **The Registrar/Court Officer is directed to send a copy of this order to the IBBI for their record.**

Sd/-  
**(L. N. GUPTA)**  
**MEMBER (T)**

Sd/-  
**(ASHOK KUMAR BHARDWAJ)**  
**MEMBER (J)**

**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT-II)**

**IA. NO. 1833/ND/2020**

**IN**

**Company Petition No. (IB)-334(ND)/2018**

**IN THE MATTER OF:**

**Ranjit Das & Ors.**

**... Applicant/Financial Creditor**

**Versus**

**M/s. MSX Mall Private Limited**

**... Respondent**

**AND IN THE MATTER OF**

**Mr. Anil Kumar Jain**

Resolution Professional:  
MSX Mall Private Limited,  
255B, IInd Floor, Block-A-1,  
Lawrence Road, Keshav Puram,  
New Delhi – 110035

**... Applicant**

**VERSUS**

**Mr. Madhav Saran Agarwal & Mrs. Alka Agarwal**

R/o House No. D-88, Sector 26,  
Noida, Gautam Buddha Nagar,  
Uttar Pradesh

**... Respondent/ Ex Directors/ Resolution Applicants**

**Order Delivered on: 10.11.2023**

**SECTION: Section 30(6) of IBC 2016**

**CORAM:**

**SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)**

**SH. L. N. GUPTA, HON'BLE MEMBER (T)**

**PRESENT:**

**For the RP** : Mr. Anil Kumar Jain RP, Adv. Abhishek Anand,  
Adv. Mritunjay Kumar

**For Respondent/RA** : Adv. Abhishek Anand

## **ORDER**





**Per : Sh. L. N. Gupta, Member (T)**

The present application is filed by Mr. Anil Kumar Jain, RP under Section 30(6) of IBC, 2016 seeking approval of the Resolution Plan submitted by Mr. Madhav Saran Agarwal and Mrs. Alka Agarwal (**hereinafter referred to as Ex-Directors/Respondents/ Resolution Applicants**).

2. To put the facts succinctly, the underlying main Petition CP (IB)-334/ND/2018 was filed by Ranajit Das & Ors. against the Corporate Debtor namely, M/s MSX Mall Private Limited under Section 7 of IBC, 2016, which was admitted vide Order dated 09.07.2018 by this Adjudicating Authority and the Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor was initiated. The Corporate Debtor, at present, is represented through its RP Mr. Anil Kumar Jain.

3. The RP has stated that the Corporate Debtor is an MSME enterprise, for which the ex-Directors/Promoters have submitted the present Resolution Plan, which is approved by the CoC with 96.3% Votes in the 13<sup>th</sup> meeting of the CoC of the Corporate Debtor held on 30.01.2020.

4. In support of its contention, the Applicant/RP has annexed the MSME certificate, which is reproduced overleaf:

 भारत सरकार Govt. of India सूक्ष्म, लघु और मध्यम उद्यम मंत्रालय MINISTRY OF MICRO, SMALL & MEDIUM ENTERPRISES		 सूक्ष्म, लघु और मध्यम उद्यम MICRO, SMALL & MEDIUM ENTERPRISES																	
 उद्योग आधार		 Udyog Aadhaar																	
<b>E</b>		<table border="1"> <tr> <td>Type of Enterprise</td> <td>Micro</td> <td>Small</td> <td>Medium</td> </tr> <tr> <td>Manufacturing</td> <td>A</td> <td>B</td> <td>C</td> </tr> <tr> <td>Services</td> <td>D</td> <td>E</td> <td>F</td> </tr> <tr> <td>UAM No.</td> <td colspan="3">UP28E0029165</td> </tr> </table>		Type of Enterprise	Micro	Small	Medium	Manufacturing	A	B	C	Services	D	E	F	UAM No.	UP28E0029165		
Type of Enterprise	Micro	Small	Medium																
Manufacturing	A	B	C																
Services	D	E	F																
UAM No.	UP28E0029165																		
<b>Udyog Aadhaar Registration Certificate</b>																			
Udyog Aadhaar Number		UP28E0029165																	
Name of Enterprise		MSX MALL PVT. LTD																	
Location of Plant Details																			
SN	Flat/Door/Block No.	Name of Premises/Building Village	Road/Street/Lana	Area/Locality	City	Pin	State	District											
1	B-4	SITE-IV	UPSIDC	SURAJPUR INDUSTRIAL AREA	GREATER NOIDA	201306	UTTAR PRADESH	GAUTAM BUDDHA NAGAR											
Official Address of Enterprise		B-4, SITE-IV, UPSIDC, SURAJPUR INDUSTRIAL AREA, UTTAR PRADESH-201306																	
		District	GAUTAM BUDDHA NAGAR	State	UTTAR PRADESH	PIN	201306												
		Mobile No:	9599916609	Email:	ruksar@abidegroups.com														
Date of commencement		28/03/2011																	
Major Activity		SERVICES																	
Enterprise Type		Small																	
Previous Registration details-if any		::																	
National Industry Classification Code																			
SN	NIC 2 Digit	NIC 4 Digit	NIC 5 Digit Code	Activity Type															
1	B1 - Services to buildings and landscape activities	8110 - Combined facilities support activities	81100 - Combined facilities support activities	Services															
2	B1 - Services to buildings and landscape activities	8130 - Landscape care and maintenance service activities	81300 - Landscape care and maintenance service activities	Services															
Acknowledgement		Date of Filing	24/12/2019	Date of Printing	24/12/2019														
Disclaimer: This is computer generated statement, no signature required. Printed from udyogaadhaar.gov.in																			
MyMsme Mobile App (Beta Version) is available now for download. <a href="https://play.google.com/store/apps/details?id=msme.mysmsme">https://play.google.com/store/apps/details?id=msme.mysmsme</a>																			



5. On perusal of the MSME certificate (ibid), it is observed that the MSME registration certificate was obtained by the Suspended Directors on December 24, 2019, whereas the Corporate Insolvency Resolution Process of the Corporate Debtor commenced vide Order dated July 09, 2018 of this Adjudicating Authority. Evidently, the MSME Certificate of the Corporate Debtor was obtained

on December 24, 2019 by the Suspended Directors, which is subsequent to the date of commencement of CIRP of the Corporate Debtor i.e., on July 9, 2018.

6. Against this backdrop, we consider it appropriate to refer to the Judgement dated 12.01.2021 in the matter of **Harkirat Singh Bedi vs the Oriental Bank of Commerce & Anr. in Company Appeal (AT)(Ins.) No.40 of 2020**, wherein the Hon'ble NCLAT held the following:

*“39. The appellant in its EOI claimed the advantage of section 240A of the code claiming exemptions from applicability of section 29A(c) and 29A(h) in terms of eligibility to be a resolution applicant as a medium level enterprise under MSME Development Act, 2006. On reading the provisions under section 29A along with section 240A of I&B Code. It can be concluded that the exemption is only in respect of clause (c) and (h) of Section 29A of the I&B Code. However, in this case the Appellant is declared ineligible under clause (b) of Section 29A where no exemption has been given to MSME. **Also, the date of registration of the Corporate Debtor as MSME as on record was 5th June, 2019, i.e. after CIRP admission order dated 29th March, 2019. The application for registration of MSME by the Appellant was without authorization, being subsequent to initiation of CIRP and hence was invalid. Therefore, the Appellant is ineligible to take the benefits of section 240A under I&B Code.”***

**(Emphasis added)**

7. Further, in the matter of “Hari Babu Thota RP of Shree Aashraya Infra-Con Ltd.” the Hon’ble NCLAT at Chennai, in Company Appeal (AT) (CH) (Ins.) No. 110 of 2023 dated 02.06.2023, held the following:

*“In the instant case, the Resolution Applicant registered as an MSME only after the initiation of CIRP. This Tribunal in the case of ‘Digamber Anand Rao Pingle’ Vs. ‘Shrikant Madanlal Zawar & Ors’, wherein the Promoter of the ‘Corporate Debtor’ had filed an Appeal against the ‘Liquidation Order’ passed by the ‘Adjudicating Authority’ claiming that the ‘Corporate Debtor’ was an MSME and that he could file a Resolution Plan, but **this Tribunal observed that as the Application for MSME certificate was made after the commencement of CIRP, such unauthorized Application cannot be considered and cannot tide over ineligibility under Section 29-A.** The ratio of this matter is squarely applicable to the facts of this case and the matters of eligibility under Section 29-A as observed by the Hon’ble Supreme Court in a catena of Judgements, cannot be undermined.”*

**(Emphasis added)**

8. As already noted in paragraph 5 of this order, in the instant case, the Suspended Management obtained the MSME Certificate post-initiation of CIRP. Therefore, the status of the Corporate Debtor on the date of commencement of CIRP was not that of MSME. Hence, the benefit of Section 240A of IBC, 2016 cannot be availed by the Resolution Applicant/Suspended Board of Directors to

submit the Resolution Plan. Accordingly, in our considered view, the Resolution Applicant herein is barred under Section 29A(c) to submit the Resolution Plan.

9. Even otherwise and moreover, vide a separate order passed in IA-2003 of 2022 dated 10.11.2023, the Ex-Directors of the Corporate Debtor namely, Mr. Madhav Saran Agarwal and Mrs. Alka Agarwal, the Resolution Applicants herein have been found accountable for committing a series of fraudulent transactions under Section 66 of IBC, 2016 and orders have been passed for them to contribute the amounts involved in the fraudulent transactions to the Bank Account of the Corporate Debtor, which makes them ineligible from submitting a Resolution Plan under Section 29A(g) of IBC, 2016 as well and the immunity under Section 240A is not available to them.

**10. Since the Resolution Applicant/Ex-Directors have been found ineligible to submit the Resolution Plan under Section 29A(c) as well as under Section 29A(g) of IBC 2016, we have no other option but to reject the IA-1883 of 2020 seeking approval of the Resolution Plan, and accordingly, the Resolution Plan is rejected.**

**11. Further, since the maximum permissible period of CIRP of 330 days has since lapsed, there is no other option but to order the Liquidation of the Corporate Debtor. Ordered accordingly.** Further, in terms of the provisions of Section 34(4)(a) of IBC, 2016, the current Resolution Professional, Mr. Anil Kumar Jain IP, is replaced by Mr. Gautam Singhal IP having registration no.

IBBI/IPA-001/IP-P-01437/2018-2019/12240 (email id: gautam@klfindia.com)



Mobile No. 9811898418 as the Liquidator of the Corporate Debtor with immediate effect, who shall take early steps for Liquidation of the Corporate Debtor in accordance with the law.

12. **A copy of this order be sent by the Registry/Court Officer to IBBI for their record.**

Sd/-  
**(L. N. GUPTA)**  
**MEMBER (T)**

Sd/-  
**(ASHOK KUMAR BHARDWAJ)**  
**MEMBER (J)**

**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT-II)**

**IA. NO. 4570/ND/2020**

**IN**

**Company Petition No. (IB)-334(ND)/2018**

**IN THE MATTER OF:**

**Radha Kapoor & Ors.**

**... Applicant/**

**Financial Creditor**

**Versus**

**M/s MSX Mall Pvt. Ltd.**

**... Respondent**

**AND IN THE MATTER OF IA. NO. 4570/ND/2023:**

**1. Radha Kapoor**

W/o Sh. Har Krishan Lal Kapoor  
Aged about 69 years (Senior Citizen)  
H.No. A-961, Krishna Garden Tools,  
Arjun Nagar, Kotal Mubarakpur,  
New Delhi-110003

**... Applicant No. 1**

**2. Sh. Har Krishan Lal Kapoor**

S/o. Late Sh. Behara Singh,  
Aged about 68 years (Senior Citizen)  
H.No. A-961, Krishna Garden Tools,  
Arjun Nagar, Kotal Mubarakpur,  
New Delhi-110003

**... Applicant No. 2**

**3. Sangeeta Kapoor**

D/o. Sh. Har Krishan Lal Kapoor  
Aged about 44 years  
H.No. A-961, Krishna Garden Tools,  
Arjun Nagar, Kotal Mubarakpur,  
New Delhi-110003  
E-mail: [sangeetakkapoor@gmail.com](mailto:sangeetakkapoor@gmail.com)

**... Applicant No. 3**

**VERSUS**

**1. M/s MSX Mall Private Limited**

Through Resolution Professional  
Mr. Anil Kumar Jain  
R/o. 255-B, IInd Floor, Block A-1  
Near Central School, Lawrence Road,  
Keshav Puram, New Delhi-110035  
E-mail: [rp.msxmall@gmail.com](mailto:rp.msxmall@gmail.com)

**... Respondent No. 1**

**2. Madhav Saran Agarwal And Alka Agarwal**

Through Authorized Representative  
Ms. Garima Gupta  
R/o. D-88, Sector-26, Noida  
Uttar Pradesh-201301  
E-mail: garima.gupta1207@gmail.com

**... Respondent No. 2**

**Order Delivered on: 10.11.2023**

**SECTION: Section 60(5) of IBC 2016**

**CORAM:**

**SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)**

**SH. L. N. GUPTA, HON'BLE MEMBER (T)**

**PRESENT:**

**For the Applicant in IA :** Adv. Divya Gattani, Ms. Sangeeta Kapoor, Ms. Radha Kapoor, Mr. Shahil Kapoor

**For the RP :** CA Anil Kumar Jain, Resolution Professional along with Adv. Abhishek Anand & Adv. Yogesh Bihani

**ORDER**

**PER: SH. ASHOK KUMAR BHARDWAJ, MEMBER (J)**

**IA-4570/2020**

The captioned application has been preferred under Section 60(5) of the IBC 2016, by the Applicants, namely, Radha Kapoor her husband Har Krishan Lal Kapoor, and their daughter Sangeeta Kapoor. The prayers made in the application are:

- (i) for setting aside the voting by CoC qua the Resolution Plan concluded on 03.02.2020;
- (ii) deferring the voting which was initiating from 29.01.2020 to 30.01.2020 in the 13th CoC meeting and 31.01.2020 till

03.02.2020, qua the approval of Plan for Resolution of Insolvency of the Corporate Debtor;

- (iii) direction to Respondent No.2/RA to modify the Resolution Plan; and for rejection of the Plan on the ground of being non-viable and non-feasible.

2. As has been espoused by the Applicants, they are amongst the Financial Creditors (in the Real Estate Class) and are being represented in the Committee of Creditors by the AR, namely, Mr. Prabhat Ranjan Singh. Applicant No.1 and 2 holds 0.27% voting shares in the CoC and such share of the Respondent No.3 is 0.09%. The CP No. (IB)-334/ND/2018 (Ranjit Das & Ors. vs. MSX Mall Private Limited) was preferred by six Petitioners jointly. The application was admitted by this Adjudicating Authority (hereinafter referred to as Tribunal) in terms of the order dated 09.07.2018. Resultantly, Mr. Anil Kumar Jain (IP) was appointed to discharge the function as IRP qua the CD. Subsequently, he was appointed as RP, in terms of the order dated 25.10.2018 passed by this Tribunal.

3. After the initiation of CIRP, the Applicants submitted their respective claims before Respondent No.1 (RP), in Form CA (prescribed for submission of claim by Financial Creditors in a class, under Regulation 8A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The claim was admitted. The Applicants had claimed possession of their shops/units in MSX Mall. The details of shops as mentioned in para 5 of the application read thus: -

*“5. After the initiation of the CIRP, the Applicants submitted their respective claims in FORM CA to the Respondent no.1, and the same were admitted. It is pertinent to mention here that the Applicants had claimed possession of their shops/units in the*

*Corporate Debtor, in which they had invested their hard earned money. The details of the shops/unit are as follows:*

- (i) Shop No. SF-217 (admeasuring 873 sq.ft.) allotted jointly in favour of the Applicant No.1 and Applicant No. 2.*
- (ii) Shop No. JS-133 on Second floor (admeasuring 100 sq.ft. allotted) jointly in favour of the Applicant No.1 and Applicant No.2.*
- (iii) Shop No. SF-228 A (Facing towards Food Court) (admeasuring 162 sq.ft.) allotted in favour of the Applicant No.1 and Applicant 3.*

4. As far as the prayer made in the application regarding deferment of the voting scheduled to be held from 29.01.2020 to 30.01.2020 in the 13<sup>th</sup> CoC meeting and from 31.01.2020 till 03.02.2020 regarding the approval of the Resolution Plan is concerned, at this stage, the prayer has become infructuous and is disposed of accordingly.

5. Regarding the challenge to the Resolution Plan, we find that primarily the Applicants have raised the plea that the MSME certificate was obtained after the commencement of CIRP and the Applicants did not vote in favour of the Plan. As far as this plea is concerned, having considered the same, we have already rejected the application for approval of the Plan.

6. The need for going into the prayers (ii) and (iii) is obviated as the Resolution Plan has already been rejected vide orders in IA No. 1833/2020 dated 10.11.2023. Accordingly, the present application has become infructuous and is disposed of accordingly.

**Sd/-**  
**(L. N. GUPTA)**  
**MEMBER (T)**

**Sd/-**  
**(ASHOK KUMAR BHARDWAJ)**  
**MEMBER (J)**