

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

**IA (IBC)/353/KOB/2023**

**IN**

**CP(IBC)/54/KOB/2022**

*(Under Section 66 of IBC, 2016)*

***In the matter of* ASTEN REALTORS PRIVATE  
LIMITED**

**MEMO OF PARTIES:**

**RAJENDRAN P R,**

Resolution Professional, Asten Realtors Private  
Limited, 186/7, Padinjare Parippil Kulayettikkara  
P.O, Ernakulam, Kerala 682315.

**... Applicant**

**-Vs-**

**KAKANATIL SIRAJ MATHER ABDUL RAHIMAN,**

Suspended Director, 33/29 A, The Pramenade,  
Mather Projects, Pavor Road, Padivattom,  
Edappally P.O, Ernakulam, Kerala 682034.

**... Respondent No.1**

**KAKANATIL RAFFI MATHER IBRAHIM KUTTY  
MUHAMMED,**

Suspended Director, A Ivory Height, Panampilly  
Nagar, Ernakulam, Kerala 682034.

**... Respondent No.2**

**GOODBIT ADVISORS LLP,**

B7, 3<sup>rd</sup> Floor, Jay Chambers, Dayaldas Road, Vile  
Parle (E), Mumbai Mumbai City, Maharashtra  
400057.

**... Respondent No.3**

**ASTEN MALLS PRIVATE LIMITED,**

B7, 3<sup>rd</sup> Floor, Jay Chambers, Dayaldas Road, Vile Parle (E), Mumbai Mumbai City, Maharashtra 400057.

**... Respondent No.4**

**SACRED HEART PROVINCE KALAMASSERY,**

Sacred Heart Provincial House, Njalakam Kara, Thrikkakkara North Village, Kanayannur Taluk, Ernakulam.

**... Respondent No.5**

**Order delivered on: 22.05.2024**

***Coram:***

**Hon'ble Member (Technical)**

**Shri. Shyam Babu Gautam**

**Hon'ble Member (Judicial)**

**TMT. (Retd.) Justice T Krishna Valli**

***Appearances:***

For the Applicant : Mr. Vinod P V, Advocate

For the Respondents : Mr. Ashok G V, Advocate (R1 & R2)

Mr. Joseph Kodianthara, Sr. Advocate  
(R3 & R4)

Mr. A Kevin Thomas, Advocate (R5)

**ORDER**

**Per Coram**

1. This Application is filed under Section 66 of the IBC, 2016 by the resolution professional of Asten Realtors Private Limited, the Corporate Debtor, against the suspended Board of directors and their related entities seeking following reliefs: -
  - a) *Pass an order to cancel the sale deed No 2609 of 2017, registered at Sub Registrar Office, Thrikkakara and issue direction to Sub Registrar Office, Thrikkakara to cancel the said Sale Deed from Books of the Registry; and*
  - b) *Pass an order directing the Respondent No.5 to execute and register sale deed for transferring 1 Hectare 13.08 Ares comprising of land in Re Survey No.563/1-10-3 (26 Ares), 563/1 1-2 (24.28 Ares), 563/ 1 1 (56.22 Ares) and 563/12-2 (5.97 Ares) of Kakkanad Village in favour of the Corporate Debtor; and*
  - c) *Pass an order directing the Respondent No. 1 to 4 to pay the cost of stamp duty, registration charge and all expenses towards for execution and registration of the above land in favour of the Corporate Debtor;*
  - d) *Pass an order against the Respondent No.1 to 4 to pay compensation for conducting such fraudulent transactions to the Corporate Debtor and also for cost of this application to the Resolution Professional towards the CIRP Cost in the interest of justice;*

The Brief facts of the case are as follows: -

2. Asten Realtors Private Limited, the Corporate Debtor (CD), is under CIRP vide order of this Tribunal dated 25.01.2023 and the applicant is the RP. The applicant state that on perusal of books of accounts of CD, he identified a transaction, i.e., the sale of 279.43 cents of land by R5, Sacred Heart Province, Kalamassery, to R4, Asten Malls Private Ltd(earlier Asten Malls Ltd) and subsequent sale of R4 to R3, Goodbit Advisors LLP as coming under section 66 of IBC, as fraudulent transactions causing loss of 29.34 crore to creditors and homebuyers of CD. It is stated that the said opinion of RP was confirmed by Annexure A3 report submitted by forensic auditors on 12.07.2023 to the RP and COC.
3. It is stated that R5 entered into agreement for sale dated 28.11.2011 with CD for 6 Acres, 26.850 cent(626.85 cents) land for construction of 'Rajagiri Campus Court', a residential and commercial project at Kakkanad, Ernakulam. The consideration for the said sale was Rs. 65.82 crore equal to 10.50 lakh per cent in 2011. The terms were that 80% consideration will be paid by CD in cash and 20% in the form of allotment of 27 flat units valued at Rs.12,78,58,500/- along with 27 parking valued at Rs.1,40,000/- each. The cash consideration after adjusting advance of Rs. 20 crores already paid by CD was agreed to be paid as deferred payments carrying along with 10% simple interest p.a from date of the agreement till actual payment to R5. It is stated that CD paid including the 27 flat allotments and interest a total sum of Rs. 59.29

crore out of the total consideration of 65.82 crore to R5 as on 31.03.2017. It is stated that instead of transferring the entire 6 Acre 26.850 cent of land to CD, the R5 transferred 279.43 cent to R4 vide sale deed dated 15.09.2017 for Rs. 10,71,60,600/- which amounts to 3.83 lakh per cent. It is also stated that as per CD records, CD only received Rs. 4,45,16,200/- towards the sale and R4 had not paid any amount to R5. It is stated that R4 was owned by R1 and R2 and prior to execution of sale deed, R4 was fully acquired by CD, as per Annexure A5, board resolution dated 15.03.2017. After executing sale deed, R4 was sold to R3 for meagre consideration of Rs. 4,99,400/-. It is stated that R3 is an LLP formed on 10.08.2017 for sole purpose of investing in R4 and acquire its land and has no revenue from operations as per its financial statements for FY 2017-2021. It is stated that Annexure A6, board resolution dated 18.10.2017 state that;

*“Asten Malls Limited had acquired land to conduct its business using borrowed amount. But that company was facing difficulties to find out funds to start its operations and to repay the amount borrowed to acquired land. Huge amount was required to conduct business of Asten Malls Limited. Asten Realtors Private Limited was not in a position to invest further funds in Asten Malls Limited. So, the company proposed to sell its investments in Asten Malls Limited”*

Applicant state that the aforesaid resolution selling R4 to R3 which include land worth more than 29.34 crore for a meagre sum of 4,99,400/- and the amount paid by R4 to CD which is 4,45,16,200/- together proves that the transaction is fraudulent by nature.

4. RP state that he issued letter to R5 on 16.04.2023 to show cause why claims in 27 apartments should not be cancelled and adjusted with excess amount received from CD through these transactions to which R5 replied vide Annexure A8, on 24.04.2023 that the transfer was made under instruction of CD with supporting board resolution dated 14.09.2017 and deed of undertaking dated 15.09.2017, and further that clause 23,24,25 and 31 of agreement for sale provides for same. It is stated that board resolution of CD dated 14.09.2017 does not provide for any payment by R4 to R5 and state that the amount should be adjusted with payment already made by CD to R5. Applicant contend that the series of transactions in such short period from acquisition of R4 by CD, transfer of land to R4 and sale of R4 to R3 for meagre sum are done with dishonest intent for benefit of third parties and these transactions culminated in CIRP.
5. R1 and R2 on other side have categorically denied all the allegations against them in their reply unless otherwise is a formal matter on record and pleas to put to strict proof by way of cross examination of the auditor or RP if necessary. It is henceforth argued that the application which seeks to cancel the sale deed between R4 and R5, who are strangers to CIRP, is not maintainable as it falls in realm of civil court and not under a summary process envisaged in IBC. It is stated that the land in question belonged to R5 and the transaction was between R4 and R5 who are not under supervision of NCLT and hence the reliefs sought are void. It is stated that CD saved a sum of 10.5 crore in the said transaction

which was balance payable to R5 vide agreement for sale. Other legal proceedings for damages which R5 could have invoked also was avoided through these transactions. Further the limitation of 3 years was also raised as preliminary issue, i.e the said transaction occurred in 2017 and application cannot be extended under guise of look back period. It is stated that mere failure to object to this transaction also would not assume a fraudulent transaction on part of CD. R1 and R2 stated that the said agreement for sale of 8 parcel of land entered for development of residential and commercial project was on an agricultural land as per records. CD availed the benefit of Annexure R1, Kerala Govt scheme issued in 31.05.2007, acquired permit to undertake project till 25.09.2017 and effectively converted the agricultural land into garden land, thereby increasing market value of land to Rs. 10.5 lakh per cent upto the date of expiry of permit. It is stated that without permit the value of land would be below 4 lakh per cent.

6. It is stated that the clause 6 of agreement reflects intent of parties to fix consideration based on character of property. Clause 8 measures property to 6 acre and 26.850 cent. By Clause 11 and 12, CD was due to pay 80% by cash and 20% by residential apartments. CD paid 20 crore cash as advance and balance cash 32.66 crore was to be paid as deferred payments of Rs.5 crore from March 2012 with 10% simple interest p.a till date of final settlement. Clause 21 states that if CD defaulted in balance payment, R5 can sell the land proportionately allotted to them which would further add financial loss for any delay. Hence the consideration as per agreement was

not a fixed one but depended on date of completion of project. Clause 33 state the period of completion to be 42 months failing which additional 18% interest levied to CD. Clause 65 state the maximum the period of completion to be 48 months from date of agreement failing which as per clause 67, R5 could terminate the agreement. It is stated that due to factors such as labour shortage, delay by sub vendors, supply disruption, cost escalation, receivables pending, coupled with force majeure events such as demonetisation, work was incomplete by stipulated time period. CD was prone to legal proceedings/termination by R5 for non-performance of contract obligation. As of 2016, the pending sale consideration was 70 crore including interest and the building permit also expiring on 25.09.2017 causing potential loss of land value due to automatic conversion to agricultural land, CD was forced to mitigate the risks by selling the last remaining land parcel in which project work was incomplete out of the total land under agreement for a price of 10.5 crore. It is stated that R4 under CD's control which were already in the stage of being sold to R3 expressed interest to buy the land. After due negotiation with R5, it was agreed to sell the remaining land parcel as per enabling clauses in agreement for sale with CD, to R4.

7. The contention of RP is that CD paid the amount for purchase of land by R4 and R3 to R5. RP has not only neglected the aforesaid factors and also has failed to state how CD has paid for the consideration to R5 on account of this land parcel as agreed or with help of any financial creditor. The forensic audit methodology as



stated in clause 1.3 of report is flawed nevertheless the audit also does not cover books of accounts of R4 or R5 or R3 to substantiate the loss of money to extent of 29.34 crore to CD by fraud, or show any deviation from accounting standards, or in what manner it is considered not in ordinary course of business. It is further stated that sale consideration by R4 to R5 reflected market realities and stated clearly in clause 2.6.1 of Annexure A4 forensic audit report which say that there exists no undervalued transaction by CD which itself is self-contradictory. The intent to defraud or any evidence is not shown in the application and has mechanically relied on the report only applying pieces from it ignoring other contents. Even the resolution dated 15.09.2017 is misplaced as no proof is shown to prove CD paid to R5 on behalf of R4 or even any journal entry in CD's books. It is stated that applicant did not consider the sum due by CD to R5, or perused the nature of the agreement for sale to derive at the consideration payable and has simply stated that interest paid by CD has covered the total consideration payable. The specific allegations that only Rs. 4,45,16,200/- is paid to CD against sale of land, and that only Rs. 4,99,400/- is received by CD from R3 for sale of R4, that R3 had no revenue in FY 2017-21 and that beneficiaries of transaction are R1 to R3 are stated as false. The show cause notice issued to R5 is are stated to be untenable so is the reliance placed on BR dated 14.09.2017 to allege fraud. The intent behind the resolution is stated to be that since a major part of agreement consideration was already paid by CD, the balance only need be set off by sale of land

to R4 and consideration received from R4. It is stated that no third party has benefited from these transactions and that the sale was orchestrated by the promoters to save CD from any damages and thwart any possible CIRP.

8. R3 and R4 in their reply state that CD was unable to pay balance consideration payable under agreement for sale dated 28.11.2011 inspite of many extensions. The risk of damages and termination of agreement was imminent upon CD which was communicated and CD agreed to secure the payment through R4 who shall buy the 279.426 cent land parcel. CD in order to fund the same approached Fedex Finance Pvt Ltd('Fedex') but as CD was financially indebted to Fedex, an LLP was floated by Fedex to acquire the shares of R4 and to secure land to be purchased by R4. Fedex thereafter lend Rs. 12 Crore to R4 to purchase the said land from R5 which was later converted to compulsorily convertible debentures(CCD) as per Annexure R3(b). The total consideration for sale was agreed at 10,71,60,600/- including a Rs. 3 lakh building permit as per Annexure R3(c). The fair value of said land was at 9.45 lakh per Are(3.82 lac/cent) as per guideline value issued by Kerala Govt and the remaining amount of loan was used by R4 to fund its working capital. As part of arrangement Fedex also appointed a director into board of R4. Later R3 bought shares of R4 at Rs. 4,99,400/- along with its liabilities to tune of Rs. 12 crore.
9. It is stated that the application is belatedly filed as the RP's determination and the petition has to be made within 135<sup>th</sup> day of

CIRP which is not case here. Further it is contended that as per section 66 of IBC, no liability or action can be bought against a third party to CD other than a director or partner. Moreover, the application directing RTO, Thrikkakara to cancel sale deed is beyond scope of 66 application and falls in purview of civil court nevertheless has not been made a party in the application. Further it is stated that the contention that CD had received only 4.45 crore towards land sale and R5 did not receive any consideration is false as R5 acknowledges receipt of sum in sale deed itself. It is stated that these transactions alleged under section 66 has to be proved beyond reasonable doubt does not even fall under 43 of IBC. The contention that sale of land by R5 to R4 at 10,71,60,600/- can never be undervalued as RTO would not even register a sale deed at below guideline price. R3 and R4 state that any loss caused to CD by actions of promoter it cannot be tied against them who only conducted transactions fairly. It is further stated that since land in question is agricultural land rudimentarily, it is still lying with R4 unable to be developed or disposed. RP or auditor never considered this fact before alleging the loss of value upon sale. It is stated that R3 had not only bought shares at meagre sum but also bought a liability to tune of 12 crore as part of purchase of R4 from CD which is omitted conveniently by applicant.

10. R5 in their reply stated that as per clause 31 of agreement for sale specifically stated that sale deeds are to be executed by R5 in favour of CD or its nominees/allottees. It is stated that project comprised of residential land which was directly registered in

name of homebuyers and commercial land was agreed to be registered to Asten malls Limited, subsidiary of CD as per the agreement for construction of malls/commercial building. R5 had thereafter registered the commercial land parcel to R4 on basis of instruction of CD and Annexure A8 resolution and deed of undertaking. It is stated that CD paid entire consideration for residential flats to R5. It is further stated that R5 came to know only from RP that R4 was later sold to R3 and was not aware of same and no fraudulent transaction is alleged against R5. It is stated that R5 is ready to execute fresh sale deed in favour of CD if this Tribunal orders so provided all the expenses in this regard be borne by CD.

11. Heard the submissions and perused the documents on record. This application is filed by RP under section 66 of IBC against the respondent's seeking cancellation of certain transaction involving a sale of 279.43 cents of land by R5, Sacred Heart Province, Kalamassery, to R4, Asten Malls Private Ltd(earlier Asten Malls Ltd) being fraudulent transactions causing loss of 29.34 crore to creditors and homebuyers of CD. The basis for the transaction as per records produced before us is the agreement for sale dated 28.11.2011 entered between CD and R5. It is evident from terms of the agreement that there was intention to sell the apartments and adjoining residential land to R5 and the homebuyers, and that the CD, its nominees or assignees and homebuyers had claim in the remaining commercial land provided the consideration be paid in full as per the agreement. The fact that the CD faced financial

difficulties seems plausible from the averments of R1 and R2, and in order to get out of the continuing liability for damages and interest laying above CD's head, R1 and R2 made an arrangement to sell the remaining commercial land for which price was unpaid, to R4 and indirectly to R3. This arrangement can in no way be termed fraudulent provided the consideration was lawful and agreed for. From records it is shown to us that what happened is that the land was sold to R3 who was the ultimate beneficiary of the transaction for an amount of 12 crore loan provided by it and 4.99 lakh of shares of R4 purchased by it. The entire consideration was funded by Fedex Finance Pvt Ltd, a financial creditor, through R3 and R4 to R5, the land owner. CD had also for transferring the rights on land to R3 through R4 received a reasonable compensation. Prima facie in consideration of above, it is seen that the entire allegation of fraud is unsustainable as the RP has without any application of mind or even considering the agreement or books of accounts of CD simply relied on a report of forensic auditor to make this application. Even the forensic auditor has not seen the records of CD properly or even sought necessary clarification from R5 or R3, for the entire consideration of 12 crore routed as loan/CCD by R3 to R4 and to R5 is omitted in this application. It is disappointing to say that such applications under section 66 IBC requiring reasonable proof beyond any doubt filed without proper identification of the element of 'fraud' in transactions of CD is completely a frustrating exercise. It is necessary being summary process that RP/ applicant in such cases

prove to this Tribunal by documentary evidence showing a clear violation of any accounting standards or prevailing law, that any party has had an intent to defraud any creditor or made a wrongful gain or loss out of such transaction. In this case, it is proved to be only an ordinary course of business transaction which CD and its promoters had undertaken with honest intent to thwart financial situation. We therefore find no merit in the application.

12. In result, **IA (IBC)/353/KOB/2023**, is, dismissed, and disposed of accordingly.
13. The Registry is directed to send e-mail copies of the order forthwith to all the parties inclusive of the Counsel.
14. Urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.
15. File be consigned to records.

**SHYAM BABU GAUTAM**  
**(MEMBER TECHNICAL)**

**T KRISHNA VALLI**  
**(MEMBER JUDICIAL)**

Signed on this, the 22<sup>nd</sup> day of May, 2024.

Rohit/LRA