

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **30.06.2026** THROUGH VIDEO CONFERENCING

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

IN THE MATTER OF : Gem Suppliers
Vs
EAP Infrastructure Pvt Ltd

MAIN PETITION NUMBER : IBA/1064/2019

(IA/MA) APPLICATION NUMBERS

IA(IBC)/795(CHE)/2022; IA(IBC)/855(CHE)/2022; IA(IBC)/898(CHE)2022

ORDER

IA(IBC)/795(CHE)/2022

Present: Ld. Counsel Shri. Girish for the RP / Liquidator of EAP
Infrastructure Private Limited.

Ld. Counsel Shri. Raghav Menon for the RP of Amarprakaash
Developerss Private Limited.

Ld. Counsel Shri. Pawan Jhabakh for R2, R3, R4, R6 and R7.

Vide separate order pronounced in Open Court, application is **dismissed**.

IA(IBC)/855(CHE)/2022

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Sd/-

(VENKATARAMAN SUBRAMANIAM)

MEMBER (TECHNICAL)

MG

Date: 30.06.2026

Sd/-

(SANJIV JAIN)

MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
CHENNAI BENCH-1
AT CHENNAI**

IA(IBC)/795(CHE)/2022

in

IBA/1064/2019

(filed under Section 66 & 60(5) of the Insolvency and Bankruptcy Code, 2016)

In the matter of EAP Infrastructure India Private Limited

Chandrasekhar Sagutoor

Resolution Professional EAP Infrastructure India Pvt. Ltd.
G5 & G6, Ground Floor, No.333/17
Salma Arcade Complex, Kodambakkam Main Road
Trustpuram, Kodambakkam, Chennai 600 024

. . . Applicant

Vs

1. Amar Prakaash Developers Pvt. Ltd.

No.92, 1st Floor, Happiness Tower
Thirumudivakkam Main Road
Thirumudivakkam
Chennai, Kancheepuram Dist., - 602109

2. Tarun Kumar Dugar

S/o. Kishan Chand Dugar 38/71,
1st Main Road, New Colony
Chromepet
Kancheepuram Dist., Chennai - 600044

3. Mohan Vijay Amirthraj

S/o. Mohan
41, Ranga Nagar, 4th Cross Street
Thiruneermalai, Chromepet
Kancheepuram Dist., Chennai - 600044

4. Adarsh Surana

S/o. Sudhir Kumar Surana Amar Prakash Nivas

No.42, Dr. Rajendra Prasad Road Nehru Nagar,
Chromepet,
Kancheepuram Dist., Chennai-600044

5. **Surendar Rajarathinam**
S/o.Rajarathinam 3, Sindhu Street
Muthusamy Nagar
Nemilicherry
Chromepet
Kancheepuram Dist., Chennai - 600044
6. **Kuldeep Surana**
S/o. Sudhir Kumar Surana
Amar Prakash Nivas,
No.42, Dr. Rajendra Prasad Road Nehru Nagar
Chrompet
Kancheepuram Dist., Chennai - 600044
7. **Ashish Surana**
S/o. Sudhir Kumar Surana
Amar Prakash Nivas
No.42, Dr. Rajendra Prasad Road Nehru Nagar
Chrompet
Kancheepuram Dist., Chennai - 600044

. . . Respondents

For Applicant : Bhagavath Krishnan, Advocate

*For Respondent : Raghav Menon, Advocate for RP of Amar Prakaash Developers
Pawan Jhabakh, Advocate for Promoter Director*

CORAM:

**SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)**

Order Pronounced on 30th June, 2026

ORDER

(Heard Through Hybrid Mode)

1. This application under Section 66 r/w Section 60(5) of IBC has been filed by the Resolution Professional of EAP Infrastructure India Private Limited against Amar Prakash Developers Private Limited represented by the RP and erstwhile Directors seeking directions to the Respondents, either jointly or severally, to contribute a sum of Rs. 39.77 Crore to the assets of the Corporate Debtor for undertaking fraudulent trading and for misappropriating inventory materials and to direct Respondent No. 7 to handover physical possession of car (Vehicle No. TN 11 1008) to the Applicant herein.

2. Briefly the facts are that the Applicant, after taking charge of the Corporate Debtor EAP Infrastructure India Private Limited, on 05.04.2022 sought for the assets list of the Corporate Debtor from Respondent No. 3 and 4. On verification, he found that the last audited financials for the Corporate Debtor were filed for the year 2017-18. He thereafter sought the account statements of the Corporate Debtor. The Respondent No. 3 furnished the asset list to the Applicant on 06.05.2022 including the financial data installed in the tally software. On its

perusal, he opined that several fraudulent transactions were carried out by the Promoters with a view to defraud the Creditors. It is stated that the Corporate Debtor made several transactions with Respondent No. 1, a related party. It invested a sum of Rs. 10.76 Crores in the equity shares of Respondent No. 1 which was promoted by Respondent No. 4.

3. It is stated that the Corporate Debtor was set up by the same Promoters of Respondent No. 1. Respondent No. 1 outsourced the construction activities to the Corporate Debtor. It used to procure materials and do the construction activities for Respondent No. 1. The Applicant tabulated a chart showing the details of the materials consumed and the revenue generated during the financial years 2016-17 to 2020-21 as tabulated below:

S. No.	MATERIALS CONSUMED	REVENUE GENERATED FROM THE 1 st RESPONDENT	PERCENTAGE OF MATERIALS CONSUMED TO REVENUE
FY 2016-2017 (Audited)			
1.	46.82 Crores	87.29 Crores	54%
FY 2017 - 2018 (Audited)			
2.	52.68 Crores	95.47 Crores	55%
FY 2018-2019 (Unaudited)			
3.	61.18 Crores	52.21 Crores	117%
FY 2019-2020 (Unaudited)			
4.	12.97 Crores	10.49 Crores	124%
FY 2020-21 (Unaudited)			
5.	0.21 Crores	Nil	NA

4. On analysis, he found that for FY 2016-17, the materials consumed were for about Rs. 46.82 Crores while the Corporate Debtor earned revenue of Rs. 87.29 Crores. Similarly, in FY 2017-18, the materials consumed were for about Rs. 52.68 Crores while the Corporate Debtor earned revenue of Rs. 95.47 Crores. However, in FY 2018-19 and FY 2019-20, though the materials were consumed at the same pace but the revenue earned was much less. It is stated that the Respondents 2 to 7 did not offer any explanation for the same. As per the tally data, the

order book of the Corporate Debtor was entirely with Respondent No. 1 which is closely related to the Corporate Debtor.

5. It is stated that as per the tally data, in FY 2018-19, opening stock available was for Rs. 32.03 Crores while in FY, the Corporate Debtor purchased additional materials for Rs. 43.06 Crores, total amounting to Rs. 75.09 Crores whereas the Corporate Debtor raised income only for Rs. 52.21 Crores and the closing stock as on 31.03.2019 was only for Rs. 13.91 Crores. In FY 2019-20, opening stock available was for Rs. 13.91 Crores while in the FY, the Corporate Debtor purchased additional materials for Rs. 1.67 Crores, total amounting to Rs. 15.58 Crores whereas the Corporate Debtor raised income only for Rs. 10.49 Crores and the closing stock as on 31.03.2020 was only for Rs. 2.61 Crores. Thereafter, no revenue was generated. As per the asset statement given by the erstwhile Director as on the CIRP date, no stock was available with the Corporate Debtor. The books of account showed that all the materials were consumed though no revenue was accounted for. It is stated that the Applicant sought for the explanation from the Respondents but they did not offer any explanation nor provided any

information about the billing systems or the agreements which the Corporate Debtor entered into with the Respondent No. 1.

6. It is stated that the Respondents are liable to contribute to the tune of Rs. 39.77 Crores to the assets of the Corporate Debtor being the fraudulent transactions.
7. It is alleged that a car was registered in the name of the Corporate Debtor. It was sold to Respondent No. 7, Promoter Director of the Corporate Debtor for Rs. 14.0 Lakh on 30.09.2020. The car was under hypothecation with Indian Overseas Bank for which the Bank filed a claim as a secured creditor during CIRP which claim was admitted. It is stated that Respondent did not provide the sale documents in respect of the said car. It is also stated that no monies in respect of sale of the car were received by the Corporate Debtor nor there was any Board Resolution to this effect.
8. The Respondents contested the application. Respondent No. 1 stated that in terms of Section 14 of IBC, moratorium was in force against institution or continuation or proceedings against the Respondent No. 1 including execution of any judgment decree or order in any court of

law. Before the commencement of CIRP of Respondent No. 1, the ex-management of the Respondent No. 1 had filed the claim with the Applicant on 16.12.2022 for Rs. 37,67,14,211/- which included the principal amount of Rs. 29,00,36,743/- which claim was rejected by the RP as Annexure 4. It is stated that Aadarsh Surana / Respondent No. 4 and Vijay Amritraj / Respondent No. 3 were the Directors of the Corporate Debtor as well as of Respondent No. 1. It is stated that RP of Respondent No. 1 has not received the tally accounts from the IRP or the ex-management. He had received the audited financial statements for FY 2016-17 to FY 2018-19. Majority of contract charges disclosed in the financials pertain to the Corporate Debtor. Comparison of billing of the Corporate Debtor and contract charges of Respondent No. 1 is tabulated below:

Financial Year	Figures in Rs. Crores	
	Billing by Corporate Debtor	Contract charges of Respondent 1
2016-17	87.29	97.53
2017-18	95.47	103.08
2018-19	52.21	57.72

9. It is stated that the revenue of the Corporate Debtor as per the unaudited financial statement for FY 2018-19 was Rs. 52.21 Crores which is similar to the contract charges for the same financial year for the related parties of the Respondent No. 1, as per the audited financial for the same financial year being Rs. 57.72 Crores. Hence, it can be said that revenue for FY 2018-19 was fully recognized by the Corporate Debtor.
10. It is stated that the Applicant has incorrectly linked the revenue with the consumption of materials. The revenue is linked with the billing and the billing is linked with the progress of work / construction. The Applicant has not placed a Chartered Engineer Certificate showing the work done by the Corporate Debtor during the FY 2018-19 to FY 2019-20 which remained unbilled to the Respondent No. 1.
11. It is stated that the Applicant has failed to clarify the negative purchase of materials. It is stated that the Corporate Debtor used to procure materials and carry out the construction activities for the Respondent No. 1 which used to place work orders for the pre-defined scope of the work. No cost escalation was permitted and the payments used to be released to the Corporate Debtor based on the work measured /

certified. It is stated that Respondent No. 1 cannot be held liable for the contribution of Rs. 39.77 Crores on account of fraud if any, committed by Respondent No. 2 to 7. Further, ex-management of Respondent No. 1 had filed the claims with the Applicant for Rs. 37,67,14,211/- supported with the statement of accounts and copies of work order which the Applicant rejected without any justification. It is stated that during the CIRP of Respondent No. 1, IRP had received a claim from the Applicant on 05.06.2023 for an amount of Rs. 47,11,85,099/-. Since no details regarding the claim were available with the IRP due to absence of financials and documents, the claim was provisionally admitted by the IRP. The IRP had also sought details from Respondent No. 4 through mail dated 29.05.2023 but he did not receive any reply.

12. Respondent No. 2, 3, 4, 6 and 7 filed a common reply stating that no fraudulent transaction was ever made by them and the entire allegations are contrary to the facts, purely on presumptions. It is stated that the market conditions were favourable in FY 2016-17 to FY 2017-18 and there was high profit while in FY 2018-19, the conditions were unfavourable. There was pressure on the sale; valuation had come down, the prices were compromised; and the consumptions were

higher than the revenue. It is stated that the Applicant has all the records, documents, information, agreements, contracts, bills and transactions entered by the Corporate Debtor with the Respondent No.

1. The Applicant has not pointed out any specific transaction.
13. It is stated that in entire five years, the total material consumed was for Rs. 173.86 Crores and the total revenue was Rs. 245.46 Crores. So no loss was caused to the Corporate Debtor. In initial phases, the construction cost is lower but at later phase the construction cost increases heavily. Therefore, consumption cannot be compared with the revenue.
14. It is stated that since the car became old, it was sold to an unorganized sector. The transaction was duly recorded in the books.
15. The Applicant filed the Rejoinder to the reply of Respondent No. 1 stating that this application was filed prior to initiation of CIRP against Respondent No. 1. It were the Promoters of the Corporate Debtor who had undertaken fraudulent transactions. It is stated that although the materials were consumed but the same were not billed by the Corporate Debtor. The Applicant arrived at the opinion after perusing the books

of accounts as provided by the Respondents. The Corporate Debtor has nothing to do with the work done by Respondent No. 1. As per the books of accounts, the negative value of Rs. 2.40 Crores in the purchase of materials is nothing but return of material by the Corporate Debtor. It is stated that the material consumed and the bills raised by the Corporate Debtor were not proper in the financial years. The Corporate Debtor has nothing to do with the sale of the properties of the Corporate Debtor. It is stated that consumption of materials comes by considering the opening inventory in addition to the purchases during the year less closing stock available. Hence, Respondent No. 1 is liable to pay the amount as claimed in the application. The Applicant has placed the financial statements and trial balance statements at page 5 to 132 of the Rejoinder.

16. The Applicant also filed Rejoinder to the reply of Respondent No. 2, 3, 4, 6 and 7. It is stated that Respondents never responded to the mails and phone calls of the Applicant. The Applicant had filed an application under Section 19(2) against the erstwhile Directors. It is stated that determination of inventory misappropriation was done based on the balance sheets. The Corporate Debtor did not have any

business other than the construction of projects for the Respondent No.

1. Following table shows an analysis of revenue for operations and major expenditure incurred by the Corporate Debtor over a period of time.

Revenue from Operations and Major Expenditure Analysis (Rs.in Crore)					
Particulars	FY17	FY18	FY19	FY20	FY21
	Audited	Audited	Provisional	Provisional	Provisional
Revenue from Operations (A)	87.29	95.47	52.21	10.49	-
Major Expenditure Breakup:					
Material Cost	46.82	52.68	61.18	12.97	0.21
Other Direct & Indirect Expenses	37.22	37.87	32.35	6.62	0.17
Depreciation	0.83	1.04	1.37	0.94	0.40
Interest	0.72	1.72	1.24	0.12	0.83

Revenue from Operations and Major Expenditure Analysis (Rs.in Crore)					
Particulars	FY17	FY18	FY19	FY20	FY21
Total of above Expenditure (B)	85.59	93.30	96.14	20.64	1.60
% of Expenditure on Revenue (B/A)	98.05%	97.73%	184.15%	196.85%	

The above table is self explanatory showing how the Corporate Debtor stopped raising bills to Respondent No. 1 since FY 2019. Total revenue of Five years prior to CIRP was Rs. 245.45 Crores while the total expenditure was 297.27 Crores. Besides, Corporate Debtor incurred expenditure other than the material cost amounting to Rs. 96.14 Crores while the revenue generated was only Rs. 52.21 Crores as per analysis tabulated below.

Inventory Mis-appropriation determined by Resolution Professional (Amount in Rs.Crore)					
Particulars	FY17	FY18	FY19	FY20	FY21
	Audited	Audited	Prov	Prov	Prov
Opening Inventory (WIP+Stock in Trade) - A	20.25	22.51	32.03	13.91	2.61
Add: Purchase of Stock-in Trade - B	49.08	62.20	43.06	1.67	-2.40
Closing Inventory (WIP+Stock in Trade)-C	22.51	32.03	13.91	2.61	-
Cost of Materials consumed (A+B-C)	46.82	52.68	61.18	12.97	0.21
Actual Sales and Income from Operations	87.29	95.47	52.21	10.49	-
% of Materials on Revenue from Ops	54%	55%	117%	124%	-

Inventory Mis-appropriation determined by Resolution Professional (Amount in Rs.Crore)					
Particulars	FY17	FY18	FY19	FY20	FY21
Inventory misappropriated without raising bills to APDPL			32.38	7.18	0.21

17. It is stated that the transaction analysis was done based on the books of accounts provided by the erstwhile Directors in tally. Except the tally data, no agreements and supporting documents were provided by the erstwhile Directors. It is stated that the Corporate Debtor even did not furnish information to the Income Tax Department despite several notices issued by the Department. Hence penalty proceedings were initiated against the Corporate Debtor raising a demand of Rs. 37.79 Crores which claim was filed by the Income Tax Department. The car was sold to Respondent No. 4 on 30.09.2020 within the look back

period, though it was under hypothecation. A claim was filed by the IOB, which was admitted by the Applicant. The car is still in the name of the Corporate Debtor as per the RTO record.

Analysis and Findings

18. We have heard Ld. Counsels for the parties and gone through the written submissions.
19. For a transaction to qualify under Section 66(1) of IBC, 2016, the following conditions should be satisfied;
 - (a) Liability can be fixed upon 'any person';
 - (b) The said person should knowingly carry on the business with the Corporate Debtor;
 - (c) The said person should have a dishonest intention to defraud the creditors;

It also includes Directors of the 'Corporate Debtor', provided that such Directors did not exercise due diligence or failed to take reasonable steps to minimize potential loss to the creditors when there was no possibility of avoiding commencement of 'Corporate Insolvency Resolution Process'. However, a director can be deemed to have exercised due diligence, if such diligence was exercised as expected reasonably of a director carrying out a business in the ordinary course of business.

Thus for establishing the fraudulent intention, it must be shown that the Ex-Directors of the 'Corporate Debtor' continued to run the business with an intent to defraud the creditors.

20. The CIRP against the Corporate Debtor in the present case was initiated on 02.09.2021. This application has been filed on 29.05.2022. As seen from the record, the Applicant did not get conducted the transaction audit of the Corporate Debtor and filed this application on the basis of the books of accounts, balance sheets and tally data available on record.
21. The Corporate Debtor was set up by the same Promoters of Respondent No. 1 which was a project proponent in various projects. Respondent No. 1 outsourced the construction activities to the Corporate Debtor. The Corporate Debtor used to procure materials and do the construction activities for the Respondent No. 1 which used to place work orders for predefined scope of works. Payments used to be released by the Respondent No. 1 to the Corporate Debtor based on the works measured / certified.
22. In the present case, the Applicant has linked the revenue with the consumption of materials. We agree with the submission of Respondent No. 1 that in the construction projects, revenue is linked

with the billing and the billing is linked with the progress of work / construction. We are of the view that the correct methodology has not been adopted by the Applicant while filing this application. The proper course for the Applicant was to get the construction work audited from a certified Chartered Engineer to find out what amount of work was executed by the Corporate Debtor for the Respondent No. 1 and what revenue was released by the Respondent No. 1 to the Corporate Debtor against the work done. In the construction work, there are many stages. In structural work, expenditure is less but in finishing work, expenditure is more. The stock inventory is prepared on the basis of the materials consumed in the works and the materials procured for taking up the works. The Applicant after taking the services of the Chartered Engineer should have assessed the consumption of materials in the project on the basis of the work done instead basing the application on the revenue collection which is not at all the correct methodology for making assessment of consumption.

23. In the instant case, the Respondents have placed the copy of the work orders given to the Corporate Debtor for carrying out the construction activities. The works used to be measured by the Engineers and on

their certification, the payments used to be released by the Respondent No. 1. For taking up the initial construction, mobilization advance was given which was deducted from the running payments. This is an usual procedure followed in the construction projects. The Contractor / Corporate Debtor has to do the works as per the terms and conditions of the work orders irrespective of loss or profit it suffers in / from the projects. It has also been clarified by the Respondent No. 1 that the work order did not have any cost escalation clause.

24. It is pertinent to mention that the Promoter Directors of the Respondent No. 1 before the commencement of the CIRP of the Respondent No. 1 had filed the claim against the Corporate Debtor for Rs. 37,67,14,211/-. The claim was rejected by the Applicant, though at the time of filing of the claim, the Promoter Director had given the statement of accounts and copies of the work orders. It is not the case that the Respondent No. 1 did not have any claim against the Corporate Debtor. So, how the liability as claimed in the present application can be fastened on the Respondent No. 1.
25. A perusal of the record rather shows that these transactions had been carried out in the usual course of business. There is no record

indicating that the Respondents had derived any benefit out of these transactions. The Respondents were in the management of the Corporate Debtor and had taken the decisions in the best interest of the Corporate Debtor and as such they cannot be personally held liable. The Corporate Debtor had business relationship with Respondent No. 1 since the year 2012. The Respondent No. 1 had given a revenue of Rs. 800.0 Crores to the Corporate Debtor since 2012. The Respondent No. 2 in his written synopsis has given a chart showing the business done with Respondent No. 1 as tabulated below.

Funds received from APD (Respondent 1)			
Financial Year	Received	Mobilisation	
2011-2012	70,00,000		Audited Financials
2012-2013	81,64,44,398		
2013-2014	2,02,95,86,053		
2014-2015	1,35,51,62,403	16,00,00,000	
2015-2016	1,52,01,05,292		
2016-2017	68,78,10,842		
2017-2018	89,08,65,287		
2018-2019	64,96,60,282	13,26,00,000	Funds received from APD (Respondent 1)
2019-2020	16,59,22,660		
2020-2021	1,17,10,000		
2021-2022	25,14,661		
Total	8,13,67,81,878	29,26,00,000	

From the above chart, it is clear that the transactions had taken place in the usual course of business. The Corporate Debtor had taken up the work orders worth Rs. 1200 Crores from Respondent No. 1 which it had been executing even when it was suffering loss in a particular year keeping the long term business relationship because it is unethical and unprofessional for any Company to exit from its contracts because they are non-profitable. The details of the work order and their value / work done are tabulated as below.

APDPL VS CD Work order against Receipt details			
Work order	Work order value	Work order dates	Receipt
THE ROYALCASTLE PHASE II,AMP/TRC/WO/013/2012-13,AMP/TW/WO/004/2012-13, PALM RIVIERA (WOMEN'S CLUB),PALM RIVIERA (MEN'S CLUB),PALM RIVIERA PHASE III,PALM RIVIERA PHASE II,AMP/PR/WO/007/2012-13,AMP/TRC/WO/018/2013-14,AMP/TW/WO/006/2013-14,AMP/TRC/WO/021/2013-14,AMP/TW/WO/007/2012-13,AMP/PR/WO/018/2014-15,AMP/SUB/WO/002/2015-16, PALM RIVIERA PHASE I, TEMPLE WAVES(PHASE I), TEMPLE WAVES(CLUB 5),TEMPLE WAVES(TOWER - I & J), TEMPLE WAVES(TOWER - G & M),TEMPLE WAVES(TOWER - A, B & H), APDPLAPD-SCWO19-200001	12,28,50,00,000	07.05.2012,11.05.2012,16.02.2013,25.02.2013,25.02.2013,25.02.2013,27.02.2013,15.04.2013,20.07.2013,19.08.2013,25.09.2013,22.05.2014,11.05.2015,02.02.2018,02.02.2018,02.02.2018,02.02.2018,02.02.2018,02.02.2018,17.07.2019	8,38,67,81,878

26. It is also pertinent to mention that the Applicant seeking reliefs for the contribution of Rs. 39.77 Crores had filed a claim with the RP of the Respondent No. 1 which the RP has provisionally admitted, so it cannot be said that the transactions impugned in the present application are the fraudulent transactions and attract the provision of Section 66 of IBC.

27. As regards sale of car TN 11 1008 which was registered in the name of the Corporate Debtor, this Tribunal vide an order dated 11.03.2025 in the application IA/639/2022 had directed the Respondents to hand over the car to the Applicant / RP. It was also submitted by the Applicant / Liquidator during the proceeding on 18.07.2025 that since the car has been returned, prayer 5.2 does not survive.

28. Hon'ble NCLAT in the case of Regen Powertech Pvt. Ltd. –Vs- Wind Construction Pvt. Ltd. in Company Appeal (AT)(Ins) No.349 of 2022, held as under;

33. Be it noted, this 'Tribunal', significantly, points out that, whenever 'Fraud' on a 'Creditor' is perpetrated in the course of 'carrying on Business', it does not necessarily follow that the 'Business' is being carried on with an 'Intent to Defraud' the 'Creditor'

34. One cannot remain 'oblivious' of the candid fact that, if the 'Directors' of a 'Company' had acted on a 'bonafide belief' that the Company would 'recover' from its 'Financial Problems' / 'Difficulties', then, they will not be held liable for the 'act' / 'offence' of 'Fraudulent Trading'.

35. As a matter of fact, the 'aspect' of 'Fraudulent Trading' requires a very 'High Degree of proof', which is attached to the 'Fraudulent Intent'. To put it emphatically, a more compelling "Material' / 'Evidence' is required to satisfy the conscience of this 'Tribunal', 'on a preponderance of probability'. Apart from that, an 'isolated' / 'solo fraud' case, against the person, then, action in 'tort' can be resorted to, as opined by this 'Tribunal'. No wonder, a 'Creditor',

36. In the instant Case 'on hand', the 'Appellant' / 'Applicant' before the 'Adjudicating Authority' (National Company Law Tribunal, Division Bench – II, Chennai) had filed IA(IBC)/489(CHE)/2021 in IBA/1099/2019 under Section 66 (1) of the Insolvency and Bankruptcy Code, 2016. In this Page 20 of 22 Company Appeal (AT)(CH)(Ins) No.349/2022 connection, this 'Tribunal' significantly points out that in respect of an 'Application' (Filed under Section 66 of the Insolvency and Bankruptcy Code, 2016) 'Fraudulent Trading' / 'Wrongful Trading', by the 'Applicant' / 'Resolution Professional' is concerned, 'Tangible Materials' / 'Relevant Facts' are to be pleaded in an 'Unambiguous and Unequivocal Terms', by supplying the necessary details / facts as the case may be.'

29. In the light of what has been stated above, we are of the view that the Applicant has not made a case of fraud or dishonest intention against the Respondents. Hence Section 66 of IBC, 2016 cannot be invoked against the Respondents under such circumstances. The Application deserves to be dismissed.

30. Accordingly IA(IBC)/795(CHE)/2022, is **dismissed**. No order as to costs.

Sd/-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

Sd/-

SANJIV JAIN
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
CHENNAI BENCH-1
AT CHENNAI**

IA(IBC)/855(CHE)/2022

in

IBA/1064/2019

(filed under Section 43 read with 60 (5) of the Insolvency and Bankruptcy Code, 2016)

In the matter of EAP Infrastructure India Private Limited

Chandrasekhar Sagutoor

Resolution Professional EAP Infrastructure India Pvt. Ltd.
G5 & G6, Ground Floor, No.333/17
Salma Arcade Complex, Kodambakkam Main Road
Trustpuram, Kodambakkam, Chennai 600 024

. . . Applicant

Vs

- 1. Amar Prakaash Developers Pvt. Ltd.**
No.92, 1st Floor, Happiness Tower
Thirumudivakkam Main Road
Thirumudivakkam
Chennai, Kancheepuram Dist., - 602109
- 2. Tarun Kumar Dugar**
S/o. Kishan Chand Dugar 38/71,
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- 3. Mohan Vijay Amirthraj**
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- 4. Adarsh Surana**
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Amar Prakash Nivas,
No.42, Dr. Rajendra Prasad Road Nehru Nagar
Chrompet
Kancheepuram Dist., Chennai - 600044
7. **Ashish Surana**
S/o. Sudhir Kumar Surana
Amar Prakash Nivas
No.42, Dr. Rajendra Prasad Road Nehru Nagar
Chrompet
Kancheepuram Dist., Chennai - 600044

. . . Respondents

For Applicant : Bhagavath Krishnan, Advocate

*For Respondent : Raghav Menon, Advocate for RP
Pawan Jhabakh, Advocate for Promoter Director*

CORAM:

**SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)**

Order Pronounced on 30th June, 2026

ORDER

(Heard Through Hybrid Mode)

1. This application under Section 43 r/w Section 60(5) of IBC has been filed by the Resolution Professional of EAP Infrastructure India Private Limited against the Corporate Debtor Amar Prakaash Developers Private Limited (Respondent No. 1) being represented by the RP and Others seeking directions to declare that the execution of General Power Attorney dated 15.3.2021 in favour of Respondent No. 1 as preferential transaction and consequently direct the Respondents to hand over the physical possession of the Corporate Debtor's land to the extent of 1 Acre 67 Cents situated in S.No. 148/3, S.No149/14, S.No.149/18 and S.No.152/1 at Pazhanthandalam Village, Tamil Nadu together with original title deeds, to declare the sale of Plant and Machineries dated 1.1.2021 to the 1st Respondent as a preferential transaction and direct the 1st Respondent to pay a sum of Rs.1,11,74,155/- to the Applicant.

2. Briefly the facts are that the Corporate Debtor was incorporated on 02.08.2011. The details of the Directors i.e. their appointments and cessations are as follows.

Details of Directors since Incorporation					
Sl No.	Name of the Director	DIN	Designation	Date of Appointment	Date of Cessation
1	SUDHIR KUMAR SURANA	02009765	Promoter Director	02/08/2011	07-05-2014
2	AADARSH SURANA	02009868	Promoter Director	02/08/2011	07-05-2014
3	AASHISH SURANA	02009849	Promoter Director	02/08/2011	20/11/2020
4	KULDEEP SURANA	02009849	Promoter Director	02/08/2011	31/10/2014
5	VELLAISAMY AMBALAM CHIDAMBARAM	07013504	Director	09-02-2015	31/03/2018
6	ARUN	05305766	Director	16/06/2012	30/09/2015
7	AADARSH SURANA	02009868	Promoter Director	20/11/2020	29/03/2021
8	SURENDAR RAJARATHINAM	07978856	Director	20/11/2020	29/03/2021
9	KULDEEP SURANA	02009849	Promoter Director	21/03/2018	20/11/2020
10	TARUN KUMAR DUGAR	09053988	Director	29/03/2021	
11	MOHAN VIJAY AMIRTHARAJ	09102296	Director	29/03/2021	

3. It is stated that on examination of books of accounts, Applicant found that several transactions have taken place wherein Respondent No. 1, a related party and Creditor was given preference over the other Creditors. Besides, several properties of the Corporate Debtor were hived off to the Respondent No. 1.

4. It is stated that the Corporate Debtor had invested a sum of Rs. 10.76 Crores and was an equity shareholder in Respondent No. 1 of which Respondent No. 4 was the Promoter Director. The Corporate Debtor was promoted by the same Promoters of Respondent No. 1 which used to outsource the construction activities to the Corporate Debtor. It is stated that there were dues to the tune of Rs. 6.30 Crores payable by the Corporate Debtor to the Respondent No. 1. It is stated that a sum of Rs. 2,61,21,000/- which was due from the Corporate Debtor to the Respondent No. 1 was adjusted against Rs. 6.30 Crores after transferring 1acre 66 cents of land of the Corporate Debtor. The amount was debited on 15.12.2020 with the following note:

"Being Property transferred to Amarprakash Developers Pvt. Ltd. as per the GPA dated 15.3.2021 DOC No. 3381/2021 Ext. 1.67 Cents Vide S.No. 148/3,pt. 29cents, S.No. 149/1A pt. 28 Cent, S.No.149/1B pt. 6 cent, S.No.152/1pt 1.04 Acres, at Pazhanthandalam Village"

5. It is stated that by creating accounting treatments, the Promoters transferred the valuable assets of the Corporate Debtor to the related party by way of general power of attorney (GPA). The entry in the books of accounts was made on 15.12.2020, though the GPA was given to the Respondent No. 1 on 15.03.2021. It is stated that the only valuable asset of the Corporate Debtor was the land parcel which was

transferred to Respondent No. 1 at a book value on 15.03.2021. Respondent No. 4 and Respondent No. 5 were the Directors of the Corporate Debtor when the GPA was executed and transfer was made in the books of accounts.

6. It is stated that the Applicant contacted Respondent No. 2 and Respondent No. 3 and sought the details of the transactions who thereafter provided the GPA on 06.05.2022. On verification, he found that the GPA was executed without any consideration with the Sub Registrar Office, but in the books of accounts, the sale entry was made on the book value of the land. Respondent No. 2 and Respondent No. 3 were requested multiple times to hand over the original title deeds of the above property but they never provided. It is stated that the Corporate Debtor transferred the valuable assets for the benefit of Respondent No. 1 on account of liabilities owed by the Corporate Debtor thus giving preference to Respondent No. 1. It is stated that vide letter dated 07.05.2022, Applicant wrote to Respondent No. 1 revoking the power granted to Respondent No. 1 under GPA and also issued a communication to the Sub Registrar on 07.05.2022 intimating about the revocation of the GPA calling upon him not to register any

transactions pursuant thereto. It is stated that till date Respondents have not handed over the physical possession of the property.

7. It is stated that on 01.01.2021, the Corporate Debtor sold the plant and machineries to Respondent No. 1 and adjusted a sum of Rs. 1,11,74,155/- . The Applicant enquired about the said sale from Respondent No. 2 to 7 and sought for the details which the Respondents did not provide till date. It is stated that the sale of plants and machineries and adjustment of the same from the dues payable by the Corporate Debtor are the preferential transactions and as such the Respondent No. 1 be directed to pay a sum of Rs. 1,11,74,155/- besides handing over the physical possession of the land in question along with the title documents.
8. Respondents contested the application. It is stated by Respondent No. 1 that no books of accounts were available with the IRP. The IRP had filed an application under Section 19 of IBC against Respondent No. 3 and 4 in this respect. It is stated that IRP had received a claim from the Applicant on 05.06.2023 for an amount of Rs. 47,11,85,099/- without any supporting documents / details. It is stated that the claim was provisionally admitted by the IRP. It is stated that the IRP of

Respondent No. 1 had communicated to Respondent No. 4 via mail dated 29.05.2023 but he did not receive any response. It is stated that sale of a property by execution of GPA is one of the prevailing mode in the market for transfer of property. It is stated that Section 43(2) does not apply in case, transfer of property is made in the ordinary course of business of the Corporate Debtor. The Corporate Debtor had liability for payment of Rs. 2,69,00,000/- as on 02.09.2019 being the debt as on two years preceding the CIRP date. The Corporate Debtor had a liability to make the payment of Rs. 3,58,59,650/- on the date of commencement of CIRP. It is stated that Respondent No. 1 had paid Rs. 4,22,92,374/- from 03.01.2020 to 14.12.2020 before the transfer of the land to the Respondent No. 1. It is stated that GPA is irrevocable in terms of Section 202 of the Indian Contract Act, 1872 which provides that a power of attorney once executed cannot be revoked if it is given for consideration and the agent has acted in good faith under its authority. It is stated that the Respondent No. 1 had paid the consideration for the sale of plant and machinery and thus was not put to any beneficial position which it would have been in the event of distribution of assets in accordance with Section 53. It is stated that

before the commencement of CIRP of the Corporate Debtor, erstwhile Promoters had filed the claims with the RP of the Corporate Debtor on 16.12.2022 for an amount of Rs. 37,67,14,211/- which the RP rejected without any plausible reason. It is stated that in addition to the amount of Rs. 6.30 Crores payable by the Corporate Debtor before adjustment of sale consideration for 1.67 acres of land, the Corporate Debtor has the liability to make the payment of Rs. 25,41,77,093/- excluding the liability for the payment of interest.

9. Respondent No. 2, 3, 4, 6 and 7 also filed the reply stating that investment by a Corporate Debtor in another Corporate is an usual transaction and there is no legal impediment for doing such investment. It is stated that the investments were made in 2015 when there was no financial sickness. It was made in the interest of the Corporate Debtor since the Corporate Debtor was the Contractor of Respondent No. 1 which was a real estate company.
10. It is stated that the land comprised of 3.12 acres. It was mortgaged with Kriticons Limited, one of the Financial Creditors of the Corporate Debtor. Due to continuous pressure from the Financial Creditor, one

parcel of above land admeasuring 1.45 acres was sold to Kriticons Limited on 16.09.2020 in lieu of settlement of entire dues of Kriticons Limited. Besides Respondent No. 1 had an outstanding recoverable from the Corporate Debtor to an extent of Rs. 39.0 Crores which was the mobilization advance given by Respondent No. 1 to the Corporate Debtor. The advances were procured by Respondent No. 1 from its Financial Creditors. There was undue pressure for recovery from Respondent No. 1. Its funds were blocked. Upon settlement of dues of Kriticon Limited on sale of 1.45 acres of land, Kriticons Limited released the charge on the remaining land comprising of 1.67 acres. Since the Corporate Debtor was unable to pay / remit back the huge mobilization, it made Respondent No. 1 agree to accept the part payment by way of transfer of above land and sold the land to Respondent No. 1 for Rs. 2.60 Crores. Respondent No. 1 in turn sold the land for discharge of its Financial Creditor's liabilities. It is stated that since it was only the part payment towards the liabilities, no consideration was required to be shown in the sale transaction as the amount was already received by the Corporate Debtor in the form of mobilization advance. Thus this part amount of Rs. 2.60 Crores was

adjusted against the total outstanding. Even after adjustment, a sum of Rs. 29.50 Crores is outstanding against the Corporate Debtor. It is stated that these transactions are not the preferential transactions.

11. As regards sale of plant and machinery, it is stated that most of the materials which were returned / sold were procured for specialized project development for Venezian project. When the Corporate Debtor tried to sell it in the open market for returning the mobilization advance, it was fetching very low i.e. about 10% of the purchase price being customized for specific project development. Thus rather selling it in an open market at 10%, the Corporate Debtor sold it to settle the outstanding of Respondent No. 1 which took it at the purchase price.

12. The Applicant filed the Rejoinder to the reply of Respondent No. 1 wherein he denied that the immovable properties can be transferred by way of GPA. It is stated that immovable properties can only be sold by way of sale deed. In the present case, entry in the books of accounts were made even before the alleged power of attorney. It is stated that GPA is not the sale deed. Further, there was no consideration for the instrument. Respondent No. 1 does not have any valid title to the

property. It is stated that the transfer of property through GPA is not an ordinary course of business. By way of said transfer, Respondent No. 1 was put in a beneficial position over the other Creditors.

13. The Applicant also filed Rejoinder to the reply of Respondent No. 2, 3, 4, 6 and 7. It is stated that as per the audited balance sheet as on 31.03.2018, the Corporate Debtor had received a mobilization advance of Rs 16.0 Crores. The closing work showed Rs. 16.30 Crores. The mobilization advance was adjusted against the work done. If a particular land was sold in 2020 itself, there was no necessity to the Corporate Debtor to give GPA to Respondent No. 1 in March 2021. It is stated that GPA was registered after the Board resolution was passed on 15.03.2021. GPA provides that it is only a power given to R1 and the Corporate Debtor without any consideration. It is stated that application for initiation of CIRP was filed in 2019 and CIRP commenced on 02.09.2021. It is stated that the land is still in the name of the Corporate Debtor.

Analysis and Findings

14. We have heard Ld. Counsels for the parties and gone through the written synopsis filed by them.

15. It is not in dispute that the Corporate Debtor was incorporated in 2011. It was promoted by the same Promoters as that of Respondent No. 1. The Corporate Debtor was promoted to execute the construction activities of the Respondent No. 1 which used to issue work orders from time to time since the year 2012. It is also not in dispute that Respondent No. 4 was the Director in the Corporate Debtor as well as the Respondent No. 1. There is also no denial of the fact that for carrying out the construction activities, the Respondent No. 1 used to pay mobilization advance to the Corporate Debtor which used to be adjusted from the running bills.
16. It is seen from the documents and the pleadings that as on 31.12.2020, there were dues payable by the Corporate Debtor to the Respondent No. 1 to the tune of Rs. 6.30 Crores. The Respondent No. 1 had paid the mobilization advance after borrowing from the Creditors who were pressurising the Respondent No. 1 to return the amount. The Corporate Debtor had a land parcel of 3.12 acres which it had mortgaged with Kriticons Limited, its Financial Creditor. On 16.09.2020, the Corporate Debtor sold one parcel of the said land admeasuring 1.45 acres to Kriticons Limited in lieu of settlement of entire outstanding dues.

Kriticons Limited released the charge on the complete land which included 1.67 acres. The Respondent No. 1 had given the mobilization advance way back in 2015. The Respondent No. 1 was under the financial pressure from the Creditors. Since the Promoter Directors of the Respondent No. 1 and Corporate Debtor were common and there were outstanding liabilities towards the Corporate Debtor, which fact is not disputed by the Applicant, a decision was taken by the Promoter Directors to transfer the remaining land of 1.67 acres to the Respondent No. 1 against repayment / adjustment of the amount of Rs. 2.60 Crores from the outstanding of the Respondent No. 1. The book entry shows that the transaction was made on 15.12.2020. Admittedly, the power of attorney was executed on 15.03.2021 which was registered after the Board Resolution but the said amount of Rs. 2.61 Crores was debited with a note " Being Property transferred to Amarprakash Developers Pvt. Ltd. (Respondent No. 1) as per the GPA dated 15.03.2021 *DOC No. 3381/2021 Ext. 1.67 Cents vide S.No. 148/3,pt. 29 cents, S.No. 149 / 1A pt. 28 Cent, S.No. 149/1B pt. 6 cent, S.No. 152/1pt 1.04 Acres at Pazhanthandalam Village*". We are not in agreement with the contention of the Applicant that there was no transfer of fund nor there was any consideration. The

entries in the book show that the land was sold for a consideration of Rs. 2.61 Crores which amount was adjusted against the outstanding liabilities. Admittedly, no sale deed was executed for effecting the transfer but later a power of attorney was executed on 15.03.2021 in respect of the said land which was registered with the Sub Registrar office. Along with the power of attorney, possession of the land was also handed over to the Respondent No. 1. Since the power of attorney was coupled with consideration and handing over of possession, it will be treated as deemed sale / transfer of land. It is true that the Applicant cancelled the power of attorney later and informed the Sub Registrar office but the said cancellation was without refund of the consideration and would not be treated as the valid cancellation.

17. As regards preferential treatment given to Respondent No. 1 instead of other Financial Creditors, the Respondents have given satisfactory explanation for making this transaction which appears to have been made in the usual course of business not to give any special benefit or preference to the Respondent No. 1. Further, there was never any objection from the other Financial Creditors. The transaction was effected in 2020 and the CIRP in the present case was initiated in 2021.

It is relevant to mention that the guideline / market value of the said land in the year 2020 was 96 Lakh, however, it was sold to Respondent No. 1 for Rs. 2.61 Crores. The Promoter Directors have stated that the land was not having access from the road, there were no takers of the land because of access issue and the Corporate Debtor settled the liabilities for Rs. 2.61 Crores keeping the relations intact with the Respondent No. 1 without losing its commercial interest. The Promoter Directors have also placed the copy of agreement of sale dated 13.01.2020 and the guideline valuation of the property. Admittedly, the sale has to be compulsorily registered but agreement of sale coupled with power of attorney, payment of consideration and handing over of possession would not make the sale void. The purpose of registration is to avoid fraud and forgery. Person dealing with immovable property can rely with confidence on the statements contained in the registers maintained under the Act regarding ownership and title. In the instant case, the Respondent No. 1 has not questioned the ownership and title in the said land. Further, by virtue of the provisions under Section 53A of Transfer of Property Act, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons

claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract.

18. As regards sale of plant and machinery to the Respondent No.1, it has been stated by the Respondents that these were the customized plant and machinery for a specific project and if these plants and machineries were sold in open market, it would only give 10% of its value being scrap value which in the present case was sold to the Respondent No. 1 at the purchase value. The said step was taken by the Corporate Debtor to maximise the value of the assets of the Corporate Debtor and not to give preference / benefit to the Respondent No. 1, the related party of the Corporate Debtor. Further, the amount against the sale of plant and machinery was credited in the account of the Corporate Debtor and the liability of the Corporate Debtor was reduced. We find that this decision was a business decision to minimize the loss in the Corporate Debtor.

19. Admittedly, Regulation 35A of CIRP Regulations imposes a duty on the RP to take measure within the timeline and any action taken by RP beyond the time prescribed is prohibited, but it has been held in catena

of judgements i.e. in the case of *Aditya Kumar Tibrewal vs Om Prakash Pandey & Ors (Company Appeal (AT) Insolvency No. 583 of 2021)* and *Prasant Chandra Rath & Anr vs Surya Kanta & Anr (Company Appeal (AT) Insolvency No. 869 of 2022)* by Hon'ble NCLAT that the timeline prescribed in Regulation 35A of CIRP Regulations is only directory and any action taken by the RP beyond the time prescribed, cannot be held to be non-est or void on the ground that it is beyond the prescribed period, if there are genuine and valid reasons for the RP for not filing the application for avoidance transactions within the time prescribed.

20. The Hon'ble Supreme Court in the case of *Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. –vs- Axis Bank Ltd., etc. in Civil Appeal No. 8512-8527 of 2019*, has dealt in detail as to how the Resolution Professional is required to approach the transaction as preferential before filing an application before the Tribunal. The following has been culled out to ascertain a transaction as preferential which reads as under:

28.1. Looking to the legal fictions created by Section 43 and looking to the duties and responsibilities per Section 25, in our view, for the purpose of application of Section 43 of the Code in any insolvency resolution process, what a resolution professional is ordinarily required to do could be illustrated as follows:

1. In the first place, the resolution professional shall have to take two major but distinct steps. One shall be of sifting through the entire cargo of transactions relating to the property or an interest thereof of the corporate debtor backwards from the date of commencement of insolvency and up to the preceding two years. The other distinct step shall be of identifying the persons involved in such transactions and of putting them in two categories; one being of the persons who fall within the definition of 'related party' in terms of Section 5(24) of the Code and another of the remaining persons.

2. In the next step, the resolution professional ought to identify as to in which of the said transactions of preceding two years, the beneficiary is a related party of the corporate debtor and in which the beneficiary is not a related party. It would lead to bifurcation of the identified transactions into two sub-sets: One concerning related party/parties and other concerning unrelated party/parties with each sub-set requiring different analysis. The sub-set concerning unrelated party/parties shall further be trimmed to include only the transactions of preceding one year from the date of commencement of insolvency.

3. Having thus obtained two sub-sets of transactions to scan, the steps thereafter would be to examine every transaction in each of these sub-sets to find: (i) as to whether the transaction is of transfer of property or an interest thereof of the corporate debtor; and (ii) as to whether the beneficiary involved in the transaction stands in the capacity of creditor or surety or guarantor qua the corporate debtor. These steps shall lead to shortlisting of such transactions which carry the potential of being preferential.

4. In the next step, the said shortlisted transactions would be scrutinised to find if the transfer in question is made for or on account of an antecedent financial debt or operational debt or other liability owed by the corporate debtor. The transactions which are so found would be answering to clause (a) of sub-section (2) of Section 43.

5. In yet further step, such of the scanned and scrutinised transactions that are found covered by clause (a) of sub-section (2) of Section 43 shall

have to be examined on another touchstone as to whether the transfer in question has the effect of putting such creditor or surety or guarantor in a beneficial position than it would have been in the event of distribution of assets per Section 53 of the Code. If answer to this question is in the affirmative, the transaction under examination shall be deemed to be of preference within a relevant time, provided it does not fall within the exclusion provided by subsection (3) of Section 43.

6. In the next and equally necessary step, the transaction which otherwise is to be of deemed preference, will have to pass through another filtration to find if it does not answer to either of the clauses (a) and (b) of sub-section (3) of Section 43. After the resolution professional has carried out the aforesaid volumetric as also gravimetric analysis of the transactions on the defined coordinates, he shall be required to apply to the Adjudicating Authority for necessary order/s in relation to the transaction/s that had passed through all the positive tests of sub-section (4) and sub-section (2) as also negative test of sub-section (3).

21. An analysis of the above discussions clearly brings forth to the light that the transactions made by the Respondents were in the ordinary course of business or the financial affairs of the Corporate Debtor and were not the preferential transactions. These transactions do not in any manner prejudice the interest of the creditors.
22. In the light of what has been stated above, we are of the view that the Applicant has not made a case of preferential transactions on the part of the Respondents except making sweeping allegations and hence Section 43 of IBC, 2016 cannot be invoked under such circumstances. The present Application being sans merit is liable to be dismissed.

23. Accordingly, the application IA(IBC)/855(CHE)/2022 is **dismissed** with no orders as to costs.

Sd/-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

Sd/-

SANJIV JAIN
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
CHENNAI BENCH-1
AT CHENNAI**

IA(IBC)/898(CHE)/2022

in

IBA/1064/2019

(filed under Section 45 of the Insolvency and Bankruptcy Code, 2016)

In the matter of EAP Infrastructure India Private Limited

Chandrasekhar Sagutoor

Resolution Professional EAP Infrastructure India Pvt. Ltd.
G5 & G6, Ground Floor, No.333/17
Salma Arcade Complex, Kodambakkam Main Road
Trustpuram, Kodambakkam, Chennai 600 024

... Applicant

Vs

- 1. Kriticons Limited,**
Ceebros Center
No.3, 4th Floor, 45, Montieth Road
Egmore Chennai 600 008
- 2. Tarun Kumar Dugar**
S/o. Kishan Chand Dugar 38/71,
1st Main Road, New Colony
Chromepet
Kancheepuram Dist., Chennai - 600044
- 3. Mohan Vijay Amirthraj**
S/o. Mohan
41, Ranga Nagar, 4th Cross Street
Thiruneermalai, Chromepet
Kancheepuram Dist., Chennai - 600044
- 4. Adarsh Surana**
S/o. Sudhir Kumar Surana Amar Prakash Nivas
No.42, Dr. Rajendra Prasad Road Nehru Nagar,

Chromepet,
Kancheepuram Dist., Chennai-600044

5. **Surendar Rajarathinam**
S/o.Rajarathinam 3, Sindhu Street
Muthusamy Nagar
Nemilicherry
Chromepet
Kancheepuram Dist., Chennai - 600044
6. **Kuldeep Surana**
S/o. Sudhir Kumar Surana
Amar Prakash Nivas,
No.42, Dr. Rajendra Prasad Road Nehru Nagar
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7. **Ashish Surana**
S/o. Sudhir Kumar Surana
Amar Prakash Nivas
No.42, Dr. Rajendra Prasad Road Nehru Nagar
Chrompet
Kancheepuram Dist., Chennai - 600044

... Respondents

For Applicant : Bhagavath Krishnan, Advocate

*For Respondent : Dev Eshwaar, Advocate for Kriticons Limited
Raghav Menon, Advocate for RP of Amar Prakaash Developers
Pawan Jhabakh, Advocate for Promoter Director*

CORAM:

**SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)**

Order Pronounced on 30th June, 2026

ORDER

(Heard Through Hybrid Mode)

1. This application under Section 45 of IBC has been filed by the Resolution Professional, now the Liquidator of EAP Infrastructure India Private Limited against Kriticons Limited and Others seeking the following reliefs.
 - i. *To declare the sale, vide Sale Deed (Doc. No. 4516/20) dated 16.9.2020, as undervalued transaction and consequently declare that the said transaction as void and the Lands in Sy No. 148/3, 148/4, 149/1A, 149/1B, 152/1, 153/13 Part in Pazhathandalam Village, Sriperambudur Taluk with a total extent of 1.45 Acres be vested in the Corporate Debtor.*

2. The facts relevant for the disposal of the application are that the Applicant after taking charge of the Corporate Debtor sought for the assets list of the Corporate Debtor from the Promoter Directors. On verification, he found that the last audited financial reports were filed upto FY 2017-18. He sought for the account statements. On 06.05.2022, Respondent No. 2 furnished the asset list along with the financial data as on 02.09.2021, the CIRP initiate date. He reviewed the financial data and found that as on 06.05.2022, the Corporate Debtor had liabilities

towards Respondent No. 1 for about Rs. 2.0 Crores. As per the books, the Corporate Debtor was the owner of the lands admeasuring 3.12 Acres at Pazhathandalam village, Sriperambudur Taluk being the only valuable asset of the Corporate Debtor having a book value of Rs. 4,97,10,500/-. During the months of September 2021 and December 2021, the Corporate Debtor transferred the above lands. On 16.09.2020, it sold 1.45 acres to Respondent No. 1, Kriticons Limited for Rs. 86,00,000/- and adjusted the total outstanding amount of Rs. 2.0 Crores payable to Respondent No. 1. It is stated that the book value of the said land as per the books was Rs. 2,35,70,700/-. It is stated that the Corporate Debtor sold the balance land of 1.67 acres to a related party namely Amarprakaash Developers Pvt Ltd (Amar Prakaash) and adjusted the dues payable by it to Amarprakaash.

3. It is alleged that the sale of land to Respondent No. 1 is an undervalued transaction. It is stated that Respondent No. 2 to 7 did not provide any details to the Applicant of the above transaction. He wrote to Respondent No. 1 on 10.05.2022 seeking explanation for the undervalued transaction which Respondent No. 1 replied on 18.05.2022 stating that on 29.10.2018, the Corporate Debtor had obtained a loan of

Rs. 2.0 Crore. With a view to settle the loan amount, it sold the lands for Rs. 86,00,000/- and settled the accounts. It is alleged that the sale was conducted at a price which was much lesser than the book value of the lands. Hence, the said transaction is a undervalued transaction which is liable to be declared as void and the land be vested to the liquidation estate of the Corporate Debtor.

4. **Respondent No. 1 contested the application** and filed the reply stating that the Corporate Debtor owed a loan of Rs. 2.0 Crore from the Respondent which carried an interest @ 24% per annum vide loan agreement dated 29.10.2018 as Annexure 1. It was for a period of six months. The Corporate Debtor executed a memorandum of deposit of title deeds dated 29.10.2018 in favour of the Respondent which was registered vide document No. 6194 of 2018 on the file of the Sub Registrar. It had mortgaged the land admeasuring 3.12 acres and also acknowledged the receipt of Rs. 2.0 Crore from the Respondent in its balance sheet for FY 2018-19. Since the Corporate Debtor did not repay the amount within the specified period, the Respondent recalled the loan vide mail dated 26.02.2020 and reminder dated 11.05.2020. It is stated that the Corporate Debtor could not repay the loan. It

subsequently entered a MoU dated 16.09.2020 (Annexure 4) whereby it agreed to transfer the land in favour of the Respondent for an amount of Rs. 86,00,000/- in conformity with the then market value of the land. The Respondent also placed the guideline value of the land at the relevant time as Annexure 5. It is stated that the land was transferred pursuant to the MoU and thereafter the Corporate Debtor registered the sale deed dated 16.09.2020 in favour of the Respondent vide document No. 4516 of 2020 after the Board Resolution dated 01.09.2020 as Annexure 7. It is stated that the transfer was made in lieu of payment of debt by the Corporate Debtor in the ordinary course of business and the same does not fall within the ambit of Section 45 of IBC. It is stated that CIRP in the present case was initiated on 02.09.2021. It is stated that the Respondent is not a related party of the Corporate Debtor and as such, the look back period as provided under Section 46(1)(i) shall be one year preceding the insolvency commencement date. It is stated that this application has not been filed within the period of 135 days of the insolvency commencement date, the period provided under Regulation 35A of CIRP Regulations which is mandatory. It has been filed after 268 days.

5. **Respondent No. 2, 3, 4, 6 and 7 also filed the reply** wherein they stated on the lines of Respondent No. 1. It is stated that in view of continuous pressure from the Financial Creditor / Respondent No. 1, it was resolved to offer a land comprising of 1.45 acres. The book value of the land was Rs. 2.35 Crores but after Covid 19 and distress in the real estate industry, the land was not having even the market value of Rs. 80,00,000/-. Somehow, the Corporate Debtor made the Respondent No., 1 agree to accept 1.45 acres of land in lieu of settlement of its outstanding dues of about Rs. 2.92 Crores. The guideline value was only Rs. 86,00,000/- at that time. It is stated that because the book value was Rs. 2.35 Crores, it cannot be presumed that above transaction was an undervalued transaction. A loan of Rs. 2.92 Crores was settled against the sale of the above land and as such no loss was caused to the Corporate Debtor.
6. **Respondent No. 4 also filed the written synopsis** vide SR. No. 287 dated 21.01.2025 reiterating what was stated by the other Respondents.
7. **The Applicant filed the Rejoinder** wherein he reiterated the facts as stated in the application. It is stated that the Corporate Debtor in the books of account debited loss to the P&L account on 16.09.2020 which

was nullified. The interest charged was only Rs. 18.10 Lakhs which was paid. The Respondents have not explained how the value of the land was kept at Rs. 86,00,000/-. It is stated that the adjoining land of 1.6 acres was sold at a higher value of Rs. 2.61 Crores on 15.12.2020 to GPA which sale has been determined as a preferential transaction for which an application IA/852/2025 has been filed. The total land of 3.12 acres was purchased by the Corporate Debtor on 27.07.2015 for Rs. 4.97 Crores. It is stated that the transfers were made during the look back period with an intention to take away the only available tangible asset of the Corporate Debtor from the reach of the Creditors. He has given a tabulation which is reproduced as below.

	purchase d cents	Cost as per B/s	sold cent s	Sold to	Sale value	Loss on sale
land-cent128	71	1,12,89,000	71	KRITICONS LTD	42,11,000	70,78,000
	57	90,64,600	57	Amar Prakaash Developer ss Pvt Ltd	90,64,600	-
land cent127	17	31,63,300	17	KRITICONS LTD	10,08,300	21,55,000
	110	1,70,39,100	110	Amar Prakaash Developer ss Pvt Ltd	1,70,39,100	-
land cent 57	57	91,18,400	57	KRITICONS LTD	33,80,700	57,37,700
	312	4,96,74,400	312		3,47,03,700	1,49,70,700
Summary of above						
Sold to	Purchase date	Cost as per B/s	sold cent s	Date of Transfer	Sale value	Loss on sale
Kriticons Ltd	27-Jul-15	2,35,70,700	145	16-Sep-20	86,00,000	1,49,70,700
Amar Prakaash Developer ss Pvt Ltd		2,61,03,700	167	15-Dec-20	2,61,03,700	-
Total:		4,96,74,400	312		3,47,03,700	1,49,70,700

8. It is stated that the Corporate Debtor saved the stamp duty by showing the sale at a lower value and justified the loss on sale and adjusted against the future profits of the Corporate Debtor with an intention to siphon off the valuable assets. It is stated that if the value of the land had been reduced so much as claimed, there was no necessity for R1 to return the remaining land of 1.6 acres to the Corporate Debtor which would have been adjusted against the total outstanding.

Analysis and Findings

9. We have heard Ld. Counsels for the parties and perused the written synopsis.
10. It is an admitted case of the parties that the Corporate Debtor had taken a loan of Rs. 2.0 Crore from the Respondent No. 1 vide loan agreement dated 29.10.2018. It carried an interest @ 24% per annum which was payable within a period of six months. The Corporate Debtor executed a memorandum of deposit of title on 29.10.2018 mortgaging the land of 3.12 acres with the Corporate Debtor. The Corporate Debtor failed to repay the loan within the specified period. The Respondent recalled the loan vide letter dated 26.02.2020 followed by a reminder dated 11.05.2020. The Corporate Debtor then entered into a MoU with the Respondent No. 1 on 16.09.2020 and agreed to transfer a land admeasuring 1.45 acres in favour of the Respondent No. 1 on a consideration of Rs. 86,00,000/- which was the guideline value at the relevant time. It was also agreed that after transfer of the land, the whole debt payable to the Respondent would be settled. The Corporate Debtor registered the sale deed in favour of the Respondent on 16.09.2020. The MoU placed at page 24 as Annexure 4 also states that

the amount of one time full and final settlement arrived at mutually by both the parties is Rs. 86,00,000/-. The Registrar also did not raise any question as to the value of the land at the time of registration of sale deed in favour of the Respondent. As per settled proposition of law, the sale deed cannot be registered at a value less than the minimum guideline / sector value as notified by the Authorities. The Respondent No. 1 has placed the guideline value of the property at the relevant time as Annexure 5. Other Respondents have stated that since there was continuous pressure from the Financial Creditor for payment, the Corporate Debtor resolved to offer a parcel of land comprising of 1.45 acres to the Respondent. Though the book value of the land was Rs. 2.35 Crores but after Covid 19, because of distress in the real estate industry, the land was not having the market value even upto Rs. 80,00,000/-. The Respondent agreed to purchase the land for Rs. 86,00,000/- at the guideline value and adjust the balance amount.

11. As regards interest, Respondents have placed a chart in its written submissions vide SR. No. 286 dated 21.01.2025 showing the liability payable to the Respondent with interest as Rs. 2,86,32,085/- which was more than the book value of Rs. 2.35 Crores. It is an admitted case of

the Applicant that the balance land was sold to Amarprakaash for Rs. 2.61 Crores. The outstanding loan and mobilization advance of Rs. 2.86 Crores and Rs. 2.61 Crores respectively come to Rs. 5.47 Crores which was settled in the composite transactions by the Corporate Debtor. The Applicant has not produced any evidence to show that the market value of the land at the relevant time was more than Rs. 2.35 Crores. He based his calculation only on the basis of transfer of 1.67 acres of land to Amarprakaash. There is no denial of the fact that there was distress in the real estate after the Covid 19 pandemic. The Corporate Debtor was having pressure from the Financial Creditor to clear the dues. That being the position, it cannot be said that the Corporate Debtor entered into an undervalued transaction with the Respondent.

12. As regards look back period, as provided under Section 46 of IBC, the alleged sale was executed on 16.09.2020. The CIRP was initiated against the Corporate Debtor on 02.09.2021. Therefore the said transaction is within the look back period of one year which is applicable for the Respondent No. 1 being the non-related party. As regards delay in filing the application beyond 135 days, the period specified under Regulation 35A of IBBI Regulations, admittedly, Regulation 35A of

CIRP Regulations imposes a duty on the RP to take measure within the timeline and any action taken by RP beyond the time prescribed is prohibited, but it has been held in catena of judgements i.e. in the case of *Aditya Kumar Tibrewal vs Om Prakash Pandey & Ors (Company Appeal (AT) Insolvency No. 583 of 2021)* and *Prasant Chandra Rath & Anr vs Surya Kanta & Anr (Company Appeal (AT) Insolvency No. 869 of 2022)* by Hon'ble NCLAT that the timeline prescribed in Regulation 35A of CIRP Regulations is only directory and any action taken by the RP beyond the time prescribed, cannot be held to be non-est or void on the ground that it is beyond the prescribed period, if there are genuine and valid reasons for the RP for not filing the application for avoidance transactions within the time prescribed.

13. Facts and circumstances show that there was no undervalued sales of the assets of the Corporate Debtor. It is not the case that the suspended management had derived any benefit out of the said transaction rather the said transaction was done to clear the debt which was settled at a low amount with the Respondent No. 1 as per the MoU.

14. For the aforesaid reasons, we **dismiss** the application
IA(IBC)/898(CHE)/2022 with no orders as to cost.

Sd/-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

Sd/-

SANJIV JAIN
MEMBER (JUDICIAL)