IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

I.A. NO. 5032/2023
In
CP (IB) NO. 919(ND)/2020

IN THE MATTER OF:

AMAN CHHABRA & ANR.

...FINANCIAL CREDITOR

VERSUS

MASCOT SOHO HOMES PRIVATE LIMITED

(NOW KNOWN AS TRESCO HOMES PRIVATE LIMITED)

...CORPORATE DEBTOR

ALSO IN THE MATTER OF:

GYAN CHANDRA MISRA
REGISTRATION NO. IBBI/IPA-001/IP-P01797/2019-2020/12789
C-40, SECOND FLOOR, SECTOR-15
VASUNDHARA, GHAZIABAD, 201012
EMAIL ID: MASCOTSOHO.CIRP@GMAIL.COM

...RESOLUTION PROFESSIONAL/APPLICANT

VERSUS

SANDEEP KUMAR DAS
FM-402, AMPRAPALI VILLAGE, INDIRAPURAM,
GHAZIABAD, UTTAR PRADESH-201014
EMAIL: INFO.MANORATH@GMAIL.COM

...RESPONDENT NO. 1

MRITUNJAY KUMAR
F-1201, NEEL PADAM KUNJ, SECTOR 1,
VAISHALI, GHAZIABAD, UTTAR PRADESH-201010
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...RESPONDENT NO. 2

SUKHBEER SINGH
D-701, APEX GREEN VALLEY, SECTOR-9,
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...RESPONDENT NO. 3

DILEEP KUMAR SINGH
FLAT NO. 08111, 11TH FLOOR, ATS ADVANTAGE,
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... RESPONDENT NO. 4

VINEETA SINGH
FLAT NO. 06091, 9TH FLOOR, TOWER NO. 06,
ATS ADVANTAGE, INDIRAPURAM,
GHAZIABAD, UTTAR PRADESH-201014
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...RESPONDENT NO. 5

VIRENDRA KUMAR KAUSHIK
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...RESPONDENT NO. 6

GULSHAN KUMAR
199/200, GURURAM DASS NAGAR,
LAXMI NAGAR, DELHI-110092
EMAIL: INFO.MANORATH@GMAIL.COM

...RESPONDENT NO. 7

CORAM:
SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 09.07.2026

Present:

For the Respondent Nos. 1,2,3,6 and 7	:	Mr. Mirnal Harsh Vardhan, Ms. Rituparna Patra, Advs.
For the RP	:	Mr. Sunil Fernandes, Sr. Adv., Mr. Abhishek Anand, Adv.

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)

1. The present application is filed by the Resolution Professional of the MASCOT SOHO HOMES PRIVATE LIMITED (NOW KNOWN AS TRESCO HOMES PRIVATE LIMITED) **("Corporate Debtor")** under Section 66 of the Insolvency and Bankruptcy Code ("Code"), 2016 with the following prayers:

   i) Declare the transactions involving the above discount for allotment of flats totaling to Rs. ***1,33,96,608/-*** *(Rupees One Crore Thirty Three Lakhs Ninety Six Thousand Six Hundred and Eight only) as Fraudulent Transaction under section 66 of the Code;*
   ii) Direct the Respondents or the suspended directors of the Corporate Debtor involved in carrying out transaction Rs. ***1,33,96,608/-*** *(Rupees One Crore Thirty Three Lakhs Ninety Six Thousand Six Hundred and Eight only) liable to make 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.*
   iii) Pass such other order/s as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the instant case.

2. **Facts of the case as averred by the Applicant in the present matter are:**

   a. The Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor was initiated by this Adjudicating Authority, vide order dated 12.01.2022 on an application filed under Section 7 of the Code by Aman Chhabra and Nidhi Chhabra ("Financial Creditor"), wherein Mr. Gopal Lal Baser was appointed as the Interim Resolution Professional. Subsequently, vide order dated 02.03.2022, this Adjudicating Authority replaced the erstwhile Interim Resolution Professional and appointed Mr. Gyan Chandra Misra in his place.

b. During the CIRP, due to continuous non-cooperation by the Ex-Directors/promoters of the Corporate Debtor, the Resolution Professional filed an application under Section 19 of the Code before the Tribunal, being CA No. 1903/ND/2019. The said application was subsequently withdrawn vide order dated 26.09.2022 upon cooperation being extended by the Ex-Directors/promoters. Thereafter, upon receipt of the relevant records of the Corporate Debtor, the Resolution Professional invited proposals from registered valuers for conducting a forensic audit and proposed the appointment of B L Chakravarti & Associates, Chartered Accountants, as Forensic Auditors before the CoC.

c. In the Fourth Committee of Creditors ("CoC") meeting held on 13.09.2022, the CoC approved the appointment of Mr. Bihari Lal Chakravarti as the Forensic Auditor to conduct a forensic audit of the Corporate Debtor, inter alia, with respect to preferential, undervalued, extortionate credit, and fraudulent/wrongful trading transactions.

d. The Forensic Audit Report revealed that during the years 2012 to 2015, the Corporate Debtor granted discounts ranging from 20% to 60% on allotments made to various allottees. In the opinion of the Resolution Professional, such transactions are fraudulent in nature under Section 66 of the Code. It has further been submitted that the said allotments are also undervalued transactions, as they were made for consideration significantly lower than that charged from other allottees. However, the said transactions fall beyond the relevant period prescribed under Section 46 of the Code.

Unit No.	Customer Name	Saleable Area	BSP Rate	Gross BSP	Net BSP	Discount	Discount %
E-1001	Swapan Kumar Saha	1560	3050	4758000	1560000	3198000	67 %
C-902	Lal Bahadur Singh	1440	2850	4104000	1800000	2304000	56 %

C-1505	Balkishan Chauhan	999	2515	2512485	1398600	1113885	40 %
D-1004	Dev Jyoti Purohit	999	2515	2512485	1398600	1113885	40 %
F-1106	Nimit Mohan	999	2850	2847150	1673325	1173825	40 %
B-1002	Nirmal Kumar Jha	1250	3100	3875000	2475000	1400000	36 %
C-1405	Varun Chauhan	999	2515	2512485	1876122	636363	25 %
C-1204	Madan Lal Verma	1250	2515	3143750	2436250	707500	22.5 %
E-1104	Gurdeep Singh Bakshi	1440	2825	4068000	3156480	911520	22 %
A-603	Dhrub Ranjan	1440	2850	4104000	3266370	837630	20 %

e. The Applicant submitted that the Corporate Debtor granted substantial discounts to the aforesaid allottees without recording any justification in the respective allotment letters, and such allotments were not made in the ordinary course of business. Consequently, the Corporate Debtor suffered a loss of Rs. 1,33,96,608/- (Rupees One Crore Thirty-Three Lakhs

Ninety-Six Thousand Six Hundred and Eight only). The details of the discounts under various discount rates are mentioned below:

No. of Cases	Discount Offered	Gross BSP	Allotment (Rs.)	Discount(Rs.)
1	More than 67%	4758000	1560000	3198000
2	More than 56%	4104000	1800000	2304000
3	40% to 45%	7872120	4470525	3401595
4	33% to 36%	3875000	2475000	1400000
5	20% to 25%	13828235	10735222	3093013
		34437355	21040747	13396608

f. The Applicant has stated that the aforesaid transactions were undertaken during the period 2012 to 2015 without any justification and with the intent to defraud the creditors of the Corporate Debtor. Section 66(1) of the Code empowers the Hon'ble Tribunal, upon an application by the Resolution Professional, to direct persons knowingly party to such fraudulent conduct of business to contribute to the assets of the Corporate Debtor. Further, under Section 66(2) of the Code, where a director knew or ought to have known prior to the insolvency commencement date that CIRP could not be avoided and failed to exercise due diligence to minimize losses to creditors, such director is liable to contribute to the assets of the Corporate Debtor.

g. In the present case, the Ex-Directors of the Corporate Debtor allotted flats at substantial discounts with the intent to defraud the creditors of the Corporate Debtor and for fraudulent purposes. The Ex-Directors were fully aware of the defaults committed by the Corporate Debtor and the imminent insolvency; however, despite such knowledge, they failed to exercise due diligence to minimize losses to the creditors and entered into transactions evidently intended to defraud them.

h. The Applicant has stated that the transactions involving allotment of flats at discounts exceeding 20%, aggregating to Rs. 1,33,96,608/- (Rupees One Crore Thirty-Three Lakhs Ninety-Six Thousand Six Hundred and Eight only), constitute fraudulent transactions carried out with the intent to defraud the creditors of the Corporate Debtor. Accordingly, under Sections 66 and 67 of the Code, the Respondents, being the Ex-Directors involved in such transactions, are liable to contribute the said amount to the assets of the Corporate Debtor.

3. Reply on behalf of Respondents No. 1, 2, 3, 6, and 7

a. The Respondents submitted that the Application is devoid of merit both in fact and law, and the allegations levied are misconceived, false, and unsupported by any cogent evidences. The Respondents submitted that the Applicant has approached this Hon'ble Tribunal with unclean hands by suppressing and misrepresenting material facts, and the present Application is based merely on bald and unsubstantiated allegations regarding discounted allotments without any credible material in support.

b. The Respondents, being the Ex-Directors of the Corporate Debtor, submitted that they have at all times acted in the interest of the Corporate Debtor and its creditors. The transactions alleged to be fraudulent under Section 66 of the Code were undertaken in the ordinary course of business, and any discounts offered to allottees were solely for generating revenue and safeguarding the interests of the creditors. It is further submitted that the allegations are based entirely on an ex-parte Forensic Audit Report prepared without internal or external confirmation. The Applicant has failed to establish any wrongful gain to the Respondents or any intent on their part to defraud the stakeholders of the Corporate Debtor.

c. The respondent submitted that merely reproducing extracts from the Forensic Audit Report does not empower the Resolution Professional to independently determine the nature of the transactions. The Forensic Audit Report itself contains no definitive findings satisfying the requirements for invoking the present proceedings, and the Applicant has failed to form any independent opinion before filing the instant Application.

d. To support its contention, the Respondent has relied upon orders passed by Coordinate benches in the matter of ***Jitendra Lohiya v. Nikhil Chowdhury & Ors.***, reported in (2022) ibclaw.in 337 NCLT, wherein, at Paragraph 16, it is observed as follows:

> "*16. We have carefully seen the averments of the Application and corresponding Reply of the Respondents. We have noticed that the allegations made in Application do not constitute anything actionable against the Respondents. It was the duty of the RP to come to conclusive determination before filing an Application with the Adjudicating Authority. Simply by repeating the extracts or observations made in the forensic auditors report, the RP could not make an independent determination about the nature of transactions as required by Regulation 35A (2) of the CIRP Regulations.*"

e. In ***Jayesh Sanghrajka v. Divine Investments***, the NCLT, Mumbai Bench dismissed the Application filed under Section 66 of the IBC, observing that:

> "*The forensic audit report is required to classify the transactions which fall under Section 66 of the IBC, highlight details and provide reasons for classifying the transactions as fraudulent. The onus is on the Applicant to prove that there was an intent to defraud. In the instant case, there was a failure to establish a fraudulent intention. In fact, the Respondents were able to establish that the transactions were not fraudulent, and every effort was taken to revive the Corporate Debtor. The Bench perused the certificates from the chartered accountant submitted*

by the Respondents and concluded that the amounts were adjusted by the Respondents. It was also observed that the Applicant had literally construed the documents and balance sheets, and thus lacked research to suitably comprehend that the funds were being adjusted by the Respondents."

f. It is submitted that the Applicant has failed to establish any dishonest or fraudulent intent on the part of the Respondents to defraud the creditors of the Corporate Debtor. Apart from making bald allegations regarding the amounts involved, the Applicant has produced no material to show that the business of the Corporate Debtor was carried on dishonestly or with intent to defraud its creditors. To support its contention the Respondent has relied upon ***Regen Powertech (P.) Ltd.*** wherein the Hon'ble NCLAT, Chennai had observed that one cannot remain oblivious of the candid fact that, if the Directors of a Company had acted on a 'bona fide belief' that the Company would recover from its Financial Problems / Difficulties, then, they will not be held liable for the act or offence of Fraudulent Trading.

g. It is submitted that although the Applicant has heavily relied upon the Forensic Audit Report, neither has the same been annexed with the Application nor supplied to the Respondents. Further, neither the Applicant nor the Forensic Auditor sought any clarification from the Respondents before or after preparation of the report. Reliance is placed on *Deepak*

Bhandari & Ors. vs. Vivek Kumar Arora, RP, Bhandari Deepak Industries Pvt. Ltd. MANU/NC/0215/2023, wherein it was held that members of the suspended Board are entitled to copies of the valuation and forensic audit reports to ensure effective participation in the CIRP.

h. It is submitted that the transactions in question were undertaken in the ordinary course of business, and any discounts offered to allottees were solely for increasing sales, revenue, and profitability of the Corporate Debtor for the benefit of its creditors and stakeholders, and therefore cannot be termed fraudulent. The Applicant has failed to provide any formula, computation, or supporting data to demonstrate how such discounts caused prejudice to the creditors or constituted fraudulent transactions. Further, the Applicant has neither supplied nor annexed the Forensic Audit Report relied upon in the present Application.

i. Further the Respondents denied on the allegation that they had entered into any transaction with the intent to defraud the creditors of the Corporate Debtor. It reiterated that the Applicant has failed to substantiate the allegations under Section 66 of the Code with any cogent evidence, as fraud cannot be established merely on the basis of a Forensic Audit Report. It is further denied that flats were allotted at discounted rates with any fraudulent intent or that the Ex-Directors were aware of any imminent insolvency and failed to exercise due diligence. The allegations are baseless, unsupported by evidence, and made solely to harass the Respondents.

4. REPLY ON BEHALF OF RESPONDENTNO. 5

a. The Answering Respondent submits that the Applicant has referred to certain allotments made to allottees as undervalued transactions and, on that basis, has alleged that the same constitute fraudulent transactions under Section 66 of the IBC, 2016, thereby seeking contribution from the Respondents/ex-Directors towards the assets of the Corporate Debtor. It is alleged that discounts were extended to customers during the period 2012–2015 and that such transactions were undervalued in nature. However, a bare perusal of Sections 45 and 46 of the IBC, 2016 makes it evident that the relevant look-back period for avoidable/undervalued transactions is confined to transactions undertaken within one year preceding the Insolvency Commencement Date. In view of the aforesaid statutory provisions and the appointment of the IRP on 12.01.2022, only those transactions undertaken within one year preceding the Insolvency Commencement Date could have been examined under Sections 45 and 46 of the IBC, 2016. Accordingly, the present Application is misconceived and not maintainable.

b. It is further submitted that the Answering Respondent was not an active Director of the Applicant Company and had no role in the day-to-day affairs, including allotment of units to buyers or negotiation of sale consideration. In any event, the Applicant cannot question the commercial wisdom exercised by the then management in determining the sale price, which was dependent upon various commercial and business considerations in the overall interest of the Company. Significantly, no specific allegation has been made against the Answering Respondent.

c. It is submitted that the alleged Forensic Auditor never sought the Answering Respondent's version or explanation with respect to the alleged undervalued transactions. No opportunity was afforded to the Answering Respondent to clarify the allegations levelled against her. In any event, the Answering Respondent had no involvement in the said transactions. It is further submitted that the IRP was required to apply an independent mind before filing the present Application, which is otherwise an abuse of the process of law.

5. REJOINDER ON BEHALF OF APPLICANT

a. It is observed from the Forensic Audit Report ("FAR") submitted by the Forensic Auditor that during the period 2012 to 2015, the Corporate Debtor offered discounts ranging from 20% to 67% to various allottees on the allotment value. According to the Applicant, such transactions are fraudulent in nature within the meaning of Section 66 of the Code.

b. It is further alleged that the Corporate Debtor granted substantial discounts to the said allottees without recording any justification in the respective allotment letters. The Applicant has also contended that such allotments at discounted rates were not made in the ordinary course of business and allegedly resulted in a loss of Rs. 1,33,96,608/- to the Corporate Debtor.

c. The Applicant alleges that the transactions carried out during the period 2012 to 2015 were undertaken without any explanation or prudent business justification and were intended solely to defraud the creditors of the Corporate Debtor. It is further alleged that the answering Respondents, being the directors of the Corporate Debtor at the relevant time, facilitated and participated in such transactions to the detriment of the stakeholders of the Corporate Debtor.

d. It is alleged that the answering Respondents, being the erstwhile directors of the Corporate Debtor, were fully aware of the defaults committed towards various creditors and the imminent insolvency of the Corporate Debtor. Despite such knowledge, they allegedly failed to exercise due diligence to minimize losses to the creditors/stakeholders and entered into transactions which, on the face of it, appear to have been intended to defraud the creditors/stakeholders of the Corporate Debtor.

e. It is submitted that the alleged transactions cannot be said to have been undertaken in the ordinary course of business when the same resulted in substantial losses to the Corporate Debtor. The Applicant alleges that the erstwhile directors extended undue benefits to certain allottees while prejudicing the interests of other stakeholders, despite being aware of the deteriorating financial condition of the Corporate Debtor.

f. It is further denied that the discounts were offered solely for generating sales and revenue. In this regard, reference is made to Paragraph 9 of the Application, which reflects that discounts ranging from 20% to 67% were granted without any fixed criteria, calculation, or recorded rationale. The Applicant further alleges that such discounts were extended selectively to certain allottees without any supporting records, approvals, or discussions in the Board Meetings. Accordingly, it is alleged that the answering Respondents, being the ex-directors of the Corporate Debtor, acted arbitrarily and in disregard of applicable legal and corporate governance requirements.

g. It is submitted that the Forensic Audit Report merely corroborates the facts already reflected in the books of accounts of the Corporate Debtor. The Applicant alleges that the answering Respondents, being the erstwhile directors of the Corporate Debtor, failed in their fiduciary duty to safeguard the interests of the stakeholders and thereby committed fraudulent transactions within the meaning of Section 66 of the Code, 2016.

h. It is further submitted that discounts of up to 67% were granted to certain allottees, which, considering the deteriorating financial condition of the Corporate Debtor, were excessive and commercially unjustifiable. The Applicant further alleges that no records exist regarding the rationale, purpose, or criteria for granting such discounts, either in the Board Meetings or management records, thereby indicating that the transactions were undertaken arbitrarily and with intent to defraud the creditors of the Corporate Debtor.

ANALYSIS AND FINDINGS

6. We have heard the learned counsel for both parties and perused the entire case records/documents.

7. It is the case of the Applicant that the present Application under Section 66 of the Insolvency and Bankruptcy Code, 2016 is maintainable, inasmuch as the Respondents are alleged to have carried out fraudulent transactions resulting in substantial loss to the Corporate Debtor and consequent prejudice to its stakeholders. It is alleged that during the period from 2012 to 2015, the Ex-Directors of the Corporate Debtor granted selective and disproportionate discounts ranging from 20% to 67% to certain allottees, without any discernible commercial rationale or business justification. The Applicant further contends that such transactions were not undertaken in the ordinary course of business and constitute a breach of the fiduciary duties owed by the Ex-management to the Corporate Debtor.

8. The Applicant has contended that the arbitrary and unexplained discounts granted by the Ex-management caused a total loss of Rs. 1,33,96,608/- (Rupees One Crore Thirty-Three Lakhs Ninety-Six Thousand Six Hundred Eight only) to the Corporate Debtor. It is further alleged that such transactions, undertaken during the period from 2012 to 2015, lacked any commercial justification or prudent business rationale and were carried out with the intent to defraud the creditors of the Corporate Debtor.

9. It is the case of the Applicant that the Respondents have failed to furnish any justification, business rationale, Board approval, management decision, or uniform criteria for granting disproportionate discounts ranging from 20% to 67% to select allottees. No discussion or approval regarding such discounts is reflected in the Board or management records. The absence of any fixed policy or documented basis clearly indicates that the transactions were carried out arbitrarily and with mala fide intent to defraud the creditors of the Corporate Debtor.

10. The Applicant submitted that the discounts were selectively granted to certain favoured allottees and not uniformly extended to all purchasers. The allegations are substantiated by the books of account, ledger accounts, allotment letters, and other financial records of the Corporate Debtor. Despite disputing the Forensic Audit

Report, the Respondents have failed to produce any documentary evidence rebutting its findings or establishing any business justification, Board approval, or commercial rationale for the impugned transactions.

11. On perusal of the case file, it is observed that the Applicant has relied solely upon the Transaction Auditor Report and failed to place on record any cogent material establishing the prevailing market value of the subject units during the relevant period i.e., 2012–2015. It is observed that no circle rate notifications, ready reckoner values, independent valuation reports, comparable market transactions, or builder pricing data have been produced in support of the allegations. Mere tabulation of alleged "discounts", in absence of any benchmark or comparative valuation, is insufficient to infer undervaluation or fraudulent conduct. Significantly, the Application neither alleges nor demonstrates that the allotments were made below the circle rates prescribed by the competent State authorities. No material from the registering authority, revenue department, or stamp valuation authority has been brought on record. In such circumstances, the grant of discounts, by itself, cannot be construed as fraudulent and remains within the realm of commercial decision-making and prevailing market practice.

12. It is a settled commercial practice in the real estate industry to offer discounts and rebates to prospective allottees for the purposes of promoting sales, managing liquidity, and reducing unsold inventory.

Mere grant of discounted rates, duly reflected in the books of accounts of the Corporate Debtor, cannot ipso facto constitute "fraudulent trading" within the meaning of Section 66 of the Insolvency and Bankruptcy Code, 2016. In the present case, no material has been placed on record to establish any concealment, deceit, siphoning of funds, or wrongful personal gain accrued to the Respondents on account of the impugned transactions.

13. The scope and ambit of Section 66(1) of the Insolvency and Bankruptcy Code, 2016 are well settled. Invocation of the said provision necessarily requires a clear and cogent finding that the affairs of the Corporate Debtor were carried on with an intent to defraud creditors or for any fraudulent purpose. Such a conclusion must rest upon credible and substantive evidence demonstrating dishonest intent, wrongful conduct, and deliberate acts of fraud. Mere assumptions, accounting irregularities, or incomplete records, in the absence of supporting material, cannot by themselves attract the rigours of Section 66(1) of the Code. In the present case, no material has been brought on record to establish any fraudulent intent or wrongful conduct on the part of the Respondents.

14. It is further noted that the transactions in question pertain to the period 2012–2015, whereas the Corporate Insolvency Resolution Process was initiated only in the year 2022. The substantial time gap between the transactions and commencement of CIRP militates against the allegation that the Respondents had carried on the business of the Corporate Debtor with the knowledge that insolvency was inevitable. On the contrary, the Corporate Debtor continued its business operations for several years thereafter. Accordingly, the essential ingredients contemplated under Section 66(2)(a) and (b) of the Code remain unsubstantiated.

15. In order to gain clarity on the issue involved in the present matter, this Adjudicating Authority has also examined the judgment passed by the Hon'ble NCLAT in **Regen Powertech Private Limited vs Wind Construction Private Limited (Company Appeal (AT)(CH)(Ins) No.349/2022**) wherein the Hon'ble NCLAT held that:

> *"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', who was defrauded, will have 'recourse' to an 'alternative remedy', under 'Civil Law'."

16. This Adjudicating Authority also places reliance upon the judgment passed by the Hon'ble NCLAT in Ashok Kumar Agarwal v. Narayan Chandra Saha and Ors., (Company Appeal (AT) (Insolvency) No. 139 of 2025) wherein it has been categorically held that mere suspicion or a bald allegation of fraud, unsupported by cogent evidence, is insufficient to invoke the provisions of Section 66 of the Insolvency and Bankruptcy Code, 2016. The Hon'ble Appellate Tribunal further observed that, in the absence of any direct or circumstantial material establishing fraudulent intent or conduct, an application under Section 66 of the Code cannot be sustained.

17. It is observed that the Resolution Professional has failed to establish, by way of cogent and reliable material, as to how any creditor suffered a definite or quantifiable loss on account of the impugned allotments or how the alleged discounts resulted in any corresponding wrongful gain to the Respondents. The allegation of loss quantified at Rs. 1.33 Crores is founded merely on presumptions and remains unsupported by any valuation report, computation methodology, comparative market analysis, or independent verification.

18. This Adjudicating Authority further finds that the Applicant has failed to make out any case of fraudulent intent or wrongful trading within the meaning of Section 66 of the Insolvency and Bankruptcy Code, 2016. The transactions in question appear to have been undertaken in the ordinary course of the business operations of the Corporate Debtor nearly a decade prior to the commencement of CIRP. No substantive material has been placed on record to demonstrate any element of deceit, concealment, siphoning or diversion of funds, or unlawful personal enrichment on the part of the Respondents. In the absence of such foundational evidence, the allegations of fraudulent conduct cannot be sustained.

19. In the present case, this Adjudicating Authority finds that, apart from observation made in Forensic Audit Report and the averments made in the pleadings, no substantive or independent material has been placed on record to establish the allegations of fraudulent conduct against the Respondents. The contention that the Corporate Debtor suffered a loss of Rs. 1,33,96,608/- on account of the alleged arbitrary discounts remains a bald assertion, unsupported by any cogent evidence, valuation analysis, or documentary proof. Mere statements in pleadings or unsubstantiated submissions cannot constitute proof of fraudulent trading under Section 66 of the Insolvency and Bankruptcy Code, 2016. In the absence of credible material demonstrating fraudulent intent, wrongful gain, diversion of funds, or actual loss caused to the Corporate Debtor or its creditors, the essential ingredients for invoking Section 66 of the Code remain unfulfilled.

20. In view of the facts and circumstances of the case, coupled with the observations made hereinabove, this Adjudicating Authority is of the considered opinion that the Applicant has failed to substantiate the allegations raised in the present Application by way of cogent and reliable evidence. Accordingly, the present Application, being i.e. **I.A. NO. 5032/2023 in CP (IB) NO. 919(ND)/2020**, **stands dismissed.**

Sd/-	**Sd/-**
ATUL CHATURVEDI **MEMBER (TECHNICAL)**	**MANNI SANKARIAH SHANMUGA SUNDARAM** **MEMBER (JUDICIAL)**

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

IA/ 4196/2025

In
CP (IB) NO. 919(ND)/2020

IN THE MATTER OF:

Aman Chhabra & Anr.

...Financial Creditor

Versus

M/S. Mascot Soho Homes Private Ltd.

... Corporate Debtor

AND IN THE MATTER OF:

1. Smt. Amutha Varadhrajan

   Wife of Sh. N. Varadharajan

2. Sh. N. Varadharajan

   Son of Sh. Rangappa Gowder Varadhrajan,

....Applicants

Versus

Mr. Gyan Chandra Mishra

(Resolution Professional)

... . Respondent

CORAM:
SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 09.07.2026

<u>Present:</u>

For the Applicant	**:**	Mr. Prashant Kumar, Adv.
For the RP	**:**	Mr. Sunil Fernandes, Sr. Adv., Mr. Abhishek Anand, Adv.

<u>ORDER</u>

<u>PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)</u>

1. Upon consideration is an application filed by Applicants i.e. Mrs. Amutha Varadharajan and Mr. N. Varadharajan (hereinafter jointly referred to as the "Applicants") under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 seeking the following reliefs:

I. Direct the RP to give the benefit of the entire claim of Rs. 25,00,000.00 (Rupees Twenty Five Lakhs only) along with due interest in respect of the said flat i.e. Flat No. E-1201, 12" Floor, Tower-E, 3BHK+3 Toilets Super area 1560 sq. ft. in Manorath Building built on Plot No. GH-4B/1, Sector-16, Greater Noida-West Gautam Budh Nagar, Uttar Pradesh to the Applicants;

II. Pass such other orders and directions that may be deemed appropriate in the interest of justice and in the facts and circumstances if the present case.

2. Briefly stated the facts of the case as averred by the Applicant

a. The Applicants had filed an application bearing IA No. 4787 of 2023 before this Tribunal in CP (IB) No. 919/ND/2020, inter alia, seeking directions to the Resolution Professional to admit the entire claim amounting to Rs. 25,00,000/- (Rupees Twenty-Five Lakhs Only), being the amount paid by the Applicants towards the sale consideration of the unit allotted to them by the Corporate Debtor.

b. The Applicants are the joint allottees of Flat No. E-1201, 12th Floor, Tower-E, admeasuring 1560 sq. ft. in the project "Manorath Building" situated at Plot No. GH-4B/1, Sector-16, Greater Noida West, Gautam Budh Nagar, Uttar Pradesh (hereinafter referred to as the "said Flat"), allotted by M/s. Mascot Soho Homes Pvt. Ltd. (Corporate Debtor) for a total sale consideration of Rs. 25,00,000/- (Rupees Twenty-Five Lakhs Only). The Applicants paid the entire sale consideration, out of which Rs. 15,00,000/- was paid through banking channels/cheques against Receipt Nos. 523 dated 09.03.2013 and 727 dated 16.07.2013, and the remaining Rs. 10,00,000/- was paid in cash in three tranches against Receipt Nos. 732 dated 03.07.2013, 876 dated 28.06.2014 and 888 dated 18.10.2014 issued by the Corporate Debtor.

c. Pursuant to the appointment of the Resolution Professional in respect of the Corporate Debtor by this Adjudicating Authority, the Applicants duly filed their claim along with supporting documents, whereupon the entire claim amount of Rs. 25,00,000/- (Rupees Twenty-Five Lakhs Only) in respect of the said Flat was initially recognized in the list of flat buyers. However, upon publication of the revised list of creditors and admitted claims before the CoC, the Applicants discovered that only Rs. 15,00,000/- paid through banking channels/cheques had been admitted by the Resolution Professional, while the remaining amount of Rs. 10,00,000/- paid in cash against duly issued receipts by the Corporate Debtor was not considered.

d. Being aggrieved by the said act of the Resolution Professional the Applicants sent e-mails to the Resolution Professional evidencing and requesting to give them the due credits of the entire amount paid by them to the said Corporate Debtor company but to no avail.

3. REPLY ON BEHALF OF RESOLUTION PROFESSIONAL

a. The Respondent, Mr. Gyan Chandra Mishra, Resolution Professional **("RP"/"Respondent")** of M/s Mascot Soho Homes Private Limited (now known as Tresco Homes Private Limited) **("Corporate Debtor")**, submitted that the Applicant had earlier filed I.A. No. 4787/2023 before the NCLT on the same issue, which was remanded to the CoC vide Order dated 13.03.2025 for consideration in accordance with law. Thereafter, the CoC, in its meeting held on 14.05.2025, rejected the Applicant's claim of Rs. 10,00,000/- allegedly paid in cash, by a majority vote of 88.30%.

b. The flat in the project of the Corporate Debtor was allotted to the Applicant for a total consideration of Rs. 25,00,000/- (Rupees Twenty-Five Lakhs only), out of which Rs. 15,00,000/- (Rupees Fifteen Lakhs only) was paid through banking channels. Further, Page 3 of the Allotment Agreement specifically records receipt of the said amount by the Corporate Debtor.

c. The Resolution Professional initially admitted the Applicant's claim of Rs. 25,00,000/- (Rupees Twenty-Five Lakhs only) as submitted in the claim form; however, the claim was subsequently revised to Rs. 15,00,000/- (Rupees Fifteen Lakhs only), and the balance amount of Rs. 10,00,000/- (Rupees Ten Lakhs only), allegedly paid in cash and not reflected in the books of accounts of the Corporate Debtor, was rejected by the RP.

d. It is submitted that there is no bar under the Code on the Resolution Professional revising claims upon receipt of additional information. In discharge of his statutory duties under Section 25(2)(e) of the Insolvency and Bankruptcy Code, 2016, the Resolution Professional is required to maintain an updated list of creditors' claims and, accordingly, revised the Applicant's claim on the basis of documents furnished by the Applicant and the books of accounts of the Corporate Debtor. It is further submitted that the Resolution Professional merely collates and verifies claims under the Code and the Regulations framed thereunder and does not exercise any adjudicatory powers.

e. It is admitted that the flat was allotted by the Corporate Debtor for a total consideration of Rs. 25,00,000/- (Rupees Twenty-Five Lakhs only), out of which Rs. 15,00,000/- (Rupees Fifteen Lakhs only) was paid by the Applicants through banking channels. However, the books of accounts of the Corporate Debtor do not reflect receipt of the remaining amount of Rs. 10,00,000/- (Rupees Ten Lakhs only) allegedly paid in cash. Therefore, in the absence of supporting evidence and corresponding entries in the books of accounts, such claim could not be admitted by the Resolution Professional, as held in **IL & FS Financial Services Limited v. M/s Emerald Lands (India) Private Limited, Company Petition No. IB-1466(ND)/2019**.

f. The **Hon'ble NCLAT in Pooja Mehra Vs. Nilesh Sharma & Ors. in Company Appeal (AT) (Insolvency) No. 1511 of 2023** held that "there is no proof of actual disbursement of the sum of Rs. 50,00,000/- by the Appellant to the Corporate Debtor, such as bank statement, audited accounts, etc. Further, the said payment is not recorded in the Corporate Debtor's books of accounts. All the above facts do not lend credence to the Appellant's assertion that she is a genuine homebuyer. Further, the documents referred to herein bear no signature of any witnesses. With such material on record and no details of the payments received for the flat, it is difficult to accept this evidence.

ANALYSIS AND FINDING

4. We have heard the learned counsels for the parties and carefully perused the pleadings, documents, and material placed on record.

5. On perusal of the case record, it is noted that the Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor was initiated by this Adjudicating Authority vide order dated 12.01.2022 under Section 7 of the Code. Pursuant thereto, a Public Announcement was issued by the Interim Resolution Professional on 09.02.2022, inviting claims up to 22.02.2022.

6. It is observed that the case of the Applicants is that they are the joint allottees of Flat No. E-1201, situated on the 12th Floor, Tower-E, comprising 3BHK with 3 Toilets having a super area of 1560 sq. ft., in the project namely "Manorath Building" constructed on Plot No. GH-4B/1, Sector-16, Greater Noida West, Gautam Budh Nagar, Uttar Pradesh (hereinafter referred to as "the said Flat"), which was allotted by M/s. Mascot Soho Homes Pvt. Ltd. (Corporate Debtor) for a total sale consideration of ₹25,00,000/- (Rupees Twenty-Five Lakhs only).

7. As per the submissions made by the Applicants, the total sale consideration of ₹25,00,000/- (Rupees Twenty-Five Lakhs only) in respect of the said Flat was duly paid by them. Out of the aforesaid amount, a sum of ₹15,00,000/- (Rupees Fifteen Lakhs only) was paid through banking transactions/cheques, for which the Corporate Debtor issued Receipt No. 523 dated 09.03.2013 and Receipt No. 727 dated 16.07.2013. It is further submitted that the remaining amount of ₹10,00,000/- (Rupees Ten Lakhs only) was paid in cash in three tranches, namely ₹3,00,000/-, ₹3,00,000/- and ₹4,00,000/- respectively, against which Receipt No. 732 dated 03.07.2013, Receipt No. 876 dated 28.06.2014 and Receipt No. 888 dated 18.10.2014 were allegedly issued by the Corporate Debtor at the relevant point in time.

8. We note that it is admitted by both the parties to the extent that the Corporate Debtor had allotted the said Flat to the Applicants for a total sale consideration of ₹25,00,000/- (Rupees Twenty-Five Lakhs only), out of which an amount of ₹15,00,000/- (Rupees Fifteen Lakhs only) stands reflected as having been received through banking transactions. However, it is observed that the books of accounts and records of the Corporate Debtor do not reflect receipt of any cash payment towards the balance consideration amounting to ₹10,00,000/- (Rupees Ten Lakhs only), as alleged by the Applicants. In such circumstances, where the alleged claim is not substantiated from the records of the Corporate Debtor or cannot be duly verified from the supporting evidence placed on record, the Resolution Professional cannot be expected to admit such claim merely on the basis of assertions made by the Applicants.

9. It is further noted that the Resolution Professional, upon revision of the List of Creditors, admitted the Applicant's claim to the extent of Rs. 15,00,000/- (Rupees Fifteen Lakhs only). It is submitted by the RP that under Section 25(2)(e) of the Insolvency and Bankruptcy Code, 2016, the RP is duty-bound to maintain an updated list of claims and is empowered to revise claims upon receipt of additional information. Accordingly, the Resolution Professional merely discharged his statutory duties under the Code. Pursuant to the Order dated 13.03.2025 passed by this Adjudicating Authority, the Applicants claim was referred back to the CoC for reconsideration. Thereafter, in the CoC meeting held on 14.05.2025, the CoC, by majority vote of 88.30%, rejected the Applicants' claim to the extent of Rs. 10,00,000/- allegedly paid in cash, for want of credible supporting evidence.

10. The Respondent has submitted that the duties of a Resolution Professional are clearly enumerated under Section 25 of the Insolvency and Bankruptcy Code, 2016. There is no embargo under the Code preventing a Resolution Professional from revising a claim upon the discovery of further material or information. In fact, under Section 25(2)(e) of the Code, the Resolution Professional is obligated to maintain an updated list of claims. It is therefore contended that the Resolution Professional was merely discharging his statutory duties in accordance with the Code.

11. We are inclined to refer to the Order passed by **Hon'ble NCLAT** in **Pooja Mehra v. Nilesh Sharma (RP) and Ors., Pooja Mehra v. Nilesh Sharma (RP) and Ors.**, where it has been held as follows:

> *"92. Another issue before us in the instant case is, whether basis the materials on record, can we come to a conclusion that the Appellant is a homebuyer or not. The Appellant claims to have paid a sum of Rs. 50,00,000/- to the ex-management of the Corporate Debtor in 'cash' towards 'total sale consideration' against Flat No. D2-601. The Appellant relies upon a Receipt dated 15.05.2016 purportedly issued by the Corporate Debtor as an acknowledgement of the aforesaid cash transaction. However, the said receipt is not an accounting receipt as it does not bear any serial number, receipt number or diary number and is not accounted for in the books of accounts of the Corporate Debtor. Further, on the same date on which the Allotment Letter dated 15.05.2016 was purportedly issued by the Corporate Debtor to the Appellant, a Buy Back Agreement dated 15.05.2016 has also been executed for repurchase of the Flat by the Corporate Debtor after one year. The said Buy Back Agreement also records that the Appellant would receive assured return on a monthly basis in the nature of interest on the sum advanced. Further, security cheques of Rs. 30,00,000/- and Rs. 20,00,000/- were also apparently*

issued by the Corporate Debtor to the Appellant for securing the refund of the amount allegedly paid by the Appellant to the Corporate Debtor. It is noted that the alleged agreement dated 15.05.2016, allotment letter dated 15.05.2016 are unilaterally signed by Sh. Pramod Goel without proper authorization and reflection in the records of the Corporate Debtor. The records show otherwise. In the books of accounts of the Corporate Debtor the alleged unit i.e., D2-601 is registered in the name of one Mr. Ashok Kumar Sharma. This unit stands admitted as a claim in his name. Pertinently, the Allotment Letter and the Buy Back Agreement mention different unit numbers: while the Allotment Letter mentions the unit no. D2- 601, the Buy Back Agreement mentions unit no. D2-2002. Further, there is no proof of actual disbursement of the sum of Rs. 50,00,000/- by the Appellant to the Corporate Debtor, such as bank statement, audited accounts, etc. Further, the said payment is not recorded in the Corporate Debtor's books of accounts. All the above facts do not lend credence to the Appellant's assertion that she is a genuine homebuyer. In fact, the Appellant herself filed the Claim in Form-C as a Financial Creditor, and not in Form CA as a Homebuyer. Further, the Appellant's name also does not find mention in the 'List of Homebuyers who have not submitted Claims' published by the Resolution Professional.

93. The Appellant relies on the receipt of Rs.50 lakhs issued on 15.05.2016 issued by one of the Directors of the Corporate Debtor. Since there is no serial number, receipt number or diary number etc. and is also not reflected in the books of the accounts of the Corporate Debtor, it is presumed that this was a cash towards total sale consideration against Flat No. 601 in Tower D2. Since the Appellant has not been able to produce any corroborating material relating to the payment particularly from his Bank records and furthermore such payment is also not reflected in the books of *accounts of the Corporate Debtor, it is difficult to lend any credence to this transaction. Furthermore, perusal of the Buyback Agreement and the allotment letter shows discrepancy, particularly at page 89 of the Appeal Paper Book, wherein in one place flat number mentioned is D2-601 and in another place on the same page, the flat number is mentioned D2-2002. Further the documents referred to herein bear no signature of any witnesses. With such material on record and no details of the payments received for the flat, it is difficult to accept this evidence. The post-dated cheques cannot be a supporting evidence as corresponding payment from the Appellant to the Corporate Debtor is not established."*

12. It is noted that the Resolution Professional rejected the additional claim of Rs. 10,00,000/- (Rupees Ten Lakhs only), allegedly paid in cash by the Applicant, on the ground that no corresponding entry reflecting receipt of the said amount was found in the books of accounts of the Corporate Debtor.

13. Therefore, in view of the evidence placed on record and the entries reflected in the Books of Account of the Corporate Debtor, the Resolution Professional was justified in declining to admit the said claim. This position is supported by the decision in **IL & FS Financial Services Limited vs. M/s Emerald Lands (India) Private Limited, Company Petition No. IB-1466(ND)/2019**, wherein it was held that claims unsupported by corresponding entries in the books of the Corporate Debtor cannot be admitted.

14. Therefore, we conclude that no authentic or reliable documentary evidence has been placed before us to establish that the alleged payment of Rs. 10,00,000/- was in fact made by the Applicant. In the absence of any conclusive proof substantiating the said transaction, and considering the facts and circumstances of the case, we are of the view that the alleged payment of cash of Rs. 10 Lakhs cannot be accepted as having been duly made.

15. Accordingly, the present application i.e. **I.A. No. 4196/2025 in C.P. (IB) No. 919/ND/2020 stands dismissed.**

Sd/-	**Sd/-**
ATUL CHATURVEDI **MEMBER (TECHNICAL)**	**MANNI SANKARIAH SHANMUGA SUNDARAM** **MEMBER (JUDICIAL)**