THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH-I

Section 43 of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 35A of the IBBI Regulations, 2016

<u>IA(I.B.C)/893(MB)2020</u>

MR. RAJENDRA M. GANATRA
(Resolution Professional of Sunshine Housing and Infrastructure Pvt. Ltd.)

...**Applicant**

V/s

MR. ATUL SHAMJI BHARANI & OTHERS

…**Respondent**

<u>IA(I.B.C)/4677(MB)2025</u>

GAURAV ADUKIA
(Liquidator of Sunshine Housing and Infrastructure Pvt. Ltd.)

...**Applicant**

V/s

Kashyap Kanaiyalal Mehta & Ors

…**Respondent**

<u>IA(I.B.C)/389(MB)2026</u>

MR. ATUL SHAMJI BHARANI

...**Applicant**

V/s

GAURAV ADUKIA
(Liquidator of Sunshine Housing and Infrastructure Pvt. Ltd.)

…**Respondent**

In the matter of

COMPANY PETITION (IB) NO. 4733 OF 2018

ICICI PRUDENTIAL REAL ESTATE AIF I

…Petitioner

V/s

SUNSHINE HOUSING & INFRASTRUCTURE PRIVATE LIMITED

…Respondent

Order delivered on: 03.09.2026

Coram:

Shri Prabhat Kumar	**Shri Sushil Mahadeorao Kochey**
Hon'ble Member (Technical)	Hon'ble Member (Judicial)

Appearances:

Ms. Mily Ghoshal for the Applicant / Liquidator in IA 4677 & 893.
Mr. Kush Shah for the Respondent No.10 in IA 4677. Mr. Mulkit Salia for the Respondent No.8 in IA 4677 and for Respondent Nos. 7, 14, 20, 22 in IA 893. Ms. Divya Vaz for the Applicant in IA 389 & for Respondent Nos. 1 & 2 in IA 4677 & for Respondent Nos. 2 & 3 in IA 893. Ms. Prakruti Joshi for Respondent Nos. 9, 10, 12, 15 to 18 in IA 893.

ORDER

1. An Application IA 893 of 2020 was filed on 13.04.2020 by Mr. Rajendra M. Ganatra, the then Resolution Professional ("Erstwhile RP") of Sunshine Housing and Infrastructure Private Limited ("Corporate Debtor") having its

registered office in state of Maharashtra for declaration of following transactions as Preferential in terms of Section 43 of Insolvency & Bankruptcy Code, 2016 ("IBC") and consequential directions to Respondent No.1 to 29 to contribute to the assets of Corporate Debtor, respective amounts \ received by them under preferential transactions. :

No.	Particulars	Amount to be reversed (Rupees)	Name of the Party / Remarks
1	Unsecured Debentures redeemed **(Related)**	2,65,00,000	Sunshine Tracon Pvt. Ltd
2	Unsecured Debentures redeemed **(Unrelated)**	3,60,00,000	Details as provided in para 5, table 2
3	Other Preferential transactions **(Related)**	38,80,74,013	Details as provided in para 5, table 3
4	Other Preferential transactions **(Unrelated)**	13,52,50,000	Details as provided in para 5, table 4
Total		**58,58,24,013**	

2. The Corporate Debtor was admitted to Corporate Insolvency Resolution Process ("CIRP") under IBC vide Order dated 08.05.2019 passed in Petition under Section 7 of the Code, bearing CP (IB) No. 4733 (MB)/2018 filed by ICICI Prudential Real Estate AIF ("Financial Creditor") appointing erstwhile Resolution Professional as the Interim Resolution Professional of the Corporate Debtor, and was later on confirmed as Resolution Professional ("RP") in accordance with the provisions of the Code. During the pendency of this Application IA 893 of 2020, the Committee of Creditors approved a Resolution Plan submitted by M/s. Nandi Vardhan Infrastructure Limited, which was approved by this Tribunal by its order dated February 11, 2022, whereby any recoveries pursuant to avoidance applications were to ensure to the benefit of the Successful Resolution Applicant, however, the Successful Resolution Applicant

failed to perform its obligations under the Resolution Plan, consequent to which, this Tribunal allowed rerun of CIRP process after observing that the Corporate Debtor possesses rights in a SRA Project, which are stated to be in jeopardy, and pursuant to resolution passed by 100% of CoC for rerun of CIRP process vide order dated 24.6.2024. Consequent to it, Mr. Gaurav Adukia, was appointed as Resolution Professional ("RP"), who pursued this application.

3. The Respondent Nos. 1 and 2, namely Mr. Anil Shamji Bharani and Mr. Ashok Bharani, were the Directors on the Board of Directors of the Corporate Debtor at the commencement of insolvency, and were involved in the day to day affairs of the Corporate Debtor. Respondent nos. 3 to 6, namely M/s Sunshine Tracon Pvt. Ltd., M/s Sunshine Global Technologies Pvt. Ltd., M/s Tricas Agencies & Commerce Pvt. Ltd., and M/s Sunshine Technobuild Pvt. Ltd. respectively are related parties with whom the impugned preferential transactions were entered.

4. Pursuant to the approval of the first Committee of Creditors in the meeting held on June 4, 2019, the erstwhile Resolution Professional engaged the services of M/s Sharma Goel & Co. LLP ("Transaction Auditor") for conducting Transaction Audit of the Corporate Debtor for the period from May 9, 2017 to May 8, 2019 and for further prior period if found necessary, to identify transactions under sections 43 (Preferential Transactions), section 45 (Undervalued Transactions), section 50 (Extortionate Credit transactions) and section 66 (Fraudulent trading or wrongful trading) of the Code. The erstwhile Resolution Professional handed over the Balance Sheet (up to date accounts) for the Audit to Transaction Auditor along with scope of work.

5. The Transaction Auditor submitted Transaction Audit Report ("TAR") dated 06.12.2019 to the Applicant, providing their assessment of various transactions covered under sections 43, 45, 50 & 66 of the Code, entered by the Corporate Debtor with related and unrelated parties during the reference period reported in the said transaction audit report.

6. Based on such Transaction Audit Report, the following transactions are impugned as preferential u/s 43 of IBC, and Transaction at Sl. no. 1 & 2 are stated to fall u/s 66 of IBC, being fraudulent transactions, as well :

Sl. No.	**Particulars**	**Amount in INR**	**Name of the Parties**
1	Unsecured Debentures held by **Related Parties**, converted into Preference Share Capital and then bought back from 9th May 2017 to 8th May 2019	2,65,00,000/-	Sunshine Tracon Pvt. Ltd. (Respondent no. 3)
2	Unsecured Debenture held by **Unrelated Parties**, converted into Preference Share Capital and then bought back from 9th May 2018 to 8th May 2019	3,60,00,000/-	Eight individuals / firms and four HUF listed in table 2 below
3	Other Preferential transactions with **Related Parties** – Amount transferred from 9th May 2017 to 8th May 2019	38,80,74,013/-	Sunshine Tracon Pvt. Ltd. 3 ors. listed in table 3 below
4	Other Preferential Transactions with **Unrelated Parties** – Amount transferred from 9th May 2018 to 8th May 2019	13,52,50,000/-	Ten individuals / firms and four companies listed in table 4 below
Total		**58,58,24,013/-**	

7. The Party wise details in relation to transactions at Sl. No. 2, 3 and 4 are given in the following tables :

Table - 2			**Amount in INR**
Unsecured Debentures Held by Unrelated Parties, Rupees converted into Preference Share Capital and then bought back			**Respondent No.**
1	Yogesh Harakchand Cheeda, HUF	15,00,000/-	15
2	Parag S. Parekh, HUF	15,00,000/-	17
3	Shantilal J. Parikh, HUF	15,00,000/-	18
4	Ramesh Parikh, HUF	5,00,000/-	8
5	Yogesh Harakchand Chheda	10,00,000/-	16
6	Virani Electronic	35,00,000/-	14
7	Aruna Praful Dharod	15,00,000/-	13
8	Mansi Parag Shah	200,00,000/-	7
9	Harshil M. Parekh	10,00,000/-	9
10	Jasmina Manish Parekh	10,00,000/-	10
11	Riddhi Tejas Tanna	5,00,000/-	11
12	Tejas Vinod Tanna	25,00,000/-	12
	Total	**360,00,000/-**	

Table - 3			
Other Preferential transactions with related parties, amount transferred during 09.05.2017 to 08.05.2019.		**Amount in INR**	**Respondent No.**
1	Sunshine Tracon Private Limited	30,21,46,262/-	3
2	Tricas Agencies & Commerce Private Limited	1,57,00,000/-	5
3	Sunshine Technobuild Private Limited	2,61,27,151/-	6
4	Sunshine Global Technologies Private Limited	4,41,00,600/-	4
	Total	**38,800,74,013/-**	

Table - 4			
Other Preferential Transactions with Unrelated Parties		**Amount in INR**	**Respondent No.**
1	Anglo Commotrade Pvt. Ltd.	345,00,000/-	19
2	MIG Portfolio Leasing Pvt. Ltd.	120,00,000/-	20
3	Pray Projects Pvt. Ltd.	500,00,000/-	21
4	Ratangar Finlease Pvt. Ltd.	210,00,000/-	22
5	Aruna Praful Dharod	60,00,000/-	13
6	Asmita Bharat Khandhar	10,00,000/-	23
7	Kalavati Rameshchandra Shah	20,00,000/-	24
8	Kirit B Shah	10,00,000/-	25
9	Manisha Ketan Timbadia	6,00,000/-	26
10	Mrudula K Shah	14,00,000/-	27

11	Shashi Ajit Thakkar	20,00,000/-	28
12	Virani Electronics	10,00,000/-	14
13	Yogesh Harakchand Chheda	20,00,000/-	16
14	Saloni Rajesh Shah	7,50,000/-	29
	Total	**1352,50,000/-**	

8. It is stated by the Applicant that, according to TAR, transactions with parties of table-1 at serial numbers (1) and (2) therein, involved conversion of unsecured debentures into preference shares and their redemption on the same day during the respective relevant periods. Transactions at serial no. 3 in table-1, involved net transfers of Rs.38,80,74,013/- from the Corporate Debtor to four related parties by way of advances. Transactions at serial no. 4 in table-1, involved net transfers of Rs.13,52,50,000 to unrelated parties. Thus, these transactions led to aggregate outgo of Rs.58,58,24,013/- from the Corporate Debtor to related and unrelated parties during one and two years respectively preceding CIRP commencement date, when dues of the secured creditor were not cleared. Hence these were preferential transactions in terms of section 43 of the IBC. Further, the applicant has stated that the transactions mentioned at table1 with aggregate value of Rs.58,58,24,013/- are prima-facie preferential transactions, since these benefitted the related and unrelated parties within the relevant periods as applicable at the cost of secured creditor.
9. It is further stated by the Applicant that, according to TAR, the Corporate Debtor has granted option to 45 unrelated parties to purchase area in Project Galaxy at the rates ranging from Rs.7,834/- to Rs.25,133/- per square feet. Further, the applicant has stated that , during the period of 28/12/2018 to 25/4/2019 when, the Option Agreement(s) (‘OA’) were executed, the ready reckoner value of the residential property in the area of the project site was Rs. 11,494.65 per sq. ft. of RERA carpet area. Based on this, 10 out of 45 OA holders whose rate is less than ready reckoner value can be covered under section 45 of the Code as undervalued transactions if the sale in terms of OA is mandatory. It is also stated that, in terms of board resolution dated November 14, 2018, in the event of the

allotment of the housing unit not fructifying, the OA holders could claim the advance with interest at the rate of 12% pa., consequently, 44 out of 45 OA holders have filed claims as unsecured financial creditors For aggregate amount of Rs.34,29,38,353/- including interest, however, subsequent to filing of the claims, the OA holders communicated to RP, their willingness to exercise the option as per OA with the new developer under the CIRP. It is further stated that OA holders who are unsecured creditors only cannot exercise their options and seek transfer of units in terms of OA. Therefore, the. OA will not result in undervalued transactions.

10. In relation to Option Agreements, it is further stated that, according to TAR, the OAs were executed months after remittances, these were likely entered into with the intention to secure the interest of unsecured creditors, though the status of option holders remains unsecured, accordingly, considering these facts, according to TAR, the above transactions may get covered u/s 49 of IBC, 2016 as these were deliberately entered into, to defraud creditors. However, it is noted the transaction pertaining to OA agreements are not impugned in the present application, and could not have been impugned in the light of erstwhile RP's statement in the application itself that '*OA will not result in undervalued transactions'*.

11. Further an application IA 4677 of 2025 was filed by Mr. Gaurav Adukia, the RP appointed in the rerun of the CIRP after failure in the implementation of the Resolution Plan, pursuant to another transaction audit report dated 20th June 2025 submitted by the Auditor M/s JLN US & Co., Chartered Accountants after their engagement by the RP for the period from 01.04.2016 to 08.05.2019 & 11.02.2022 To 24.06.2024. In this application the Respondents are erstwhile directors of the Corporate Debtor namely, Kashyap Kanaiyalal Mehta, Atul S Bharani, Ashok S Bharani as Respondent Nos. 1 to 3 apart from them Respondent Nos. 4, 5, 6, 7 and 9 are the persons related to successful resolution applicant, who had failed to implement the approved resolution plan. Respondent

No. 8 is MIG Portfolio Leasing Pvt Ltd, Respondent No. 10 is Sunshine Infraserv Private Limited, the subsidiary of corporate debtor. Respondent Nos. 12, 13 and 14 are Trincas Agencies & Commerce Pvt Ltd, Sunshine Tracon Private Limited, and Sunshine Technobuild Pvt Ltd. Further, Respondent No. 11, Pray Projects Private Limited, is beneficiary of proceeds of sale of investments.

12. In IA 4677 of 2025, the RP has impugned following transactions :

i. Following payments as preferential under Section 43 of IBC –

a) Mayurpankh Fine Builders Pvt Ltd amounting to Rs. 38.30 lakhs,

b) Mayurpankh Properties Pvt Ltd amounting to Rs. 1.22 lakhs,

c) Orchid Hou singinfra LLP amounting to Rs. 240.91 lakhs,

d) Sulabh Resources Pvt Ltd amounting to Rs. 174.50 lakhs,

e) Sunshine Global Technologies Pvt. Ltd. amounting to Rs. 6.68 lakhs,

f) Sunshine Hometown Construction LLP amounting to Rs. 300 lakhs,

g) Sunshine Merchants Pvt Ltd amounting to Rs. 10 lakhs,

h) Sunshine Tracon Private Limited amounting to Rs. 9730.93 lakhs, and

i) Trincas Agencies & Commerce Pvt. Ltd amounting to Rs. 734.96 lakhs,

ii. Preferential payment by way of Journal Entries to Parties mentioned at Annexure - 3 of the TAR, namely, Apex Developers amounting to Rs. 40.00 lakhs, Chetna Heetesh Veera / Heetesh Kalyanji Veera amounting to Rs. 25.00 lakhs, Fanny Mehta amounting to Rs. 500.00 lakhs, Geeta Enterprise amounting to Rs. 75.00 lakhs, Khushi Enterprise amounting to Rs. 25.00 lakhs, Mamta Textiles amounting to Rs. 25.00 lakhs, Sona Textiles amounting to Rs. 50.00 lakhs and Alpa Trading Company amounting to Rs. 25.00 lakhs, total aggregating to Rs. 765.00 Lakhs;

iii. Payments made before 08.05.2017 to Parties mentioned at Annexure - 4 of the TAR, namely, Alfa Fiscal Services Pvt. Ltd. amounting to Rs. 5.71 lakhs, Anandomayee Merchandise Pvt. Ltd. amounting to Rs.12.51 lakhs, Anglo Commotrade Pvt. Ltd. amounting to Rs. 0.58 lakhs, Celebrity Projects Pvt. Ltd. amounting to Rs. 81.00 lakhs, Mithani Enterprises Pvt. Ltd amounting to Rs. 60.14 lakhs, Pray Projects Pvt. Ltd. amounting to Rs. 38.13 lakhs, Savla Circuits Pvt. Ltd. amounting to Rs. 160.74 lakhs and Sunshine Technobuild Pvt. Ltd. - Loan amounting to Rs. 12.00 lakhs, Total aggregating to Rs. 370.80 lakhs.

iv. Sale of fixed assets (Office No. 501, 502 & 601) to M/s MIG Portfolio Leasing Pvt. Ltd., Mr. Vipul Ramanlal Shah and M/s Blueplus Securities Private Limited as fraudulent under Section 66 of the IBC;

v. Diversion of funds out of debenture subscription proceeds to the following persons as fraudulent under section 66 of the IBC :

a) Sunshine Technobuild Pvt. Ltd. amounting to Rs. 7,02,65,000/-,

b) Sunshine Tracon Pvt. Ltd. amounting to Rs. 21,17,99,000/-,

c) Trincas Agencies & Commerce Pvt. Ltd. amounting to Rs. 78,66,249/-, and

d) Kashyap K Mehta amounting to Rs. 4,14,600/-.

vi. Sale of the investment done in the companies listed in clause 16.A.1 of the Application, namely, 50,000 shares of Dombivli.Nagari Sahakari Bank Ltd., 9999 shares of SQ Infrastructure Pvt. Ltd.(Gtmipl), 2549950 shares of Sunshine Housing Pvt. Ltd, 7.600-6800-8000 shares of Sunshine lnfraserve Pvt.Ltd., 9999 shares of Sunshine Realcon Pvt.Ltd., and 9999 shares of Sunshine Technobuild Pvt. Ltd. and capital in Sunshine Urban Infra LLP amounting to Rs. 0.01 Lakhs, aggregating to Rs. 666.10 lakhs, as undervalued transaction as envisaged u/ s 45;

vii. Slump Sale of Infinity Project to one M/s. SQ Infrastructure Private Limited as under valued u/s 45 of IBC.

13. Some of the transactions, impugned in this application, have also been impugned in IA 893 of 2020. Further, there are some transactions impugned in this application, however, it is noted that these transactions were also commented by the previous transaction Auditors M/s Sharma Co. LLP, but the erstwhile RP had not arrived at any opinion in relation to those transactions being liable to be avoided in terms of under Chapter III and VI of part II of the Insolvency and Bankruptcy Code, 2016.

14. Atul Shamji Bharani, one of the suspended director and Respondent in both the applications, filed IA 389 of 2026 challenging the maintainability of IA No.4677 of 2025 stating that the Impugned Application is a feeble attempt to harass the expromoters of the Corporate Debtor; Reliefs have been sought against parties against whom no allegations are made and who are not even necessary parties; and relief is sought in respect of parties who have not been impleaded to the Impugned Application. It is further stated that impugned Application is a dishonest attempt by the Liquidator to get a second bite at the cherry, as during the pendency of said Interim Application bearing No. 893 of 2020 the liquidator chose not to press for reliefs therein, which was recorded in order dated 8.12.2025 that "*Ld. Counsel for the Applicant in I4 893/2020 informs that they are not pressing transactions, other than conversion transaction, in this Application and they have filed another Application, 1A (IB.C)/4677(MB)2025 to impugn such other transactions though all the transactions have been stated in both the Applications*."

15. These Applications were heard together and Respondents were given opportunity to file their reply and advance their oral submissions. Some of the Respondents have filed the reply and made submissions before this Tribunal. Further, the parties were allowed to file their written submission after conclusion of the verbal arguments and some of them are filed the same.

16. It is noted that, while the transactions have been impugned in IA 893 as preferential, however, the erstwhile RP had made a prayer for issuance of appropriate order under Section 49 of the Code also in relation to (i) conversion of debentures into preference there and thereafter redemption thereof by the corporate debtor, and (ii) sale of office to MIG Portfolio Leasing Pvt. Ltd. It is relevant to note that the basic ingredients of Section 43 and 49 are materially different, and the application as primarily proceeded to impugned the transaction as preferential in nature, except a passing observation of the erstwhile RP in para 19 and para 22 that the possibility of defrauding creditors under Section 49 cannot be ruled out. It is further observe that the erstwhile RP has failed to demonstrate at the first instance as to how these transactions are under valued under Section 45 of the IBC, which is a prerequisite for attracting Section 49 of the IBC. Section 45 of the IBC considers a transaction to be under valued where there is a gift or an assets is transferred for a consideration significantly less than the consideration provided by the corporate debtor. In case of conversion of debentures into preference there and thereafter redemption thereof, it is noted that said redemption is justified on the ground of consequential reduction in the financial cost and it is not the case of the erstwhile RP that the preference share so redeemed were an assets of the corporate debtor. Further, in case of transferred of office to MIG the erstwhile RP as himself at paragraph 21 of the application that "*the property was prima facie was not under valued*". In view of this we do not find any merit in the prayer of erstwhile RP for impugning these transaction under Section 49 in terms of IA 893. Accordingly, we proceed to examine the transaction impugned in IA 893 in terms of Section 43 of the IBC only.
17. It is contended by the Respondent that impugned transaction were carried out in the ordinary course of business. Further, the Applicant has filed this application on the basis of an unsigned and unstamped transaction audit report without taking into consideration the management responses.

18. Indubitably, the facts stated in the transaction audit report as well as relied by the Applicant are not disputed by the Respondents, and their objection is arising solely from alleged non consideration of management responses to each of the transactions while arriving at final conclusion by the transaction auditor as well as applicant.

Conversion of CCDs into Preference Shares and Redemption thereof

19. It is noted that the corporate debtor had issued unsecured compulsorily convertible debentures (CCDs) which were held by parties named at Sl. No. 1 of paragraph 6 and in Table 2 of paragraph 7 above. The conversion of debentures, impugned in the application, were converted into preferential share capital in the month of November 2018, January 2019 and March 2019. It is noted from the transaction audit report that such conversion CCDs into preference share was carried out in earlier financial years, namely, FY 2015-16, 2016-17 and 2017-18, as well, however, the same have not been impugned in IA 893, presumably, because these redemption were falling outside look back period. Nonetheless, we fail to understand as to why the conversion and redemption, and telling return of the capital, were not impugned under Section 66 of the IBC.
20. Section 43 of the IBC creates a deeming fiction whereby a payment made to any person in preference over creditors, who had claim against the asset of the corporate debtor under Section 53 of the IBC for settlement of antecedent debt due to such person, within a specified period is deemed to be a preferential payment liable to be restored back to protect the assets of the corporate debtor for their distribution to the creditors who are otherwise entitled to in terms of section 53 of the code. Said Section also provide an exception to these deeming fiction, if such transfer is made in the ordinary course of business or financial affairs of the corporate debtor and payee.
21. It is not in dispute that CCDs were liable to be compulsorily converted into the share capital of the company and these CCDs were of Rs. 10/- each were converted into preference shares of Rs. 10/- each, and such converted preference

shares were redeemed on the same date by making payment of holder(s) of converted CCDs. It is explained by the management that *"As per Section 73 of the Companies Act, 2013 a Company can not avail loan from any person other than Directors of the Company. As per the provisions of Companies Act, 2013 a Company can raise fund through issue of Compulsory Convertible Debentures (CCD). CCD can only be redeemed or repaid by converting Debentures into Shares. Therefore, the company had converted its CCD into Preference Shares and than redeemed the preference Shares. Hence, SHIPL had converted CCD to Preference Shares and repaid the loan on the same data".* Neither the management nor any of the beneficiaries of the payment made on such redemption have placed on record any document evidencing the tenor or terms of said arrangement to justify, if the amounts received by the corporate debtor as subscription to the CCD have fallen for due of payment on the date of conversion.

22. The reliance of the holders of CCDs on Doctrine of Indoor Management has no relevance in the present case and is not even being considered by this Tribunal to decide whether the impugned transaction falls within Section 43 of the Code merely on the basis of non-compliances with provision of Companies Act, 2013, as this Tribunal has observed that Section 43 extends to transfer of the property for the benefit of the creditors. Section 3 defines a creditor to mean "a person to whom a debt is owed and the debt is defined to mean a liability or obligation in respect of a claim. The claim is defined to mean "A right to payment" and holder of redeemable preference share acquires a right to payment on the date when the company decides to redeem its preference shares. Accordingly, the holder of these CCDs acquires a character of a creditor on the date company decide to redeem its preference shares.

23. Nonetheless, it is clear from the above explanation of the management that the subscriber to the CCDs had in fact advanced loan to the corporate debtor and those loans were camouflaged as subscription to the CCDs to circumvent to the

Section 33 of the Companies Act, 2013. Even if this explanation is taken into consideration, ignoring from the time being the surreptitious manner in which the amounts were stated to have been borrowed, these CCDs, upon conversion into preference shares, still remained and obligation due to the shareholders of the corporate debtor, and in terms of Section 53 (1) of the IBC, the Preference shareholders are entitled to receive payment from the liquidation proceeds only after the payment due to all the creditors have been made. In that view, the redemption of Preference shares within the look back period shall certainly fall within Section 43 (2) of the IBC.

24. It is observed by the Transaction Auditor that, as per various Form SH-7 filed for the FY 2016-17 and FY 2017-18 the due date for redemption of preference share is mentioned as five years from the date of issue of Preference Shares, accordingly, they could have been redeemed after five years only whereas the corporate debtor redeemed these shares on the date of conversion itself. In that view, the redemption of Preference share on the very date of its issuance upon conversion of the CCDs cannot said to be in the ordinary course of business or financial affairs of the corporate debtor. Reliance placed by the Respondent on the decision of this bench in case of ***Mr. Anish Niranjan Nanavaty Vs. Globalcom IDC Limited I.A. 1966 OF 2020 in C.P.(IB) No. 3025/MB/2019*** is distinguishable on facts as, in that case, the payments impugned as preferential was made by the Corporate Debtor directly to the account of Central Govt. for discharge of GST liability of the payee to prevent obstruction in the business of Service provider on account of unpaid GST dues by the payee. Accordingly, we are of considered view that the amounts stated at Sl. No. 1 of paragraph 6 and in Table 2 of paragraph 7 above are required to be restored back to the corporate debtor forthwith by their recipients who are named thereat.

Other Preferential transactions with related parties and unrelated party in IA 893 of 2020

25. Other Preferential transactions with related parties and unrelated parties involving transfer of amounts during look back period, it is noted that the RP had not forgone the right to prosecute these transactions in IA 893 of 2020 but had only contended that these transactions overlaps with the transaction impugned in IA 4677 and can be decided in terms of IA 4677 where the RP had improvised its case in relation to these transactions, though each transaction impugned in IA 893 is also impugned in IA 4677 also.

26. The question arises whether the RP, appointed in rerun of CIRP process, can review the opinion already formed by the erstwhile RP while filing IA 893 before this Tribunal when the complete material was available before him in terms of records of the Corporate Debtor and Transaction Audit report of Sharma Goel & Co LLP. In our considered view, the scope of rerun of the CIRP process after failure of the approved Resolution Plan could not have been extended by the RP so as to consider the rerun as a fresh CIRP process. It is not in dispute that the erstwhile RP had engaged a transaction auditor for determination of transaction to be impugned as avoidance or fraudulent, and after perusal of the said report, the erstwhile RP formed an opinion in relation to avoidance of fraudulent transaction as required under Section 43, 45, 49 and/or 66 of IBC. After forming such opinion the RP determined the transaction and the extent of each of such transaction for impugning each of them in terms of IA 893. It is noted that the RP, in IA 4677, has either enlarged the extent of transactions already impugned in IA 893, or has included additional transactions, which were already forming part of earlier transaction report of Sharma Goel & Co LLP and forming basis of IA 893. It is also noted that the RP in IA 4677 as impugned certain transactions undertaken with the parties related or connected to SRA on the basis that these parties are related to corporate debtor, however, the RP has failed to consider that the SRA or its nominee directors were not related to the corporate debtor on the insolvency commencement date, and their subsequent relationship arising from the failed implementation of approved resolution plan could not be taken into

consideration for holding them as a related party under Section 5 (24) of the IBC. Accordingly, we are of considered view that IA 4677 of 2025 is not maintainable and cannot be adjudicated by this Tribunal in view of erstwhile RP having made determination of avoidance or fraudulent transaction and the RP, assuming charge of the corporate debtor in the rerun after failed implementation of the approved resolution plan, cannot be permitted to review or revisit the such determination for avoidance or fraudulent transaction already concluded by the erstwhile RP, and the RP, being successor of erstwhile RP, can only be permitted to adduce the additional evidences to support the determination of erstwhile RP.

27. In view of this, we consider it appropriate to proceed with these transactions in terms of IA 893 only.

28. Section 4.3 of the transaction audit report provides the aggregate amount paid and received by the corporate debtor to/from related parties, listed in table 3 of para 7 above, as follows:-

Other Preferential transactions with related parties, amount transferred during 09.05.2017 to 08.05.2019 (INR)					
Name of the Parties		**Opening Balance as on 09.05.2017**	**Amount paid during the period**	**Amount Received during the period**	**Net Amount impugned in the application**
1	Sunshine Tracon Private Limited	42,15,07,208/-	57,44,40,761/-	26,86,76,180/-	30,21,46,262/-
2	Tricas Agencies & Commerce Private Limited	3,87,00,000/-	1,57,00,000/-		1,57,00,000/-
3	Sunshine Technobuild Private Limited	1,12,74,900/-			2,61,27,151/-
4	Sunshine Global Technologies Private Limited	8,64,65,600/-	4,47,68,987/-		4,41,00,600/-
	Total				**38,800,74,013/-**

29. Further, there was no receipt of amounts during the look back period from the unrelated parties, accordingly, the amount stated in Table 4 of Para 7 above are the amounts paid to these parties, impugned as preferential, whereby the amounts due to them came to be settled fully.

30. It is explained by the management in relation to payment of related parties that *"Sunshine Tracon & Trincas Agencies are NBFCs from which SHIPL used to borrow sums of money for the purpose of business operations. With regards to*

Sunshine Global and Sunshine Tachnobuild, these are group companies from which SHIPL used to borrow short term money to tide over cash crunch & continuation of business when other means were not available. In any case availing of unsecured loans/repayment thereof has been done in ordinary course of business. In fact, such transactions have been regularly undertaken by SHIPL from the inception. SHIPL had borrowed these unsecured money from above mentioned companies for the project expenses and business requirement and the same were payable to the above companies.

- *SHIPL had borrowed these unsecured money from abovementioned companies for the project expenses and business requirement and the same were payable to the above companies.*
- *In order to reduce interest burden SHIPL had borrowed further unsecured amount in lieu of option agreement were granted to these creditors for area to be allotted post completion of the project.*
- *This further unsecured borrowings which is non interest bearing have been used to repay previous borrowing to aforesaid companies. Eventually balance sheet position SHIPL has not been materially altered."*

31. It is explained by the management in relation to payment of unrelated parties that *" SHIPL had started facing liquidity strain from 2017 onwards due to slump in the market and non availability of further credit, there were many operational expenses like Monthly Rent of about Rs. 70,00,000/- to the slum dwellers, interest servicing on secured and unsecured loans, other expenses, etc. which were necessary to be incurred for the project in the normal course of business. Avenues of funds for SHIPL were closed from all sides. Also since the project had not received approval for the sale portion of the building, it was not registered under RERA, 2016. Hence, Sale of inventory", as a source of funds was not open.*

- *To keep the company as a going concern and to keep the project alive, the company procured funds from the above mentioned companies.*
- *Payments to the aforesaid companies have been made by availing other unsecured borrowing, there were no cash flow generated from the project which have been used to repay this amount hence any right of secured creditors as well as other financial creditors have not been jeopardized to any manner. In any case availing of unsecured loans/repayment thereof has been done in ordinary course of business in fact such transactions have been regularly undertaken by SHIPL from the inception.*
- *However, in the case of SHIPL, the unsecured creditors were just replaced by other non interest bearing unsecured creditors just to protect company's solvency.*
- *There was no sacrifice or dilution of securities. Hence these payments are not in the nature of preferential transactions."*

32. It is further explained by the management in relation to payment of unrelated parties that -

- *"Apart from MIG Portfolio Leasing Private Limited which was secured loan, all other parties have provided unsecured loans to SHIPL, As a general market practice all these unsecured loans are generally payable on demand,*
- *Above creditors demanded their payment and the same was honoured by the company by either selling mortgaged property or borrowing fresh credit from another unsecured creditors.*
- *Out of above 15 creditors the dues of MIG Portfolio Leasing Pvt. Ltd. were paid from the sale of Mortgage security. The Unit No. 502 of Sunshine Plaza were sold for consideration of Rs. 2,00,00,000/- out of which Rs. 1,20,00,000/- has been adjusted to repay the outstanding loan*

and balance amount has been utilized for the payment of outstanding dues of Property Tax, Maintenance & Other expenses.

- *Rest of the loans carried interest averaging 18% per annum to reduce the interest burden & to protect company's solvency most of these were repaid by fresh credit which were non-interest bearing.*
- *In any case availing of unsecured loans/repayments thereof has been done in ordinary course of business. In fact, such transactions have been regularly undertaken by SHIPL from the inception.*
- *However, in the case of SHIPL, the unsecured creditors were just replaced by other non interest bearing unsecured creditors just to protect Company's Solvency*."

33. It is further explained by the management in relation to payment of unrelated parties that " *As a general market practice all these unsecured loans are generally payed on demand. Above creditors demanded their payment and the same was honoured by the company by borrowing fresh credit from other unsecured creditors. This cannot be construed to mean the payments were made in preference to other financial creditors. As you see from above the transaction were in nature of replacement of high cost debt to low cost debts to protect the company's solvency. There was no cash flow from the project being diverted to the creditors other then secured creditors. Hence this is not preferential transaction."*

34. In the present case the company Petition 4733 of 2018 was filed under Section 7 of IBC on 21.12.2018 by ICICI Prudential Real Estate AIF I for initiation of CIRP in the case of Corporate Debtor and this application was admitted on 08.05.2019. The corporate debtor had committed default in payment of interest due on the secured debentures subscribed by ICICI in month of October, 2018 and the total outstanding due to them as on 31.03.2018 was 40 crores, besides interest of Rs. 3.83 crores, which was secured as a charge on development rights amongst other. Besides this an amount of Rs. 66.44 crores, besides an interest of

Rs. 2.16 crores due thereon, was due to Axis Finance Limited as on 31.03.2018 as secured obligation. Both of these lenders had a charge on sale receivable of the projects.

35. It is not in dispute that the amounts were paid to the related party during look back period. Section 43 of the IBC is a deeming fiction and if the ingredients of Section 43(2) are satisfied, the said payments are liable to be avoided, except such payments were made in the ordinary course of business or financial affairs of the corporate debtor and payee of such amounts. The management has represented that these amounts were paid out the non-interest bearing borrowings made in lieu of option agreements whereby the auction holders were to be allotted specified area in the project upon completion, accordingly, one interest free borrowing had substituted interest bearing borrowings. It follows from this explanation that the corporate debtor has raised additional finances by disposing of future developed area to the auction holders, which in any case put these option holders in the category of secured creditors even though the amounts so raised were not carrying interest. Nonetheless it is noted from para 11 of IA 893 of the application that these option holders could claim advanced amounts with interest @ 12% per annum in the event allotment of unit does not fructify, in terms of the board resolution dated 14.11.2018, and these option holders have claimed these advances along with interest as unsecured financial creditor in the CIRP of the corporate debtor. Even if, the contention of management that the amounts were raised from option holders against future allotment of developed area in the project at their option, the project receivables, having been charged to ICICI Axis, could not have been diverted for discharging the obligations due to the paid parties out of such proceeds. Accordingly, we do not find any merit in the contention that the said repayment was in the ordinary course of business or financial affairs of the corporate debtor.

36. It is also noted that Respondent No. 20 in IA 893 i.e. MIG Portfolio Leasing Pvt. Ltd. was holding a charge over one of the property of the corporate debtor to the

extent of Rs. 1.20 crores and the interest due thereon, accordingly, the mortgaged properties was sold to them for consideration of Rs. 2 crores. On perusal of said mortgaged deed executed in favour of MIG Portfolio, it is noted that the said deed of mortgaged was executed on 08.01.2019, though the secured amounts were advanced on 01.04.2016. Further, the sale deed for sale of mortgaged property was executed on 14.02.2019. It follows from this that the security interest was created during the look back period and just a month prior to the execution of sale deed. As noted above, the Corporate Debtor had defaulted in its obligation to the ICICI in October 2019 and an Application under Section 7 was filed on 21.12.2018. Accordingly, the execution of mortgaged deed as well as sale agreement took place after filing of an application under Section 7 of the Code. This fact coupled with the management's explanation that *Avenues of funds for SHIPL were closed from all sides* clearly indicates that the creation of a mortgaged after filing of an application under Section 7 resulted into creation of a security interest had not resulted into securing any value of the corporate debtor, hence, creation of such security interest is not saved by Section 43(3)(b) of the Code.

Decision

37. As has been observed in the preceding paragraph that there was outstanding more than of 100 crores due to the secured creditors as on 31.03.2018 as well as prior financial years, accordingly, the amounts paid to the parties listed at Sl. No. 1 of paragraph 6, in Table 2 of paragraph 7, and in Table 3 and 4 of Paragraph 7 resulted into payments to them in preference of secured lenders as follows from the Liquidation Value of Rs. 63.29,91,685/- the Corporate Debtor and they would been lower in priority to such secured lenders.

38. Accordingly, the payments made to the parties listed at Sl. No. 1 of paragraph 6, in Table 2 of paragraph 7, and in Table 3 and 4 of Paragraph 7 are required to be avoided and restored back to the corporate debtor. These amounts shall be paid within 30 days failing which the amounts or part thereof, remaining unpaid, shall

carry an interest of @12% per annum and the interest due thereon shall be first appropriate from any subsequent payments.

39. In terms of the above IA 893 of 2020 is partly allowed and IA 4677 of 2025 is dismissed as not maintainable. Resultantly, IA 389 of 2026 is rendered infructuous and disposed of accordingly.

-Sd/-	**-Sd/-**
Prabhat Kumar	**Sushil Mahadeorao Kochey**
Member (Technical)	Member (Judicial)