IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 207
IB-876/ND/2020
IA-2462/ND/2021, IA-5637/ND/2021

IN THE MATTER OF:
Dhankalash Distributors Pvt. Ltd. ... Applicant

Versus

Piyush IT Solutions Pvt. Ltd. ... Respondent

Under Section: 7 of the IBC, 2016 (CIRP)

Order delivered on 16.09.2026

CORAM:
SH. ASHOK KUMAR BHARDWAJ **SH. ATUL CHATURVEDI**
HON'BLE MEMBER (J) **HON'BLE MEMBER (T)**

PRESENT:

For the RP	**:**	Adv. Aditya Vikram Singh, Adv. Manav Sharma
For the Respondent	**:**	Dr. Atul Singh for R-26 in IA-5637/2021.
For the IT Dept.	**:**	Mr Sunil Agarwal, SSC, Ms Monica Benjamin, JSC, Mr Gibran Naushad, JSC, Mr Adeeb Ahmad, Ms Harshita Sharma, Ms Laiba Arif, Advs.

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

IA-2462/ND/2021: The prayer made in the captioned application reads thus:-

a) *"Allow the present Application;*
b) *pass necessary order(s) / direction(s) declaring the transaction mentioned under Category A as a preferential transaction under Section 43 of the Code, and therefore null and void;*
c) *pass necessary consequential order/direction under Section 44 of the Code against the Respondent No.3 directing it to pay Rs.7.10 Crores in the account of the Corporate Debtor maintained by the Applicant;*
d) *pass necessary order(s)/direction(s) declaring the transaction mentioned under Category B as undervalued transactions under Section 45 of the Code;*
e) *pass necessary consequential order/direction under Section 48 of the Code against the Respondent No. 4 to 12, directing them to severally pay their respective share of benefits derived*

from interest-free loans in the account of the Corporate Debtor maintained by the Applicant;

f) pass necessary consequential order/direction under Section 48 of the Code against the Respondent No.1 & 2, suspended directors of the Corporate Debtor, to jointly and severally pay Rs 9.58 crore, being interest amount deprived to Corporate Debtor on interest-free loans, in the account of the Corporate Debtor maintained by the Applicant."

Ld. Counsel for the RP could make reference to para 17 of the application to espouse that when, on the one hand, the Corporate Debtor was in need of funds and had availed financial facilities by paying dividend on non-convertible debentures, on the other hand, it disbursed financial facilities to its related parties. In his submissions, extending interest-free financial facilities to related parties by the Corporate Debtor amounted to a fraudulent transaction, as in a way it was an attempt to divert the funds of the Corporate Debtor beyond the reach of the creditors. His further submission is that when the Corporate Debtor availed financial facilities from Respondent No. 3 between 03.10.2019 to 16.10.2019, on 31.10.2019 it returned the amount. In his submission, once the amount of debt was returned to Respondent No. 3 within the look-back period, the same amounted to preferential transactions. As can be seen from the provisions of Section 43 of IBC, 2016, the return of the amount of debt to any of the creditors by giving it preference over other Creditors constitute preferential transaction. Section 43 of IBC, 2016 reads thus:

43. Preferential transactions and relevant time.—(*1*) Where the liquidator or the resolution professional, as the case may be, is of the opinion that the corporate debtor has at a relevant time given a preference in such transactions and in such manner as laid down in sub-section (*2*) to any persons as referred to in sub-section (*4*), he shall apply to the Adjudicating Authority for avoidance of preferential transactions and for, one or more of the orders referred to in section 44.

(*2*) A corporate debtor shall be deemed to have given a preference, if—

(*a*) there is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor; and

(*b*) the transfer under clause (*a*) has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53.

(*3*) For the purposes of sub-section (*2*), a preference shall not include the following transfers—

(*a*) transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee;

(*b*) any transfer creating a security interest in property acquired by the corporate debtor to the extent that—

(*i*) such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest and was used by corporate debtor to acquire such property; and

(*ii*) such transfer was registered with an information utility on or before thirty days after the corporate debtor receives possession of such property:

Provided that any transfer made in pursuance of the order of a court shall not, preclude such transfer to be deemed as giving of preference by the corporate debtor.

Explanation.—For the purpose of sub-section (*3*) of this section, "new value" means money or its worth in goods, services, or new credit, or release by the transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the liquidator or the resolution professional under this Code, including proceeds of such property, but does not include a financial debt or operational debt substituted for existing financial debt or operational debt.

(*4*) A preference shall be deemed to be given at a relevant time, if—

(*a*) it is given to a related party (other than by reason only of being an employee), during the period of two years preceding the insolvency commencement date; or

(*b*) a preference is given to a person other than a related party during the period of one year preceding the insolvency commencement date.

Indubitably, the CIRP commenced on 28.10.2020, and the return of the amount of debt of Rs. 7.10 crores to Respondent No. 3 was during the period of two years from the commencement of CIRP and is covered by the provisions of Section 43 of the Code. Though the Applicant has tried to describe certain transactions as undervalued transactions under Section 45, in our view the transactions referred to by him are covered by Sections 43 & 66 of the Code. The factual position as captured by the Applicant in Part-A & B of the application reads thus:

AVOIDANCE TRANSACTIONS

A. PREFERENTIAL TRANSACTION UNDER SECTION 43 OF THE CODE

Transaction with M/s. TipTop Tie-Up Pvt. Ltd. (Respondent No.3)

8. That prior to the commencement of CIRP and within the look back *qua* non-related party, the Corporate Debtor, had availed a short term unsecured loan to the tune of Rs.7.10 Crores from the Respondent No.3. The entire loan amount was received in different tranches in between 03.10.2019 to 16.10.2019. The said unsecured loan was completely repaid on 31.10.2019 *i.e.* within 30 days from the date of the receipt of the first tranche.

9. That there is/are no document(s) such as loan agreement, etc. available or provided by the suspended directors to the Applicant or the Transaction Auditor *qua* the unsecured loan received by Corporate Debtor from Respondent No.3 to conclusively ascertain the re-payment terms and to determine / ascertain why the loan was repaid to the Respondent No.3 by preferring over similarly situated creditors.

10. That since entire so called short term unsecured loan of Rs 7.10 crore was repaid during look back period and there is/are no documents available to justify such immediate re-payment, therefore, the Applicant has determined that the Corporate Debtor has given preference to the Respondent No.3 in repayment of the unsecured loan to the Respondent No.3 over other similar situated creditors and have put Respondent No.3 in a beneficial position over similar situated creditors than it would have been in the event of distribution of assets made in accordance with Section 53 of the Code. Consequently, the aforesaid transaction falls under the purview of Section 43 of the Code and deserved to be declared as a 'preferential transaction'.

11. Hence, the Respondent No.3, being beneficiary of the aforesaid enunciated preferential transaction, is liable to repay the amount of Rs.7.10 Crore to the Applicant herein by depositing the same in the account of the Corporate Debtor.

B. UNDERVALUED TRANSACTIONS UNDER SECTION 45 OF THE CODE

Corporate Debtor provided interest free loans Respondent No.4 to 12

12. That the Transaction Auditor in its the Audit Report has identified that, prior to and within the lookback period *qua* related and non-related parties, the Corporate Debtor gave unsecured loans to Respondent No. 4 to 12 from time to time. That although prior to the initiation of the CIRP, the Corporate Debtor had received back the entire principal amount from such entities, however, no interest was charged / received from the Respondent beneficiaries on such loans.

13. It is pertinent to mention herein that on one hand the Corporate Debtor gave interest free loans/advances to multiple entities and on the other hand, the Corporate Debtor was paying interest @ 18.50% p.a. on the 70 numbers of the Redeemable, Cumulative, Non-Convertible Debentures of Rs.1,00,00,000/- (Rupees One Crore Only) each issued to Altico Capital India Ltd. against the loan amount of Rs.70,00,00,000/- (Rupees Seventy Crores Only).

14. That as per the finding of the Transaction Auditor, the Corporate Debtor incurred a notional loss of Rs. 23.49 Crores during 01.04.2018 to 28.10.2020 on account of non-charging of interest on such unsecured loans provided to aforesaid Respondent beneficiaries. The Transaction Auditor in its Audit Report has classified these transactions as 'fraudulent' transactions covered under Section 66 of the Code but the Applicant herein do not concur with the views and findings of the Transaction Auditor leading to such conclusion about these transactions.

15. That Applicant, on perusal of the Audit Report and aforesaid transaction related available documents that *firstly,* the Corporate Debtor has disclosed and declared about the aforesaid interest free loan transactions in its audited financial statements of the relevant financial year which further has been duly submitted to Ministry of Corporate Affairs (MCA), as a statutory compliance under the Companies Act, 2013. Importantly, these financial statements were also has been adopted by shareholders of the Corporate Debtor. Moreover, the Corporate Debtor has received back the principal amount of the unsecured loans given to the aforesaid Respondents. As such, these transactions does not satisfy or fulfil the ingredient of being a 'fraudulent' transaction under Section 66 of the Code. *i.e.* intent to defraud the creditors and/or fraudulent purpose. That considering modalities of these loan transactions, the Applicant has determined that these transactions are 'undervalued' as the Corporate Debtor has been re-paid significantly less amount as compared to the rightfully entitled interest amount on the loans, thus, these transactions falls under the purview of Section 45 of the Code

16. *Secondly,* The Applicant noticed that the amount of notional loss of Rs.23.49 Crores stated to have been suffered by the Corporate Debtor as per the Transaction Auditor is incorrect for the following reason *i.e.* Transaction Auditor has treated outstanding balances related to civil work carried out by M/s. Lotus Green Developers Pvt. Ltd. as a contractor of the Corporate

> Debtor, as Loan instead of 'Advances' given against construction contract executed between them. Further, the Transaction Auditor has stated that, in the context of interest free loan transactions, he has considered definition of related party as provided under the Companies Act, 2013 and accounting standards instead of definition as provided under Section 5(24) of the Code, as no transaction was undertaken with related parties defined under section 5(24) of the Code . Further, the Transaction Auditor, while calculating the notional interest loss has also included period falling outside the scope of the lookback period as prescribed under Section 46 of the Code ..
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> 17. That due to such undervalued transactions carried out by the Corporate Debtor, as per Applicant's determination, the Corporate debtor has incurred a notional loss of Rs 9.58 Crore, *calculated at the similar rate of interest @ 18.50 % p.a. as the Corporate Debtor paid to Altico Capital India Ltd.*, within the lookback period prescribed under Section 46 of the Code.

The only issue raised in the reply filed on behalf of Respondent Nos. 11 & 12 is misjoinder of cause of action/parties and non-filing of the application within the prescribed period of limitation. The PUFE transactions are categorized in a single category to indicate that the transactions are entered into to cause loss to the creditors, by keeping the funds and resources of the Corporate Debtor beyond their reach. May be for the sake of convenience, separate applications should be filed in respect of the transactions covered by Sections 43 & 66 of the Code, as the ingredients of both the provisions are independent and separate. Nevertheless, the infirmity is not so fatal that the preferential/fraudulent transaction should not be reversed. We may also not be oblivious of the fact that the RP/Liquidator acts in a fiduciary capacity and none of their individual/personal interests is involved in the CIRP. These are the creditors/members of CoC whose interests are at stake. In other words, the PUFE applications are not pursued by such parties whose interests are actually affected and are filed and pursued by someone who is given responsibility to do so by operation of the statute. For the callousness of the RP, the creditors cannot

be made to suffer. Even otherwise, when the applications are rejected on technical grounds and liberty is granted to the RP to file fresh applications, either he may not prefer the applications again or further complications may arise. In the wake, we are not inclined to entertain the technical objection raised on behalf of the aforementioned Respondents. As far as the issue of limitation is concerned, CIRP commenced on 28.10.2020, and the application was preferred in the year 2021; thus, the same is not barred by limitation in any manner. Besides, the action taken by RP during CIRP cannot be nixed on this ground. In the totality of the facts and circumstances, the Respondent No. 3 is directed to pay back the amount of Rs.7.10 Crores to the CIRP account of the Creditor. Nevertheless, the said Respondent would be entitled to stake its claim in the CIRP and would get its shares as per the provisions of Section 53 of IBC, 2016. As far as the interest-free loan given to related parties is concerned, the parties referred to in para 17 of the application are directed to pay interest to the Corporate Debtor @ 18% per annum. **Subject to the aforementioned, the application stands disposed of.**

IA-5637/ND/2021: The prayer made in the captioned application reads thus:

a) *"By way of an ex-parte ad-interim order direct Respondent Nos. 3-12 to disclose direct and indirect shareholding pattern as existing on 09. 09.2018 and 28.10.2020;*
b) *pass ex-parte ad interim directions that the Respondent Nos. 13-24 need not be considered as financial creditors of the Corporate Debtor until the disposal of this Application;*
c) *pass an ex-parte ad interim order directing substituted service by way of publication, for Respondent Nos. 13-21 and 23-24;*
d) *direct Everett to repay a sum of Rs. 10 crores (along with interest at the rate of 12% from the date of payment of amounts by the Corporate Debtor to Everett until the date of repayment of the said amounts to the Corporate Debtor) to the Corporate Debtor, pursuant to Sections 66, 67 and other applicable provisions of the Code;*
e) *direct the parties referred to in **Annexure-3,** to repay the Corporate Debtor an interest amount of Rs. 23.49 crores (calculated as of the date of payment of principal, whichever is earlier), along with interest at the rate of 18.50% from the date of the Audit Report, until the date of payment of the interest, in the manner provided in **Annexure A-3,***

pursuant to Sections 66, 67 and other applicable provisions of the Code;

f) *set aside the transactions in relation to transactions set out in* ***Annexure A-4,*** *pursuant to Sections 66, 67 and other applicable provisions of the Code;*

g) *direct appropriate government agencies to investigate transactions as sought for in Para D (a) and (b), to gather further evidence to determine if the said transactions are also fraudulent in nature pursuant to Section 66 of the Code, on account such services actually never having been provided to the Corporate Debtor."*

Ld. Counsel for the RP made reference to para 11 of the application to espouse that an amount of Rs. 9 Crores + 1 Crore was given by the Corporate Debtor to Respondent No. 1 on the pretext of performing some construction work, when there was no contract or understanding between the Corporate Debtor and the said Respondents that such amount was required to be paid in advance. The relevant excerpt of the application, wherein details of the transaction has been reads thus:-

11. It is submitted that the following transactions were identified in the Audit Report as being non-compliant as per the provisions of the Code. It is respectfully submitted that the following transactions are in addition to the transactions included in the Avoidance Application:

I. Transactions in contravention of Section 66 of the Code

A. Transaction with Everett Infra & Engineering Equipment

(i) The Audit Report identifies a transaction entered into between Everett Infra & Engineering Equipment Private Limited ("Everett") and the Corporate Debtor, for completion of civil and structural work at Plot No. SC-01/C3 admeasuring 28,000 (Twenty-Eight Thousand) sq. mtrs ("Arena II") as being fraudulent in nature, as per Section 66 of the Code.

(ii) The Audit Report notes that as per Clause 10 of the work order, 100% of the recurring amount bill ("RA Bill") may be released within 15 (fifteen) working days from the date of certification from the date of certification

of bill. However, an amount of Rs. 9 crores was paid as an advance, despite the work order not providing for such an advance. As per the Audit Report, the advance paid also meant that clause of defect liability was not complied with. [***Note: Client to provide copies of the work order and the invoices***]

(iii) Further, it is pertinent to submit that the Goods and Services Tax ("**GST**")
registration for Everett had been cancelled by the Directorate General of Analytics and Risk Management on 27.11.2019, on account of issuing/availing fake GST and input tax credit.

(iv) Moreover, the Corporate Debtor did not receive an input tax credit of Rs. 1.43 crores on supplies received. Despite this, the Corporate Debtor paid an additional amount of Rs. 1 crore to Everett in March 2020, thereby net recoverable balances rose to Rs. 73.15 lacs till the last day of CIRP.

(v) It is submitted that given that Everett was found to be a party booked for issuing/availing fake goods and services tax and input tax credit, in a report by the Office of the Directorate General of Analytics and Risk Management dated 22.07.2020.

(vi) Given that Rs. 9 crores was released an advance despite the work order not providing for the same, and given the fact that Rs. 1 crore was released by the Corporate Debtor to Everett in March 2020, despite not receiving input tax credit of Rs. 1.43 crores, the Applicant is of the opinion that this transaction amounting to a total of 10 crores is fraudulent as per Section 66 of the Code, undertaken with the intent to defraud the creditors of the Corporate Debtor.

B. Provision of interest free loans and advances to Related Parties and Non-Related Parties

(i) The Audit Report has identified 10 parties to whom the Corporate Debtor has advanced interest free loans. The 10 parties include the following:

a) Apricot Buildcon Private Limited, a related party and a Group Company of the Corporate Debtor;

b) Fab Realcon Private Limited, a related party and a Group Company of the Corporate Debtor;

c) Lotus Greens Constructions Private Limited, a related party and a Group Company of the Corporate Debtor;

d) Lotus Greens Developers Private Limited, a related party and a Group Company of the Corporate Debtor;

e) NS Global Private Limited, a related party and a Group Company of the Corporate Debtor;

f) Rimrock Shelters LLP, a related party and a Group Company of the Corporate Debtor;

g) Three C Green Developers Private Limited, a related party and a Group Company of the Corporate Debtor;

h) Three C Infratech Private Limited, a related party and a Group Company of the Corporate Debtor;

i) Three C Universal Developers Private Limited;, a related party and a Group Company of the Corporate Debtor

j) Granite Gate Properties Private Limited, a non-related party.

(ii) The Audit Report identifies that interest loss on account of such interest-free lending is Rs. 23.59 crores (calculated at 18.5% per annum), and therefore also categorizes the transactions as being fraudulent in nature. The Audit Report also points out that while the Corporate Debtor was continuing to pay interest to Altico Capital India Limited ("**Altico**") at 18.50% per annum, the Corporate Debtor did not receive interest from group companies, despite the Corporate Debtor already facing a severe financial crunch. A table containing the amounts due from the 10 parties to the Corporate Debtor, referred to in the paragraph hereinabove, is annexed herewith as **Annexure A-3**.

(iii) It is also pertinent to note that the erstwhile IRP had categorized the following transactions as being undervalued in nature in the Avoidance Application. It is submitted that in addition to the transactions being undervalued in nature, the transactions are also fraudulent in nature as per Section 66 of the Code as they were made with the intent to defraud the creditors of the Corporate Debtor.

a. ***Three C Greens Developers Private Limited***

(iv) The Audit Report states that the Corporate Debtor had availed a credit facility of Rs. 70 crores from Altico *vide* the issuance of unlisted Non-Convertible Debentures. As per the terms of the credit facility, Rs. 20.28 crores was to be utilized for providing inter-corporate loan/deposit to Three C Greens Developers Private Limited. The said loan was provided to Three C Greens Developers Private Limited in 13.11.2017 and 07.03.2018, and was repaid by Three C Greens Developers Private Limited between November 2017 and January 2019. The Audit Report therefore identifies the interest loss for this period, as being Rs. 1.32 crores, and further classified it as a fraudulent transaction under Section 66 of the Code.

b. *Three C Universal Developers Private Limited*

(v) The Audit Report notes than an amount of Rs. 30.12 crores was loaned by the Corporate Debtor to Three C Universal Developers Private Limited in July 2017 and was recovered by the Corporate Debtor only in January 2019. The Audit Report further states that while the amount of Rs. 30.12 crores was recovered from Three C Universal Developers Private Limited, the same was recovered without any interest. The Audit Report therefore identifies the interest loss as being Rs. 2.80 crores.

c. *Rimrock Shelters LLP*

(vi) The Audit Report notes that an amount of Rs. 13.75 crores was loaned by the Corporate Debtor to Rimrock Shelters LLP in March 2018, and the said amount was received by the Corporate Debtor only in August 2019, without any interest. It is pertinent to note that Rimrock Shelters LLP and the Corporate Debtor are related parties. The Audit Report therefore identifies the interest loss as being Rs. 3.82 crores.

d. *N S Global Private Limited*

(vii) The Audit Report observes that a loan amount of Rs. 34.23 crores was disbursed to N S Global Private Limited in January 2019 by the Corporate Debtor, and was repaid by N S Global Private Limited in March 2020. It is to be noted that N S Global Private Limited and the

Corporate Debtor are related parties, and further N S Global Private Limited shares the same registered address and registered email address as the Corporate Debtor. The Audit Report therefore identifies the interest loss as being Rs. 7.09 crores.

e. *Fab Realcon Private Limited*

(viii) The Audit Report states that the Corporate Debtor had transferred an amount of Rs. 22 crores as non-interest bearing loan in October 2017 to Fab Realcon Private Limited, which was repaid to the Corporate Debtor in January 2018. The Audit Report therefore identifies the interest loss as a result of this transaction as being Rs. 1.01 crores.

(ix) It is respectfully submitted that the erstwhile IRP in the Avoidance Application has categorised interest free loans as being undervalued in nature as per Section 45 of the Code. Further, the erstwhile IRP has also stated that the Corporate Debtor suffered a loss of Rs. 9.58 crores on account of providing interest free loans to the parties referred to in paragraph B(i) above, as against Rs. 23.49 crores stated off in the Audit Report, (a) since some of the transactions were carried out prior to the lookback period as referred to in Section 46 of the Code, and (b) since the amount provided to Lotus Greens Developers Private Limited was provided as advances against a construction contract, and not as a loan. However, the Applicant is of the opinion that the entire amount of Rs. 23.49 crores ought to considered as a loss caused to the Corporate Debtor for loss on account of interest free loan, pursuant to Section 66 of the Code. Further, even if monies were provided to Lotus Greens Developers Private Limited as advances, significant interest loss was caused to the Corporate Debtor, an average amount of Rs. 27.37 crores was advanced to Lotus Greens Developers Private Limited throughout the period between 2018 and 2020. [***Note: Client to confirm the factual veracity of the statement***]

(x) The Applicant is therefore of the opinion that the provision of interest free advances being provided to the entities referred to hereinabove, was with the intent of unduly benefitting these parties while adversely affecting the interests and injuring the interests and intentionally deceiving creditors, lenders and other financial institutions which had

exposure to the Corporate Debtor. Additionally, it seems evident that due diligence was not exercised in order to minimize the potential losses that may have been caused to the creditors of the Corporate Debtor company. The Applicant is therefore of the view that this transaction is *ex-facie* fraudulent in nature as per Section 66 of the Code, undertaken with the intent of defrauding creditors.

the transactions as fraudulent transactions, as per Section 66 (1) of the IBC.

(vi) In the absence of sufficient evidence, it is respectfully submitted that the Hon'ble Adjudicating Authority may direct appropriate government agencies to investigate if the transactions in Para D (a) and (b) are also fraudulent in nature in accordance with Section 66 of the Code on account such services actually never having been provided to the Corporate Debtor.

Ld. Counsel for the Applicant could draw our attention to the forensic audit report, wherein the Forensic Auditor could take note of the payment of the aforementioned amount to Respondent No. 1, without there being any basis for the same. The Forensic Auditor had noted that as per Clause 10 of the work order, 100% of the RA Bill amount was to be released within 15 working days from the date of certification of the bill from the Project in-charge, while actually the amount of Rs.9 Crores was to be paid to the supplier for civil and construction work (supply of goods/services). The relevant excerpt of the Forensic Report reads thus:

9.1. Everett Infra & Engineering Equipment Pvt. Ltd - Unrelated Party

As per the work order dated 04th January 2019, CD has placed an work order to the supplier for "Completion of Civil & Structure work at "ARENA-II" Project at Sec-79, Noida.

As per clause no. 10 of the said work order, it is mentioned that 100% of RA bill amount (after necessary deductions) may be released within 15(Fifteen) working days from the date of certification of bill from project in charge, while in actual an amount of Rs. 9.00 Crores (in totality) has been paid to the supplier as an advance against civil work-super structure.

Against the said advance, Invoices of Rs. 9.27 Crores (including GST) has been accounted for in the month of Nov' 2019.

Based on the available information and our further analysis, we have observed the following: -

- CD has released a substantial amount as an advance while there was no such stipulation was given in the work order clause No. 10
- GSTIN (09AADCE5929Q1ZW) of the supplier has been cancelled sue-moto on 27.11.2019 (SS are attached Below)

TRANSACTION AUDIT REPORT **M/S PIYUSH IT SOLUTIONS PRIVATE LIMITED**

Legal Name of Business	Trade Name
EVERETT INFRA AND ENGINEERING EQUIPMENTS PRIVATE LIMITED	EVERETT INFRA AND ENGINEERING EQUIPMENTS PRIVATE LIMITED

Profile Place of Business

Administrative Office	Other Office	Date of Registration
(JURISDICTION - STATE) State - Uttar Pradesh Zone - Lucknow I Range - Lucknow (A) Sector - Lucknow Sector- 1	(JURISDICTION - CENTER) Commissionerate - LUCKNOW Division - LUCKNOW-I Range - RANGE-1	01/12/2018
Constitution of Business	**GSTIN / UIN Status**	**Taxpayer Type**
Private Limited Company	Cancelled suo-moto (Effective from 27/11/2019)	Regular

- Supplier has filed the GST returns till Sep' 2019 only meaning thereby is that CD has not received the Input Tax Credit of Rs. 1,43,82,114/-on supplies received.
- GSTIN of all the states of said supplier is found as inactive as per screenshot attached

Search Result based on PAN : AADCE5929Q

S. No.	GSTIN/UIN	GSTIN/UIN Status	State
1	21AADCE5929Q1ZA	Inactive	Odisha
2	02AADCE5929Q1ZA	Inactive	Himachal Pradesh
3	20AADCE5929Q1ZC	Inactive	Jharkhand
4	07AADCE5929Q1ZG	Inactive	Delhi
5	07AADCE5929Q2ZZ	Inactive	Delhi
6	09AADCE5[illegible]Q1ZW	Inactive	Uttar Pradesh
7	23AADCE5929Q1ZB	Inactive	Madhya Pradesh
8	37AADCE5[illegible]Q1ZK	Inactive	Andhra Pradesh
9	19AADCE5929Q1ZV	Inactive	West Bengal
10	27AADCE5[illegible]Q1ZV	Inactive	Maharashtra

- Supplier is found as booked under the list of parties booked for issuing/ availing fake GST and input tax credit issued by the Director General of Analytics and risk management on 22.07.2020

Also, Inspite of knowing the facts that Input Tax Credit on the aforesaid mentioned invoice was not made available, the CD has given an additional amount of Rs. 1.00 Crores in the m/o Mar' 20 thereby net recoverable balances roses to Rs. 73.15 lacs till the date of CIRP.

TRANSACTION AUDIT REPORT **M/S PIYUSH IT SOLUTIONS PRIVATE LIMITED**

On basis of analysis and taking into consideration all the above-mentioned points, we are of the opinion that transaction appears to be of suspicious and fraudulent transaction u/s 66 of IBC' 2016 as under: -

- Rs. 9.00 Crores given as an advance to the supplier without accepting any retention money.
- As the amount has already been released in advances, Clause of defect liability period not being complied with.
- Supplier found as booked for issuing fake ITC and credit not made available to the CD
- Further Amount of Rs. 1.00 Crores released in Mar'2020 though the ITC of Rs. 1,43,82,114/- was not reflecting in the GSTR 2A of the CD. It shows the gross negligence of the CD to provide the undue benefit to the supplier and further to deceive the creditors, lenders and homebuyers.

On the basis of analysis mentioned above, the transaction amounting to 10 Cr appears to be fraudulent transaction U/s 66 of IBC' 2016.

It is unheard of that, for the supply of goods and services, an exorbitant amount as above is paid by any party to contract in advance, without there being any written agreement to that effect. The Forensic Auditor could conclude that the transaction seems to be fraudulent. The transaction could be entered into in November'2019, when the CIRP commenced on 28.10.2020. Indubitably, the same was entered into by the Promoter/management qua the Corporate Debtor, to keep the funds/resources of the Corporate Debtor away from the reach of the Corporate Debtor in the process. In the wake, the application is allowed, and the Respondent No. 1 is directed to pay back the amount of Rs.10 Crores along with interest at the rate of 12% to the CIRP account of the Corporate Debtor within four weeks.

Besides the aforementioned, the Corporate Debtor extended an interest-free financial facility amounting to Rs.23.49 Crores to the parties referred to in the Forensic Audit Report. In terms of the Forensic Audit Report, the extension of an interest-free financial facility to related parties amounted to a fraudulent transaction, causing loss to the Corporate Debtor and, in a way, keeping the resources of the Corporate Debtor away from the reach of the creditor. Clause 9.2 of the report reads thus:

9.2. Interest free loan provided to Related / Non related / Group Entities

CD has provided interest free loan and advance to various group entities while on the other side, CD was paying interest @ 18.5% to the debenture issued to Altico Capital India Ltd. Details are as under: -

(Amount in Crs)

Particulars	31-03-2018 (A)	31-03-2019 (B)	28-10-2019 (C)	28-10-2020 (D)	Average (A+B)/2	Average (B+C)/2	Average (C+D)/2	Total Average	Interest @18.5%
Apricot Buildcon Pvt.Ltd.	2.22	0.72	0.72	-	1.47	0.72	0.36	2.55	0.47
Fab Realcon (P) Ltd.	0.83	2.55	2.55	-	1.69	2.55	1.28	5.52	1.02
Granite Gate Properties Pvt.Ltd.	0.16	0.01	0.01	0.01	0.09	0.01	0.01	0.11	0.02

TRANSACTION AUDIT REPORT **M/S PIYUSH IT SOLUTIONS PRIVATE LIMITED**

Particulars	31-03-2018 (A)	31-03-2019 (B)	28-10-2019 (C)	28-10-2020 (D)	Average (A+B)/2	Average (B+C)/2	Average (C+D)/2	Total Average	Interest @18.5%
Lotus Greens Constructions Pvt Ltd	1.36	0.54	8.92	-	0.95	4.73	4.46	10.14	1.88
Lotus Greens Developers Pvt Ltd	4.20	13.44	11.86	(0.06)	8.82	12.65	5.90	27.37	5.06
NS Global Pvt ltd	-	34.69	3.62	-	17.35	19.16	1.81	38.31	7.09
Rim rock Shelter LIP	13.75	13.75	-	-	13.75	6.88	-	20.63	3.82
Three C Green Developers Pvt Ltd	14.29	(0.02)	(0.01)	-	7.14	(0.02)	(0.01)	7.12	1.32
Three C Infratech Private Limited	0.33	-	-	-	0.17	-	-	0.17	0.03
Three C Universal Developers Pvt Lt	30.12	0.02	-	-	15.07	0.01	-	15.08	2.79
Total	67.26	65.70	27.67	(0.05)	66.48	46.69	13.81		23.49

These loans appear to be given to group entities to deceive the creditors, lenders and other financial institutions. Although these loans were received back as on CIRP Date but this transaction has resulted in actual interest loss to the CD. Few Party wise details are given below: -

9.2.1. *Transaction with Three C Green Developers P Ltd.*

CD has transferred Rs. 33.00 Crores as per the terms of debenture issued to Altico Capital India Ltd. Out of the said funds, it was mentioned that Rs. 20.28 Crores is transferred as inter-corporate deposit/ loan to Three C Green Developers P Ltd. (erstwhile holding co. of the CD). The said funds are recovered from the CD as under (Major transactions reported hereunder): -

Date	Amount Received
13-11-2017	1,00,00,000
07-03-2018	8,85,00,000

28-01-2019	10,20,50,100

From the table above, it is clear that the amount got stuck for a period of more than 1.5 years and CD incurred total interest cost on the blockage of fund to Rs. 1.32 Crores (approx.).

We are of the opinion that said loss of interest is a fraudulent transaction u/s 66 of IBC 2016.

9.2.2. *Three C Universal Developers P Ltd.*

An amount of Rs. 30.12 Crores was lying as recoverable as per the Audited Balance Sheet of Mar' 2018 which was subsequently got recovered in Jan' 2019. **It is clear that said fund has been diverted or used for the benefit of group entity. Said fund was blocked for a period of around 19 months (July 2017- Jan 2019) and has caused interest loss to the CD to the tune of Rs. 2.80 Crores.**

Though, the purpose of the aforesaid transaction is not explained to us but in our opinion the said transaction has caused a huge loss to the CD on account of not charging interest on loan. The CD could have repaid the debentures or use that money into the project but instead the preference was given to group concern of the money that even didn't belong to the CD.

Though the funds are received back later but this transaction appears to be a fraudulent transaction under sec 66 of IBC' 2016 as the funds of others have been used for other purpose to benefit others and shows mala-fide intention of CD to deceive the creditors, lenders and homebuyers.

9.2.3. *Rimrock Shelters LLP*

CD has transferred Rs. 13.75 Crores to the said party as non-interest-bearing loan in Mar' 2018 and has received back these funds in Aug' 2019.

In the Audited Balance Sheet of Mar' 2018, the aforesaid transaction has been disclosed under the heading loans and advances to Related parties and in the Mar' 2019, it has been disclosed under the head loans and advances to others.

On the latest available data at ROC, Mr. Haran Karan Uppal S/o Mr. Nirmal Singh hold 99.99% share in Teal Infracon Pvt. Ltd. and Teal Infracon Pvt. Ltd hold 99.99% stake in Partnership firm Rim rock Shelters LLP. Though the relationship couldn't be established under IBC, 2016, however, since this entity being part of the Lotus group and is under significant influence of the control and supervision of the same management as that of CD. The entity is also registered at the same address as that of CD.

Though, the purpose of the aforesaid transaction is not explained to us but in our opinion the said transaction has caused a loss of Rs. 3.82 Crores (approx.) to the CD on account of not charging interest on loan. The CD could have repaid the debentures or use that money into the project but instead the preference was given to group concern of the money that even didn't belong to the CD.

Though the funds are received back later but this transaction appears to be a fraudulent transaction under sec 66 of IBC' 2016 as the funds of others have been used for other purpose to benefit others and shows malafide intention of CD to deceive the creditors, lenders and homebuyers.

9.2.4. *N S Global P Ltd.*

CD has transferred Rs. 34.23 Crores to the said party as non-interest-bearing loan in Jan' 2019 and has received back these funds by the end of Mar' 2020.

In the Audited Balance Sheet of Mar' 2019, the aforesaid has been disclosed under the heading loans and advances to Related parties.

On further research, it is found that registered office of the co, is same as that of the CD and email id are also same and this entity being part of the Lotus group and is under significant influence of the control and supervision of the same management as that of CD.

Though, the purpose of the aforesaid transaction is not explained to us but in our opinion the said transaction has caused a loss of Rs. 7.09 Crores (approx.) to the CD on account of not charging interest on loan. The CD could have repaid the debentures or use that money into the project but instead the preference was given to group concern of the money that even didn't belong to the CD.

Though the funds are received back later but this transaction appears to be a fraudulent transaction under sec 66 of IBC' 2016 as the funds of others have been used for other purpose to benefit others and shows malafide intention of CD to deceive the creditors, lenders and homebuyers.

9.2.5. *Fab Realcon private limited*

CD has transferred Rs. 22.00 Crores to fab Realcon private limited in in Oct' 2017 as non-interest-bearing loan and has received back these funds in Jan' 2018.

Though, the purpose of the aforesaid transaction is not explained to us but in our opinion the said transaction has caused a loss of Rs. 1.01 Crores (approx.) to the CD on account of not charging interest on loan. The CD could have repaid the debentures or use that money into the project but instead the preference was given to group concern of the money that even didn't belong to the CD.

Though the funds are received back later but this transaction appears to be a fraudulent transaction under sec 66 of IBC' 2016 as the funds of others have been used for other purpose to benefit others and shows malafide intention of CD to deceive the creditors, lenders and homebuyers.

Apparently, the extension of the financial facility to certain parties, impleaded as Respondent Nos. 3 to 10 in the application, is an act performed, precipitating the commencement of CIRP to divert the resources of the Corporate Debtor, and the transactions amount to fraudulent transactions. Nevertheless, the RP has not raised any plea that the amount could not be returned to the Corporate Debtor, and he has raised the issue of interest only. In the wake, in our view, the interest of justice would be subserved if the directions are given to Respondent Nos. 3 to 10 to pay interest on the amount disbursed to them from the date of disbursement till the date of repayment of the same. The Respondent Nos. 3 to 10 are directed to pay interest at the rate of 18% per annum on the amount disbursed to them by the Corporate Debtor from the date of disbursement till the date of repayment of the amount to the Corporate Debtor within two weeks from today.

The application also contained certain allegations constituting fraudulent transactions in respect of allotment of seven flats. The allegations made in the application read thus:

> ***C. Flats wherein the amounts received is less than Rs. 1 Lakh***
>
> **(i)** The Audit Report identifies the allotment of 7 flats to Mr. Vaibhav Krishna, Star Builder and Contractors, Mr. Vishva Deepak Pandey, Mr. Debendra Bahadur Singh, Ms. Aradhna Singh, Mr. Mohit Malhotra and Mr. Amit Gulati. Copy of the table containing the relevant details of the allotment of 7 flats annexed herewith as **Annexure A-4**. Out of a total consideration of Rs. 6.78 crores, only Rs. 3.32 Lakhs had been received at the time of the Audit Report.
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> **(ii)** The Audit Report further notes that no other documents were provided and therefore concluded that the transaction is fraudulent in nature under Section 66 of the Code.
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> **(iii)** The Applicant is of the opinion that the transaction is ex-facie fraudulent in nature under Section 66 of the Code. The assets of the Corporate Debtor have been used to benefit third party entities to the detriment of the Corporate Debtor and its creditors. It is submitted that it is evident that the same was done with the knowledge that these transactions would cause losses to the Corporate Debtor and its other creditors.
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> ***D. Transactions where all necessary and relevant documents have not been made available to the Auditor***
>
> **(i)** The Audit Report identifies certain transactions as being fraudulent in nature. Relevant documents such as agreements and invoices to justify payments in relation to these transactions were not made available to the Auditor, leaving him unable to verify the genuineness of such transactions. Accordingly, the said transactions were classified as fraudulent transactions under Section 66 of the Codee.
>
> ***(a) Transactions in relation to Lotus Green Developers Private Limited and Three C Green Developers Private Limited***

(ii) The Audit Report identifies that out of a total cost of Rs. 274.39 crores incurred by the Corporate Debtor towards the development of Arena-II, 80% of the total costs were made to group concerns, *i.e.* Lotus Greens Developers Private Limited and to Three C Green Developers Private Limited. Out of the total costs of Rs. 274.40 crores, Rs. 173.53 of the civil costs were incurred towards development activities carried out by Lotus Greens Developers Private Limited.

(iii) The Audit Report further noted that in the financial year 2014-15, the Corporate Debtor has paid Project management fee of INR. 8.99 crores representing 3% of total inventory. The documents relating to such services, which would justify such payments, has not been made available for verification. Consequently, the Auditor was unable to verify the genuineness of the payments made

(b) Allotment of Flats through credit notes

(iv) The Audit Report also makes references to allotment of flats to certain entities and individuals to whom the purchase consideration was adjusted through the issuance of credit notes. The Audit Report identifies the adjustment of purchase consideration through issuance of credit notes to the following entities and individuals: (i) Rana Pratap Singh, (ii) Sushila Chhabra, (iii) Unified Captial Solutions Private Limited, (iv) Manav Kaushal and (v) Karan Singh. By way of illustration, a flat worth Rs. 81.35 lakhs was allotted to Unified Captial Solutions Private Limited against the initial receipt of Rs. 0.13 lakhs. The Corporate Debtor passed an adjustment entry by issuance of credit notes amounting to Rs. 61.53 lakhs for brokerage, and the balance is still pending from Unified Captial Solutions Private Limited.

(v) The Auditor notes that the the subject transactions were of a fraudulent nature. Due to non-availability of all the necessary documents, the Auditor was unable to verify the genuineness of the transactions and whether the transactions were undertaken at arms length price. Consequently, given the nature of the transaction, the Auditor classified

the transactions as fraudulent transactions, as per Section 66 (1) of the IBC.

(vi) In the absence of sufficient evidence, it is respectfully submitted that the Hon'ble Adjudicating Authority may direct appropriate government agencies to investigate if the transactions in Para D (a) and (b) are also fraudulent in nature in accordance with Section 66 of the Code on account such services actually never having been provided to the Corporate Debtor.

During the course of the hearing, the RP could submit that he is not sure about the transaction being fraudulent or not and needs to verify the position. In the wake of the stand taken by him, the RP is directed to file a fresh application in respect of the above transaction after verification of the factual position within one week, from today. **Subject to the aforementioned, the application stands disposed of.**

Sd/-
(ATUL CHATURVEDI)
MEMBER (T)

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