



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

IN THE MATTER OF CP(IB) NO. 2582/ND/2019:

M/s Jakson Limited

**... Petitioner/
Operational Creditor**

Versus

M/s Three C Universal Developers Pvt Ltd

**... Respondent/
Corporate Debtor**

AND IN THE MATTER OF I.A. No. 4750/2024:

Smt. Santosh Garg

R/o House No. 55, Model Town,
Ambala City- 133201, Haryana

... Applicant No. 1

AND

Smt. Deepika Garg

R/o House No. 127, Sector- 1,
Ambala City, District Barara- 133201,
Haryana

... Applicant No. 2

AND

Mr. Vishal Garg

R/o House No. 127, Sector- 1,
Ambala City, District Barara- 133201,
Haryana

... Applicant No. 3

AND

Mr. Tarsem Kumar

R/o House No. 55, Model Town,
Ambala City- 133201, Haryana

... Applicant No. 4

Versus

**Mr. Rakesh Kumar Gupta,
Resolution Professional for
Three C Universal Developers Pvt. Ltd.
Off: 701, Vikrant Tower, Rajendra Place,
New Delhi – 110008**

... Respondent

Under Section: 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016



Order delivered on 18.03.2025

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. ANIL RAJ CHELLAN, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Sumesh Dhawan, Adv. Karan Kohli, Adv. Raghav, Adv. Kapoor

For the RP : Adv. Rakesh Kumar Gupta, Adv. Abhishek Anand

PER: SHRI ASHOK KUMAR BHARDWAJ, MEMBER (J)

ORDER

IA- 4750/2024:

The CP(IB) No. 2582/ND/2019 was preferred under Section 9 of IBC, 2016 by M/s Jakson Limited (hereinafter referred to as, “**Operational Creditor**”) against M/s Three C Universal Developers Private Limited (hereinafter referred to as, “**Corporate Debtor/ CD**”) and this Tribunal in terms of order dated 17.02.2019 directed the initiation of Corporate Insolvency Resolution Process against the Corporate Debtor. Presently, Mr. Rakesh Kumar Gupta (hereinafter referred to as, “**Respondent/ RP**”) is acting as the Resolution Professional qua the Corporate Debtor.

2. The Respondent/ RP had preferred I.A. No. 3054 of 2021 under Section 66 of the Code wherein Respondent Nos. 1-2 are the suspended directors and the Nos. 3-5 are promoters qua the CD and the Applicants herein are arrayed as Respondents No. 6-9. It is the contention of the RP that the Respondents had defrauded the creditors of the Corporate Debtor to the tune of Rs. 66,70,00,000/- by way of certain transactions regarding purchase of land whereby the Corporate



Debtor and its subsidiary, M/s Three C Infratech Private Limited, separately purchased certain agricultural land parcels from the Respondent No. 6-9 in I.A. No. 3054/2021 at exorbitant rates with the intention to defraud the creditors of the Corporate Debtor.

3. The captioned application i.e. I.A. No. 4570/ 2024 has been preferred by the Applicant with the prayer to remove their respective names from the array of Respondents in I.A. No. 3054/2021. The reliefs sought by in the captioned application reads thus: -

- a. Allow the present application; and*
- b. Direct the Respondent to the removal of Applicants who are parties in the Application bearing I.A. No. 3054 of 2021 as Respondent No. 6, 7, 8 and 9 in terms of the Gluckrich Capital Pvt. Ltd. vs. The State of West Bengal & Ors. Special Leave Petition (Diary No. 6732 of 2023) passed by the Hon'ble Supreme Court.*
- c. Pass such other or further order(s) as may be deemed fit and proper in the facts and circumstances of the instant case.*

4. The factual background of the matter as well as the pleas raised by the Applicant/ RP, as espoused in the application, reads thus: -

- (i) The Respondent/ RP filed I.A. No. 3054/ 2021 under Section 66 of the Code against the Suspended Management and promoters of the CD and also made Applicants as parties in the said Application.
- (ii) The I.A. No. 3054/ 2021 is *ex-facie* not maintainable against the Applicants in view of the judgment of Hon'ble Supreme Court in



Gluckrich Capital Pvt Ltd. vs. The State of West Bengal & Ors.

[Special Leave Petition (Diary No. 6732 of 2023)] which provides that Section 66 of the Code can only be invoked against persons who were responsible for the conduct of the business of the Corporate Debtor and not against third parties.

- (iii) The Applicants are neither Partners nor Directors qua the CD and thus, as third parties, no relief can be sought against them under Section 66 of the Code. Further, the Applicants are in no manner involved in the business of CD and/ or responsible for the conduct of the same.
- (iv) This Adjudicating Authority in terms of order dated 21.03.2024 in I.A. No. 5233/2021, I.A. No. 5102/2020, I.A. No. 5094/2021 in the present company petition had directed the Respondent/ RP to study the aforesaid judgment of ***Gluckrich Capital Pvt. Ltd. (supra)*** and further held that it is for the RP or the SRA, as the case may be, to take such civil remedies against third party, for recovery of dues payable to CD, which may be available in law and that the remedy against third party is not available under Section 66 of the Code.

5. The contentions espoused by the RP are: -

- i. The application filed on 20.09.2024 seeking removal/ deletion of names of the applicants from the array of Respondents in I.A. No. 3054 of 2021 is belated and the same is an attempt to wriggle out the liability of the Applicants towards the Corporate Debtor.



- ii. The reliance on the judgment of *Gluckrich Capital Pvt. Ltd. (supra)* owing to the fact that the legal landscape surrounding the applications filed under Chapter III of the Code has evolved since the passing of the aforementioned judgment is misplaced. The judgment in *Gluckrich Capital Pvt. Ltd. (supra)* has been diluted by the Hon'ble NCLAT in ***Royal India Corporation Limited vs. Mr. Nandkishor Vishnupant Deshpande & Ors.*** [Company Appeal (AT) (Insolvency) No. 137/ 2021] wherein it has been held that the facts of said judgment were distinct in nature and action under Section 66 of the Code can be taken against “any persons” for recovery of amount involved in the fraudulent transaction.
- iii. Furthermore, this Adjudicating Authority in ***Relan Buildwell Private Limited versus Kaliber Associates Private Limited*** [I.A. No. 2833 of 2022] in terms of order dated 11.09.2024 also diluted the law laid down in *Gluckrich Capital Pvt. Ltd. (supra)* and held that when third parties to a Corporate Debtor act like any person who carry out the business of the Corporate Debtor with an intent to defraud the creditors or for any other fraudulent purpose then those third parties are liable under Section 66 of the Code for appropriate contributions to the assets of the Corporate Debtor as this Hon'ble Adjudicating Authority deems fit.
- iv. The Applicants are indubitably third parties to the Corporate Debtor however, without a shadow of doubt they have acted as parties who carry out the business of the Corporate Debtor with an intent to defraud the



creditors and have been directly involved with keeping funds of the Corporate Debtor out of the reach of creditors.

- v. It is a matter of record that payments towards purchase of agricultural lands were made at extortionate and exorbitant rates i.e., 29 times the prevailing rates in the market for such lands, and further the consideration for the lands was accepted by the Applicants without any agreement to the effect and three years prior to the registration of the sale deed. Furthermore, the land was purchased by routing the funds through a wholly owned subsidiary of the Corporate Debtor when the same subsidiary owed approximately 100 Crores to the Corporate Debtor.
- vi. There was a deliberate design by the parties involved in the said transaction, including the Applicants herein, to keep a cumulative amount of Rs. 66,70,00,000/- out of the reach of the creditors by: *firstly*, siphoning off of funds from the Corporate Debtor in the name of purchasing immovable property without any agreement to this effect; *secondly*, falsifying land records and showing purchase of immovable property after a lapse of three years; and *thirdly*, immediately after registration offering the immovable property to a judicial forum in recovery proceedings instituted qua the Corporate Debtor and its subsidiary.
- vii. Thus, the Applicants herein are necessary parties to the I.A. No. 3054 of 2021, who played their nefarious part in defrauding the creditors of the Corporate Debtor and cannot be simpliciter removed/deleted from the array of parties in the said application.



ANALYSIS & FINDINGS:

6. From the perusal of the aforementioned submissions made by both the parties, the moot question which arises for determination by this Adjudicating Authority is whether the Applicants, who sold certain land parcels to the Corporate Debtor, allegedly at exorbitant prices, can be arrayed as Respondents in an application filed under Section 66 of the Code.

7. It is pertinent to note that this Court in terms of order dated 11.09.2024 in the matter of **Relan Buildwell Private Limited vs. Kaliber Associates** [I.A. No. 2833/2022 in CP(IB) No. 228/PB/2018], had the occasion to examine in detail the object and intent of Section 66 of the Code as well as the judicial precedents on the subject matter. Therefore, it is apposite to refer to the relevant excerpts of the aforementioned order, which reads thus: -

“26. In order to appreciate the contentions raised by the Ld. Counsels for the parties, we need to decipher the provisions of Section 66 of the Code. As can be seen from the provisions of sub-section (1) of the Section, if during the Corporate Insolvency Resolution Process or a Liquidation Process, it is found that any business of the Corporate Debtor has been carried on with intent to defraud creditors of the Corporate Debtor or for any fraudulent purpose, the Adjudicating Authority may on the application of the Resolution Professional pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contribution to the assets of the Corporate Debtor as it may deem fit. From a plain and simple reading of sub-section (1) of Section 66, it emerges that the satisfaction of the provision entails the following ingredients: -



- (i) *Carrying of business;*
- (ii) *Intention to defraud the creditors of CD or for any fraudulent purpose;*
- (iii) *Any person who is knowingly party to carrying on the business with the intent to defraud creditors of the Corporate Debtor or for any other fraudulent purpose.*

27. *From the aforementioned, it is clear that any person who is party to the business of the Corporate Debtor is liable to make the contributions to the assets of the Corporate Debtor as per directions of this Tribunal/ Adjudicating Authority. In order to appreciate the liability of other persons, with whom the Corporate Debtor carried the business, it would be appropriate to comprehend the concept of party to business as also the business of the Corporate Debtor. One also need to appreciate as to whether the expression “carrying on business” means the business of the Corporate Debtor or business term/ contract of any party with the Corporate Debtor.*

28. *If we go by the principle of Noscitur a sociis, the meaning of an unclear word can be determined by considering the word around it in context. This helps in ensuring that the interpretation of law or contract is aligned with the document’s purpose and structure. Thus, while comprehending the expression “any person who were knowingly parties to the carrying on of the business” used in Section 66(1) of the Code, we may fall back on the expression “any business of the Corporate Debtor”. If we go by the expression used in second sentence of Section 66(1) of the Code, the “any person who were knowingly parties to the carrying on of business” would mean that only a person who is carrying the business of the Corporate Debtor and not the business with Corporate Debtor.*



29. **In Smt. Sudipa Nath vs. Union of India** [WPC (PIL) 04/2023], Hon'ble High Court of Tripura at Agartala ruled that an application contemplated exclusively under Section 66(1) of IBC, 2016 is not made for avoidance of any transaction. In the said judgment Hon'ble High Court viewed that Section 66(1) of the Code confers no jurisdiction upon this Tribunal but declaring any transaction as void, even if fraudulent but confers jurisdiction on it to fix the liabilities on the persons responsible for conducting business of Corporate Debtor which is fraudulent or wrongful. In terms of the judgment, Section 66(1) contemplates an application thereunder only by the Resolution Professional and by none other and restrict the power of NCLT by stipulating that the provision can be invoked only when the business of the Corporate Debtor is carried with intent to defraud creditors or Corporate Debtor or for any fraudulent purpose. According to the Hon'ble High Court, even after being satisfied that the business of the Corporate Debtor is carried on with the intent to defraud creditors or the Corporate Debtor any fraudulent purpose, this Tribunal can pass order only against a person who are responsible for the conduct of such fraudulent business of the Corporate Debtor with mens rea to make them personally liable to make such contributions to the assets of the Corporate Debtor as it may deem fit. Para 19 of the judgment reads thus: -

“19. Therefore, in legislature wisdom and as apparent from the text of 66(1) it is clear that firstly it confers no jurisdiction but declaring any transaction as void, even if fraudulent, but confers jurisdiction on NCLT to fix the liabilities on the persons responsible for conducting business of corporate debtor which is fraudulent or wrongful. Secondly section 66(1) contemplates an application thereunder only by the resolution professional and by none other. Thirdly section 66 (1) also restricts the



power of NCLT subject to being satisfied with pre-requisite that any business of the corporate debtor has been carried on with intent to defraud creditors or the corporate debtors or for any fraudulent purpose and if satisfied it powers to pass an order is only against such person who are responsible for the conduct of such fraudulent business of the corporate debtor with mens rea to make them personally liable to make such contributions to the assets of the corporate debtor as it may deem fit.”

30. *In terms of the provisions of Section 66(1) of the Code, the Adjudicating Authority may direct only a Director or the Partner of the Corporate Debtor, as the case may be to make such contribution to the assets of the Corporate Debtor as it may deem fit, if –*

- (a) Before the insolvency commencement date, such director or the partner knew or ought to have known that there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor; and*
- (b) Such director or partner did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor.*

31. *From the aforementioned, it is clear that even a Director or a Partner of a Corporate Debtor can be held liable to make contribution to the assets of the Corporate Debtor, if before the Insolvency Commencement Date, the Director or Partner knew or ought to have known that there was no reasonable prospect of avoiding the commencement CIRP in respect of such Corporate Debtor and they did not exercise due diligence in minimizing the potential loss to the creditors of the Corporate Debtor. Thus, the determining factor regarding exercise of power by this Tribunal to direct even the*



Director or Partner of the Corporate Debtor to make contribution to the assets of the CD is that the Director or Partner should be posted with the fact that there was no reasonable prospect of avoiding the commencement of CIRP in respect of the CD, and in the backdrop do not exercise due diligence in minimising the potential loss to the Corporate Debtor.

32. The explanation below sub-section (3) of Section 66 of the Code outlines the due diligence by providing that a Director or a Partner of a Corporate Debtor, as the case may be shall be deemed to have exercised due diligence if the diligence was reasonably expected of a person carrying out the same function as are carried out by such Directors or Partners as the case may be in relation to Corporate Debtor. So, if the diligence exercised by the Director or the Partner regarding the business of the CD is found reasonable to ensure to minimise the potential loss to the creditor of the Corporate Debtor, it may not be held liable for contributing to the assets of the Corporate Debtor.

33. In terms of the provisions of Section 66(1) of the Code where an order is passed by this Adjudicating Authority under sub- section (1) or (2) of Section 66 as the case may be, it may give such further direction as it may deem appropriate for giving effect to the order and it may provide for the liability of any person under the order to be charged on any debt or obligation due from the Corporate Debtor to him, or any mortgage or charge or any interest or charge on assets of the Corporate Debtor held by or vested in him, or any person on his behalf, or any person claiming as an assignee from or through the person liable or any person acting on his behalf. Additionally, this Adjudicating Authority may make such further directions as may be necessary for enforcing any charge imposed under clause (a) of sub- section (1) of Section 67 from time to time.



34. The explanation given below Section 67(1) provides that for the purpose of the Section, “assignee” includes a person to whom or in whose favour, by the direction of the person held liable under clause (a) the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration given in good faith and without notice of any of the grounds on which the directions have been made.

35. Sub-section (2) of Section 67 of the Code provides that where the Adjudicating Authority could pass an order under sub-section (1) or sub-section (2) of Section 66, as the case may be, in relation to a person who is a creditor of the CD, it may by order direct that the whole or any part of any debt owed by the Corporate Debtor to that person and any interest thereon shall rank in order of priority of payment under Section 53 after all other debts owed by the Corporate Debtor.

36. As is clear from the aforementioned, while examining the issue raised in the captioned I.A., Sections 66 and 67 of the Code are very pertinent and relevant, thus it would be useful to capture the language of the same in the order as it is. Therefore, the provisions of the Sections are noted thus: -

“66. Fraudulent trading or wrongful trading. –

(1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may on the application of the resolution professional pass an order that any persons who were knowingly parties to the carrying on of the business in



such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.

(2) On an application made by a resolution professional during the corporate insolvency resolution process, the Adjudicating Authority may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit, if-

(a) before the insolvency commencement date, such director or partner knew or ought to have known that there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor; and

(b) such director or partner did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor.

(3) Notwithstanding anything contained in this section, no application shall be filed by a resolution professional under sub-section (2), in respect of such default against which initiation of corporate insolvency resolution process is suspended as per section 10A.

Explanation. – For the purposes of this section a director or partner of the corporate debtor, as the case may be, shall be deemed to have exercised due diligence if such diligence was reasonably expected of a person carrying out the same functions as are carried out by such director or partner, as the case may be, in relation to the corporate debtor.”

“67. Proceedings under section 66. –



(1) Where the Adjudicating Authority has passed an order under subsection (1) or sub-section (2) of section 66, as the case may be, it may give such further directions as it may deem appropriate for giving effect to the order, and in particular, the Adjudicating Authority may—

(a) provide for the liability of any person under the order to be a charge on any debt or obligation due from the corporate debtor to him, or on any mortgage or charge or any interest in a mortgage or charge on assets of the corporate debtor held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf; and

(b) from time to time, make such further directions as may be necessary for enforcing any charge imposed under this section.

Explanation. – For the purposes of this section, “assignee” includes a person to whom or in whose favour, by the directions of the person held liable under clause (a) the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration given in good faith and without notice of any of the grounds on which the directions have been made.

(2) Where the Adjudicating Authority has passed an order under subsection (1) or sub-section (2) of section 66, as the case may be, in relation to a person who is a creditor of the corporate debtor, it may, by an order, direct that the whole or any part of any debt owed by the corporate debtor to that



person and any interest thereon shall rank in the order of priority of payment under section 53 after all other debts owed by the corporate debtor.

37. In **Usha Ananthasubramanian vs. Union of India** [(2020) 4 SCC 122], followed by the Hon'ble High Court of Tripura, with reference to Section 337 and 339 of the Companies Act, 2013, Hon'ble Supreme Court ruled that the powers under the provisions could not be possibly be utilised in order that a person who may be the head of some other organisation be roped in and his or her assets be attached. Para 8 of the judgment of the Hon'ble High Court in which the judgment of the Hon'ble Supreme Court is referred to, reads thus:

“8. In the context of companies Act, 2013 in **Usha Ananthasubramanian vs. Union of India** (2020) 4 SCC 122, the Hon'ble Supreme Court was pleased to consider the extent of application of section 339(1) and was pleased to observe as under: 7) Section 337 refers to penalty for frauds by an officer of the company in which mis-management has taken place. Likewise, Section 339 refers to any business of the company which has been carried on with intent to defraud creditors of that company. Obviously, the persons referred to in Section 339(1) as persons who are other than the parties “to the carrying on of the business in the manner aforesaid” which again refers to the business of the company which is being mismanaged and not to the business of another company or other persons.

8) This being the case, it is clear that powers under these sections cannot possibly be utilized in order that a person who may be the head of some other organization be roped in, and



his or her assets be attached. This being the case, we set aside the impugned order passed by the NCLAT and well as the NCLT. The appeal is allowed in the aforesaid terms.

9) We may clarify that nothing stated in this judgment will have any effect insofar as the investigation conducted by the CBI or the investigation by the Serious Fraud Investigation Office (SFIO) is concerned.”

38. In **Prashant Properties Ltd. vs. SPS Steels Rolling Mills Ltd** [MANU/WB/2456/2019], Hon’ble High Court of Calcutta ruled that under Section 66(2) of IBC, 2016, this Tribunal can only direct the director or partner of the Corporate Debtor and not other parties to the transaction to make contribution to assets of the Corporate Debtor. Para 10 of the order passed by Hon’ble High Court of Tripura in which the judgment is referred to reads thus: -

“10. In **Prashant Properties Limited vs. SPS Steels Rolling Mills Ltd MANU/WB/2456/2019** in the context of Section 66 of IBC, the Calcutta High Court was pleased to observe as under:

29. Even if Section 66 of the IBC applied to past transactions, unlike Sections 44, 48 and 51 IBC (under which the NCLT, as Adjudicating Authority, can avoid past transactions), under Section 66, the NCLT cannot avoid past transactions, even if fraudulent, but under Section 66(2) can only direct the Director/partner of the Corporate Debtor, and not other parties to the transaction, to make contribution to assets of the Corporate Debtor.....”

“64. Upon hearing both sides, it is seen that Sections 43 and 44, as well as Section 45 of the IBC are inapplicable to the present case, in view of those being maintainable



only at the instance of a liquidator or a resolution professional...”

39. In **Gluckrich Capital Pvt. Ltd. vs. State of West Bengal & Ors.** [Miscellaneous Application No. 1302 of 2023 (Interlocutory Application No. 102537 of 2023) in SLP(Crl.) filed by Diary No. 6732 of 2023], while examining an application, filed seeking clarification of judgment and order dated 24.02.2023 passed by it, Hon’ble Supreme Court viewed that the observation made by Hon’ble High Court of Tripura in **Sudipa Nath (supra)** was correct. Para 7 and 8 of the judgment passed by the Hon’ble Supreme Court reads thus: -

“7. In our considered opinion, in the name of seeking a clarification, the endeavor of the applicant herein is to indirectly get over with the judgment and order dated 18.01.2023 in WP(C) (PIL) 04 of 2023 passed by Tripura High Court. Such an endeavor, in the guise of clarification, cannot be permitted.”

*“8. We may also observe that the Tripura High Court has rightly relied upon the observation made by this Court in a binding precedent, in **Usha Ananthasubramanian Vs. Union of India**, which pertains to a matter under Section 339(1) of the Companies Act, 2013 which is pari materia with Section 66 of IBC. The High Court in the case of Sudipa Nath (Supra) has rightly observed that:—*

“13..... That Section 66 (1) also directed towards making such persons personally liable for such fraudulent trading to recouping losses incurred thereby and to provide that the NCLT can pass order holding such persons liable to make such contributions to the assets of the corporate debtor as it may deem fit. No power has been conferred on NCLT to pass such orders



against other organizations/legal entities (other than corporate debtors) with whom such business was carried out against any person responsible in such other organizations/legal entities for carrying on business with corporate debtor. For the said purpose, the ratio of the judgment of the Hon'ble Supreme Court in Usha Ananthasubramanian (supra) in the context of section 339 (1) one of the companies Act, 2013 as extracted above would clearly apply even in the context 66(1) of IBC. Accordingly, an application under Section 66(1) by the resolution professional would not bar any civil action in accordance with law, either at the instance of resolution professional or liquidator or by the corporate debtor in its new avatar on a successful CIRP for recovery of any dues payable to the corporate debtor by such organization/legal entities. Such legal action is independent of Section 66(1).”

[...]

41. From the aforementioned discussion and analysis, it emerges that: -

(i) Third Party may not be liable to make contribution to assets of the CD, under Section 66 of IBC, 2016, but when the Third-Party act like any person who are knowingly parties to the carrying on of the business of the CD with intent to defraud creditors of the CD or for any fraudulent purpose, it/ he may be liable to make such contribution to the assets of the CD, as it may deem fit.

(ii) Where any persons who were knowingly parties to carrying on of the business of the CD with the intent to defraud the creditors of the CD or for any fraudulent purpose, the Adjudicating Authority may on the application of the Resolution Professional pass an order directing



such persons to make such contributions to the assets of the CD as it may deem fit.

(iii) Director/ Partner of the Corporate Debtor as the case may be are liable to make such contribution to the assets of the CD, as directed by the Adjudicating Authority if having knowledge that there was no reasonable prospect of avoiding the commencement of CIRP in respect of the Corporate Debtor, do not exercise due diligence in minimising the potential loss to the creditors of the Corporate Debtor.

(iv) Due diligence means such diligence which is reasonably expected of a person carrying out the same function as are carried out by such director or partner as the case may be in relation to Corporate Debtor, to minimise the potential loss to the creditors of the Corporate Debtor.

(v) Where the Adjudicating Authority passes an order under subsection (1) or (2) of Section 66, it may give such further directions as it may deem appropriate for giving effect to the order and in particular, it may-

(a) Provide for the liability of any person under the order to be a charge on any debt or obligation due from the corporate debtor to him, or on any mortgage or charge or any interest in a mortgage or charge on assets of the corporate debtor held or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf;

(b) From time to time, make such further directions as may be necessary for enforcing any charge imposed under this section.



(vi) The order under Section 66 (1) and (2) can also be passed in relation to a person who is a creditor of the Corporate Debtor and in such situation, the whole or any part of any debt owed by the CD to that person and in any interest thereon shall rank in the order of priority of payment under Section 53 after all other debts owed by the Corporate Debtor.”

8. The view emerging from the aforementioned analysis is that third persons such as the Applicants in the present case, who sold their land to the Corporate Debtor, cannot said to be falling within the ambit of expression “any persons who were knowingly parties to the carrying on the business of the Corporate Debtor” as used in Section 66 of the Code. In the facts of the present case, an application under Section of the Code, with respect to the concerned transaction for purchase of land, may be maintainable against the persons who were responsible for management of the Corporate Debtor.

9. The Ld. Counsel for the Respondent/ RP had placed reliance on the judgment dated 06.05.2024 passed by the Hon’ble NCLAT in ***Royal India Corporation Limited vs. Mr. Nandkishor Vishnupant Deshpande & Ors.*** [Company Appeal (AT)(Insolvency) No. 137/2021] to contend that the Hon’ble NCLAT had diluted the law as laid down by the Hon’ble Supreme Court in ***Gluckrich Capital (supra)*** and held that action under Section 66 of the Code can be taken against “any persons” for recovery of the amount involved in the fraudulent transactions.



10. However, we do not agree with the above contention. *Firstly*, the law laid down by the Hon'ble Supreme Court cannot be diluted by a lower court/ tribunal. *Secondly*, even in the aforementioned judgment of **Royal India Corporation Limited (supra)**, the Hon'ble Appellate Tribunal had noted that the Corporate Debtor therein as well as the Appellant Company against which action under Section 66 of the Code was being taken were being managed by the same person and therefore, in the facts of said case, the Appellant Company could not be said to be a "third party". The relevant excerpt of the judgment reads thus: -

"10.2 We now examine the Appellants objection that proceedings under Section 66 of IBC, 2016 cannot be taken against the third parties. Before proceeding any further, it will be relevant to refer to the provisions of Section 66(1) of IBC, 2016 which is reproduced below:- [...]"

As per provisions of sub-section (1), the Adjudicating Authority can pass an order directing "any person", who was party to carrying on the business of Corporate Debtor in such manner as to defraud creditors of the Corporate Debtor, or for any fraudulent purpose, to make him liable to make such contribution to the assets of the Corporate Debtor as it may deem fit. A plain reading clearly shows that action can be taken against 'any person' for recovery of amount involved in the fraudulent transaction.

10.3 The Appellant had relied on the judgment of the Hon'ble Supreme Court in the matter of Gluckrich Capital Pvt. Ltd. vs. State of West Bengal & Ors.- 2023 SCC OnLine SC 1187 and in the case Usha Ananthasubramanian vs. Union of India- (2020) 4 SCC 132. On perusal of the judgment of the Hon'ble Supreme Court in the case



of Gluckrich Capital Pvt. Ltd. vs. State of West Bengal & Ors.- 2023 SCC OnLine SC 1187 quoted by the Appellant it is seen that the application seeking clarification of Judgment and order dated 24.02.2023 passed by the Hon'ble Supreme Court in SLP (Crl.), diary no. 6723/23, filed by Applicant was dismissed and the said judgment related to transit anticipatory bail in a criminal case.

10.4 The judgment of the Hon'ble Supreme Court, relied upon by the Appellant in the case Usha Ananthasubramanian vs. Union of India; (2020) 4 SCC 132 the facts were entirely different. The said appeal was filed by Usha Ananthasubramanian, former MD & CEO, Punjab National Bank wherein the judgment of NCLT and NCLAT was set aside. In this case, the allegation was that the Appellant had failed to take preventive steps to prevent fraud perpetuated by Mr. Nirav Modi and thereby committed mischief and conspiracy with the other accused person. While deciding the said case, Hon'ble Supreme Court has held as under:- [...]

10.5 The facts of the present case are different and distinguishable from the cases cited by the Appellant. In the present case, there is a finding that Manoj Punamia was running several companies in its business of gold refinery. The finding of the Customs Department was that both the Appellant Company (RICL) and Corporate Debtor (RRPL) were being managed by Mr. Manoj Punamia. Mr. Manoj Punamia and his wife were said to be shareholders of the Appellant Company. In these circumstances, the appellant cannot be said to be a third party, as both RICL and RRPL are under the control of same person [...]

11. Therefore, in the above judgment, the Hon'ble NCLAT could view that when the Corporate Debtor and the company against which action under Section 66 of



the Code was being taken were being managed by the same person, then such a company could not be held as a “third party” outside the ambit of the aforementioned provision. In the facts of the present case, the Respondent/ RP had raised no such pleading that the Applicants were in any way in control of the business of the Corporate Debtor or were part of the management of the Corporate Debtor. Thus, the reliance placed on behalf of the Respondent/ RP on the judgment of ***Royal India Corporation Limited (supra)*** is untenable.

12. In the wake, the I.A. No. 4750/2024 is allowed. Consequently, the name of the Applicants in the IA who are Respondent Nos. 6, 7, 8 and 9 stands deleted from the array of Respondents in I.A. No. 3054/2021. However, it is made clear that the proceedings would continue against the suspended board/ promoters/ directors, and if it is found that the transaction entered into by the suspended board/ promoters/ directors was fraudulent, then such members of suspended board/ promoters/ directors (Respondent Nos. 1-5 in I.A. No. 3054/2021) will be liable for action/ order under Section 66 and 67 of IBC, 2016.

Sd/-
(ANIL RAJ CHELLAN)
MEMBER (T)

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