**THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH-I**

**I.A. 4033 OF 2023**

Under Section 66 of the Insolvency & Bankruptcy Code, 2016

**Mr. Pulkit Gupta, Resolution Professional of Sharon Bio-Medicine Limited**

**… Applicant**

Vs.

**Ms. Savita Satish Gowda Managing Director, Sharon Bio-Medicine Limited**

**…Respondent No.1**

**Mr. Lalit Misra, Whole-Time Director, Sharon Bio-Medicine Limited**

**…Respondent No.2**

**Mr. Mohan Prasad Kala, Director, Sharon Bio-Medicine Limited**

**…Respondent No.3**

**Ms. Vineeta Bulusu, Director, Sharon Bio-Tech Limited**

**(Currently Enki Life Science Limited)**

**…Respondent No.4**

**Mr. Prashant Ghildiyal, Director, Sharon Bio-Tech Limited**

**(Currently Enki Life Science Limited)**

**…Respondent No.5**

**Mr. Rajendra Prasad Kalika Prasad Kalika, Director, Sharon Bio-Tech Limited**

**(Currently Enki Life Science Limited)**

**…Respondent No.6**

**Satra Plaza Premises Co-Operative Society Limited**

**…Respondent No.7**

**Satra Properties India Limited**

**…Respondent No.8**

In the matter of

**C.P.(IB) No. 246/MB/2017**

**Culrrossn Opportunitic SP. & others.**

**…. Financial Creditor**

Vs.

**Sharon Bio-Medicine Limited**

**…. Corporate Debtor**

***Order delivered on: 25.08.2025***

***Coram**:*

**Shri Prabhat Kumar**
Hon'ble Member (Technical)

**Sushil Mahadeorao Kochey**
Hon'ble Member (Judicial)

*Appearances:*

For the Applicant: Adv. Rohan Agarwal a/w Adv. Anush Mathka, Adv. Ananya Bajpai and Adv. Deevanshu Jaswani

For Respondent: Adv. Prashansa Agarwal (R1 to R3)
Adv. Rohit Gupta a/w Adv. P.V. Narendran (R4 to R6 and R9)

## ORDER

1. This Interlocutory Application IA 4033 of 2023 in C.P. (IB) 246 of 2017 has been filed on 25.8.2023 by Mr. Pulkit Gupta, Resolution Professional of Sharon BioMedicine Limited ("Corporate Debtor") in the Corporate Insolvency Resolution Process of Corporate Debtor in terms of Section 66 of Insolvency & Bankruptcy Code, 2016 ("Code") seeking following relief :

    i. *Declare that the transactions undertaken by Enki Life Science Ltd. (formerly known as Sharon Bio Tech Limited) in collusion with Respondent Nos. 1-3 (common directors of the Corporate Debtor and Enki Life Science Ltd.) in relation to Satra Plaza and the said parking premises as set out in the application have been carried out with fraudulent intent, as provided in Section 66 of IBC, and be reversed;*

ii. *The alleged letter dated February 7, 2012 purportedly issued by the Developer in favour of Sharon Bio-Tech Limited and as set out in the Application be set aside;*

iii. *The erstwhile management of the Corporate Debtor be directed to produce the original Allotment Letters dated January 31, 2012 issued by the Developer to the Corporate Debtor qua the said parking premises;*

iv. *The Management Committee, Satra Plaza Co-operative Society Ltd. be directed to hand over the parking sticker and parking premises allotted to the Corporate Debtor; and*

v. *Pending the hearing of the present Application, this Hon'ble Tribunal be pleased to restrain the Respondent Nos. 1-8 from alienation and/or disposing off the parking premise bearing Nos. 157-176 at Satra Plaza.*

vi. *direct Enki Life Science Limited to handover the possession of parking spaces to the Corporate Debtor;*

vii. *in the event prayer 'f' is granted, direct Respondent No. 7 to take all steps necessary to give effect to the allotment vide allotment letter dated January 31, 2012 issued to the Corporate Debtor.*

2. This Tribunal admitted the captioned an application filed u/s 7 of the Code commencing CIRP in case of Corporate Debtor. In the CIRP process, the Resolution Plan submitted by Peter Beck and Peter Vermoegensverwaltung Ltd. ("Peter Beck") was approved by this Tribunal vide order dated 28.2.2018, however, the said Resolution Plan could not be implemented within the specified timelines and the CIRP was re-initiated in terms of an order dated 3.6.2022 passed by this Tribunal pursuant to an Order dated 28.2.2022 passed by Hon'ble Supreme Court granting a liberty to do so in an appeal before it. Thereafter, in the fresh CIRP, this Tribunal approved the resolution plan submitted by Innova Captab Limited ("Resolution Plan") vide order dated 17.5.2023. The Schedule 2, Clause 11 of the said approved Plan provides that "*in the event any transaction is avoided / set aside by the NCLT in terms of Sections 43, 45, 47, 49, 50 or 66 of the IBC and any amount is received by the Resolution Professional in furtherance thereof, such sums shall be for the benefit of the Secured Assenting Financial Creditors and shall be a passthrough amount to the Secured Assenting Financial Creditors*". Consequently, the State bank of India, one of secured assenting financial creditor, was brought on record as Applicant in place of original applicant Resolution Professional.

3. Respondent No. 1 to 3 i.e. Ms. Savita Satish Gowda, Mr. Lalit Mishra and Mr. Mohan Prasad Kala respectively were director of the Corporate Debtor at the time of commencement of CIRP and Ms. Savita Satish Gowda is stated to be Managing Director. Respondent No. 4 to 6 i.e. Ms. Vineeta Bulusu, Mr. Prashant Ghildiyal and Mr. Rajendra Prasad Kalika are director of Sharon Bio- Tech Limited (Currently Enki Life Limited), which was impleaded as Respondent No. 9 pursuant to order dated 21.1.2025 passed in IA 311 of 2025. Respondent No. 7 is Satra Plaza Premises Co-Operative Society Limited, wherein the property in question is situated. Respondent No. 8 Satra Properties India Limited is transferor of the property, in question.
4. The Corporate Debtor entered into 20 separate Agreement for Sale on 23.9.2009 with Respondent No. 8 for purchase of unit Nos. 1401-1413, 1501, 1502, 1509, 1510, 1511,1512 and 1513 towards office in the Mall/Office Portion of the Commercial Building to be known as “Satra Plaza” located at Palm Beach Road, Vashi, Navi Mumbai-400 073 and the said Agreement was duly registered with the sub-registrar. The units along with their respective parking premises were allotted to the Corporate Debtor on January 31, 2012 and the parking premises were charged to the lenders of the Corporate Debtor. The Respondent No. 8 is stated to have allotted car parking nos. 157-176 vide letter(s) dated 31.01.2012 issued for each of

car parking space to the Corporate Debtor, thus one parking space was allotted for each unit of office/shop.

5. Respondent No. 8 and Respondent No. 9 are stated to have entered into an Agreement for Sale dated 15.10.2010 for purchase of Office/Shop No. 1613 admeasuring 57.69 sq. meter (i.e. 621 sq. feet) carpet area on the sixteenth floor in the commercial building to be known as "Satra Plaza" and the said Agreement was duly registered with the sub-registrar. The Respondent No. 8 is stated to have allotted car parking nos. 157 to 160 against its purchase of Shop/Office no. 1503; car parking nos. 161 to 164 against its purchase of Shop/Office no. 1507; car parking nos. 165 to 168 against its purchase of Shop/Office no. 1508; car parking nos. 169 to 172 against its purchase of Shop/Office no. 1611; and car parking nos. 173 to 176 against its purchase of Shop/Office no. 1613; vide letter(s) dated 07.02.2012 issued for allotment of car parking space against each of shop/office to Respondent No. 9, thus same car parking space(s) came to be allotted to Respondent No. 9, which had earlier been allotted to the Corporate Debtor.
6. The Corporate Debtor entered into a Master Restructuring Agreement (MRA) dated 31.1.2012 with its lender consortium whereby "Exclusive charge on office premises nos 1401-1412, 1501, 1502, 1509-1513 at Satra Plaza, Sector 19, Vashi, Navi Mumbai (2 Floors of 16000 sq. ft. each) including the furniture & fixtures and charge over car parking at aforementioned

office premises" was agreed in favour of State Bank of India. Thereafter, an Indenture of Mortgage was executed on 7.9.2015 in favour of State Bank of India by Corporate Debtor in relation to such office spaces.

7. The Original Applicant has submitted that he came to know about the same on 23.1.2023 when Respondent No. 7, in response to his initial request vide letter dated 8.8.2022 for provision of parking stickers and subsequent correspondences providing photocopies of letter dated 31.1.2012, informed that the Parking Spaces were already allegedly allotted to Respondent No. 9 by Respondent No. 8 on February 7, 2012. The Resolution Professional of Respondent No. 8 is stated to have provided 5 unsigned letter(s) dated 7.2.2012 regarding purported cancellation issued by the Respondent No. 8 on plain paper which reads as "*This is in reference to our letter dated 31.01.2012 in which we have allotted your car parking nos. 157, 158, 159 & 160 in the Upper Basement which stands cancelled and the same has been allotted to Sharon Biotech Ltd. against their office no. 1503.*"

8. The present application pertains to the diversion of these 20 parking spaces allotted to the Corporate Debtor by Respondent No. 7 in favour of Respondent No. 9 in complete disregard of original allotment letter dated 31.1.2012 allotting such parking spaces to the Corporate Debtor.

9. Respondent No. 1 to 3, the directors of the Corporate Debtor, have filed their reply all dated 17.09.2024 and are similar in the contents. They have contested the present application on following grounds –

   (i) The Application is filed with an exorbitant delay of more than 2000 days;

   (ii) There is no relief sought as against the Respondent Nos. 1 to 3;

   (iii) The Allotment letters from the Builder to the Corporate Debtor alone did not transfer the parking premises to the Corporate Debtor when there was no consideration and/or agreement executed;

   (iv) The Allotment letters were thereafter cancelled as consideration was not paid on account of non-availability of funds and such a transaction of not purchasing a property is not a fraudulent transaction;

   (v) There is no loss caused or placed on record or sought to be recovered in the present Application as required under Section 66 of the Code;

   (vi) The Application only seeks restoration of parking premises to the Corporate Debtor which is not restoration of losses as required under Section 66;

   (vii) In any case, SBI is not seeking to use the parking premises if the same are restored to the Corporate

Debtor and are therefore not the beneficiaries of the present Application.

10. Respondent No. 6, one of director of Respondent No. 9, has filed Reply dated 19.12.2023 stating that –

i. the present Application has been filed well beyond the period of limitation;

ii. no action can be brought against the third parties under an Application filed under Section 66 of the IBC Code, 2016 in view of Hon'ble Supreme Court's decision dated 19th May 2023 in *Gluckrich Capital Pvt. Ltd. Versus The State Of West Bengal & Ors.;*

iii. The Applicant has, with the sole intention of misleading the Tribunal, deliberately omitted certain germane facts of the present case, this Application deserves to be dismissed *in limine*. The Para 6(iv) of the Agreement for sale also provided that the rights to sell and allot the parking premises shall be at the sole discretion of the Respondent No.8 and the same shall also be pursuant to the payments made by the Purchasers of shops/kiosks/ as per the negotiations between the Purchasers and the Respondent No.8. For the allotment of parking to be valid and final, it was imperative that the allotment of such parking premises was to be confirmed in the General Body Meeting of the Society and recorded in the records of the Respondent No.7. On perusal of the

records of the Respondent No.7, it can be unequivocally stated that the allotment of the parking premises is in the name of the Company. The same is also evident from the letter of Respondent No.7 addressed to the Corporate Debtor dated 23rd January 2023;

iv. Respondent No.4, namely Mrs. Vineeta Bulusu was appointed as the Director of the Company on 13th January 2015 whereas the allotment of the Car Parking Premises to the Company was made way back in February 2012. The Respondent No.5 & 6 were also appointed as the director of the Company on 30th September 2017 & 7th September 2020 respectively i.e, much after the date of allotment of parking which was on 7th February 2012.

11. Respondent No. 4, one of director of Respondent No. 9, has filed Reply dated 17.6.2025 stating that –

i. The present Application in its original form was preferred by the Resolution Professional without impleading the Respondent No.9 to the Application. In other words, the Resolution Professional had not formed any opinion and/or made any determination of a "fraudulent transaction' in so far as Respondent No.9 is concerned who was therefore not originally impleaded to the present Application;

ii. The present Application is not maintainable as against Respondent No.9 as it has been impleaded to the Application by SBI and not by the Resolution Professional;

iii. The present Application has been filed against Respondent No.9 more than 2787 days after CIRP initiation and is thus liable to be dismissed for being filed with exorbitant delay in so far as the timeline of 130 days under Regulation 35A is concerned;

iv. An application challenging fraudulent transactions can only be filed against the directors of the Corporate Debtor as held by the Hon'ble Supreme Court in the matter of Glukrich Capital Pvt. Ltd. vs. State of West Bengal & Ors. 2023 SCC OnLine SC 1187;

v. It is alleged by the Applicant that the two companies were under common control on the basis that three directors of the companies were common. However, the transaction being challenged in the present case is allotment of parking spaces to Respondent No.9 vide allotment letters dated 7.02.2012, and prior to 7.02.2012, two of the three common directors in the two companies had ceased to be the directors of Respondent No.9. Further, it is the case of the Applicant that the Respondent Nos. 1 to 3 were the majority shareholders of the Respondent No.9 which is incorrect, as at the time

of the transaction i.e., issuance of allotment letters in favour of the Respondent No.9, only Respondent No.3 was a shareholder of the Respondent No.9 holding only 12.71% of the shareholding.

12. Respondent No. 8, Satra Properties India Limited, through its Resolution Professional filed reply dated 20.7.2024 stating that she only has unsigned parking allotment letter dated 31.1.2012 & 7.2.2012 and cancelation letter dated 7.2.2012 and these letters seems to have been executed as the beneficiary parties have placed on record signed copy thereof. It is further stated therein that "*While the original copy of all the unsigned letters will be available with Sharon Bio-medicines Ltd and Sharon Bio-tech Ltd, I am unable to trace the signed office copy of these documents because of various issues*."

13. The Applicant has filed Rejoinder to the Reply of Respondent No. 1 to 3 and Respondent No. 6 stating that the fraudulent transaction in relation to the parking spaces came to the knowledge of Pulkit Gupta, the Resolution Professional ("RP") appointed to carry out re-run only on January 2023. The parking spaces were granted to the Corporate Debtor pursuant to Agreements for Sale dated September 23, 2009 (collectively, "Agreements of Sale") for office premises in portion of the commercial building known as "Satra Plaza".

Clause P(ii) of the Agreements of Sale is reproduced hereunder:

> "*The purchasers of the shops/kiosks/units/premises in said Mall Portion and the said Office Portion in the said commercial building shall have separate entry and exits to and from the respective said portions as well as separate car-parking spaces.* "

It is also stated by the Applicant that there is a clear relationship between the Corporate Debtor and Respondent No. 9 which is demonstrated by the following:

i. Until 2015, one of the corporate offices of the Corporate Debtor also operated out of the same office premises as Respondent No. 9 having the plot address at Plot-No. 163, Smt. Jankidevi Public School Road, MHADA, SVP Nagar, Andheri (West), Mumbai, Maharashtra - 40005.

ii. Before 2018, the Corporate Debtor had one of its corporate offices at C-312, BSEL Tech Park, Sector 30(A), Vashi, Navi Mumbai - 400703, which was owned by Respondent No. 9 and it was rented out to the Corporate Debtor by virtue of Leave and License Agreement dated April 1, 2015. In lieu of such lease, the Corporate Debtor also paid lease rentals to Respondent No. 9 on a regular basis till November 2017;

iii. The Corporate Debtor and Respondent No. 9 have three common directors, being the Respondents herein. The relationship between the Corporate Debtor and Respondent No. 9 is made clear when one considers the fact that Respondent Nos. 1 to 3 were also directors in Respondent No. 9. Respondent No. 1 was director of Respondent No. 9 from 7.11.2006 to 10.1.2012; Respondent No. 2 was from 11.11.2005 to 10.1.2012; and Respondent No. 3 was from 7.11.2005 to 15.2.2013. Further, Respondent No. 4 who is the Director of the Respondent No. 9 since September 29, 2015, is the real sister of Respondent No. 1.

14. Heard the Learned Counsel and perused the material on record.

15. Section 66 of the reads as under :

**"Section 66: Fraudulent trading or wrongful trading.**

*[*]**66.** (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 the 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."*

16. The Respondents have contested the present application on the ground that it has been filed beyond the time limit prescribed under Regulation 35A of CIRP Regulations and has explained the reasons for such delay. In the case of ***Aditya Kumar Tibrewal v. Om Prakash Pandey and Ors. (2022 SCC OnLine NCLAT 142), Hon'ble NCLAT*** has held that the timelines

prescribed under Regulation 35A of the CIRP Regulations providing for filing an application for preferential and other transactions, is directory and not mandatory and any action taken by the RP beyond the timelines prescribed under Regulation 35A cannot be held to be non est or void only on the ground that it is beyond the prescribed timeline. Accordingly, we do not find any merit in this contention. As regards Respondent's objection that the Resolution Professional could not have filed present application during the re-initiation of CIRP while there was no determination in respect of impugned transaction having been made in first round of CIRP. The Code contemplates that an application u/s 66 of the Code can be filed during the corporate insolvency resolution process and it is not in dispute that re-initiation of CIRP consequent upon failure in implementation of Resolution Plan resulted into recommencement of CIRP. There is no embargo in the Code that such application can not be filed during the re-initiation of CIRP. In view of Hon'ble NCLAT decision holding timelines under Regulation 35A to be directory in nature, we are of considered view that, in the absence of specific bar, the Resolution Professional is not precluded from making determination of avoidance or fraudulent transactions during the re-run of CIRP, more so when the alleged fraudulent act was discovered during such re-run only. Nonetheless, this only indicates that the erstwhile

Resolution Professional Mr. Dinkar Venkatsubraminan had been negligent in taking over the custody and control of the assets of the Corporate Debtor so as to preserve the same.

17. The Applicant has sought declaration that the impugned transactions are null and void and consequential reversal of the effect of said transactions in prayer (2). This Tribunal can not pass such orders while adjudicating an application in terms of Section 66 of the Code, as held in case of ***Piramal Capital and Housing Finance Ltd. v. 63 Moons Technologies Ltd. and Ors. (2025) ibclaw.in 120 SC,*** wherein the Hon'ble Supreme Court held that ""*60. However, in cases of "Fraudulent or Wrongful trading" in respect of the business of the CD as contemplated in Section 66, the properties and the persons involved may or may not be ascertainable and therefore the Adjudicating Authority is not empowered to pass orders to avoid or set aside such transactions, but is empowered to pass orders to the effect that any persons, who were knowingly parties to the carrying on of business in such manner, shall be liable to make such contributions to the assets of the CD, as it may deem fit. The Adjudicating Authority in such applications may also direct that the Director of the CD shall be liable to make such contribution to the assets of the CD as it may deem fit, as contemplated in Section 66(2). In case of Fraudulent trading or Wrongful trading, it would be a matter of inquiry to be made by the*

*Adjudicating Authority as to whether the business of CD was carried on with intent to defraud creditors of the CD or was carried on for any fraudulent purpose".*

18. Before proceeding further, it is relevant to note certain averments in the Agreement for Sale dated 23.9.2009 in respect of office unit no. 1405 entered between the Respondent No. 8 and Corporate Debtor for purchase thereof (all agreements in respect of other units are similarly worded).

19. Clause 3 of the said agreement provides for the payment of lumpsum consideration of Rs. 1,65,24,000/- for the said office unit, which is stated to be consideration *for enclosed balcony and the proportionate price of the common area and facilities appurtenant to the said Premises*. It is further stated therein that "…..*The said Premises are more particularly described in the Third Schedule hereunder written. The Purchaser/s shall have a specific undivided interest in their respective common areas and facilities limited or otherwise pertaining to the said commercial building in proportion of the area of the premises agreed to be sold hereunder to the total area of the said Building. The nature extent and description of the common/limited/restricted common areas and facilities are more particularly described in the Annexure "D" annexed hereto".*

20. Recital P(ii) of the Agreement states that "*The purchasers of the shops/kiosks/units/premises in said Mall Portion and the*

*said Office Portion in the said commercial building shall have separate entry and exits to and from the respective said portions as well as separate car-parking spaces;*"

21. Clause 9(c) of the said Agreement further provides that "*The Promoters have made the provisions for the purpose of car parking/arrangements at two level basements and lay bye area as and by way of limited common areas and facilities. The Promoters have provided car parking spaces in the 2 level basements and lay bye area, out of which the Promoters shall be entitled to deal with and dispose of and/or allot such car parking space for the use, enjoyment and benefit of premises holders for ground, first, second and third floors as per the details set out Firstly in the Fourth Schedule hereunder written and car parking nos. 1 to 140 in the lower basement has been retained for the use, enjoyment and benefit of the premises purchasers of 4th to 18th floors, whose detail is more particularly set out secondly in the Fourth Schedule hereunder written. The Purchaser/s hereby agree either individual or jointly and/or condominium as the case may be and shall always abide by such provisions of right to entry and exit and shall not be entitled to raise any claim or demand contrary to such provisions. It is hereby agreed by and between the parties hereto that for all the unsold and/or unallotted car-parking spaces in the said commercial building the Promoters shall have the sole and absolute right to formulate the basis of usage*

*of such unsold parking lots and charges, if any to be levied for such usage even after formation of the condominium……..The Purchaser/s agree that the Promoters shall have the exclusive right to decide the terms and conditions, rate of parking charges, timing of parking, place of parking and subject to availability of space and that the Purchaser/s shall not be entitled to demand to be provided any additional carparking spaces……..*" Fourth Schedule states that "*Car parking nos. 1 to 140 in the lower basement retained for 4 to 18th Floors premises*".

22. It is relevant to note that the said Agreement for Sale does not contemplate any additional consideration for allotment of Car Parking Space in the lower basement area for allottees of 4 to 18th Floor premises and Car Parking Nos. 1 to 140 thereat are for exclusive usage of such premises owners. Further, clause 9 (c) of the Agreement only vests all the unsold and/or unallotted car-parking spaces in the said commercial building with the Promoters, who is to have the sole and absolute right to formulate the basis of usage of such unsold parking lots and charges, if any to be levied for such usage even after formation of the condominium. Clause 9 (c) read with recital P(ii) and Fourth Schedule makes it clear that the Respondent No. 8 was obligated to provide parking space to each allottee of premises in 4 to 18th floor in the lower basement area, as such parking space constituted a facility appurtenant to the said Premises.

It is relevant to note here that neither Resolution Professional of Respondent No. 8 nor Respondent No. 9 has categorically stated that any consideration over and above the price of Office unit purchased by the buyers were paid or agreed to be paid to Respondent No. 8 for allotment of parking space. No evidence, including the financial statement of Respondent No. 9 for the relevant year i.e. 2011-12 or prior year evidencing payment of such additional consideration, to this effect has been placed on record. It is also noteworthy that Agreement for Sale for purchase of Office Unit, under which the Parking Spaces were purportedly allotted to Respondent No. 9 was entered into on October 15, 2010 on behalf of Respondent No. 9, when Respondent Nos. 1 to 3 were in control and management of Respondent No. 9 and the Agreement for Sale with the Corporate Debtor and Respondent No. 9 by Respondent No. 8 is similar in contents, hence there can not be two different interpretation leading to a conclusion that while Respondent No. 9 had right to disproportionate Parking Space without additional consideration, but the Corproate Debtor's right to have one Parking Space for One office Unit was subject to payment of additional consideration, more so when the Respondent No. 8 has not placed on record any understanding to this effect.

23. The Respondent No. 1 to 3 have heavily relied on clause 6 (vi) of the Agreement to contend that the Promoters i.e.

Respondent No. 8 had absolute right to deal with the Parking Spaces and it could have revoked the allotment letter issued to the Corporate Debtor for allotment to another unit holder. Clause 6(vi) of the Agreement states that " *It is expressly and specifically clarified, agreed; understood and confirmed by and between the parties hereto that the unsold premises and other premises including car parking spaces in the basement levels of the building standing on the said property shall at all times, including after the formation and registration of the and/or after execution of the declaration be and remain the absolute property of the Promoters, and the Promoters may if it so desires, become member of the condominium in respect thereof, and the Promoters shall have full right, absolute power and authority, and shall be unconditionally entitled to deal with-and to sell, let or otherwise dispose of the same in any manner and for such consideration, and on such terms and conditions as it may in its sole and absolute discretion deem fit and proper, to any person or party its choice, and neither the Purchaser/s herein, nor the condominium shall object to or dispute the same. On the Promoters intimating to the condominium the name or names of the Purchaser/s and acquirer/s of such unsold premises etc., the condominium shall forthwith accept and admit such purchasers and acquirers as their member/s and shareholder/s, and shall forthwith issue share certificate/s and other necessary documents in their*

*favour, without raising any dispute or objection to the same and without charging/recovering from them any premium, fees, donation or any other amount of whatsoever nature in respect thereof.*"

24. The said clause only makes it clear that the unsold premises and other premises including car parking spaces in the basement levels of the building standing on the said property shall at all times, including after the formation and registration of the and/or after execution of the declaration be and remain the absolute property of the Promoters, and the Promoters shall be unconditionally entitled to deal with-and to sell, let or otherwise dispose of the same in any manner and for such consideration, and on such terms and conditions as it may in its sole and absolute discretion deem fit and proper, to any person or party its choice. The said clause only deals with the unsold premises and car parking spaces and it cannot be said that such clause, in any manner, suggests that the Car Parking Slots were required to be purchased for additional consideration. Clause 6 (vi) deals with the unsold premsies and car parking spaces, which has also been clarified in clause 9 (c) apart from declaring the usage of lower basement car parking having been reserved for buyers of premises in 4 to 18th floor. There is no averment in whole of the agreement that the Parking Space is to be bought separately, accordingly in the absence of any such averment, the averment at recital P(ii)

and clause 9 (c) has to be read to mean that each premises owner was to be allotted one parking space under the Agreement for Sale and the lumpsum consideration paid for purchase of each office unit included consideration for one parking space as well. Any other interpretation would render the averments in recital P(ii) and clause 9 (c) partly otiose, which is not permissible under the established rules of interpretation and construction. Hence, we are of considered view that there is no substance in the argument of the Respondents that clause 6(vi) of the Agreement vested absolute right in the Respondent No. 8 to deal with Parking spaces at lower basement level and said Parking Space could have been acquired against payment of additional consideration, which Corporate Debtor failed to pay. In our considered view, such right was available only in relation to unsold premises and parking spaces; that right was saved so as to preclude the condominium from asserting its rights over the unsold parking spaces; and the averment in clause 6 (vi) can not be read in a manner so as to deny the right of the Corporate Debtor for rightful allotment of one parking space for each office unit, which it was allotted at the first instance by the Respondent No. 8. It is pertinent to note that the Corporate Debtor through its Director had executed a Master Restructuring Agreement dated 30.3.2015, wherein Respondent No. 1 to 3 are stated to be Promoters of the

Corporate Debtor in clause 1.51 thereof, and by way of said Agreement, the Corporate Debtor had offered to create exclusive charge over Car Parking at office premises nos. 1401-1413, 1501. 1502, 1509-1513 at Sara Plaza, Sector 19, Vashi, Navi Mumbai (2 Floors of 16000 sq ft each) in terms of clause 15.4 thereof, which clearly demonstrates that the Respondent No. 1 to 3 were aware at that point of time that the allotment of Car Parking Spaces in favor of Corporate Debtor was in place, which otherwise is stated to have been cancelled by Respondent No. 8 on 7.2.2012. It is noteworthy in this context that the Respondent No. 1 to 3 also filed such cancellation letter(s) duly signed by a person indicating that Respondent No. 1 to 3 had knowledge of existence of such cancellation letter while agreeing for exclusive charge in favor of Lenders in terms of MRA dated 30.3.2015, if it was in existence at that time. This further suggests that the Letter(s) dated 7.2.2012 are back dated communications, created to siphon the rights in Parking Space(s) vested in the Corporate Debtor. It is also pertinent to note that the person who had signed the allotment letter dated 31.1.2012 in favour of Corporate Debtor is different than the person who is stated to have signed on letter(s) dated 7.2.2012 in relation to allotment in favour of Respondent No. 9 and cancellation letters and the Resolution Professional of Respondent No. 8 could not lay her

hand on the signed copies of the letter of cancellation and allotment all dated 7.2.2012 in her records.

25. In the case of ***Rattan Singh and Others Vs. Nirmal Gill and Others 2020 SCC online SC 936***, the Hon'ble Supreme Court quoted its decision in case of ***Anil Rishi v. Gurbaksh Singh Appeal 2006 5 SCC 558***, –

> *"43. The requirement regarding shifting of burden onto the defendants had been succinctly discussed in Anil Rishi v. Gurbaksh Singh, wherein this Court had held that for shifting the burden of proof, it would require more than merely pleading that the relationship is a fiduciary one and it must be proved by producing tangible evidence. The relevant extract of the said decision is reproduced as thus: (SCC pp. 561-63, paras 8-11 & 14-16)*
>
> *"8. The initial burden of proof would be on the plaintiff in view of Section 101 of the Evidence Act, which reads as under:*
>
> *"Sec. 101. Burden of proof. \026 Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.*
>
> *When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.*

*9. In terms of the said provision, the burden of proving the fact rests on the party who substantially asserts the affirmative issues and not the party who denies it. The said rule may not be universal in its application and there may be exception thereto. The learned trial Court and the High Court proceeded on the basis that the defendant was in a dominating position and there had been a fiduciary relationship between the parties. The appellant in his written statement denied and disputed the said averments made in the plaint.*

*10. Pleading is not evidence, far less proof. Issues are raised on the basis of the pleadings. The defendant-appellant having not admitted or acknowledged the fiduciary relationship between the parties, indisputably, the relationship between the parties itself would be an issue. The suit will fail if both the parties do not adduce any evidence, in view of Section 102 of the Evidence Act. Thus, ordinarily, the burden of proof would be on the party who asserts the affirmative of the issue and it rests, after evidence is gone into, upon the party against whom, at the time the question arises, judgment would be given, if no further evidence were to be adduced by either side.*

*11. The fact that the defendant was in a dominant position must, thus, be proved by the plaintiff at the first instance.*

* * *

*14. But before such a finding is arrived at, the averments as regard alleged fiduciary relationship must be established before a presumption of undue influence against a person in position of active confidence is drawn. The factum of active confidence should also be established.*

*15. Section 111 of the Evidence Act will apply when the bona fides of a transaction is in question but not when the real nature thereof is in question. The words 'active confidence' indicate that the relationship between the parties must be such that one is bound to protect the interests of the other.*

*16. Thus, point for determination of binding interests or which are the cases which come within the rule of active confidence would vary from case to case. If the plaintiff fails to prove the existence of the fiduciary relationship or the position of active confidence held by the defendant appellant, the burden would lie on him as he had alleged fraud. The trial Court and the High Court, therefore, in our opinion, cannot be said to be correct*

*in holding that without anything further, the burden of proof would be on the defendant."*

26. It has been pleaded by the Applicant that the Corporate Debtor and Respondent No. 9 were Related Party and placed on record relevant evidence(s) to assert this fact. The Related Party in relation to Corporate Debtor is defined in Section 5(24) of the Code and clause (a) and (e) reads as under :

*(a) a director or partner of the corporate debtor or a relative of a director or partner of the corporate debtor;*

*(e) a public company in which the individual is a director and holds along with relatives, more than two per cent. of its paid-up share capital*

27. Respondent No.3 has admitted that he was a shareholder of the Respondent No.9 holding 12.71% of its shareholding and he was director of Respondent no. 3 till 15.2.2013, accordingly, the Respondent No. 9 was a related party of the Corporate Debtor in terms of Section 5(24) of the Code. As regards Respondent No. 1 and 2, it has not been denied that they were directors of Respondent no. 9 till 10.1.2012, but neither Respondent No. 9 nor Respondent No. 4 to 6, the current directors of Respondent No. 9, have placed on record who else was director of Respondent No. 9 at the relevant point and who was appointed as director upon resignation of Respondent No. 1 & 2 in their place on 10.1.2012, as someone must have been

appointed to comply the requirement of minimum three directors in a limited company. This conscious omission of the details of persons holding office of Directors in Respondent No. 9 and persons holding shares of Respondent No. 9 only indicates that there is something more behind it. Respondent No. 4 to 6 have only defended themselves by stating that they came to appointed later on, however Respondent No. 4 has not refuted the fact that she is sister of Respondent No. 1 and have failed to bring on record evidence in form of details of persons holding directorship and shareholding of Respondent No. 9 during the relevant period of time to refute the claim of the Applicant that Respondent No. 9 and Corporate Debtor were related persons.

28. The relationship between the Corporate Debtor and Respondent No. 9 further throws light on the intent and design of the persons involved in the affairs of Respondent No. 9 and Corporate Debtor at that time. The details of directors of Respondent No. 9 and Corporate Debtor at the relevant time is stated as under :

| S. No. | Name and DIN of Director | Duration of Directorship with Corporate Debtor | Duration of Directorship wit Respondent No. |
|---|---|---|---|
| 1. | Savita Satish Gowda (00042957) (Respondent No. 1) | 16.12.1994 till 30.03.2018 *(Pg. 54 of the IA, Vol. I).* | 07.11.2006 10.01.2012 *(Pg. 42 of the IA, I).* |
| 2. | Lalit Misra (00033689) (Respondent No. 2) | 06.08.1999 till 30.03.2018 *(Pg. 52 of the IA, Vol. I).* | 07.11.2005 10.01.2012 *(Pg. 52 of the IA, I).* |
| 3. | Mohan Prasad Kala (00118143) (Respondent No. 3) | 13.02.1995 till 31.12.2015 *(Pg. 53 of the IA, Vol. I).* | 07.11.2005 to 15.02.2013 *(Pg. 42 of the IA, I).* |

29. It is pertinent to note that Respondent No. 1 and 2 resigned from the Board of Respondent No. 9 on 10.1.2012, just few weeks before the allotment of parking spaces on 31.1.2012 in favor of Corporate Debtor by Respondent No. 8. The Respondent No. 4 to 6, the current directors of Respondent No. 9, have not provided complete details of directors and shareholders of Respondent No. 9 during the year 2012-13 and thereafter in their defence to rebut the allegation of relationship between the Corporate Debtor and Respondent No. 9. It is pertinent to note that Respondent No. 4 who is the Director of the Respondent No. 9 since September 29, 2015, is the real sister of Respondent No. 1. These facts further establishes that the purported cancellation of allotment of Parking space on 7.2.2012 and allotment of those spaces in

favor of Respondent No. 9, in excess of buyer's entitlement thereof, on same date was carried out to divert such space from the Corporate Debtor thus prejudicing the interest of its creditors, particularly secured creditor who was holding charge on such spaces. This conclusion is further fortified by the appointment of Respondent No. 4 as director of the Respondent No. 9, who is stated to be sister of Respondent No. 1, on 29.9.2015, after execution of Master Restructuring Agreement between Corporate Debtor and its lenders on 30.3.2015 whereby the exclusive charge was stated to be created in favor of the lenders of Corporate Debtor. These facts also lead to an inevitable conclusion that the purported cancellation letter(s) dated 7.2.2012 and purported allotment letter(s) dated 7.12.20212 in favor of Respondent No. 9 is back dated document.

30. In ***M. Siddiq v. Suresh Das 2020 1 SCC 1***, a Constitution Bench of Hon'ble Supreme Court has described the standard of 'preponderance of probabilities' in Civil cases in the following terms:

> *"720. The court in a civil trial applies a standard of proof governed by a preponderance of probabilities. This standard is also described sometimes as a balance of probability or the preponderance of the evidence. Phipson on Evidence formulates the standard succinctly: If therefore, the evidence is such that the*

*court can say "we think it more probable than not", the burden is discharged, but if the probabilities are equal, it is not. [Phipson on Evidence.] In Miller v. Ministerof Pensions [Miller v. Minister of Pensions, (1947) 2 All ER 372], Lord Denning, J. (as the Master of Rolls then was) defined the doctrine of the balance or preponderance of probabilities in the following terms: (All ER p. 373 H)*

*"(1) ... It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence, "of course it is possible, but not in the least probable" the case is proved beyond reasonable doubt, but nothing short of that will suffice." (emphasis supplied)*

*721. The law recognises that within the standard of preponderance of probabilities, there could be different degrees of probability. This was succinctly summarised by Denning, L.J. in Bater v. Bater [Bater v. Bater, 1951 P 35 (CA)], where he formulated the principle thus: (p. 37) "...*

*So also in civil cases, the case must be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter." (emphasis supplied)*

31. In the present case, considering the relationship between the Corporate Debtor and Respondent No. 9; commonality of directors; the business of Corporate Office of the Corporate Debtor and Respondent No. 9 being carried from same office premises at Plot No. 163, Smt. Jankidevi Public School Road, MHADA, SVP Nagar, Andheri (West), Mumbai until 2015; and disproportionate treatment of Corporate Debtor in relation to Parking Space without any stipulation for payment of additional consideration for entitlement to such Parking Space while Respondent No. 9 has not proved payment of any such additional consideration, even if it is assumed that there was one, it is more probable that a fraud has been played by the Respondent No. 1 to 3 in collusion with Respondent No. 9 and the erstwhile directors of Respondent No. 9 so as to divert the rights and interest in the Parking Spaces allotted to Corporate Debtor in terms of allotment letter dated 31.1.2012, while Respondent No. 8 did so as it was neither detrimental to its interest nor interest of any third party when the Corporate Debtor as well as Respondent No. 9 were having common directors till 10.1.2012 and one common director even after 7.2.2012.

32. It has been argued by Respondent No. 4 to 6 as well as Respondent No. 9 that no action can be brought against the third parties under an Application filed under Section 66 of the IBC Code, 2016 in view of Hon'ble Supreme Court's decision in the case of ***Gluckrich Capital Pvt. Ltd. vs. The State of West Bengal & Ors. (2023) ibclaw.in 75 SC***. It is relevant to note here that the decision of Hon'ble Supreme Court in case of ***Gluckrich Capital Pvt. Ltd. (surpa)*** imposing a bar on an order u/s 66 against persons other than suspended directors was distinguished by Hon'ble NCLAT in case of ***Royal India Corporation Limited vs. Mr. Nandkishor Vishnupant Deshpande (RP) and Ors. (2024) ibclaw.in 304 NCLAT*** holding that the said judgement related to transit anticipatory in a criminal case and an order u/s 66 can be passed against the related persons also, who can not said to be third party. As we have concluded that the Respondent No. 9 was a related party at the relevant time, this Tribunal can pass appropriate order(s) in terms of Section 66 of the Code against Respondent no. 9 as well. As regards Respondent No. 4 to 6 are concerned, since they were appointed on the Board of Respondent No. 9 after 7.2.2012, it can not be said that they were persons who were knowingly parties to the carrying on of the business in fraudulent manner.

33. In the case of ***Piramal Capital and Housing Finance Ltd. v. 63 Moons Technologies Ltd. and Ors. (2025) ibclaw.in 120 SC,*** the Hon'ble Supreme Court held that :

> "*60. However, in cases of "Fraudulent or Wrongful trading" in respect of the business of the CD as contemplated in Section 66, the properties and the persons involved may or may not be ascertainable and therefore the Adjudicating Authority is not empowered to pass orders to avoid or set aside such transactions, but is empowered to pass orders to the effect that any persons, who were knowingly parties to the carrying on of business in such manner, shall be liable to make such contributions to the assets of the CD, as it may deem fit. The Adjudicating Authority in such applications may also direct that the Director of the CD shall be liable to make such contribution to the assets of the CD as it may deem fit, as contemplated in Section 66(2). In case of Fraudulent trading or Wrongful trading, it would be a matter of inquiry to be made by the Adjudicating Authority as to whether the business of CD was carried on with intent to defraud creditors of the CD or was carried on for any fraudulent purpose.*

34. In view of Hon'ble Supreme Court's decision in case of Piramal Capital (Supra), in cases of "Fraudulent or Wrongful trading" in respect of the business of the CD as contemplated

in Section 66, the properties and the persons involved may or may not be ascertainable and therefore the Adjudicating Authority is not empowered to pass orders to avoid or set aside such transactions, though it can order for contribution in terms of Section 66 of the Code. The Applicant has sought consequential relief in the form of setting aside of the letter dated 7.2.2012 purportedly issued by the Developer in favour of Sharon Bio-Tech Limited and the directions to Respondent No. 7 to hand over the parking sticker and parking premises allotted to the Corporate Debtor, which this Tribunal can not do even if this Tribunal has reached a conclusion that business affairs of the Corporate Debtor, in so far as it pertains to Parking Spaces, were carried out to defraud its creditors and to keep those assets from its reach.

35. This takes us to a specific question whether in the absence of specific pleadings in relation to Section 45 or 49 of the Code, whether this Tribunal can proceed to pass the order in terms of those section. On perusal of prayer (b), (c), (d), (f) and (g), we note that these prayers do not refer to section 66 of the Code, and only seeks setting aside of letter dated 7.12.2012, whereas prayer (a) seeks declaration of this transaction having been carried out with fraudulent intent in terms of Section 66 of the Code and reversal thereof. Other prayers are consequential to prayer (a) and (b). The Hon'ble Supreme Court in the case of Piramal Capital (Supra) has further held that "*If the*

*Resolution Professional has filed common applications under Sections 43, 45, 50 and also under Section 66, the Adjudicating Authority shall have to distinguish the same and decide as to which provision would be attracted to which of the Applications, and then shall exercise the powers and pass the orders in terms of the provisions of IBC".*

36. The Applicant has pleaded at Para 32 of the application that the Applicant has learnt that the parking premise is valued at INR 5-7 lakhs per parking slot and therefore, the erstwhile management and Respondent No. 9 ought not to be permitted to get away with fraudulent transactions. It has also been pleaded in the Application that there exists a relationship between the Corporate Debtor and SBTL and the suspended management and SBTL have colluded fraudulently to unjustly enrich themselves at the cost of the Corporate Debtor and deprive the Corporate Debtor and the consequentially the creditors. These pleadings clearly make out a case of putting assets of Corporate Debtor beyond reach of its creditors illegally. Though, in the present case, the heading of the application reads as *"Under Section 66 of Insolvency and Bankruptcy Code, 2016",* it becomes pertinent to take note of fact that relief in terms of prayer (b) are not sought in terms of Section 66 of the Code in contradiction of prayer (a) where the relief has specifically been sought under section 66 leading to conclusion that the present application is a composite

application seeking avoidance of transaction as well contribution u/s 66 of the Code.

37. The Hon'ble Supreme Court, in case of ***J. Kumaradasan Nair and Anr. v. IRIC Sohan and Ors., Civil Appeal Nos. 943-944 of 2009),*** has held that "*14. It is also now a well-settled principle of law that mentioning of a wrong provision or non-mentioning of any provision of law would, by itself, , be not sufficient to take away the jurisdiction of a court if it is otherwise vested in it in law. While exercising its power, the court will merely consider whether it has the source to exercise such power or not……*" .

38. In view of above judicial precedents, we consider it appropriate to treat the present application as a composite application and proceed adjudicate prayer (b) seeking setting aside of letter dated 7.12.2012.

39. Section 45 of the Code reads as under –

> ***45.*** *(1) If the liquidator or the resolution professional, as the case may be, on an examination of the transactions of the corporate debtor referred to in sub-section (2) determines that certain transactions were made during the relevant period under section 46, which were undervalued, he shall make an application to the Adjudicating Authority to declare such transactions as void and reverse the effect of such transaction in accordance with this Chapter.*
>
> *(2) A transaction shall be considered undervalued where the corporate debtor—*
>
> *(a) makes a gift to a person; or*

*(b) enters into a transaction with a person which involves the transfer of one or more assets by the corporate debtor for a consideration the value of which is significantly less than the value of the consideration provided by the corporate debtor,*

*and such transaction has not taken place in the ordinary course of business of the corporate debtor."*

40.Further, Section 49 of the Code reads as under –

***49.** Where the corporate debtor has entered into an undervalued transaction as referred to in sub-section (2) of section 45 and the Adjudicating Authority is satisfied that such transaction was deliberately entered into by such corporate debtor—*

*(a) for keeping assets of the corporate debtor beyond the reach of any person who is entitled to make a claim against the corporate debtor; or*

*(b) in order to adversely affect the interests of such a person in relation to the claim,*

*the Adjudicating Authority shall make an order—*

*(i) restoring the position as it existed before such transaction as if the transaction had not been entered into; and*

*(ii) protecting the interests of persons who are victims of such transactions:*

*Provided that an order under this section—*

*(a) shall not affect any interest in property which was acquired from a person other than the corporate debtor and was acquired in good faith, for value and without notice of the relevant circumstances, or affect any interest deriving from such an interest, and*

*(b) shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.*

41. In the present case, this Tribunal has reached a finding that the Respondent No. 1 to 3 have allowed transfer of rights in Parking Space, otherwise vested in Corporate Debtor, in favor of Respondent No. 9, a related party, by engineering issuance of purported cancellation letter dated 7.2.2012 and purported allotment letter dated 7.2.2012 by Respondent No. 8 and such transfer by this mechanism has taken place without any consideration. Further, it has also been concluded that such transaction has been concluded with a fraudulent intent to keep such valuable rights constituting assets of Corporate Debtor beyond the reach of its Creditors, even though such rights were expressly agreed to be put under exclusive charge of its lenders. Accordingly, in our considered view, the ingredients of Section 49 of the Code are satisfied in the present case.

42. Section 49(2) of the Code vests power in this Tribunal to make an order restoring the position as it existed before such transaction as if the transaction had not been entered into. Accordingly, we hold that the purported letter(s) dated 7.2.2012 are liable to be set aside with immediate effect, accordingly, Respondent No. 7 is directed to put the Corporate Debtor in exclusive possession and enjoyment of the Parking

Spaces, which were originally allotted to it vide Letter(s) dated 31.1.2012. It was informed to this Tribunal that these Parking Spaces may have been disposed of by the Respondent No. 9 thus creating third party interest. If that be so, in alternate to setting aside of communication dated 7.2.2012, we direct the Respondent No. 9 as well as Respondent No. 1 to 3 to pay, jointly or severally, a sum equivalent to fair market value of Parking Spaces to the Applicant to protect the interests of lenders who are victims of such transactions; the fair market value of such Parking Spaces shall be determined by the Registered Valuer engaged by the State Bank of India and the fees shall be borne by it only; and the payment shall be made within 30 days from the date of information of fair market value of such Parking Space. Needless to say, the amount so determined shall carry an interest @ 12% p.a. beyond the aforesaid period of 30 days.

43. In view of the foregoing directions, this IA 4033 of 2023 is partly allowed and disposed of accordingly.

Sd/- Sd/-

**Prabhat Kumar**
Member (Technical)

**Sushil Mahadeorao Kochey**
Member (Judicial)