

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 1482 of 2025

[Arising out of Order dated 11.09.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-I in IA No.3973 of 2023]

In the matter of:

Gir Vanvaso Resort

...Appellant

Vs.

Pancard Clubs Ltd.

...Respondent

For Appellant: **Mr. Krishnendu Datta, Sr. Advocate with Mr. Malak Bhatt, Ms. Neeha Nagpal, Ms. Sukanya Joshi, Ms. Niharika Sharma, Advocates.**

For Respondent: **Mr. Abhijeet Sinha, Sr. Advocate with Mr. Shivam Shukla, Mr. Kaustubh Singh, Ms. Heena Kochar, Advocates.**

J U D G M E N T

(16th December, 2025)

Ashok Bhushan, J.

This appeal has been filed challenging the order dated 11.09.2025 passed by the Adjudicating Authority (National Company Law Tribunal) Mumbai Bench-1 in IA No.3973 of 2023 filed by the Resolution Professional of the Corporate Debtor- Pancard Clubs Limited. By the impugned order, the Adjudicating Authority has allowed the IA and directed the Appellant to handover peaceful and vacant possession of the property to the Resolution Professional. Aggrieved by the impugned order, this Appeal has been filed.

2. Brief facts of the case necessary to be noticed for deciding the Appeal are:-

2.1. The Corporate Debtor- Pancard Clubs Limited was engaged in the business of owning developing and operating hotel clubs and resorts across India. The Corporate Debtor floated Collective Investment Scheme assuring earnings returns made by the investors. The Corporate Debtor received investment in furtherance of the scheme from over Rs.50 lakhs investors who invested in the scheme to the tune of approximately Rs.70350000000 cumulatively. The Security and Exchange Board of India (SEBI) issued show cause notices and directions against the Corporate Debtor under different provisions of the SEBI Act, 2002. On 02.12.2016, an order was passed against the Corporate Debtor and its director for recovery of approximately Rs.70350000000. SEBI order for attachment of bank account/demat account of the Corporate Debtor. Shareholding of the Corporate Debtor was also attached on 21.12.2016. Moveable properties of the Corporate Debtor were attached. An order dated 21.12.2016 was issued by the SEBI in Recovery Certificate No.1020 of 2016 attaching all immoveable properties of the Corporate Debtor. The order dated 21.12.2016 contained Annexure-A which included the moveable and immoveable assets of the Corporate Debtor. One of the assets which was attached was United-21 Vanvaso Gir, 12,800 sq. mtr. land area and 3250 sq. mtr. built-up area situated in Junagarh District, State of Gujarat (which is subject matter of the present Appeal). An application under Section 7 was filed by one Nitin Suresh Satghare (Authorised Representative of the Financial Creditors in Class)

against the Corporate Debtor for initiating Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor. The Adjudicating Authority, Mumbai vide its order dated 09.09.2020 initiated the CIRP against the Corporate Debtor. One Rajesh Sureshchandra Sheth was appointed as Interim Resolution Professional who was subsequently confirmed as Resolution Professional of the Corporate Debtor. An application was filed by the Resolution Professional being IA No.628 of 2023 before the Adjudicating Authority seeking for direction to SEBI to de-attach the moveable property and release the property belonging to the Corporate Debtor. In order to ascertain the status of different properties, the Resolution Professional visited the Gir Vanvaso Resort on 19.11.2022 and found that Hotel at the property was functioning. Resolution Professional sent an e-mail dated 13.12.2022 to the Appellant seeking information pertaining to property operational therein and persons in control of benefitting from the property. An e-mail was received on 25.12.2022 by one Ruchit Vyas, Advocate for the Appellant enquiring about the source and the authority of the Resolution Professional to act for the Corporate Debtor. The Resolution Professional sent an e-mail dated 29.12.2022 explaining that he has been appointed as Resolution Professional by the CoC of the Corporate Debtor. No response was received to the e-mail. Resolution Professional sent subsequently e-mail dated 16.01.2023. In reply to the e-mail dated 16.01.2023, Mr. Ruchit Vyas, Authorised Representative of the Appellant stated his authority from Gir Vanvaso Resort. Ruchit Vyas again asked the Resolution Professional to explain his authority. Neither response nor any relevant information asked by the Resolution Professional was provided. In the CIRP, registered valuers

were appointed. Ruchit Vyas was informed about the valuation, however valuers were not allowed to enter into the property. E-mail dated 25.01.2023 was sent to the Suspended Director of the Corporate Debtor seeking information on operational properties of Pancard Clubs Limited. Several e-mails were sent by the Resolution Professional to the Suspended Director as well as to the Appellant asking for status and other details but no information was provided either by the Appellant or Suspended Director regarding property in question. Meetings were scheduled between the Resolution Professional and the resort which could not be fructified. A legal notice dated 05.04.2023 was issued to the Appellant by which legal notice information regarding management of the affairs of the Corporate Debtor was asked for. Relevant information was sent and documents as requested by letter dated 13.12.2022 were called for. E-mail dated 06.06.2023 was also sent by the Resolution Professional asking the Appellant to share the copy of Memorandum of Association executed between Pancard Clubs Limited and Gir Vanvaso Resort for operating the property as well as proposal for leasing of Gir Vanvaso property from 09.09.2022 along with the relevant information. The Memorandum of Association was not shared nor was any proposal received. The Resolution Professional filed an IA being IA No.3973 of 2023 dated 25.08.2023. In the IA, Resolution Professional prayed for following reliefs:-

“a. Without prejudice to the rights and remedies available to the Applicant/Resolution Professional and the Corporate Debtor, direct the Respondent to cooperate with the Applicant/Resolution Professional

by furnishing the requisite information (including the Memorandum of Understanding as claimed to be executed between the Respondent and the Corporate Debtor) as sought for at Paras 18 and 35 of the Application;

b. Without prejudice to the rights and remedies available to the Applicant/Resolution Professional and the Corporate Debtor, direct the Respondent to pay the usage charges for the use of the Property from the period starting from date since when the Respondent has been using the Property till the Insolvency Commencement Date:

c. Without prejudice to the rights and remedies available to the Applicant/Resolution Professional and the Corporate Debtor, direct the Respondent to pay the usage charges for the use of the Property from the period starting from the Insolvency Commencement Date till disposal of this application.

d. Without prejudice to the rights and remedies available to the Applicant/Resolution Professional and the Corporate Debtor, direct the Respondent to vacate the Property and handover the peaceful possession of the Property to the Corporate Debtor, through the Applicant/Resolution Professional; and alternatively

e. In the interim, direct the Respondent to pay to the Corporate Debtor the monthly usage charges with effect from the date of disposal of this application, as per the amount mutually agreed, to commensurate to the fair value of the prevalent lease rental applicable on the Property to be deduced by the Applicant/Resolution Professional or this Hon'ble

Tribunal, along with GST, TDS, delay payment interest, if any and mesne profits with this Hon'ble Court till final disposal of the present Application;

f. pass any other such Order(s) as this Hon'ble Adjudicating Authority may deem fit.”

2.2. In the IA, the Appellant filed Affidavit of Reply dated 09.01.2024. In the Affidavit of Reply, Appellant pleaded for the first time a Memorandum of Understanding dated 06.12.2013 (an unregistered document) claiming that Mr. Manish Kalidas Gandhi, Director of Corporate Debtor entered into MoU with Mr. Kiritbhai Keshurbhai Sorathia- Party No.1 and Shri Deepakbhai Naranbhai Suva- Party No.2 with Mr. Manish Kalidas Gandhi-Party No.3 under which amount of Rs.80,000 in cash was given by Mr. Kiritbhai Keshurbhai Sorathia and Shri Deepakbhai Naranbhai Suva on different dates between 01.12.2013 to 04.12.2013 in cash. Under the representation of Mr. Manish Kalidas Gandhi that under the scheme of the Corporate Debtor, double of the investment amount shall be returned for which 6 years 3 months was fixed and in event, Rs.1,60,00,000/- is not returned within the time then the ownership right and possession of Vanvaso resort shall be entrusted to Party No.1 and Party No.2 and on the date of expiry of the investment period and until ownership is transferred entire administration of Vanvaso Resort shall be handed over by Party No.3 to Party No.1 and 2 and Party No.1 and 2 will play the role of administrator and Party Nos.1 and 2 will reimburse the amount invested by them from and out of any return/ income generated by Resort and whatever amount remains will be used for the development of the Resort. MoU further

contemplated that the Party No.3 on failure to pay Rs.1,60,00,000/- understanding shall impliedly change into an Agreement to Sell and on payment of consideration the document transferring the proprietary rights as on the current valuation shall be executed. The Adjudicating Authority in the CIRP of the Corporate Debtor approved the Resolution Plan on 25.04.2024. The plan submitted by Chemhub Tradelink Pvt. Ltd. (SRA) was approved. It is submitted that the name of the Memo of Parties in pending application IA No.3973 of 2023 was directed to be amended to bring SRA on the record. The name of SRA was substituted on 09.10.2024 to prosecute the IA No.3973 of 2023.

2.3. Copy of the MoU dated 06.12.2013, copy of the payment receipts, copy of property tax receipts of Gram Panchayat tax receipts which were paid by Party No.1 and 2 were annexed along with the reply. The Resolution Professional filed a rejoinder affidavit to the reply. In the rejoinder affidavit, it was pleaded that the Board Resolution dated 24.08.2023 does not empower Mr. Manish Kalidas Gandhi to execute any MoU with the Appellant. It was pleaded that no documents of handing over possession are available on record. It was pleaded that the document relied has no legal validity. Document appears to be false and fictitious. The Appellant is in illegal possession of the valuable property of the Corporate Debtor. No payment was received by the Corporate Debtor from the Appellant. The Appellant is squatter and possession is liable to be returned to the Corporate Debtor. Adjudicating Authority after hearing the parties by the impugned order allowed the application. Adjudicating Authority made

observations that fact of the case casts doubt on contemporaneous existence of MoU. Adjudicating Authority further held that Section 53A of the Transfer of Property Act also does not help the Appellant. It was observed that even if it is assumed that MoU is genuine, the firm (represented by Appellant) cannot claim any right in the assets of the Corporate Debtor. The Agreement to Sell are compulsory required to be registered under the Indian Registration Act. Adjudicating Authority thereafter issued direction to the Appellant to handover peaceful and vacant possession and further directed to pay fair value of the rent for the usage of the said property. In paragraphs 18 and 19 of the impugned order, following was directed:-

“18. In view of the above, we are of considered view that the Respondent ought to have handed over peaceful and vacant possession of said property to the Resolution Professional, as it formed part of assets of the Corporate Debtor. Accordingly, the Respondent, including Mr. Kirit Sorathia and Mr. Deepakbhai Naranbhai Suva, stated to be partner of Mr. Kirit Sorathia are directed to handover the possession of the said property.

19. The prayer (a) doesn't survive in view of MOU having been placed on record. As regards payment of usage charges prayed in prayer b and c, we note that MOU, even if such MOU is assumed as enforceable, does not specify any periodical payment having been agreed with the Respondent. However, it is undisputed fact that the Respondent was in possession and enjoyment of the property as per its own admission, accordingly, we consider it appropriate to hold that the fair value of the rent for the usage of said property ought to be paid by the Respondent. Accordingly, the Applicant is directed to

determine the fair value of such rent and inform the Respondent. It is made clear that the Respondent shall be entitled to claim their investments as set off against the usage charges so determined after upon submission of necessary evidence in relation to said investments.”

2.4. The Appeal has been filed challenging the aforesaid order.

3. We have heard Shri Krishnendu Datta, Learned Senior Counsel for the Appellant and Shri Abhijeet Sinha, Learned Senior Counsel for the Respondent.

4. Learned Counsel for the Appellant challenging the impugned order submits that the Adjudicating Authority had no jurisdiction to enter into contractual dispute between the parties as per MoU dated 06.12.2013. It is submitted that the Adjudicating Authority had no jurisdiction to enter into contractual dispute between the parties under Section 60(5) of the IBC, hence, the application ought not to have been entertained. It is submitted that the jurisdiction of the Resolution Professional is strictly circumscribed by the duration of the CIRP. Upon approval of the Resolution Plan, Resolution Professional become *functus officio* and no power can be exercised under Sections 18, 19, 23 and 25. It is submitted that after approval of the Resolution Plan, no order could have been passed in favour of the Resolution Applicant directing handing over possession of the Resort Vanvaso to the Resolution Professional. The Adjudicating Authority has no jurisdiction to continue the application through the SRA as Resolution Professional's existence has come to an end after approval of the plan. It is

further submitted that the Appellant was handed over possession after payment of consideration of Rs.80,00,000/- and the MoU stood impliedly converted into an Agreement to Sell. It is submitted that the Appellant was given possession in the year 2020 when the amount invested by the Appellant was not returned back and Appellant has been managing the Resort since 2020 paying all necessary taxes expenses. Appellant has made huge investment in running the resort. Appellants were ready to perform their part of obligation under the MoU and Corporate Debtor was obliged to transfer the ownership rights in the resort to the Appellant. The Appellant being in settled possession of the assets which is an admitted fact, Adjudicating Authority failed to recognise possessory rights of the Appellant. Under Section 53A of the Transfer of Property Act, Resolution Professional or SRA cannot enforce any right against the Appellant who had been continuing in possession in part performance of written contract.

5. Counsel appearing for the Respondent refuting the submissions of the Counsel for the Appellant submits that admittedly, the Resort is in ownership of the Corporate Debtor, in the order attaching the assets of the Corporate Debtor by SEBI, Vanvaso Resort is also listed one of the immoveable assets. The Appellant in spite of Resolution Professional writing several e-mails and letters never disclosed the MoU and it was only in reply to application filed by Resolution Professional, MoU for the first time saw light of the day. It is submitted that the MoU is a sham and fictitious document which was created by the Appellants to somehow continue in possession of the assets unlawfully. There being prohibitory attachment

order of the SEBI dated 21.12.2016, neither possession of the assets can be handed over to the Appellant by Corporate Debtor nor any right can be claimed by the Appellant. The SEBI having already attached all the assets of the Corporate Debtor due to non-payment of Rs.7,035 Cr. amount. MoU relied by the Appellant is neither disclosed or shared in any proceeding or any correspondence with the Corporate Debtor or with other authorities. MoU is unregistered and un-stamped document. The Appellant is not entitled to benefit of Section 53A of the Transfer of Property Act. Benefit under Section 53A can be claimed when there is a valid Agreement to Sell. NCLT has rightly exercised its jurisdiction under Section 60(5). Resolution Professional is statutorily obliged under Section 18(1)(f) and Section 25(2)(a) of the IBC to take possession of all assets of the Corporate Debtor. Submission of the Appellant that Adjudicating Authority had no jurisdiction is without any basis. On basis of sham MoU, no right can be claimed by the Appellant. After approval of the Resolution Plan, the SRA was substituted in place of Resolution Professional to prosecute the application. Substitution of the SRA in place of Resolution Professional was never objected nor challenged by the Appellant. Appellant has no right to claim any possession or ownership in the Resort. The Appellant having continued in unlawful possession of the assets of the Corporate Debtor was liable to pay mesne profits and direction to Appellant to pay usage charges is in accordance with law.

6. Counsel for both the parties have placed reliance on various judgments of this Tribunal and the Hon'ble Supreme Court in support of their respective submissions which we need to examine.

7. From the submissions of Counsel for the parties, following issues arise for consideration:-

(I) Whether the Adjudicating Authority had jurisdiction to entertain and decide the IA No.3973 of 2023 after approval of the Resolution Plan by the Adjudicating Authority on 25.04.2024?

(II) Whether the Adjudicating Authority had jurisdiction to enter into the MoU dated 16.12.2013 and adjudicate on the rights of the parties under Section 60(5) of the IBC?

(III) Whether Appellant is entitled to claim benefit of Section 53A of the Transfer of Property Act on the strength of the MoU dated 06.12.2013 and on fact of being in possession of the resort since 2020?

(IV) Whether the order of the Adjudicating Authority directing Appellant to vacate the premises and handover the possession is unsustainable?

(V) Whether the direction of the Adjudicating Authority to Appellant to pay usage charges of the resort is sustainable?

Question No.(I)

8. The submission of the Appellant is that the Adjudicating Authority could not have proceeded to decide the application filed by the Resolution Professional IA No.3973 of 2023 after approval of the Resolution Plan on 25.04.2024. The submission is that the CIRP came to an end after approval of the Resolution Plan on 25.04.2024 reliefs in IA remains unaltered. Jurisdiction of Resolution Professional is circumscribed by the duration of the CIRP. On approval of the Resolution Plan, Resolution Professional became *functus officio* and all powers under Sections 18, 19, 23 and 25 stands exhausted, hence, the IA which was filed on 25.08.2023 and was amended to substitute the Resolution Professional with the SRA. The application under Section 60(5) could not have been entertained by the Adjudicating Authority through the SRA.

9. The above submission is refuted by the Counsel for the Respondent who submits that after approval of the Resolution Plan, the SRA was substituted in place of the Resolution Professional, hence, was fully entitled to prosecute the application. Approval of the Resolution Plan had no effect on prosecution of the application. Assets admittedly belongs to the Corporate Debtor, hence, for implementation of the Resolution Plan, the assets is required to be taken control by the SRA.

10. There is no dispute between the parties that application was filed by the Resolution Professional on 25.08.2023 much before the Resolution Plan came to be approved. After approval of the Resolution Plan, application IA

No.3973 of 2023 was also amended and Para 1(A) was added in the application to the following effect:-

“1A. The present Interlocutory Application was filed by the Resolution Professional of the Corporate Debtor. By an Order dated 25th April 2024, the Resolution Plan submitted by Chemhub Tradelink Pvt. Ltd. for the Corporate Debtor came to be approved by this Hon'ble Tribunal. By virtue of the Order dated 25th April 2024, the Successful Resolution Applicant (i.e., Chemhub Tradelink Pvt. Ltd.) was merged into the Corporate Debtor. In view of the Order dated 25th April 2024, the Corporate Debtor is now being represented by its new management. Thereafter, the new management of Pancard Club Ltd. filed an Interlocutory Application No. 4421 of 2024 seeking substitution in place and in stead of the Resolution Professional to continue the present Application. The said Interlocutory Application No. 4421 of 2024 was allowed by this Hon'ble Tribunal by an Order dated 9th October 2024. Therefore, Pancard Club Ltd., be read in place and in stead of the Applicant/Resolution Professional in the present Application.”

11. The above pleadings which was added in the application clearly indicate that application IA No.4421 of 2021 to substitute the SRA in place of Resolution Professional was allowed by order dated 09.10.2024 and thereafter Pancard Clubs Limited be read in place and instead of the Applicant in the present application.

12. When the application was filed by the Resolution Professional to take possession of the assets which admittedly belong to the Corporate Debtor

and reply to the application was filed by the Appellant dated 09.01.2024 much before the approval of the plan and application remain pending, we fail to see any substance in the submission of the Appellant that the Adjudicating Authority could not have proceeded with the application through the SRA/ Corporate Debtor. When the Adjudicating Authority has passed an order dated 09.10.2024 substituting the SRA/ Pancard Clubs Limited in place of the Resolution Professional application was required to be proceeded with and there can be no infirmity with prosecution of the application and decision of the Adjudicating Authority. We, thus, do not find any substance in the above submission of the Appellant objecting to the decision of the Adjudicating Authority on the application which was prosecuted by the SRA/ Corporate Debtor.

Question No.(II), (III) & (IV)

13. Question No.(II), (III) & (IV) being inter connected are being taken together. From the facts of the case, as noted above, it is clear that much before initiation of the CIRP against the Corporate Debtor by order dated 09.09.2022, the SEBI has attached the assets of the Corporate Debtor under Section 28A of the SEBI Act, 2002 on 21.12.2016. Along with the application which was filed by the Resolution Professional being IA No.3973 of 2023, notice of attachment of shareholdings and order under Section 28A were filed along with the application. Copy of the order dated 21.12.2016 was filed as Annexure A-3 to the application of the Resolution Professional. It is useful to notice the entire order dated 21.12.2016 which is to the following effect:-

“Order No. RO/HO1/064/2016

**BEFORE THE RECOVERY OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
Recovery Certificate No. 1020 of 2016**

(1) Pancard Clubs Ltd. (AAACP9093R);
 (2) Sudhir Shankar Moravekar (AADPM2933M);
 (3) Shobha Ratnakar Barde (ASLPB1204C);
 (4) Usha Arun Tari (ABYPT8841M);
 (5) Manish Kalidas Gandhi (AITPG8933H);
 (6) Chandrasen Ganpatrao Bhise (AADPB6103E);
 (7) Ramachandran Ramakrishnan (AAIPR9196G);
 111-113, Kalyandas Udyogbhavan,
 Near Century Bhavan,
 Prabhadevi, Mumbai - 400025.

(Defaulters)

**Order under Section 28A of the SEBI Act, 1992 read with
Rule 16 and 48 of the Second Schedule to the Income Tax
Act, 1961**

1. Recovery proceedings have been initiated against M/s Pancard Clubs Ltd. and others (Defaulters), for failure to pay a sum of Rs.7035,00,01,000/- (Rupees Seven Thousand Thirty Five Crore One thousand Only) along with returns to the investors on account of a direction to refund money in respect of Certificate No. 1020 of 2016 dated December 02, 2016 drawn up by the Recovery Officer, Mumbai, along with further Interest, costs, expenses, etc.

2. Notice of Demand dated December 02, 2016 issued by the Recovery Officer to the defaulters demanding payment of the said sum along with returns promised to the investors, costs, expenses, etc., within 15 days from the date of receipt of the

said notice. The Recovery Officer has attached various bank and demat accounts and mutual fund folios of the defaulters in execution of the said notice and sent copies of attachment notices to the defaulters. However, the funds available in the bank accounts and the securities available in the demat accounts of the defaulters are not sufficient towards the dues. Hence, it is felt that the defaulters may dispose of or transfer or alienate the assets with a view to obstruct or delay the recovery proceedings, which needs to be prevented immediately.

3. In view of the above, and in exercise of the powers conferred under Section 28A of the SEBI Act, 1992 read with Rule 16 and 48 of the Second Schedule to the Income Tax Act, 1961, the defaulters are hereby prohibited from disposing, transferring, alienating, or charging in respect of:

- a. all the immovable properties held by the defaulters including the list of properties at Annexure A & B.
- b. All other movable properties held by the defaulters.

4. It is further directed that all persons are hereby prohibited from taking any benefit under such disposal, transfer, alienation or charge in respect of the properties mentioned above which stands attached in execution of Recovery Certificate.

5. The defaulters are also hereby directed to furnish at SEBI, Head Office, Mumbai:

- a) complete details of all the movable and immovable properties held by the defaulters and charges, if any, thereon in the format prescribed at Annexure C, duly certified by the Board of Directors, within two weeks from the date of this order.

b) Original title deeds, valuation reports of all the properties held by the defaulters, either singly or jointly, within two weeks from the date of this order.

c) details of any financial and fixed assets held by the defaulters singly or jointly

d) details of capacities held by him/her in any company, any firm or any business concern, etc. along with the details of shareholding, etc. and

e) details of debtors, persons from whom money is due to the defaulters either singly or jointly.

6. This order shall be served on the defaulters and

a) The Inspectors General of Registration of all the States and Union Territories; and

b) The concerned Tehsildars, District Registrars and Sub-Registrars of the respective areas where the above mentioned properties are located.

with a direction not to act upon any documents purporting to be dealing with transfer, mortgage, charge, lease or creation or alteration of any interest in any of the properties owned/held by the defaulters, including the said properties, if presented for registration.

Given under my hand and seal at Mumbai this 21st Day of December, 2016.”

14. Annexure A to the order clearly contained Item No.9 and Item No.21 which is as follows:-

Sr. No.	Property Name & Address	Area
9	United-21 Vanvaso, Gir	12800 Sq. Meter Land

	Village: Sangodra, Tehsil: Talala, District: Junagadh, State: Gujarat.	Area and 3250 Sq. Meter Built Up Area And another land area of 4047 Sq. Meter.
21	United-21 Vanvaso, Gir Village: Sangodra, Tehsil: Talala, District: Junagadh, State: Gujarat.	Land area of 4047 Sq. Meter

15. Thus, the Vanvaso Resort was under attachment of the SEBI on 21.12.2016. After CIRP commenced on 09.09.2022, the Resolution Professional wrote several e-mails to the Appellant asking the Appellant to provide the details by e-mail dated 13.12.2022. Resolution Professional communicated to the Appellant the details of initiation of CIRP against the Corporate Debtor and required details from the Appellant asking for registered contract agreement with the company on the basis of which company is being operated. The e-mail dated 13.12.2022 is to the following effect:-

"Dear Madam/ Sir.

The undersigned is the Resolution Professional of Pancard Clubs Limited and by virtue of the provisions of the Insolvency and Bankruptcy Code, 2016, read with the accompanying Rules and Regulations thereunder (the Code), I would like to notify you as under:

1. Pursuant to an application filed by Nitin Suresh Satghare (Authorised Representative of the Financial Creditors) against Pancard Clubs limited ("PCL"/"Corporate Debtor" "Company") under Section 7 of the Insolvency and Bankruptcy Code, 2016 read

with the rules and regulations thereunder ("Code"), before the Hon'ble National Company Law Tribunal, Mumbai Bench ("NCLT"), the NCLT vide Order dated 9th September, 2022 ("the Order") in CP (IB) 4578/MB/C-1/2018 initiated the Corporate Insolvency Resolution Process (CIRP) of the Company as per the provisions of the Code.

2. Vide the said Order dated 9th September 2022, the undersigned was appointed as the Interim Resolution Professional ("IRP") of the Corporate Debtor. Subsequently, the undersigned has been appointed as the Resolution Professional ("RP") of the Corporate Debtor by the Committee of Creditors of the Corporate Debtor, in terms of the provisions of the Code.

3. By virtue of the provisions of Code read with the Order, I would like to inform you that with effect from the date of the Order i.e., 9th September, 2022 ("Insolvency Commencement Date"), in terms of Section 17 of the Code, the management of the affairs of the Corporate Debtor vests in me as the IRP/RP of the Company and as per Section 17(b) of the Code, the powers of the board of directors of the Corporate Debtor stands suspended and would be exercised by the undersigned in the capacity of the IRP/RP. Further, in terms of Sections 18 & 23(2) of the Code, the IRP/RP is under a statutory obligation to take control and custody of any asset over which the Company has ownership rights, including assets that may or may not be in possession of the Corporate Debtors.

4. From the information available with the Resolution Professional, it appears that the hotel/resort named United-21 Resort Vanvaso located at Village Sangodra,

Taluka Talala, District Junagadh, Gujarat. ("the Property") belongs to the Company and prior to the initiation of CIRP of the Company, the said Property has been attached by SEBI/EOW under the recovery proceedings initiated by SEBI/EOW against the Company.

5. In order to ascertain the status of assets of the Company, the Resolution Professional and/or his team visited the Property on November 19, 2022 and the Property was found to be in operation. On enquiring from various sources, I was given to understand that the business is being transacted in cash and other modes of payments. On further probe by the RP and his team, no information was provided by the persons present therein as to who is receiving the proceeds from operations of the Property, who is managing the operations of the Property etc. As per the knowledge derived through public domain, I am not aware of any record/information of any arrangement or agreement subsisting with the Company to occupy and/or operate the Property by any third party. Even from the various legal proceedings initiated by SEBI and various orders passed therein I do not find any mention of the said Property being provided to any party or any arrangement for operating the same.

6. Since the Resolution Professional is obligated under the provisions of the Code, to take over and manage all the assets of the Company, I therefore call upon you to provide the following details within 7 days of the receipt of this letter:

- (i) name of the person(s) who are in-charge of running the Property;*

(ii) signed and registered contract/agreement with the Company, if any, basis which the Property is being operated;

(iii) date since when the possession of the Property has been taken over and from whom;

(iv) financial details of receipt and expenditure in operating the Property:

(v) details of the bank account in which the proceeds from operations of Property are deposited:

7. Further, you are directed to refrain from taking any action or carry out transactions basis the instructions given by any of the erstwhile directors/employees/authorized signatories of the Company whether given prior to the date of the Order or at any time thereafter. You are hereby requested to ensure prevention of any acts of vandalism and damage to the Property.

8. In case you fail to promptly respond to the abovementioned queries and provide the required information/documents within 7 days of receipt of this letter, the Resolution Professional will be constrained to take action and initiate appropriate legal proceedings against you and the concerned persons.

Thanks & Regards,

Rajesh Sureshchandra Sheth

Insolvency Professional Regn. No.: IBBI/IPA-002/IP-NO1021/2020-2021/13298 AFA Number-AA2/13298/02/201222/201819 (valid till December 20,2022)

Resolution Professional in the matter of Pancard Clubs Limited”

16. The e-mail dated 13.12.2022 was replied on behalf of the Resort where the authority of the Resolution Professional and reason for calling the details were called for. Resolution Professional sent various e-mails and communication asking time and again the details with respect to operations of the Resort. Agreement or contract ultimately the Resolution Professional on 05.04.2023 issued a legal notice to Resort and Authorised Representative of Gir Vanvaso Resort. In the legal notice, the details of correspondence with the Resort was mentioned. It was stated that no response is coming from the Resort and even the valuer was not allowed to enter the premises. Meeting was scheduled with. In paragraphs 16, 17 & 18 of the notice, following was stated:-

“16. That your action of non-cooperating with the Resolution Professional, who is an officer of the court appointed in accordance with and drawing authority from the provisions of the Code, in conducting the Corporate Insolvency Resolution Process of Pancard Clubs Ltd. is against the law and the provisions of the Code in specific.

17. That in the absence of any response from you the Noticee to the letter/emails dated 13.12.2022, 29.12.2022, 16.01.2023, 20.01.2023 and absence from meeting dated 23.03.2023 and the lack of response to the multiple telephonic communications made by the Resolution Professional and his team and your failure to provide the required details with respect to the Property and refusal to allow the valuer to enter the Property for valuation in compliance with the provisions of the Code, the Resolution Professional is constrained to send the present Legal Notice.

18. In view of the above, we hereby call upon you the Noticee on behalf of our Client to provide the information as requested by the Resolution Professional vide multiple communications including letter/emails dated 13.12.2022, 29.12.2022, 16.01.2023, 20.01.2023 and also allow the valuer to enter the premises of the Property for valuation within 7 days of receipt of this notice and in case you fail to do so, our client will be constrained to initiated appropriate legal proceedings against you the Noticee, at your risk and cost.”

17. It was after the aforesaid legal notice that Resolution Professional filed the application IA No. 3973 of 2023 before the Adjudicating Authority seeking possession. Affidavit in Reply was filed by the Respondent by Mr. Kiritbhai Keshurbhai Sorathia where in the reply, it was pleaded that under Section 53A of the Transfer of Property Act, the ownership and possession of property is vested with the Respondent. Details of the MoU dated 06.12.2013 has been pleaded in the reply. Copy of the MoU, receipt of payment of Rs.80 lakhs in total in cash was filed. The Resolution Professional after noticing the reply and the case set up on the basis of MoU filed his rejoinder where it was pleaded that Appellants are in illegal possession of the assets of the Corporate Debtor. No payment was received by the Corporate Debtor. The Board Resolution dated 24.08.2013 which is claimed by the Appellant does not authorise Mr. Manish Kalidas Gandhi to enter into MoU. It was pleaded that MoU is unregistered document and does not give any right. The Resolution Professional has pleaded that the document is fictitious document. On multiple follow ups by the Resolution Professional, the document was never disclosed to the Resolution

Professional nor the MoU was shared with the Resolution Professional. Documents was claimed to be false and fictitious and it was pleaded that the transaction is malafide and misfeasance.

18. The submission which has been raised by the Appellant is that the Adjudicating Authority has no jurisdiction to enter into MoU claimed on behalf of the Appellant and Adjudicating Authority had no jurisdiction to enter into contractual dispute between the parties. Counsel for the Appellant has also relied on various judgments in support of his submission which we shall notice hereinafter. As noted above, the assets admittedly belong to the Corporate Debtor. Attachment of the assets by the SEBI on 21.10.2016 is matter of record. The resort in question is part of Annexure-A. When the assets belong to the Corporate Debtor, Resolution Professional has jurisdiction to file an application before the Adjudicating Authority to take in his control the assets of the Corporate Debtor. The application filed by the Resolution Professional to take possession of the assets was well within the jurisdiction of Adjudicating Authority under Section 60(5) which arose out of the CIRP process. Resolution Professional is obliged to take control and possession of assets of the Corporate Debtor during the CIRP, hence, the submission of the Appellant that contractual dispute between the Corporate Debtor and Resort cannot be decided and adjudicated by the Adjudicating Authority is without any substance. As noted above, it was for the first time that Appellant in the reply to IA, filed copy of the MoU dated 06.12.2013. When Appellant raised a defence on the basis of MoU dated 06.12.2013, Adjudicating Authority for deciding the application filed by the

Resolution Professional to take possession has obviously to go into the defence taken and the decision of the Adjudicating Authority on the IA 3973 of 2023 cannot be said to be without jurisdiction.

19. The judgments of the Hon'ble Supreme Court in ***"Tata Consultancy Services Ltd. vs. Vishal Ghisulal Jain- (2021) ibclaw.in 167 SC"***, ***"Gujarat Urja Vikas Nigam Limited vs. Amit Gupta & Ors.- (2021) 7 SCC 209"*** and ***"Embassy Property Developments Pvt. Ltd. vs. State of Karnataka & Ors.- (2020) 13 SCC 308"*** has been relied by Appellant. Tata Consultancy Services Ltd. (supra) was a case where Corporate Debtor had entered into Build Phase Agreement followed by Facilities Agreement. Facilities Agreement obliged the Corporate Debtor to provide premises with certain specification and facilities. Under the Facilities Agreement, either party was entitled to terminate the Agreement. Tata Consultancy has terminated the agreement. In the above context, CIRP was initiated on 29.03.2019 and termination notice was issued on 10.06.2019. Before the Adjudicating Authority, application was filed for quashing the termination notice. In the above case, the Hon'ble Supreme Court held that the Adjudicating Authority has no jurisdiction to enter into contractual issues between the parties. In the above case, the Hon'ble Supreme Court has referred to both the judgments of ***"Gujarat Urja Vikas Nigam Limited"*** (supra) and ***"Embassy Property Developments Pvt. Ltd."*** (supra). In paragraphs 26, 27, 28 and 29, following was held by the Hon'ble Supreme Court in Tata Consultancy Services Ltd. (supra):-

“26. In Gujarat Urja (supra), the contract in question was terminated by a third party based on an ipso facto clause, i.e., the fact of insolvency itself constituted an event of default. It was in that context, this Court held that the contractual dispute between the parties arose in relation to the insolvency of the corporate debtor and it was amenable to the jurisdiction of the NCLT under Section 60(5)(c). This Court observed that “....NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the corporate debtor... The nexus with the insolvency of the corporate debtor must exist” (para 69). Thus, the residuary jurisdiction of the NCLT cannot be invoked if the termination of a contract is based on grounds unrelated to the insolvency of the Corporate Debtor.

27. It is evident that the appellant had time and again informed the Corporate Debtor that its services were deficient, and it was falling foul of its contractual obligations. There is nothing to indicate that the termination of the Facilities Agreement was motivated by the insolvency of the Corporate Debtor. The trajectory of events makes it clear that the alleged breaches noted in the termination notice dated 10 June 2019 were not a smokescreen to terminate the agreement because of the insolvency of the Corporate Debtor. Thus, we are of the view that the NCLT does not have any residuary jurisdiction to entertain the present contractual dispute which has arisen dehors the insolvency of the Corporate Debtor. In the absence of jurisdiction over the dispute, the NCLT could not have imposed an ad-interim stay on the termination notice. The NCLAT has incorrectly upheld the interim order of the NCLT.

28. While in the present case, the second issue formulated by this Court has no bearing, we would like to issue a note of caution to the NCLT and NCLAT regarding interference with a party's contractual right to terminate a contract. Even if the contractual dispute arises in relation to the insolvency, a party can be restrained from terminating the contract only if it is central to the success of the CIRP. Crucially, the termination of the contract should result in the corporate death of the Corporate Debtor. In *Gujarat Urja (supra)*, this Court held thus:

"176. Given that the terms used in Section 60(5)(c) are of wide import, as recognised in a consistent line of authority, we hold that NCLT was empowered to restrain the appellant from terminating PPA. However, our decision is premised upon a recognition of the centrality of PPA in the present case to the success of CIRP, in the factual matrix of this case, since it is the sole contract for the sale of electricity which was entered into by the corporate debtor. In doing so, we reiterate that NCLT would have been empowered to set aside the termination of PPA in this case because the termination took place solely on the ground of insolvency. The jurisdiction of NCLT under Section 60(5) (c) of IBC cannot be invoked in matters where a termination may take place on grounds unrelated to the insolvency of the corporate debtor. Even more crucially, it cannot even be invoked in the event of a legitimate termination of a contract based on an ipso facto clause like Article 9.2.1(e) herein, if such termination will not have the effect of making certain the death of the corporate debtor. As such, in all future cases, NCLT would have to be wary of setting aside valid contractual terminations

which would merely dilute the value of the corporate debtor, and not push it to its corporate death by virtue of it being the corporate debtor's sole contract (as was the case in this matter's unique factual matrix).

177. The terms of our intervention in the present case are limited. Judicial intervention should not create a fertile ground for the revival of the regime under Section 22 of SICA which provided for suspension of wide-ranging contracts. Section 22 of the SICA cannot be brought in through the back door. The basis of our intervention in this case arises from the fact that if we allow the termination of PPA which is the sole contract of the corporate debtor, governing the supply of electricity which it generates, it will pull the rug out from under CIRP, making the corporate death of the corporate debtor a foregone conclusion."

(emphasis supplied)

29. The narrow exception crafted by this Court in Gujarat Urja (supra) must be borne in mind by the NCLT and NCLAT even while examining prayers for interim relief. The order of the NCLT dated 18 December 2019 does not indicate that the NCLT has applied its mind to the centrality of the Facilities Agreement to the success of the CIRP and Corporate Debtor's survival as a going concern. The NCLT has merely relied upon the procedural infirmity on part of the appellant in the issuance of the termination notice, i.e., it did not give thirty days' notice period to the Corporate Debtor to cure the deficiency in service. The NCLAT, in its impugned judgment, has averred that the decision of the NCLT preserves the 'going concern' status of the Corporate Debtor but there is no factual analysis on

how the termination of the Facilities Agreement would put the survival of the Corporate Debtor in jeopardy.”

20. The above judgment as well as the judgments of **“Gujarat Urja Vikas Nigam Limited”** (supra) and **“Embassy Property Developments Pvt. Ltd.”** (supra) are not applicable in the present case. Present is a case where Appellant as a defence to the application filed by the Resolution Professional to take possession of the assets of the Corporate Debtor relied on unregistered MoU dated 06.12.2013. There being no dispute that assets belong to the Corporate Debtor and it is obligation and right of the Resolution Professional to take possession of the assets, hence, application filed by the Resolution Professional in the present case was well within the meaning of Section 60(5)(c). In **“Gujarat Urja Vikas Nigam Limited”** (supra), the Hon’ble Supreme Court has clearly laid down that the Adjudicating Authority under Section 60(5) can exercise jurisdiction which arise out of CIRP. In paragraph 84 of the judgment, following was held:-

“84. The respondents have relied upon the decision of this Court in Committee of Creditors of Essar Steel India Limited vs Satish Kumar Gupta⁵⁷, where this Court held that section 60(5)(c) of the IBC —is in the nature of residuary jurisdiction vested in the NCLT so that NCLT may decide all questions of law or fact arising out of or in relation to insolvency or liquidation under the Code.”

21. The Hon’ble Supreme Court held that the NCLT may decide all questions of law or fact arising out of or in relation to insolvency or liquidation under the Code. There cannot be any dispute in the present case

that application which was filed by the Resolution Professional to take possession of the assets of the Corporate Debtor arose out of insolvency process against the corporate debtor, hence, the decision of the application was well within the jurisdiction.

22. Now we come to the MoU dated 06.12.2013. The Adjudicating Authority in the impugned order has expressed its doubt about the contemporaneous existence of the MoU. As noted above, the Appellant never shared the MoU with the Resolution Professional in spite of repeated e-mails and letters and legal notice. MoU rely on cash payment and cash payment to the extent of Rs.80,00,000/- receipt of which was filed along with the reply to the IA. The assets were attached by the SEBI on 21.12.2016. MoU is unregistered document. It is further pleaded by the Resolution Professional that no payment claimed to be made by the Appellant were received by the Corporate Debtor. The sequence of the facts and events clearly supports the doubt expressed by the Adjudicating Authority about existence of the MoU. MoU is unregistered document which is based on cash payment to one Mr. Manish Kalidas Gandhi of Rs.80,00,000/- in December, 2013. However, we for the purpose of the present case, proceed to examine the MoU dated 06.12.2013 as is claimed by the Appellant to find out as to whether the said MoU gives any right under Section 53A of the Transfer of Property Act. Section 53A of the Transfer of Property Act, is as follows:-

“53A. Part performance.-- *Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be*

*ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that^{2***}, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:*

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.”

23. To take benefit of Section 53A, the pre-condition is “where any person contracts to transfer for consideration any immoveable property”. Thus, contract of sale is a pre-condition. Section 54 defines sale as well as contract for sale. Section 54 of the Transfer of Property Act is as follows:-

“54. “Sale” defined. *"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.*

Sale how made.-- *Such transfer, in the case of tangible immoveable property of the value of one*

hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.-- *A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.*

It does not, of itself, create any interest in or charge on such property.”

24. Section 17 of the Registration Act, 1908 contains a provision which require compulsory registration of documents. Section 17(1)(A) which has been inserted w.e.f. 24.09.2001 is as follows:-

“17. Documents of which registration is compulsory.— [(1A) *The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 (48 of 2001) and if such documents are not registered on or after such*

commencement, then, they shall have no effect for the purposes of the said section 53A.]”

25. Further, in the State of Gujarat by Act 7 of 1982, after clause (a), clause (aa) was inserted to the following effect:-

“(aa) instruments which purport or operate to effect any contract for transfer of immovable property”

26. Thus, by virtue of the above amendment as applicable in the State of Gujarat, any instruments which purport or operate to effect any contract for transfer of immovable property is compulsory registerable. Admittedly, the MoU dated 06.12.2013 is unregistered document. On the basis of unregistered document dated 06.12.2013, no right under Section 53A can be claimed by the Appellant.

27. Counsel for the Respondent has relied on judgment of the Hon’ble Supreme court in **“Giriappa & Anr. vs. Kamalamma & Ors.- Special Leave Petition (Civil) No.30804 of 2024”** where Section 53A of the Transfer of Property Act came for consideration. In paragraphs 12, 13 and 14, the Hon’ble Supreme Court laid down following:-

“12. In terms of this provision, if the above preconditions stand complied with, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and person(s) claiming under him, any right in respect of the property of which the transferee has taken or continue in possession, other than a right expressly provided by the terms of the contract, notwithstanding the fact, that the transfer, as contemplated, had not been completed in

the manner prescribed therefor by the law for the time being in force. Noticeably, an exception to this restraint is carved out qua a transferee for consideration, who has no notice of the contract or of the part-performance thereof.

13. Section 53-A of the Transfer of Property Act was inserted partly to set at rest the conflict of views in this country, but principally for the protection of ignorant transferees who take possession or spend money in improvements relying on documents which are ineffective as transfers or on contracts which cannot be proved for want of registration. The effect of this section, is to relax the strict provisions of the Transfer of Property Act and the Registration Act in favour of transferees in order to allow the defence of part performance to be established.

14. Section 53-A is an exception to the provisions which require a contract to be in writing and registered and which bar proof of such contract by any other evidence. Consequently, the exception must be strictly construed.”

28. Now we come to the MoU which is relied by the Appellant. MoU relied by the Appellant claims that an amount of Rs.80,000 was being handed over to Mr. Manish Kalidas Gandhi, Director of the Corporate Debtor with respect to scheme running in Corporate Debtor that if you invest in company you will get benefit from the scheme. The condition of the MoU are as follows:-

“1. The said amount of Rs. 80,00,000/- (Rs. Eighty lacs only) given by us shall be utilized and employed by the Party no.3 for the development of Vanvaso Resort.

2. The amount paid by us Party No. 1 and Party No. 2 as per the scheme of Pancard Club Limited and as stated by Party No. 3 will be returned to us by doubling the amount paid by us in 6 years and 3 months i.e. to say the Party No. 1 and Party No. 2 will be given total amount of Rs .1,60,00,000/- (One Crore Sixty Lacs only) towards return.

3. As per condition mentioned at Serial no 2, if party no. 3 commits default in giving 1,60,00,000/- (One Crore Sixty Lakhs) as return within the time limit given to Party No. 1 and Party No. 2, then Party No. 3 is subjected to agree to the following conditions.

A. If default is made in payment of 1,60,00,000/- (One Crore Sixty Lacs) within the time frame mentioned as set out as hereinabove under the Pancard Club Scheme, then the ownership right and possession of Vanavaso Resort shall have to be entrusted to we Party No. 1 and Party No. 2 and the ownership right shall be given to us on the condition that on the day of expiry of our investment period, as per the valuation of Vanvaso Resort that may be made by Revenue means , whereupon, after deducting the amount of our return, we shall have to pay the balance extra amount to the party no. 3 and party no. 3 shall have to execute a valid and legal Deed in favour of us.

B. As per the condition mentioned above, Pancard Club Limited shall, by executing Deed in our favour, entrust and hand over all ownership rights and possession and for any circumstances, until ownership is transferred by the party no. 3, within 15 days of the date of expiry of our return, entire administration of Vanvaso Resort shall

have to be handed over to us by party no. 3 and whole possession shall also be handed over simultaneously.

C. We the party no.1 and the party no.2 will play the role of Administrator of Vanvaso Resort till the documents work are executed by Pancard Club Limited and the whole possession shall have to be handed over to us.

D. In accordance with the condition mentioned above, we will play the role of all the Administrators of the Vanvaso Resort and will reimburse the amount invested by us from and out of any return/income is generated arising from the Vanvaso Resort and then whatever amount remains increase as profit, we will use that amount for the development of Vanvaso Resort.

E. As per the condition mentioned above, if the profit of Vanvaso Resort is not equal to the installment amount of the amount invested by us, then we will add 11 % of our return amount annually to our amount of return.

F. And until the amount invested by us is fully repaid towards return, and until the yields at 11 % per annum is derived, Vanvaso Resort will be in possession of we party no. 1 and party no. 2 and you will have to execute a Development Agreement in our favour.

G. From the time we are handed over the entire possession of the Vanvaso Resort, we will be entirely responsible for V anvaso Resort and after the completion of our return/compensation amount, the possession of the Vanvaso Resort given to us shall be returned /entrusted to the party no. 3 in the same condition in which it was given. Further, if any government permission and or approval is required to be obtained to

run Vanvaso Resort or for administering the affairs, you will execute an agreement for the same and all other cooperation related to Vanvaso Resort will also be extended by you.

H. We, ie, Party No. 1 and Party No. 2 shall not store any article prohibited by law or do any kind of work against the law in this Vanvaso Resort.

I. This Agreement of Understanding appearing as hereinabove has been executed today with the Stamp Certificate of Rs. 300/- by we parties hereto in our respective willingness and in our conscious state of mind, by our bonafide without any kind of force-coercion, and in our proper senses, reading and understanding to the same which is confirming, admitting and binding to both the parties and in assurance thereof, we have put our respective signatures hereunder getting the same witnessed.”

29. When we look into the MoU and the condition contained therein, the MoU cannot be read as contract for sale. According to the own case of the Appellant, they invested Rs.80 lakh amount in cash under the Scheme of the Corporate Debtor where investors were able to get huge benefits. In the reply which was filed to the application filed by the Resolution Professional, Appellant themselves has pleaded that claim of nature of Memorandum of Understanding stood impliedly changed to Agreement to Sale on failure on the part of the Corporate Debtor. There is no contemporaneous correspondences claimed by the Appellant regarding non-receipt of amount of Rs.1,60,00,000/- or requesting Corporate Debtor to execute any Transfer

Deed in its favour. Complete silence by the Appellant till reply was filed to the IA in the CIRP speaks for itself.

30. Counsel for the Appellant has relied on two more judgments of the Hon'ble Supreme Court namely— **“Vasanthi vs. Venugopal- (2017) 4 SCC 723”** in which case the Hon'ble Supreme Court had occasion to consider Section 53A of the Transfer of Property Act. In the above case, Agreement to Sale dated 20.05.1975 was executed and consideration was paid by the proposed purchaser and possession was handed. In the above context, the Hon'ble Supreme Court held that Section 53A stood attracted. In paragraphs 16 & 18, following was laid down:-

“16. Reverting to the availability of the protection of Section 53A of TP Act to the original defendant and on his death, to the present respondents, to reiterate, the evidence on record does proclaim that the agreement for sale dated 20.5.1975 had indeed been executed between the predecessors-in-interest of the vendors of the appellant/plaintiff and the respondents herein, pursuant where to, an amount of Rs. 26,000/- in all had been paid by the proposed purchaser and the possession of the suit property had been handed over to him in consideration thereof. As a matter of fact, at the time of execution of said agreement, the suit property was in occupation of a tenant of the proposed seller i.e. the predecessor-in-interest of the vendors of the appellant/plaintiff and that following a compromise, the tenant delivered possession of the suit property to the predecessor-in-interest of the present respondents and since thereafter, they are in occupation thereof. The evidence on record, however, does not in very clear

terms establish that the appellant/plaintiff had conscious notice or knowledge of this agreement for sale at the time of her purchase. Admittedly as well, neither the predecessor-in-interest of the respondents nor they had taken recourse to law for specific performance of the agreement. This assumes importance in view of the averment made in the written statement that even prior to the demise of the predecessor-in-interest of the vendors of the appellant/plaintiff, he did not comply with the requests of the original defendant to get the sale deed executed and his legal heirs, after his demise, also adopted the same non-cooperative stance.

18. *As would be patent from the above quotes, the protection of a prospective purchaser/transferee of his possession of the property involved, is available subject to the following prerequisites:*

- (a) There is a contract in writing by the transferor for transfer for consideration of any immovable property signed by him or on his behalf, from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty;*
- (b) The transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract;*
- (c) The transferee has done some act in furtherance of the contract and has performed or is willing to perform his part of the contract.*

31. The Hon'ble Supreme Court in the above case has also referring to Section 53A of the Transfer of Property Act and Section 16 of the Specific Relief Act, 1964 held that Respondent in the above case were not entitled for benefit of Section 53A. The above judgment was in fact of the said case and has no application in the present case.

32. The next judgment relied by the Appellant is **"Ghanshyam vs. Yogendra Rathi- (2023) 7 SCC 361"**. In the above case also, the Hon'ble Supreme Court had occasion to consider Section 53A of the Transfer of Property Act. The Hon'ble Supreme Court also considered Section 17 of the Registration Act. In Paragraphs 15 and 16, following was laid down:-

"15. Legally an agreement to sell may not be regarded as a transaction of sale or a document transferring the proprietary rights in an immovable property but the prospective purchaser having performed his part of the contract and lawfully in possession acquires possessory title which is liable to be protected in view of Section 53A of the Transfer of Property Act, 1882. The said possessory rights of the prospective purchaser cannot be invaded by the transferer or any person claiming under him.

16. Notwithstanding the above as the plaintiff-respondent admittedly was settled with possessory title in part performance of the agreement to sell dated 10.04.2002 and that the defendant-appellant has lost his possession over it and had acquired the right of possession under a licence simpliciter, exhausted his right to continue in possession after the licence has been determined. Thus, the defendant

appellant parted with the possession of the suit property by putting the plaintiff-respondent in possession of it under an agreement to sell. The plaintiff-respondent in this way came to acquire possessory title over the same. The defendant appellant, as such, ceased to be in possession of it as an owner rather occupied it as a licensee for a fixed period which stood determined by valid notice, leaving the defendant-appellant with no subsisting right to remain in possession of the suit premises.”

33. In the above case, there was Agreement to Sale dated 10.04.2022 and receipt of payment of sale consideration. In the above context, the Hon’ble Supreme Court made following observations:-

“ingredients of Section 53A was found to be fulfilled in the above case.”

34. The present is a case where the MoU dated 16.12.2013 cannot be said to be contract of sale nor the said MoU was registered which is requirement under Section 17 as amended in the State of Gujarat for Agreement to Sale, hence, on strength of the MoU dated 06.12.2013, no right can be claimed under Section 53A by the Appellant. As observed above, we full endorse the view of the Adjudicating Authority that contemporaneous existence of the document itself is in doubt. Looking to the entire facts and circumstances of the present case, Appellant’s case is that he got the possession of the resort in the year 2020. We have already noticed the order of SEBI dated 21.12.2016 which clearly prohibited any one to claim any right on the basis of not to act upon any documents purporting to be dealing with transfer,

mortgage, charge, lease or creation or alteration of any interest in any of the properties owned/held the defaulters which is last paragraph of the order dated 21.12.2016 which is to the following effect:-

“with a direction not to act upon any documents purporting to be dealing with transfer, mortgage, charge, lease or creation or alteration of any interest in any of the properties owned/held by the defaulters, including the said properties, if presented for registration.”

35. The order of attachment issued by the SEBI also refers to and relied on Second Schedule of the Income Tax Act, 1961. Rule 48 of the Second Schedule to the Income Tax Act, 1961 provides as follows:-

“48. Attachment.—Attachment of the immovable property of the defaulter shall be made by an order prohibiting the defaulter from transferring or charging the property in any way and prohibiting all persons from taking any benefit under such transfer or charge.”

36. The possession of the assets which was attached by the SEBI on 21.12.2016 could not be claimed by the Appellant. Entire theory set up by the Appellant of MoU does not inspire any confidence and the Adjudicating Authority was right in its observations that contemporaneous existence of MoU itself is doubtful. In any views of the matter, we have already observed above that taking the MoU as it is, it does not give any right in favour of the Appellant and the Appellant was not entitled to benefit of Section 53A. We, thus, answer the following three questions in following manner:-

(II) The Adjudicating Authority had jurisdiction to enter into the MoU dated 16.12.2013 and adjudicate on the rights of the parties under Section 60(5) of the IBC in the application filed by the Resolution Professional being IA No.3973 of 2023.

(III) The Appellant is not entitled to claim benefit of Section 53A of the Transfer of Property Act on the strength of the MoU dated 06.12.2013 and on fact of being in possession of the resort since 2020. The MoU dated 06.12.2013 is unregistered document and cannot be said to be Agreement to Sell.

(IV) The order of the Adjudicating Authority directing Appellant to vacate the premises and handover the possession is sustainable and in accordance with law.

Question No.(V)

37. The Appellant has contended that the Adjudicating Authority could not have directed for payment of usage charges which can be only determined by a Civil Court. Appellant submits that mesne profits can be awarded only where possession is found to be wrongful or unauthorised. Mesne profits are compensatory in nature and arise solely as a consequence of illegal or unlawful occupation of property by a person not entitled to its possession.

38. We having found that the MoU dated 06.12.2013 is not legally valid document to claim any right of possession of the said assets of the Corporate Debtor. Appellant has to be treated to be in unauthorised and

wrongful possession of the assets. At this juncture, we need to notice one more aspect of the matter. MoU dated 06.12.2013 was entered with Mr. Kiritbhai Keshurbhai Sorathia- Party No.1, Shri Deepakbhai Naranbhai Suva- Party No.2 and Mr. Manish Kalidas Gandhi-Party No.3. Mr. Manish Kalidas Gandhi was Director of the Club and for execution of the MoU dated 06.12.2013, Appellants have relied on Board Resolution dated 24.08.2013. Copy of the Board Resolution dated 24.08.2013 was filed along with the reply of Appellant. Photocopy of the Board Resolution is as follows:-

“PANCARD CLUBS LIMITED

Xxxx Copy of the resolution passed by the Board of Directors of Pancard Clubs Limited xxx meeting held on 24th August, 2013 at the registered office of the Company at 111-113 xxx Udyog Bhavan Near Century Bazar, Prabhadevi, Mumbai - 400 025.

RESOLVED THAT xxxx at the Company be and is hereby authorised xxx execute obtain apply and submit all application(s), letter(s), paper(s) and document(s) relating to various licenses, registrations, permissions, sanctions approvals, non-objections and xxxx from the statutory/ local authority(s) including Municipal Authority. Fire Authority xxx licenses, Tourism Department, Electricity Board, Water Supply Board, Sales Tax, Income Tax and any other authorities as may be applicable under the relevant statutes with respect to the Company's property namely "United-21 Vanvaso, Gir" situated at Sangodra, Tehsil Talala, District Junagarh, State Gujarat.

RESOLVED FURTHER THAT Mr. Manish Gandhi be and is hereby also empowered to represent and appear before the statutory/ local authority(s) on behalf of the Company, to provide xxxxxxxx by them and to sign and submit all papers, documents. xxxxxxxxxxxx agreements etc. and generally to do all such xxxxxxxx to give effect to this resolution."

RESOLVED FURTHER THAT certified copies of this resolution be forwarded to such xxxxxx as may be required to give effect to this resolution."

Certified True Copy

For Pancard Clubs Limited

Ramachandran Ramakrishnan"

39. When we look into the above copy of the Board Resolution, it is clear that the copy of Board Resolution was never placed before the Resolution Professional. However, when we take into the Resolution as it proclaimed the Resolution does not authorise Mr. Manish Kalidas Gandhi to enter into any contract of sale of the assets of the Corporate Debtor in favour of the Appellant or entitle Kalpesh to handover the possession or receive any moment on behalf of the Corporate Debtor. The Resolution itself does not authorise Mr. Manish Kalidas Gandhi to execute MoU dated 06.12.2013. MoU is wholly unauthorised and beyond the power of Mr. Manish Kalidas Gandhi. Thus, entire MoU was unauthorised and Appellant had to be held to be in unauthorised possession of the assets of the Corporate Debtor and

Adjudicating Authority did not commit any error in directing the Corporate Debtor to pay usage charges after proper determination. We, thus, do not find any error in the direction of the Adjudicating Authority directing for payment of usage charges by the Appellant.

40. In view of the above discussion and conclusion, we do not find any merit in the Appeal. The Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

New Delhi

Anjali