THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

IA 5114 of 2025

Section 66 of the Insolvency and Bankruptcy Code, 2016

Aegis Resolution Services Private Limited
Resolution Professional of Ojas Tradelease and Mall Management Private Limited

...**Applicant**

V/s

Praxis Home Retail Limited & Ors

…**Respondent**

In the matter of
COMPANY PETITION (IB) NO. 865 OF 2022

CENTRAL BANK OF INDIA

…Petitioner

V/s

OJAS TRADELEASE AND MALL MANAGEMENT PRIVATE LIMITED

…Respondent

Order delivered on: 17.03.2026

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Shri Sushil Mahadeorao Kochey
Hon'ble Member (Judicial)

Appearances:

For the Applicant	:	Adv. Rohit Gupta a/w Adv. Dhrupad Vaghani, Adv. Hayatni Mohite, Adv. Ajit M.K
For the Respondent No.1	:	Adv. Pulkit Sharma, Adv. S. Dixit and Adv. Satyajit K.
For the Respondent No.2	:	Adv. Harsh M. a/w Adv. Petrushka Dasgupta, Adv. Krishna B and Adv. Janhavi Kalpesh

ORDER

1. This Application IA 5144/2025 is filed on 1.11.2025 by Aegis Resolution Services Private Limited ("Applicant/RP"), the Resolution Professional of Ojas Tradelease and Mall Management Private Limited ("Corporate Debtor"), Under the Provision of Section 66 of the Insolvency and Bankruptcy Code, 2016 ("Code"), seeking following reliefs :-

   a) *Declare and hold that the Lease Deed dated 23rd March 2022 executed between the Corporate Debtor and Respondent No. 1, in respect of an area admeasuring 44,500 sq. ft. carpet area (equivalent to 4,134 sq. mtrs.) situated on the Ground Floor of "The Acropolis Mall", Thaltej, Ahmedabad, is onerous and detrimental to the interest of the Corporate Debtor and its creditors;*

   b) *Direct that the said Lease Deed be disclaimed, annulled, and terminated forthwith under Section 60(5)(c) of the Code read with Rule 11 of the NCLT Rules as being prejudicial to the Corporate Debtor and contrary to the objectives of the Code;*

c) *Direct Respondent No. 1 to forthwith hand over peaceful and vacant possession of the Leased Premises to the Applicant, in his capacity as the Resolution Professional of the Corporate Debtor;*

d) *Declare that any demand, claim, or liability arising out of the said Lease Deed shall stand extinguished upon such termination and shall not constitute an operational or financial debt within the meaning of the Code;*

e) *Restrain Respondent No. 1, its agents, representatives, or affiliates from creating any third-party rights, encumbrances, or interest in the Leased Premises, or from otherwise interfering with the possession, control, or management of the Corporate Debtor's assets;.*

f) *Permit the Applicant to take such steps as may be necessary for securing, maintaining, and commercially utilising the Leased Premises in the best interest of the Corporate Debtor and its creditors and stakeholders;*

g) *Declare that the transaction underlying the Lease Deed dated 23rd March 2022 executed between the Corporate Debtor and Respondent No. I constitutes a fraudulent and wrongful transaction within the meaning of Sections 66 of the Code:*

h) *Direct Respondents Nos. 1 to 6, jointly and severally, to make contribution to the assets of the Corporate Debtor under Sections 66(1) and 66(2) of the Code by paying a minimum sum of INR 19,55,00,000/- (Indian Rupees Nineteen Crore Fifty Five Lakh Only) towards the losses and damages caused to the Corporate Debtor from the 'Rent Commencement Date' under the Lease Deed i.e., 01st January 2022 till 01st November 2025 along with an interest of 21% p.a.;*

i) Further direct Respondents Nos. 1 to 6, jointly and severally, to make contribution under Sections 66(1) and 66(2) of the Code for an additional sum equivalent towards the future losses and damages that the Corporate Debtor would suffer for the remaining tenure of the Lease Deed, had the transaction not been disclaimed or annulled; and

j) Pass such further and other orders as this Hon'ble Tribunal may deem fit, proper, and expedient in the interest of justice, and to give full effect to the provisions and objectives of the Code.

2. On 23rd March 2022, the Corporate Debtor executed a Lease Deed with Praxis Home Retail Limited ("Respondent No. 1"), a related party under the Future Group, leasing an area admeasuring 44,500 sq. ft. carpet area on the Ground Floor of The Acropolis Mall situated at Thaltej, Ahmedabad ("Leased Premises"), for a period of 21 years. As per the terms of the Lease Deed, it was agreed that Respondent No. 1 would pay a monthly rent of INR 2,00,000/- (Rupees Two Lakh only) as a minimum guarantee rent or a revenue share of 4% of the monthly net sales, whichever is higher. The Respondent No. 2 to 6 are stated to be directors of the Corporate Debtor at the time of execution of said lease deed.

3. This Tribunal initiated the Corporate Insolvency Resolution Process (‘CIRP’) of Ojas Tradelease and Mall Management Private Limited ("Corporate Debtor"), admitting an application CP (IB) 865 (MB) 2022 filed on 22.6.2022 by Central Bank of India, and appointed Mr. Avil Menezes as the Interim Resolution Professional (‘IRP’) vide its order dated 24th September 2024, who was later confirmed as Resolution Professional (‘RP’) vide order dated 13th May 2025.

4. The IRP made a public announcement on 26th September 2024 inviting claims from the creditors and subsequently constituted the Committee of Creditors ("CoC"). The Applicant convened the 1ª CoC meeting on 24th October 2024.

5. Upon commencement of CIRP, the IRP came to know that, by an order dated 12th September 2022 passed by the Hon'ble High Court of Judicature at Bombay ("Hon'ble High Court"), a Court Receiver had been appointed for *The Acropolis Mall*, wherein the Leased Premises of the Corporate Debtor is located. Accordingly, at the time the IRP assumed charge, the said premises were under the possession of the Court Receiver, who refused to hand over possession to the IRP. The IRP was therefore constrained to approach this Tribunal by way of I.A. No. 1936 of 2025 seeking appropriate directions. By an order dated 21st July 2025, this Tribunal observed that possession could be restored only with the leave of the Hon'ble High Court.

6. The Hon'ble High Court, vide order dated 6th August 2025, directed the Court Receiver to hand over the possession of The Acropolis Mall to the Applicant and consequently, physical possession of The Acropolis Mall was duly handed over to the Applicant by the office of the Court Receiver on 18th September 2025.

7. It is stated by the applicant that the existence and implications of the aforesaid Lease Deed were deliberated upon in various meetings of the CoC, wherein the members expressed grave concern over the detrimental impact of such a long-term, low-rent, and restrictive lease arrangement on the value maximisation objective of the CIRP.

8. The Applicant, through its advocates, issued a letter dated 11th September 2025 to Respondent No. 1, calling upon it to re-align the rent payable under the Lease Deed to prevailing market rates (effective from the date of execution), to bear and reimburse the Corporate Debtor for the loss and costs arising from the said

arrangement, and to reduce the lock-in period to a reasonable period of three (3) years.

9. In response, Respondent No. 1, through its advocates, addressed a letter dated 6th October 2025, stating that it was in the process of gathering the relevant records and information pertaining to the matter.

10. Thus, the Applicant has filed the present Application seeking the intervention of this Tribunal to treat the Lease Deed as fraudulent onerous, and detrimental to the interests of the Corporate Debtor and its creditors and to direct the Respondents to make good the loss suffered by the Corporate Debtor.

11. The Respondent No. 1 has filed the reply stating that (i) The IA is ripe with factual inaccuracies and is premised on incorrect and incomplete facts fundamentally vitiated by suppressio veri and suggestio falsi, (ii) Scope and Rigour of Section 66 of the Code requires highest threshold of proof and no liability can be fastened on Third Parties; (iii) the IA erroneously labels the Lease Deed as "Fraudulent" to invoke the provisions of Section 66 of the Code, (iv) The transaction sought to be impugned is ex facie a business and commercial decision of the board, and as such, even if presumed to be imprudent, lacks any elements of fraud or malafides, (v) this Tribunal does not have jurisdiction to adjudicate on monetary claims against third parties under section 66 of the Code, and (vi) The IA has been filed belatedly and beyond the prescribed time period.

12. The Respondent No. 2, 3, 4 and 6 have filed their reply submitting that (i) This Tribunal cannot exercise its jurisdiction under the Code to adjudicate contractual disputes; (ii) The Applicant has failed to meet the threshold of proof required under section 66 : the basic ingredients of section 66 are not made out; (iii) The Applicant has failed to abide by the timelines stipulated under Regulation 35-A; and (iv) The CoC members had a copy of the Lease Deed and

never raised any objection to the provisions of Lease Rent under the Lease Deed before the Ld. Court Receiver and the Hon'ble Bombay High Court as is evidenced from minutes of meeting Ld. Court Receiver and lenders wherein the discussion in relation to relevant clauses of Lease Deed is recorded; (v) Respondent no.1 is the only tenant in the Acropolis Mall and the other two tenants i.e. FLFL and one Future Retail limited ("FRL") had stopped operation in these premises in and around 2022; (vi) the said premises had been occupied for running `Hometown' since year 2017 and the Lease Deed is a subsequent renewal of the previous arrangement (vii) The reliefs sought by the Applicant to declare the lease Deed as `fraudulent' is contrary to case pleaded by the Applicant, which is evident from grievances raised in the application i.e. (a) the monthly lease rentals payable by Respondent no.1 are allegedly "grossly undervalued" in comparison to prevailing market rates and in comparison to rent payable by FLFL, (b) such allegedly undervalued lease rent is depriving the Corporate Debtor of fair lease rent receivables, (c) the lock-in period of 21 years is commercially unprecedented; (d) the lease deed is diminishing the value of the Acropolis Mall; and (e) the clause providing for payment of Rs. 10 crores to Respondent no.1 in the event of dispossession or interruption of possession is alleged to be arbitrary and commercially unviable.

13. We heard the Counsel and perused the material on record.

14. Indubitably, this application has been filed on 1.11.2025 much beyond the period of 135 days prescribed in Regulation 35A of CIRP Regulations. However, it t is noted that the said period was held to be directory in nature in case of ***Aditya Kumar Tibrewal (RP) v. Om Prakash Pandey and Ors., (2022) ibclaw.in 278 NCLAT*** , wherein it is held that :

> *"Regulation 35A of the CIRP Regulations imposes a duty on the Resolution Professional to take measure within the timeline as prescribed. In performance of such duty the public in general has no*

control including the Corporate Debtor. In event it is held that any action taken by Resolution Professional beyond the time prescribed in Regulation 35A of the CIRP Regulations is prohibited, it shall cause serious general inconvenience or injustice to the Corporate Debtor. One of the objective of the Code is to maximise the assets of the Corporate Debtor. In event the actions taken by the Resolution Professional after the timeline prescribed in Regulation 35A of the CIRP Regulations are to be annulled, the undervalued and fraudulent transactions will go out of the reach of Resolution Process, reach of the Court and shall cause great inconvenience and injustice to Corporate Debtor. Hence, we are of the view that timeline prescribed in Regulation 35A of the CIRP Regulations is only directory and any action taken by the Resolution Professional beyond the time prescribed under Regulation 35A of the CIRP Regulations cannot be held to be non-est or void only on the ground that it is beyond the period prescribed under Regulation 35A of the CIRP Regulations. There may be genuine and valid reasons for Resolution Professional not to file application for avoiding the transactions within time prescribed which are question relating to each case and has to be examined on case-to-case basis and if there are reasons due to which Resolution Professional could not file the Application within time the same has to be examined on merit.".

15. Accordingly, we do not find any merit in the contention of Respondents that the present application is not maintainable on ground of delay in its filing beyond the period prescribed under Regulation 35A of CIRP Regulations.

16. The applicant has, inter-alia, sought

(i) a declaration that the Lease Deed dated 23rd March 2022 executed between the Corporate Debtor and Respondent No. 1 is onerous and detrimental to the interest of the Corporate Debtor and its creditors

thereby it can be disclaimed, annulled, and terminated forthwith under Section 60(5)(c) of the Code read with Rule 11 of the NCLT Rules as being prejudicial to the Corporate Debtor and contrary to the objectives of the Code;

(ii) a direction to Respondent No. 1 to forthwith hand over peaceful and vacant possession of the Leased Premises to the Corporate Debtor; and

(iii) a declaration that the transaction underlying the Lease Deed dated 23rd March 2022 executed between the Corporate Debtor and Respondent No. I constitutes a fraudulent and wrongful transaction within the meaning of Sections 66 of the Code, and consequential direction to Respondents Nos. 1 to 6, jointly and severally, to make contribution to the assets of the Corporate Debtor under Sections 66(1) and 66(2) of the Code by paying a minimum sum of INR 19,55,00,000/- (Indian Rupees Nineteen Crore Fifty Five Lakh Only) towards the losses and damages caused to the Corporate Debtor from the 'Rent Commencement Date' under the Lease Deed i.e., 01st January 2022 till 01st November 2025 along with an interest of 21% p.a. along with additional sum equivalent towards the future losses and damages that the Corporate Debtor would suffer for the remaining tenure of the Lease Deed, had the transaction not been disclaimed or annulled.

17. Section 66 of the Code reads as under -

" Section 66: Fraudulent trading or wrongful trading:-

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

who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.

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

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

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

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

18. 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.

61. In view of the above, the Applications filed in respect of "Fraudulent and Wrongful trading" carried on by the CD, could not be termed as "Avoidance Applications" used for the Applications filed under Sections 43, 45 and 50 to avoid or set aside the Preferential, Undervalued or Extortionate transactions, as the case may be. There is clear demarcation of powers of the Adjudicating Authority to pass orders in the Avoidance Applications filed by the Resolution Professional under Section 43, 45 and 50 falling under Chapter III and the Applications filed by the Resolution Professional in respect of the Fraudulent and Wrongful trading of CD, under Section 66 falling under Chapter VI of the IBC. 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."

19. Also, it is stated in Para 29.1 by Hon'ble Supreme Court in case of ***Anuj Jain, IRP for Jaypee Infratech Limited Vs Axis Bank Limited Etc., in Civil Appeal No. 8512- 8527 of 2019*** that *",,,,,,…….. We are not elaborating on all these aspects for being not necessary as the transactions in question are already held preferential and hence, the order for their avoidance is required to be approved; but it appears expedient to observe that the arena and scope of the requisite enquiries, to find if the transaction is undervalued or is intended to defraud the creditors or had been of wrongful/fraudulent trading are entirely different. Specific material facts are required to be pleaded if a transaction is sought to be brought under the mischief sought to be remedied by Sections 45/46/47 or Section 66 of the Code. As noticed, the scope of enquiry in relation to the questions as to whether a transaction is of giving preference at a relevant time, is entirely different. Hence, it would be expected of any resolution professional to keep such requirements in view while making a motion to the Adjudicating Authority"* .

20. Though, Hon'ble Supreme Court's decision in case of Piramal Capital (Supra) clearly states that, 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, however, it had said so on the proposition that *the properties and the persons involved may or may not be ascertainable*. In the present case, it is noted that the impugned transaction pertains to lease agreement whereby the substantial rights in the property of the corporate debtor are alleged to be kept out of reach of corporate debtor having considerable effect on its valuation by entering into a lease for 21 years lock in period with a stipulation in form of clause 21 of the lease agreement providing that the corporate debtor shall be obligated to pay a sum of Rs. 10.00 crores *in the event of such dispossession or interruption, the Lessor shall liable to refund an estimated capex amount a sum of Rs. 10 cores to*

the Lessee within 30 days from the date of such dispossession or interruption. Further the lease dated 23.03.2022 is in violation of clause 12(k)(i) read with clause 18.3 of the indenture of mortgage dated 07.05.2020. Accordingly, in our considered view, that the said transaction can be examined by this tribunal in terms of section 66 of the Code to pass appropriate order if such transaction is found to have been entered into for a fraudulent purpose.

21. It is noted that the audited financial statement of the Respondent No. 1 for the year ended 31.3.2025 placed on record has classified the corporate debtor as "*Enterprises over which Companies/ individual described in (a) have control/ significant influence*" in Note 37(b) thereof, and the amount of rent paid to the corporate debtor during the year ended on 31.3.2025 and 31.3.2024 has been disclosed therein as is evident from Note 31.2.(C) thereof. Note 37(a) names (i) Surplus Finvest Private Limited, (ii) Future Corporate Resources Private Limited (through direct holding/ holding through its subsidiary), and (iii) Shri Kishore Biyani. Accordingly, the corporate debtor, by admission of Respondent No. 1, can be said to be a related person of Respondent No. 1. Further, the said note 37 also refers to some write back of liabilities owed to corporate debtor by Respondent No. 1. Though this issue has not been raised before us and we are not in a position to verify whether such liability pertains to rental obligations under earlier arrangement whereby Respondent No. 1 has claimed to be in occupation, since the ledger account of corporate debtor in books of Respondent No. 1, despite clear admission by Respondent No. 1 that it had such details, has not been placed on record. Nonetheless, it certainly indicates certain material facts are being held back from this Tribunal in relation to issue before us.

22. Indubitably, the impugned lease agreement dated 23.3.2022 was entered prior to filing of Application {C.P. (IB) 865 of 2022} u/s 7 for initiation of CIRP on 22.6.2022, and thereafter CIRP commenced on 29.9.2024 pursuant to the order passed by this Tribunal in the said application. However, it is pertinent to note

that the account of Principal Borrower, to whom the Corporate Debtor stood as a Guarantor, was classified as NPA on 30.04.2022. It is in this context the tenure of said lease agreement binding the corporate debtor for 21 years to let Respondent No. 1 enjoy the possession of the Mall for the consideration as stated in clause 3.1 of the agreement becomes noteworthy. The said clause reads as under :

> "*In consideration of Agreement granted to the Lessee, the Licensee from the Rent Commencement Date shall pay to the Lessor monthly lease rent, a Minimum Guarantee (MMG) a sum of Rs. 2,00,000/- (Rupees Two Lakhs Only) per month OR on revenue share basis @ 4% to be calculated on monthly net sales whichever is higher, for the Leased Premises to be paid on or before 10th day of every calender month in adavnce, ("Rent") based on the monthly sales statement provided by the Lessee to the Lessor.*"

23. Though, clause 21 of the lease agreement allows the corporate debtor to reclaim possession by evicting Respondent No. 1 prior to expiry of 21 years, however, as noted above, it obligates the corporate debtor to pay a sum of Rs. 10.00 crores, which is stated to be in nature of refund of an estimated capital expenditure amount. It is noted that no such details of any capital expenditure having been spent by Respondent No. 1 consequent upon its possession of said property under the said lease agreement has been placed on record. It is also noted that Respondent No. 1 has claimed that it was in possession and enjoyment of said premises since 2007 through its predecessor company from which Respondent Company came to be demerged in 2017 in terms of an order dated 10th November, 2017 and after demerger, the Respondent No. 1 was put in possession. However, neither any lease agreement for earlier period has been placed on record nor any evidence in relation to payment of rent for period earlier to date of impugned lease agreement, except a statement to that effect at Para

7.1(e) of Respondent No. 1's reply, is on record. Further, this explanation is contrary to assertion made by way of clause 21 of impugned lease agreement whereby the Corporate Debtor is obligated to pay Rs. 10.00 crores as refund of an estimated capital expenditure amount in case of dispossession prior to stipulated period of 21 years as if such capital expenditure was to be spent on taking over said premises on lease afresh, because if the Respondent No. 1 was already in possession of said premises since last 15 years prior to entering of impugned lease agreement and running its business activities, there can said to be no need to invest such capital expenditure afresh. Further, Recital B to impugned lease agreement also does not state that Respondent No. 1 was in possession of said property under lease prior to entering impugned lease agreement. The said recital B reads as

> "*B. The Lessee is engaged in the retail business and pursuant to the representations made by the Lessor with respect to title, quality of construction etc of the said Mall, the Lessee is intending to take an area admeasuring approx 44,500 square feet carpet area equivalent to 4134 sq. meters on the Ground Floor in the Said Mall (hereinafter referred to as "Leased Premises") and more particularly described in the Second Schedule hereunder written. The Parties shall undertake a joint measurement to determine the Leased Premises of the Said Mall prior to physical handing over of possession of the Leased Premises by Lessor to Lessee*.

24. It is also not clarified if the Respondent No. 1 was already a lessee of said premises, what was need to enter a fresh agreement when the Corporate Debtor was likely to default considering that the principal borrower (a related person to whose debt the corporate debtor stood as a corporate guarantor) defaulted to honor its obligation to repay the principal and interest due merely after 8 days from date of said lease agreement i.e. on 31.03.2022 leading to classification of

principal borrower's account as NPA on 30.4.2022. These facts clearly contradict claim of Respondent No. 1 as well as answering respondents and raises serious doubts on the intent of the parties to enter into lease agreement dated 23.3.2022 having abnormally large lock-in period and casting an obligation on corporate debtor to pay Rs. 10.00 crores in case of dispossession, which is more than even rent for whole 21 years, in view of Respondent No. 1's clarification that it, in fact, paid total amount of Rs. 1.22.68,474/- from 1.1.2022 till 31.3.2025 translating into monthly rent of approx. 2.55 lacs. Nonetheless, the stipulation to refund whole of capital expenditure amount without application of depreciation factor on such estimated capital expenditure for the period already expired at the time dispossession or interruptions also indicates the real intent behind such clause, which can not be other than putting the property of corporate debtor beyond reclaim thereby causing detriment to the interest of its creditors.

25. It is pertinent to note that the valuation of a ready to use commercial property is generally determined on basis of its periodic yield i.e. income capitalization method, and placing the property under lease for abnormally large period without stipulation of periodic increase can certainly not be held as a bona fide act carried out in the interest of corporate debtor in view of the fact that the Mall owned by Corporate Debtor constitutes its business with sole revenue stream therefrom and the impugned lease agreement deals with whole ground floor of such mall.

26. It is pertinent to note that the Resolution Professional can only plead facts which can be discovered from the records made available by the suspended board members, and if there was any evidence relating to prior occupation of said Mall by Respondent No. 1, it was incumbent on Respondents to provide documentary evidence(s) to that effect to the applicant when his legal counsel sent a notice dated 11.9.2025 to Respondent No. 1, which it didn't, and also it being related person of Corporate Debtor, it could have required the individuals in control of

its affairs to make available the same. In the absence of any documentary evidence, we do not find any substance in allegation of suppression of facts, which though pleaded by Respondents, have not been substantiated by them by documentary evidences and are noted to be contrary to impugned lease agreement.

27. There is no quarrel that the transaction sought to be impugned is ex facie a business and commercial decision of the board, however, business and commercial decision can be examined to ascertain whether the exercise of discretion in decision making was bona-fide and good faith. As we have noted above, the act of entering into impugned lease agreement can not held to be a bona-fide act done in good faith, we do not find any lack of jurisdiction on part of this tribunal to pass an order in relation to this transaction in terms of express provisions contained in section 66 of Code. Though, one of the prayer in this application pertains to direction for payment of amounts towards the losses and damages caused to the Corporate Debtor, however, such prayer can not said to be in nature of monetary claims, because this Tribunal is vested with express jurisdiction to require the wrong doer to contribute to the assets of corporate debtor for the loss caused to the assets of corporate debtor.

28. Indubitably, the CoC members may had the knowledge of such Lease Deed at least from 19.11.2022, and they had not taken any separate action to impugn the said lease deed, however, it is relevant to note that the financial lender had already initiated corporate insolvency resolution process of corporate debtor in terms of application u/s 7 of Code filed before this Tribunal on 22.6.2022, and the jurisdiction of this tribunal in terms of section 66 of Code arises only after commencement of CIRP, hence, it can not be said that the lenders have acquiesced to the impugned lease deed by their silence by not independently challenging the impugned lease deed before appropriate forum prior to commencement of CIRP.

29. Clause 18.3 of Indenture of Mortgage dated 7.5.2020, executed by the Corporate Debtor to secure the obligations due from M/s Future Corporate Resources Private Limited and Mr. Kishore Biyani by creating first ranking pari-passu charge in favour of IDBI Trusteeship Private Limited, the security trustee. The said clause provides for the conditions subject to which the Corporate Debtor could have entered into alleged arrangement in relation to the said Mall, being a mortgaged property, bars lease arrangement in respect of mortgaged property except as permitted under Clause 12(k). The said clause provides that "*The provisions of Section 65A of the Transfer of Property Act, 1882 shall not apply to this Indenture. Other than as permitted under Clause 12(k) hereunder, the Mortgagor shall, while in lawful possession of the Mortgaged Properties, have no power to make leases thereof without the consent in writing of the Security Trustee and on such terms and conditions as the Secured Parties may in their absolute discretion consider fit.*"

30. Further, Clause 12(k) of Indenture of Mortgage dated 7.5.2020 reads as follows :

> *(k) The Mortgagor is, hereby permitted to lease out the Mortgaged Properties provided:*
> *(i) : such lease arrangements do not contain any restrictive conditions directly or Indirectly of any nature, which will affect the unfettered right of the Mortgagee to enforce transfer the Mortgaged Properties, upon occurrence of an Enforcement Event;*
> *(ii) : the Mortgagee is intimated within 10 (ten) days of the creation of any such lease arrangement; and*
> *(iii) the Mortgagor shares a copy of such lease arrangement with the Mortgagee pursuant to execution of the lease.*

31. It is evident from above, the lease of said Mall was permissible only if the conditions stated in Clause 12(k) are fulfilled. The clause 12(k) clearly requires

the mortgagor i.e. corporate debtor to intimate the Mortgagee within 10 (ten) days of the creation of any such lease arrangement and share a copy of such lease arrangement with the Mortgagee pursuant to execution of the lease. It is evident from the Lease Deed that the lease rent commenced retrospectively from 1st January 2022, despite the Lease Deed having been executed on 23rd March, 2022 thereby clearly contravening conditions stipulated in clause 12(k) (ii) & (iii). Further, the said lease deed is not in compliance with the clause 12(k) (i) also as lock in period of 21 years coupled with obligation to pay 10 crores in case of prior dispossession is a restrictive conditions affecting the unfettered right of the Mortgagee to enforce transfer the Mortgaged Properties as the transfer of mortgaged property can not take place without transfer of unreasonable conditions contained in the impugned lease deed.

32. Accordingly, we are of considered view that the said agreement dated 22.03.2022 contravenes the terms of Indenture of Mortgage dated 07.05.2020 and the said agreement is certainly a fraudulent act on the part of Respondents.

33. We find that the applicant has pleaded his case referring the lease transaction as undervalued as well, which may fall within mischief of section 49 of Code, however since the prayers have been sought in terms of section 66 of Code and we have found sufficient ground to hold the said lease transaction was entered into for a fraudulent purpose and an intent to defraud the creditors by encumbering the property of corporate debtor by way of lease for sufficiently large period in favor of one of its related party it writ large. Accordingly, we are of considered view that the said transaction squarely falls within scope of section 66(1) of the Code as having been entered for the fraudulent purpose. Further, since the impugned transaction has been entered into just few days before the default committed by the principal borrower, to whose credit facilities the corporate debtor had stood as guarantor, the directors of corporate debtor can be said have known that the there was no reasonable prospect of avoiding

the commencement of a corporate insolvency resolution process in respect of the corporate debtor (who was guarantor to the principal obligors in default on 31.3.2022) and they have failed to exercise due diligence in minimizing the potential loss to the creditors of the corporate debtor, the said transaction also satisfies the ingredients of section 66(2) of the Code.

34. As regards Respondent no.1's contention that it had to bear electricity costs for whole of Mall due to other portions not having been occupied, it is noted from the impugned lease deed that there was no obligation on part of Respondent No. 1 to do so, and it did so out of its own volition. Accordingly, it can not be said that this factor also weighed in the mind of contracting parties while deciding the lease rentals payable as consideration. However, even if that be so, it does not have any connection or relation with the length of lock in period and stipulation as to refund of estimated capital expenditure.

35. Respondent No. 1 has also pleaded that no order can be passed by this Tribunal against third parties, however, in case of ***Royal India Corporation Ltd. v. Mr. Nandkishor Vishnupant Deshpande (RP) and Ors., (2024) ibclaw.in 304 NCLAT, it is held that***

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

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

10.3. *The Appellant had relied on the judgment of the Hon'ble Supreme Court in the matter of* Gluckrich Capital Pvt. Ltd. vs. State of West Bengal & Ors.- 2023 SCC OnLine SC 1187 *and in the case* Usha Ananthasubramanian vs. Union of India- (2020) 4 SCC 132. *On perusal of the judgment of the Hon'ble Supreme Court in the case of* Gluckrich Capital Pvt. Ltd. vs. State of West Bengal & Ors.- 2023 SCC OnLine SC 1187 *quoted by the Appellant it is seen that the application seeking clarification of Judgment and order dated 24.02.2023 passed by the Hon'ble Supreme Court in SLP (Crl.), diary no. 6723/23, filed by Applicant was dismissed and the said judgment related to transit anticipatory bail in a criminal case.*

*"**10.4.** The judgment of the Hon'ble Supreme Court, relied upon by the Appellant in the case Usha Ananthasubramanian vs. Union of India; (2020) 4 SCC 132 the facts were entirely different……."*

36. Indubitably, the Respondent no. 1 is related person of corporate debtor, which is admitted as "*Enterprises over which Companies/ individual described in (a) have control/ significant influence*", aaccordingly, we do not find any merit in

the contention of Respondent No. 1 that no order can be passed against third person.

37. The Applicant has pleaded that the Respondent Nos. 2 to 6 were the directors of the Corporate Debtor at the time of execution of the Lease Deed by the Corporate Debtor in favour of Respondent No. 1. It is also stated by the applicant that, during their tenure, Respondent Nos. 2 to 4 were actively engaged in the management and day-to-day affairs of the Corporate Debtor and were in control of its financial and commercial decision-making processes. This clearly demonstrates that the applicant has alleged knowledge of, and participation in, the transaction underlying the Lease Deed, to Respondent No. 2 to 4 and the Respondent No. 1 is a colluding party.

38. In view of the foregoing, we hold that the lease deed dated 23.3.2022 was entered in contravention of Clause 18.3 r/w 12(k) of Indenture of Mortgage, hence the said lease deed is a fraudulent transaction and the said transaction was entered with an intent to defraud the creditors by encumbering a mortgage property for sufficiently last period and variable consideration. Hence, we consider it appropriate to set aside the said lease deed dated 23.03.2022. Accordingly, the Respondent No.1 is directed to handover the control and possession for the lease premises within 30 days and also make payments for the lease rentals due under the terms of said lease for the period of their occupation within 30 days. It is clarified that the Corporate Debtor shall not liable to make any payment in terms of Clause 21 of the lease agreement consequent to such vacation.

39. In terms of the above, IA 5114 of 2025 is allowed and disposed of.

-Sd/-
Prabhat Kumar
Member (Technical)

-Sd/-
Sushil Mahadeorao Kochey
Member (Judicial)