

S.No.1

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
07-05-2024 AT 10:30 AM**

CP (IB) 497/7/HDB/2018

AND

IA (IBC) 454/2022, IA (IBC) 687/2021 in IA No. 625/2021 & IA(IBC) 842/2024 in

CP (IB) 497/7/HDB/2018

u/s. 7 of IBC, 2016

IN THE MATTER OF:

International Asset Reconstruction Company Pvt Ltd

...Financial Creditor

AND

Atlanti Spinning and Weaving Mills Ltd

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

IA (IBC) 454/2022

Orders not pronounced. For orders on 04.06.2024.

IA (IBC) 687/2021 in IA No. 625/2021

Orders pronounced. In the result, **this application is partly allowed to the extent indicated herein. No costs.**

IA(IBC) 842/2024

This is an application to take on record the 4th progress report. Report taken on record. Accordingly, **this application is allowed and disposed of.**

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - I, HYDERABAD**

**I.A. No.687 of 2021
(For recall of impugned order)
in
I.A. No.625 of 2021
in
CP (IB) No. 497/7/HDB/2018**

In the matter between :

M/s International Asset Reconstruction Company
and

M/s Atlantic Spinning and Weaving Mills Limited
Represented by its Liquidator
Ms.Sujata Chattopadhyay]

IN THE MATTER OF:

Somil K. Ne Gandhi

s/o late Kishore G. Ne Gandhi

Proprietor, M/s Sir Cloth Manufacturer Co.

Having office at K.R. Mill Compound

Bangalore Mysore Road

Mysore – 570003

Represented by his Power of Attorney

Lallan Singh

Residing at: Flat No.62

6th Floor, BBC Villa Complex

65/ 33. Prakasam Salai

Broadway, Chennai – 600 108.

**.. Applicant
(Third party)**

VERSUS

- 1. M/s Atlantic Spinning and Weaving Mills Ltd.,**
Represented by Ms. Sujata Chattopadhyay
having its registered Office at:
Office at : 404, Cosmos Mayursh

Plot No.37, Sector-11, CBD, Belapur
Navi Mumbai – 400 614.

2. Director General of Police

Police Headquarters
Opp. Azad Maidan
Panaji, Goa – 403 003.

3. Superintendent of Police

South Goa
O/o Superintendent of Police
South Goa District, Margoa, Goa.

4. Police Inspector

Police Station, Quepem
South Goa, Goa.

.. .. Respondents
(1st Respondent Corporate Debtor)

**APPLICATION UNDER SECTION 60(5) OF THE
INSOLVENCY & BANKRUPTCY CODE, 2016**

Coram:

Dr.Venkata Ramakrishna Badarinath Nandula
Hon’ble Member (Judicial)

Shri Charan Singh
Hon’ble Member (Technical)

Counsels present:

For Applicant : Mr. D.V. Seetharam Murthy, Senior
Advocate for Mr. Srikanth Hariharan, Counsel on
record for applicant.

For respondent 1 : Mr. V.V. Siva Kumar, Advocate for Ms. Sujata
Chattopadhyay, Liquidator.

Respondents 2 to 4 : None

Per : Bench

ORDER

This is an application filed under section 60(5) of the I&B

Code, 2016 praying:

- (a) to recall and set aside order dated 10.11.2021 made in IA No.625/ 2021 in CP (IB) No.497/7/ HDB/ 2018 insofar as the same relates to the schedule mentioned immovable property.
- (b) to delete and exclude the schedule mentioned immovable property from the purview of auction sale by the liquidator in the above company petition.
- (c) Pending disposal of the present petition, this Tribunal may be pleased to suspend order dated 10.11.2021 made in IA No.625/ 2021 in CP (IB) No.497/7/ HDB/ 2018 insofar as the same relates to the schedule mentioned immovable property pending disposal of the above application.
- (d) Pending disposal of the present petition, this Tribunal may be pleased to restrain the respondents no.1 to 4 from interfering in any manner whatsoever with the peaceful possession and enjoyment of the petition schedule property of the applicant.
- (e) Ad interim relief for the reliefs as claimed above.

Parties as arrayed in the present IA:

II. The Applicant :

The applicant herein is a third party to the present proceedings, who claims right, title, interest and possession

over the property described in the Schedule of this application by virtue of the document named as agreement of development dated 19.05.2007 entered into between the applicant and 1st respondent/ Corporate Debtor and the son of one Kishore G. Negandhi, said to be the proprietor of M/s Sir Cloth Manufacturer Co. It is stated that on the *demise* of the said Kishore G. Negandhi on 02.12.2019, the applicant (being his son) has succeeded to the above property. One Lallan Singh, is said to be the Power of Attorney Holder of the applicant herein.

III. The 1st Respondent :

(i) The 1st respondent is the Corporate Debtor, now under liquidation and is represented by its Liquidator Ms. Sujata Chattopadhyay.

(ii) The Respondents 2, 3 and 4 :

These respondents are the Police authorities of Goa, before whom complaints and cross complaints were filed by the parties to the present proceedings.

IV. THE FACTS AS NARRATED BY THE APPLICANT.

IV(A) The applicant's deceased father had entered into an Agreement for Development dated 19.05.2007 (ANNEXURE-2) with R/1 to use/ develop the schedule property admeasuring 15690 sq meters out of an extent ad measuring 50,690 sq meters forming part of larger piece of land known as 'fratergally' comprised in S.No.174/1, Xeldem Village, Quepem Taluka and South Goa District, and building standing thereon besides the land measuring an extent of 15,036.4 sq meters comprised in Survey No.167, known as Arcegally or Arxigally situate in the same village, in all, an extent of 30,726.4 sq meters.

IV(B) Vide letter dated 21.11.2007 (ANNEXURE-3), R/1 has expressed their unwillingness to invest and participate in the development scheme due to freezing of their Bank Account. In the said circumstances, the applicant's father came forward to carry out development either by himself or with any other partner. They have informed that they have no right over the property or in developmental activities besides delivered (sic.) vacant possession.

IV(C) The applicant has employed security personnel, supervisor and Manager; furthermore he is organizing pooja and other religious activities to goddess Lakshmi by employing priest. The applicant is making monthly payment to the above personnel. Details of such payment is enclosed as ANNEXURE-4.

IV(D) Though the property is not subjected to security interest along with remaining property in the same Survey Number, the Liquidator has brought the schedule property for sale, issued publication on 01.09.2021 in newspaper fixing sale of property on 20.09.2021, besides provided physical inspection from 13th to 16th September 2021. Copy of newspaper publication dated 01.09.2021 fixing sale of property is at ANNEXURE-5.

V. COMPLAINT BY LIQUIDATOR AND COUNTER COMPLAINT (WRITTEN REPRESENTATION) BY APPLICANT'S SIDE:

V (i) COMPLAINT DATED 18.09.2021 BY LIQUIDATOR:

The Liquidator has filed complaint before Inspector of Police, Quepem, South Goa for Police protection in respect of property in Survey Nos.174/1, etc. at Xeldem Village, Quepem Taluka and South Goa District. IA No.625 of 2021

was filed by the Liquidator seeking directions to the Police authorities to act upon said complaint dated 18.09.2021. Said IA was disposed of by this Tribunal vide order dated 10.11.2021.

V(ii) WRITTEN REPRESENTATION DATED 27.09.2021 BY A.S. YADAV:

13.09.2021: Lallan Singh, Manager and power agent went to Goa on 13.09.2021 to meet the Liquidator and A.S. Yadav, former Manager of R/1 company. However, A.S, Yadav received phone call from Supervisor, Dayanand Naik that they should proceed to Quepem Police Station. Accordingly A.S. Yadav, former Manager of R/1, power agent and advocate reached Police Station. The Police officials advised them to appear on the next day.

On 14.09.2021: At the request of Lallan Singh, as his relative passed away, Police inquiry was adjourned to 27.09.2021.

27.09.2021: A.S. Yadav addressed written representation to the Inspector of Police, Quepem Police, Quepem, Goa (ANNEXURE-6, page 26) enclosing therewith all the records. By this complaint A.S. Yadav requested the Police authorities to ask the Liquidator not to trespass the property of Sir Cloth Manufacturers and not to disturb their peaceful possession.

V (iii) COMPLAINT DATED 11.10.2021 BY APPLICANT:

The applicant has addressed written representation dated 11.10.2021 (ANNEXURE-7, page 37) to the Inspector of Police, Quepem, Goa against the Liquidator, along with relevant document establishing real facts and the applicant's right over the property. This was in response to Complaint dated 18.09.2021 filed by the Liquidator of the Corporate Debtor. The applicant is purported to have obtained a copy

of the said complaint dated 18.09.2021 filed by the Liquidator through Right To Information Act, on 08.10.2021. Lallan Singh and A.S. Yadav have filed affidavits. Affidavit of Lallan Singh dated 13.11.2021 is at ANNEXURE-8. Affidavit of A.S. Yadav dated 13.11.2021 is at ANNEXURE-9. Both these affidavits speak the real facts.

VI. GROUNDS OF CHALLENGE:

VI (A) The applicant's deceased-father had entered into a Development Agreement dated 19.05.2007 (ANNEXURE-2) with R/1 to use/ develop the schedule property as described above.

VI(B) Vide letter dated 21.11.2007 (ANNEXURE-3), R/1 has expressed their unwillingness and empowered the applicant's father to take up the task.

VI(C) In the said circumstances, the applicant's father came forward to carry out development and payment of Rs.29,50,000/- was confirmed.

VI(D) As such the applicant's father became proprietor of Sir Clothing Manufacturers Co. He was in continuous possession and enjoyment of the schedule property. The same is not subjected to any mortgage.

VI(E) The schedule property is not at all reflected in the proceedings of CP (IB) No.497/7/HDB/2018.

VI(F) IDBI intended to take possession of the applicant's property, but in vain.

VI(G) On 15.10.2015 demarcation of the applicant's property (schedule property) and the property mortgaged by the Corporate Debtor to IDBI Bank was done and Possession Notice dated 15.10.2013 (ANNEXURE-10, page 51) for taking possession of land admeasuring 36,690

sq meters and 2,307 sq meters in Survey Nos.174 and 134 was issued.

VI(H) Even the Valuation Report dated 13.03.2019 (ANNEXURE-11, page 32) submitted by Resolution Professional distinguishes the property mortgaged and the property absolutely belonged to the applicant's father as under:

Property belonged to	Survey No.	Extent of land in absolute ownership (in sq. meters)	Out of total land admeasuring (in sq. meters)
Applicant's father	174/1	15,690.00	50,690
Applicant's father	167	15,046.40	
Mortgaged by the Corporate Debtor to IDBI Bank.	174 and 134	36,690.00 and 2,307.00	

VI(I) The Liquidator has not ascertained the extend of land subjected to mortgage and has ignored the fact that the schedule property has been in continuous possession of the applicant's family for more than 30 years.

VI(J) The Liquidator has not considered the fact that applicant is absolute owner of the schedule property; is managing all the affairs including employing security personnel, manager, supervisor and priest; and is organizing daily pooja/ festivals. Statement showing the expenses incurred by the applicant towards the above management is at ANNEXURE-12, page 66).

VII. COUNTER DATED 07.12.2021 FILED BY
RESPONDENT NO.1/ LIQUIDATOR.

(A) The Liquidator contended that the applicant herein is a third party in IA No.No.625 of 2021. He has no locus standi to challenge orders of this Tribunal passed in IA No.625 of 2021. The applicant in IA No.687 of 2021 has not made a mention about his locus standi.

(B) M/s Sir Cloth Manufacturer Co. is not an existing entity. Organizational documents/ certificates have not been

produced to establish that the said M/s Sir Cloth Manufacturer Co. is an existing entity. In absence of any statutory documents to substantiate the same it is implied that there is no such entity.

(C) Even if it is assumed that M/s Sir Cloth Manufacturer Co. was a proprietorship concern of Kishore G. Negandhi. Upon death of said Kishore G. Negandhi, M/s Sir Cloth Manufacturer Co. has become defunct. It is settled law that a proprietorship concern is not a perpetual entity. Hence, going by the contentions of the applicant herein the proprietor of M/s Sir Cloth Manufacturer Co. has died on 02-12-2019. The concern has become defunct from such date. As such, filing of the present application on behalf of a defunct person is illegal and without any legal authorization.

(D) Even if it is further assumed that M/s Sir Cloth Manufacturers Co. is a valid and existing sole proprietorship, the applicant herein i.e., Mr. Somil K. NeGandhi failed to substantiate, by any documentary evidence, as to how he has become the sole interest holder of M/s Sir Cloth Manufacturer Co.

(E) Inquiries reveal that applicant/ Somil K. NeGandhi has been residing in UK from 2012. His LinkedIn profile is at **ANNEXURE B-1** of the Counter. The same projects residential status of Somil K. NeGandhi to be of UK. In light of the same, it appears that Special Power of Attorney produced along with the application is a forged one, intended only for the purpose of this case. The Liquidator seeks production of the applicant's passport to verify veracity about execution of the Special Power of Attorney.

(F) This IA is filed for recalling and setting aside order dated 10.11.2021 passed by this Hon'ble Tribunal in IA No. 625 / 2021 in CP (IB) No. 497/7/HDB/2018.

It is well established principle of law that the power of review is not an inherent power of the Tribunal. Hon'ble NCLAT in **Review Application No. 13 of 2020 in Company Appeal (AT) (Insolvency) No. 379 of 2020 in the matter of Adish Jain Vs. Sumit Bansal & another dated 3rd February, 2021**, had explicitly held that 'power of review' is not an inherent power and therefore the same cannot be exercised unless conferred specifically or by necessary implications. Whereas, the applicant herein virtually seeks 'review' of the impugned order as if this Tribunal would sit on appeal to review its own order.

(G) It is submitted that upon taking all the assets of the Company into her custody, control, possession as per Section 35 of the IBC, including the land and building in Sy. Nos. 174, 134 and 167 of Xeldem Village, Quepem Taluk, South Goa, Goa as mentioned and detailed in IA No. 625 of 2021, the Liquidator, as part of her statutory duties, has called for an e-auction of the assets of the Corporate Debtor by scheduling the e-auction on 20-09-2021 vide a public announcement dated 01-09-2021 in 'O Herald' Newspaper, Goa. The Liquidator never received any claim over the Schedule Property by any of the parties including the applicant herein at any point of time till the date of the proposed auction and physical inspection of the Schedule Property.

(H) It is submitted that the security personnel engaged by the Liquidator were taken by surprise to see that third parties

trespassed into the Schedule Property and have created a ruckus. In such instance, the said security personnel have informed the Liquidator about illegal activities of the Applicant and persons falsely claiming the property of the Corporate Debtor. Liquidator was constrained to :

- Seek assistance of R/4 in order to protect the property in question against illegal actions of Lallan Singh, AS Yadav and their henchmen.
- File IA No. 625 of 2021 before this Tribunal for a direction against the police officials to provide protection to the assets of the Corporate Debtor.

This Tribunal, upon perusal of the material on record has allowed the said IA vide order dated 10-11-2021.

(I) It is an admitted fact that the Corporate Debtor is the owner and possessor of the said property. In fact, A.S. Yadav

claiming to be ex-manager of the Corporate Debtor had given representation dated 14.09.2021 (ANNEXURE B-2. Page 27 of this Counter) to respondent No.4 herein stating that he would submit the required documents to prove their rights on the claimed property on or before 27.09.2021. Till such time both the parties should remain in their area. R/4, to maintain law and order problem, had given oral instructions to maintain status quo. The Liquidator has complied with the same. That led to postponement of auction.

(J) It is submitted that on 18.09.2021, the Liquidator has filed complaint to respondents no.2 to 4 herein narrating illegal actions of Mr. Lallan Singh and A S Yadav, intended to stall auction process and requesting them to take action against them as per law for trespassing into the Schedule Property. Lallan Singh has in fact represented the Corporate

Debtor in the First CoC. A copy of Minutes of First Meeting of CoC dated 05.11.2018 is at ANNEXURE B-3 of this Counter. Said fact indicates the nexus between the promoter group and these two persons, namely, A.S. Yadav and Lallan Singh.

VIII.PARAWISE COMMENTS OFFERED BY THE LIQUIDATOR.

The Liquidator has answered the contentions raised in the IA parawise, which are as under:

Para number of IA No.687 of 2021	Comments of the Liquidator
4.1 Applicant is an MBA During lifetime, deceased father entered into Development	(i) Applicant's education is not known to the Liquidator herein. The power of attorney produced by the Applicant along with the Application is denied as a false and fabricated document as Mr. Somil K Negandhi has declared himself to be a residing in UK for past so many years in his LinkedIn profile. As such, it is apparent that the

<p>Agreement dated 19.05.2007 (Annex.2)</p>	<p>Special Power of Attorney is a forged one obtained and fabricated for this purpose.</p> <p>(ii) Development Agreement dated 19.05.2007 (Annexure-2 of IA) between Sir Cloth Manufacturers and the Corporate Debtor is fabricated as it is neither in consonance with section 35 of the Indian Stamp Act nor was it registered under section 17(1)(b) of the Registration Act, 1908.</p> <p>(iii) The proprietor of M/s Sir Cloth Manufacturers Co. has passed away on 02.12.2019. The applicant should explain how he has become proprietor of M/s Sir Cloth Manufacturers Co. post death of its proprietor.</p> <p>(iv) Development Agreement dated 19.05.2007 is neither stamped nor registered. It is in violation of Section 35 of the Indian Stamp Act, 1899, hence it is null and void.</p> <p>(v) Memorandum of Association (ANNEXURE B-4) of the Corporate Debtor does not allow the Corporate Debtor to engaged in developmental activities. Even if it is assumed that such Development Agreement was executed by the Corporate Debtor, the same is ultra vires, null and void.</p>
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	(vi) Board Resolution dated 21.11.2007 and letter dated 21.11.2008 dated 21.11.2007 (Annexure-3 of the IA) are fabricated.
4.3 Development Agreement is irrevocable. Vide letter dated 21.11.2007 (Annex.3) Corporate Debtor expressed unwillingness to invest ...	<p>Corporate Debtor has last filed its financials for FY 2003-04, as such the alleged documents that too without any proper authorization and which are not as per the mandatory stipulations of the law cannot be relied on. Somil K Negandhi is son in law of promoter of Corporate Debtor and is a related party. Copy of Form MBP-1 (Notice of interest by Director) signed by Director, Meenakshi Jain dated 28.03.2018 is at Annexure B-5 (page 44 of this Counter).</p> <p>It is further submitted that the possession of the said property has always been with Corporate Debtor/ Resolution Professional/ Liquidator without any interruption. Photographs of the property (Annexure B-6) clearly depict that the whole property is secured by the security personnel engaged by the Liquidator and the structures therein which out of the blue are being claimed by the Applicant herewith are structures with no activity and are dilapidated condition. No part of the property is in possession of any third party. Corporate Debtor is still the absolute owner and peaceful possessor of the Schedule Property and there are no</p>

	<p>encumbrances or charges created over the same. Encumbrance Certificates are at Annexure No. B-6 (Colly) herein.</p>
<p>4.4 Applicant, due to preoccupations, could not concentrate on business of his father Employed personnel ...</p>	<p>It is astonishing to see that the Applicant claims to have engaged security personnel, supervisor and manager for the said property, when the whole property is lock, control and possession of the Liquidator. Further, the Applicant could neither establish that M/s Sir Cloth Manufacturers Co. is an existing entity nor could prove his right over M/s Sir Cloth Manufacturers Co.</p> <p>It is further submitted that the alleged account statement relied by the Applicant herein is illegible and does not contain any name of the Bank / issuing authority and nor is it authenticated or a certified copy and hence the same cannot be relied upon.</p>
<p>6.6 Subject property is not subjected to security interest along with remaining property. Remaining property alone is</p>	<p>Section 36 of IBC provides that all and any assets of the Corporate Debtor shall form part of the Liquidation Estate, as such the Schedule Property was included in the Liquidation Estate and as empowered under Section 35 of IBC, Liquidator has performed her statutory duties to sell the properties of the Corporate Debtor. In fact, it was the measure to be taken under SARFAESI Act, 2002 rather than under IBC.</p>

subjected to mortgage	
4.7 and 4.8 : Proceedings before Quepem Police Station, Goa.	<p>On 13-09-2021, learning about ruckus and trespassing of the Applicant and their hench men, the Liquidator had to travel from Mumbai to Goa. Hence, the claim of the Applicant that he travelled to Goa to have a meeting with Liquidator is false and concocted. Said facts were mentioned in IA No. 625 of 2021 and also to the police vide complaint dated 18-09-2021.</p> <p>Only upon being aggrieved by the action of the Police orally directing her to stall her official duties in conducting the auction, the Liquidator herein had made a complaint and filed IA No. 625 of 2021 before this Hon'ble Tribunal. Alleged complaint dated 11-10-2021 is neither signed by the complainant nor any proof of submission to the police authorities is provided, hence, the same cannot be relied on.</p> <p>Property is part of the Liquidation Estate and being aggrieved by the action of the Police Authorities in orally directing the Liquidator to postpone the auction, the Liquidator herein has filed IA 625 of 2021. As such, the Applicant herein which is a non-existent entity is not a necessary party to the same.</p>

<p>4.9 .. by virtue of Development Agreement dated 19.05.2007 .. the applicant's father and thereafter the applicant is in continuous possession ..</p>	<p>Development Agreement dated 19-05-2007 is fabricated document and was never executed by the Corporate Debtor. Even if it is assumed to be genuine, the same is not valid or binding and does not create any interest or right. Possession of the same was always with the Corporate Debtor. Letter dated 21-11-2007 is fabricated document. It is apparent that financials were filed only till 2003-04 with the Registrar of Companies. Whereas, the Applicant appears before this Tribunal with alleged records for the year 2007 which clearly demonstrates that the said documents are fabricated as an afterthought.</p>
<p>4.10 : Schedule property is not reflected in CP IB No.497 of 2018 proceedings ...</p>	<p>Contentions raised by the applicant deal with the actions of IDBI taken under SARFAESI Act, 2002. IDBI as a secured creditor could only act against the secured assets under the SARFAESI Act, 2002 and not on the un-mortgaged assets of the Corporate Debtor.</p>
<p>4.11 : About Valuation of Corporate Debtor submitted by RP.</p>	<p>The Resolution Professional appears to have taken details of the assets solely based on the Memorandum of Entry i.e., the mortgaged assets only. Further, the Liquidator is specifically mandated to include the assets of the Corporate Debtor to form Liquidation Estate and to sell the same for the benefit of the stakeholders of the</p>

	<p>Corporate Debtor. Liquidator can act independent of the decisions taken by the Resolution Professional.</p>
<p>4.12 : Property is in continuous possession and enjoyment of applicant for 30 years. ...</p>	<p>Corporate Debtor is still the absolute owner and peaceful possessor of the Schedule Property. The claim of the applicant by virtue of alleged Development Agreement dated 19-05-2007 that they are in possession of the Schedule property for more than 30 years.is misplaced. Nexus of the promoters of the Corporate Debtor and the Applicant herein to swindle the assets of the Corporate Debtor is clearly evident from the above.</p> <p>Further, the Applicant has produced some purported record of expenses made by the Applicant in respect of the Schedule Property, which is hereby denied as false fabricated and without any legal basis.</p>
<p>4.13 and 4. 14: Liquidator included the schedule property for sale without valid reasons</p>	<p>Liquidator has performed her statutory duties by including the assets of the Corporate Debtor in the Liquidation Estate and to proceed with e-auction of the same for the benefit of the stakeholders of the Corporate Debtor. IA No. 625 of 2021 was filed being aggrieved by the action of the Police officials in orally directing the Liquidator herein to stall her statutory duties under IBC and Police protection. As such, the Applicant who never made any claim or</p>

	who never came into the light till this date is not a necessary party to said IA No. 625 of 2021.
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IX. REJOINDER DATED 06.01.2022 FILED BY THE PETITIONER.

The applicant herein has given his response to the Counter filed by the Liquidator, which is summarized as under:

(A) In reply to para 3 of the Counter, the applicant states that the schedule states that the schedule property is under the custody, possession and control of third party/ applicant.

Thus, the Liquidator cannot be permitted to take over control or dispossess the applicant. M/s Sir Cloth Manufacturer Co. is a proprietorship concern of Kishore G. Negandhi. Said entity has purchased the schedule property by way of Development Agreement dated 19.05.2007. On demise of Kishore G. Negandhi, the applicant (being his son) has

succeeded the property. Hence M/s Sir Cloth Manufacturer Co. cannot be said to be a non-existing entity.

(B) In response to para 6 of the Counter, the applicant denies that the Tribunal has no power of review. The applicant sought to recall order dated 10.11.2021 as it was passed without notice to the person in possession of the schedule property. The Resolution Professional has filed IA No.284 of 2021, for exclusion of schedule property from valuation for liquidation of the Corporate Debtor. Based on such valuation Liquidation order was passed. Now the Liquidator cannot seek to include the schedule property into liquidation estate of the Corporate Debtor. Such an attempt is contrary to IBC, 2016.

(C) As regards the contention raised by the Liquidator in para 7 of Counter that the applicant is resident of UK, the applicant states that the applicant is a regular visitor to India

for his business interest. However, neither travel details nor passport details are furnished as demanded by the Liquidator in this para.

(D) As regards the e-auction process initiated by the Liquidator (para 9 of Counter) qua the schedule property, the applicant states that the attempt by the Liquidator to sell such properties under the guise of e-auction is illegal.

(E) As regards the submissions made by the Liquidator in para 10 of the Counter, the applicant submits that the Liquidator does not have right, title or interest over the schedule property. He denies any trespass into the schedule property either by the applicant's Power of Attorney or A.S. Yadav. The applicant is in possession of the schedule property as evidenced in photos taken on 08.12.2021 (ANNEXURE-1, pages 10 to 12).

(F) While answering para 11 of the Counter, the applicant reiterates that the Liquidator had deliberately avoided arraying the applicant and A.S. Yadav in IA No.625 of 2021. Thus, order dated 10.11.2021 in IA No.625 of 2021 is without notice to the interested parties.

(G) While answering para 13 of Counter, the applicant states that:

- Liquidator has not addressed complaint dated 18.09.2021 to respondents no.2 to 4.
- A.S. Yadav on behalf of the Applicant had addressed communication dated 11.10.2021 (Annexure-2, pages 13 to 18 of the Rejoinder) to the Goa Police authorities.

(H) The applicant has furnished the following chronology:
21.11.2007 : Sir Cloth Manufacturers is in possession of the schedule property since 21.11.2007.

On 15.10.2003 IDBI has taken possession of the property after demarcation of land done for the Corporate Debtor and Sir Cloth Manufacturer. The applicant and the officials of seven banks were party to said possession and demarcation proceedings.

(I) In reply to paras 17 to 19 of Counter, in response to the contention raised by Liquidator that Development Agreement dated 19.05.2007 (Annexure-2 of IA) between Sir Cloth Manufacturers and the Corporate Debtor is fabricated as it is neither in consonance with section 35 of the Indian Stamp Act nor was it registered under section 17(1)(b) of the Registration Act, 1908, the applicant submits that:

- Development Agreement does not require stamp duty or registration as no right or title in the immovable property was transfer to M/s Sir Cloth Manufacturer

Co. Said proprietorship concern has transferred the entire sale consideration of Rs.29,50,000/- through Cheque No.0051 dated 19.05.2007, as reflected in Bank Account Statement of the applicant.

- Corporate Debtor by way of Board Resolution dated 21.11.2007 had agreed to hand over possession of the schedule property to Sir Cloth Manufacturer Co.
- On 21.11.2007 the company had handed over possession to the said concern. Copy of Mahazar dated 21.11.2007 executed by the Corporate Debtor in favour of the applicant is enclosed at pages 19 to 25 of this Rejoinder.
- Development Agreement dated 19.05.2007 (Annexure-2 of IA) is merely an agreement for sale. The document by itself does not create or limit any right, title or

interest. Therefore, the document is not mandatorily registrable.

(J) In reply to para 20 of Counter, the applicant submits that Article 6 of Memorandum of Association of the Corporate Debtor has power to sell and dispose of the land and building. Unable to carry on its business, the Corporate Debtor has executed agreement for development in favor of Sir Cloth Manufacturer Co. for development with an auction for agreement for sale of the schedule property.

**X. REPLY DATED 21.02.2022 FILED BY
RESPONDENT NO.1/ LIQUIDATOR TO
REJOINDER OF THE PETITIONER.**

(A) In response to para 3 of the Rejoinder the Liquidator has submitted that the Liquidator has formed an estate of all the assets, viz. liquidation estate of the Corporate Debtor under section 36 of the IBC. That includes the schedule

property. The Liquidator further submitted that it is in absolute possession of the Corporate Debtor. As such, the Liquidator is statutorily empowered to sell the assets forming liquidation estate for the benefit of the stakeholders of the Corporate Debtor. Liquidator is not obligated to issue notice to the promoter group and their relatives before auctioning the properties forming part of the liquidation estate of the Corporate Debtor. The title documents along with the encumbrance certificate till date are produced by the Liquidator in the counter filed which indubitably project the clear title and possession of the Corporate Debtor over the Schedule Property.

(B) In reply to para 5 of the Rejoinder filed by the applicant, the Liquidator states that no documents were produced in support of proprietorship, proprietor or the legal heirs or the petitioner who claims to have succeeded. Hence the

proprietorship concern is fictitious entity created for the purpose of grabbing the assets of the Corporate debtor.

(C) It is contended that multiple prayers are made in this IA for different causes of action. One IA for multiple distinct reliefs is not permissible.

(D) The Liquidator further contended that Resolution Professional during CIRP and the Liquidator during liquidation process are two different authorities with independent powers, functions and duties assigned to them under IBC, 2016. The contention of the applicant that the Liquidator shall abide by the actions of the Resolution Professional is untenable. It is the duty of the Liquidator to take control and stock of the assets of the Corporate Debtor and to form a liquidation estate.

(E) It is submitted by the Liquidator that the contention of the applicant that the estate of the deceased Kishore G

Negandhi devolved on the applicant herein is merely a contention without documentary evidence. Hence it is false.

Further, it is contended by the Liquidator that the Somil K Negandhi is a resident of the UK as per his own self-declared information and that the Special Power of Attorney purported to be executed by the said Somil K Negandhi was a forged document for the purpose of this case. The statement made by the applicant in his Rejoinder that he is a regular visitor to India for his business interest is not acceptable. Alleged Special Power of Attorney therefore, be considered as a forged and fabricated document.

(F) The Liquidator contends that Schedule Property has always been in the custody, lock and key, possession of the Liquidator. In fact, to prove the possession and control over the said Schedule Property, the Liquidator herein has filed photographs of the Schedule Property clearly implying that

the same is locked and is being guarded by the security appointed by Liquidator. It is submitted that the picture in page no. 10 i.e., Annexure 1 of the Rejoinder projects the faded name of petitioner, however, in reality, said gate is old unused gate with lots of vegetation in an around it and further, the said gate is in a bad state due to natural corrosion. The actual pictures of the Schedule Property including that of the said gate are attached herewith as ANNEXURE No. 1 (Colly.), pages 19 to 25 of this Reply.

(G) The following paras of the Rejoinder dated 06.01.2022 are answered pointedly by the Liquidator in the following manner:

Rejoinder dated 06.01.2022 filed by the applicant.	Answer given by the Liquidator in her reply dated 21.02.2022
Para 12: In reply to para 11 of Counter, this applicant or his	Para 13: In reply to para no.12, it is submitted that the said admission of the deponent that they have trespassed into the Schedule Property, the same

<p>agents had trespassed into the schedule property. It is submitted that the liquidator in order to take over possession illegally approached this Tribunal by virtue of IA No.625 of 2021 despite knowing fully well that the petitioner through its agent Mr. Lallan Singh and its Manager Mr. A.S. Yadav are in possession of the property did not choose to make them as party respondents in the IA No.625 of 2021. ...</p>	<p>is true and has been the prime contention of the Liquidator, which originated the cause of action for the Liquidator to challenge the said trespassing of the petitioner and his agents by way of IA No. 625 of 2021. It is astonishing that on one hand Petitioner claims to have right and on the other hand confesses trespassing. For such illegal acts of the applicant the Liquidator filed IA No.625 of 2021. Liquidator is not obligated to array such third parties to the interim applications. As such, the impugned order of the Tribunal in IA No. 625/2021 is sound.</p>
<p>Para 14: It is denied that the liquidator addressed</p>	<p>Para 15: The Liquidator states that it is perplexing to note that the Petitioner on one hand is denying that the Liquidator addressed a complaint dated 18-09-</p>

<p>a complaint dated 18.09.2021 to respondents no.2 to 4.</p>	<p>2021 and on other hand a perusal of the alleged representation dated 11-10-2021 (Page 14 of Rejoinder dated 06.01.2022) it is evident that it was a reply to the complaint of the Liquidator dated 18-09-2021.</p> <p>As regards possession held by Sir Cloth Manufacturers of the said property, the Petitioner had not produced an iota of evidence, record or document to substantiate the same.</p>
<p>Para 15: It is denied that third party petitioner has in nexus with the promoter group. Liquidator cannot auction the properties more specifically the schedule property which is not part of liquidator estate.</p>	<p>Para 16: Contention of the Petitioner that they are not in nexus with the promoter group is false. Petitioner/ Somil K Negandhi is the son-in-law of the promoter of the Corporate Debtor. Whereas, A S Yadav is the director in related party companies who claims to be authorized signatory, Manager, etc. of the Corporate Debtor.</p> <p>A S Yadav even filed ITR of the Corporate Debtor subsequent to death of all the director of the Corporate Debtor, by impersonating to be authorized person of the Corporate Debtor.</p> <p>Lallan Singh, who now claims to be special power of attorney of Mr. Somil K Negandhi had</p>

	<p>attended the COC meetings as a representative of the Corporate Debtor.</p> <p>As such, all the parties are related and are working in nexus with the promoter group of the Corporate Debtor.</p> <p>But for trespass/ highhandedness of the Petitioner and his agents, auction process would have been complete. The Schedule Property is part of the liquidation Estate of the Corporate Debtor.</p>
<p>Para 18: Development Agreement does not require stamp duty or registration as no right or title in the immovable property was transferred to M/s Sir Cloth Manufacturer Company. ...</p>	<p>Para 19:</p> <p>Para nos. 18 and 19, it is submitted that the alleged agreement for development is a false and fabricated document. It does not bear any stamp duty and neither is it registered. Even if assumed to be true for the purpose of arguments, shall not confer any right, title or interest over the Schedule Property. As such, without any right, title or interest created in favour of the Petitioner herein.</p> <p>Though consideration was claimed to have been paid to the Corporate Debtor, no evidence is adduced to substantiate such contention.</p>

<p>Para 19: Development Agreement does not require any registration.</p>	<p>It is further submitted that the said board resolution dated 21-11-2007 is false and fabricated document, as there is no record of any such board meeting. Further, sans execution of any agreement, sans handing over possession of the Schedule Property and sans there being any right, title or interest, property is transferred to the Petitioner. Petitioner cannot take shield under Section 53A of the Transfer of Property Act.</p>
<p>Para 34: I submit that the Corporate Debtor through its Directors had issued Mahazar in favour of M/s Sir Cloth Manufacturers dated 21.11.2007, clearly demarcating the subject property in favour of M.s Sir</p>	<p>Para 32: In reply to para 34 of Rejoinder Liquidator contends that Mahazar dated 21.11.2007 (ANNEXURE-3, page 19 of Rejoinder) is false and fabricated. It has the following defects:</p> <ul style="list-style-type: none"> • Signature of a dead person, viz. Sitara Jain is forged. • Stamp is dated 29.11.2006, whereas document is dated 21.11.2007. • Document is notarized by Jose Joey Rodrigues, whose licence expires on 09.10.2024. • Apart from round seal of Notary there is no signature, notary stamp etc.

<p>Cloth Manufacturers.</p>	<ul style="list-style-type: none">• Said notary “Jose Joey Rodrigues” has antecedents of proved malpractices. Copy of orders of the Goa State Information Commission in Appeal No. 47/SIC/2013 is at ANNEXURE-2 of this Reply. Copy of newspaper article published in Times of India dated 26.06.2010 is at ANNEXURE-3 of this Reply. Notary Rules, which provide five year-licence term for Notary is at ANNEXURE-4 of this Reply.• Sitara Devi has died in 2013. Copy of Death certificate of Smt. Sitara Jain is attached herewith as at ANNEXURE-5 of this Reply. <p>As such, said Mahazar is a fabricated document.</p>
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XI. REJOINDER DATED 03.03.2022 FILED BY THIRD PARTY/ PETITIONER IN RESPONSE TO REPLY DATED 21.02.2022 FILED BY THE LIQUIDATOR.

(A) This Rejoinder is more or less reiteration/ recapitulation of what has been stated in the earlier documents. The same are noted. Besides, the following submissions are also considered.

(B) In para 20 (page 8) of the Rejoinder it is emphasized that merely because document is not registered, it does not mean that the equitable interest or beneficiary interest in respect of the schedule property (is not created). As no possession was transferred under Development Agreement, the document does not require registration. M.s Sir Cloth Manufacturer has paid the entire sale consideration and received possession of the schedule property from the erstwhile management of the Corporate Debtor.

(C) In para 30 (page 9) of the Rejoinder it is stated by the applicant that Mahazar dated 21.11.2007 was executed by the erstwhile management of the Corporate Debtor in favour of Sir Cloth Manufacturer in presence of two witnesses. Said document, which was in possession of the applicant, was produced before Notary. Said document was notarized by the said Notary and the same was also again signed as true

copy by the deponent/ applicant and submitted before this Tribunal. Thus, attempt by the Liquidator to project the said document as fabricated one is untenable.

XII. MEMO DATED 05.09.2022 FILED BY RESPONDENT NO.1/ LIQUIDATOR PRODUCING ADDITIONAL DOCUMENTS.

This Tribunal, vide order dated 05.08.2022 (ANNEXURE-2 of this Memo) has granted liberty to the Liquidator to ascertain veracity of Statement of Accounts filed in IA No.687 of 2021 and offer comments, if she so chooses. Availing such liberty the Liquidator has filed additional documents by way of this Memo marked as ANNEXURE-1 (COLLY.). The same are taken on record.

XIII. Both the sides have submitted Written Submissions/ Additional Written Submissions reiterating their respective oral submissions and relying on case law.

XIV. In light of the contest as aforementioned, the **points** that emerge for our consideration are:

- 1. Whether the order dated 10.11.2021 made in IA No.625 of 2021 in CP (IB) No.497/7/ HDB/2018 is liable to be *recalled* on the grounds stated in the petition?**
- 2. Whether the Liquidator herein can be directed to *exclude* the property mentioned in this application schedule from the liquidation estate of the corporate debtor?**

XV. We have heard Mr. D.V. Seetharam Murthy, learned Senior Advocate for Mr. Srikanth Hariharan, Counsel on record for the applicant; and Mr. V.V. Siva Kumar, learned Advocate for Ms. Sujata Chattopadhyay, the Liquidator /1st respondent, perused the record, written submissions and the additional written submissions.

POINT 1.

Whether the order dated 10.11.2021 made in IA No.625 of 2021 in CP (IB) No.497/7/ HDB/2018 is liable to be recalled on the grounds stated in the petition?

The Submissions

XVI. Mr. D.V. Seetharam Murthy, learned Senior Counsel for the petitioner, at the outset, submitted that the impugned order dated 10.11.2021, whereby this Tribunal granted Police aid to the 1st respondent/ Liquidator enabling prospective buyers of the application schedule mentioned property which was put to public sale vide publication dated 01.09.2021, is contrary to law and the principles of natural justice, as such the same is liable to be recalled. Learned Senior Counsel traced the rights of the applicant, who is a third party in respect of the application schedule mentioned property, including its physical possession to an unregistered and unstamped document 19.05.2007 captioned as 'Agreement for Development', whereunder it is stated that the Corporate Debtor, upon receipt of total consideration

of Rs. 29,50,000.00 envisaged under the said Agreement had created certain development rights in favor of the petitioner as indicated therein and that the Corporate Debtor delivered physical possession of the said parcel of land to the applicant, the 'Pachanama'/ 'Mahazar' dated 21.11.2007 besides the Board Resolution dated 21.11.2007, wherein also the above agreement was reported to delivery of the above property to the applicant has been reiterated.

Ld. Sr. Counsel also relied on the letter dated 21.11.2007 (ANNEXURE-3), wherein, it the 1st respondent has expressed its unwillingness to invest and participate in the development scheme due to freezing of their Bank Account. According to the Ld. Sr. Counsel, under these circumstances, the applicant's father came forward to carry out development either by himself or with any other partner.

According to the Ld. Sr. Counsel these documents emphatically confirm/ establish the lawful rights of the applicant over the subject property including its lawful possession and peaceful enjoyment of the same by the applicant. Learned Senior Counsel refuted the contention of the 1st respondent that, the Agreement for Development dated 19.05.2007, the Mahazar dated 21.11.2007, the Board Resolution dated 21.11.2007 and the letter dated 21.11.2007 are fabricated documents. In this context learned Senior Counsel contends that out of the total sale consideration of Rs.29,50,000/- mentioned in Agreement for Development dated 19.05.2007, a sum of Rs.29,00,000 has been paid by way of Cheque No.0051 dated 19.05.2007, drawn in favour of the 1st respondent and the balance amount of Rs.50,000 was paid by cash. In proof of encashment of the said cheque the learned Senior Counsel relied on Account Statement of

the applicant. Learned Senior Counsel further submitted that the Minutes of the Board Meeting dated 21.11.2007, clearly state that ‘a sum of Rs.29,50,000 has been received and possession of the subject property has been parted with in favour of the applicant.’ So much so according to the learned Senior Counsel the genuineness of the Agreement for Development, supra, cannot be in doubt. Learned Senior Counsel also submitted that even the records relied on by the 1st respondent clearly discloses that the Corporate Debtor while mortgaging his property in favour of lenders for availing financial facilities has consciously excluded the subject property from the said mortgage and the legal actions initiated so far, except the impugned action were not in respect of the subject property. So much so, the lawful rights of the applicant over the subject property and its possession by the applicant ever since the year 2007 stands established.

Learned Senior counsel also referred to the Information Memorandum dated 23.11.2018 prepared by the Resolution Professional appointed by this Tribunal for resolution of the insolvency of M/s Atlanti Spinning & Weaving Mills Ltd (Corporate Debtor) and the Valuation Report obtained by the (copies of which are filed at pages 14-20 of the Rejoinder dated 03.02.2022 in this IA) and contended that the subject property has been excluded from the assets/properties of the Corporate Debtor even during the period of the CIRP of the 1st respondent on account of execution of the Agreement for Development, supra.

Therefore, according to the learned Senior Counsel when the subject property has been delivered to the applicant way back in the year 2007 upon payment of the entire consideration under the agreement for development, and ever since then the applicant is in continuous uninterrupted

possession and enjoyment of the said property, the order granting police aid obtained by the 1st respondent ex parte was only to dispossess the applicant from the settled possession of the subject property, which is against the ‘objective’ of providing police aid, hence the impugned order in IA 625/2021 is liable to be recalled.

XVII. Learned Senior Counsel further submitted that the impugned order granting police aid *ex-parte*, dated 10.11.2021 in IA No.625 of 2021 in CP (IB) No.497/7/HDB/2018, since results in depriving the applicant his valuable right of being in physical possession and enjoyment of the subject property, the applicant herein is a *necessary and proper party* to IA 625 of 2021, but admittedly was not heard by the Tribunal before passing the impugned order. Hence the impugned order in IA 625 of 2021 is liable to be

interfered with by this Tribunal, by exercising its recall jurisdiction.

XVIII. In support of this plea, the learned Senior Counsel placed reliance on the ruling in,

- Union Bank of India (Erstwhile Corporation Bank) Vs. Dinkar T. Venkatasubramanian & Ors., **2023** LiveLaw (SC) 589, wherein the five Members Bench, of Hon'ble NCLAT, has held that:

*“Power of recall of a judgment can be exercised by this Tribunal when any procedural error is committed in delivering the earlier judgment; for example; **necessary party has not been served or necessary party was not before the Tribunal when judgment was delivered adverse to a party.** There may be other grounds for recall of a judgment. Well known ground on which a judgment can always be recalled by a Court is ground of fraud played on the Court in obtaining judgment from the Court”, the Bench held. (Emphasis is ours)*

XIX. Ld. Sr. Counsel also contended that the applicant had acquired *prescriptive title* over the said property by *adverse possession*, as such the corporate debtor was divested of its Title over the subject property, ever since

the date of execution of the agreement for development, hence the same cannot be included in the liquidation estate of the corporate debtor, under law.

Learned Senior Counsel, also placed reliance on *subsection* (4)(a) of section 36 of the I&B Code, 2016 and contended that the application schedule mentioned property since owned by the applicant, even if it is assumed without admitting that the Corporate Debtor is in possession of the same, such possession *is in trust for the applicant* and not on behalf of the corporate debtor, as such the 1st respondent is barred from including the same in the liquidation estate of the corporate debtor.

XX. In support of this contention the applicant relied on the ruling in Paragon Finance plc Vs. DB Thackerar &

Co., MANU/ UKWA/ 0820/ 1998 : (1999) 1 All ER 400,

wherein it was observed that:

“A constructive trust arises by operation of law whenever the circumstances are such that it would be unconscionable for the owner of property (usually but not necessarily the legal estate) to assert his own beneficial interest in the property and deny the beneficial interest of another.”

And also in Fredrick Emmanuel Abeyesundera Vs. The

Ceylon Exports Limited and anr., AIR 1936 PC 259, wherein

Privy Council held that,

“a father who has transferred certain property to his son by deed of gift, though it was unregistered had consequently tried to transfer the property to another person. It was held that father having already transferred property to his son earlier he was a constructive trustee for his son”.

XXI. Mr. V.V. Siva Kumar, learned Counsel for the 1st respondent while vehemently refuting the aforestated submissions of the learned Senior Counsel for the applicant, strongly contended that the fact that the application schedule mentioned property stood recorded in the name of the Corporate Debtor in the concerned Revenue records, in

terms of subsection (3)(a) of section 36 of the I&B Code, the same shall *invariably form part of the liquidation estate of the Corporate Debtor*, as such the 1st respondent/ Liquidator has every right under law to hold in possession of the same and deal with the same for the purpose of liquidation of the Corporate Debtor.

XXII. In support of this contention that the subject property stood recorded in the name of the Corporate Debtor in Revenue records, the learned counsel relied on the NIL Encumbrance Certificate dated 07.03.2021 issued by the Competent Authority and the Record of Entries in the Revenue records, copies of which were filed along with Counter of the 1st respondent/ Liquidator. Learned Counsel also contended that the so-called documents, viz. (i) Agreement for Development dated 19.05.2007, (ii) Mahazar dated 21.11.2007, (iii) Board Resolution dated 21.11.2007

and the letter dated letter dated 21.11.2007 are all *fabricated documents*, as such no reliance can be placed on the same.

Learned Counsel strongly disputed passing of consideration of Rs.29,50,000 under the purported Agreement for Development dated 19.05.2007.

According to the learned Counsel, the so called Agreement for Development is a *compulsorily registrable* document in terms of section 17 of the Registration Act and as the same is neither stamped nor registered, no reliance can be placed on such unstamped and unregistered Agreement as the same is *per se*, in admissible document under law.

In support of this contention Ld. Counsel placed reliance on Section 35 of the Stamp Act and also on the following ruling. M/s Indo World Infrastructure Private Limited Versus Shri Mukesh Gupta and others (National Company Law

Appellate Tribunal Principal Bench New Delhi Company

Appeal No. 93 of 2022, wherein it was held that:

"20. This brings us to the submission made by the Resolution Professional/Respondent No.1 that mere entering into an Agreement to Sell does not amount to ownership of the property and that ownership of property Company Appeal (AT) (Ins.) No.93 of 2022 is transferred only upon execution of conveyance deed before the Registrar. We note that reliance has been placed on the Hon'ble Supreme Court in Narandas Karsondas v. S.A. Kamtam and Anr. (1977)3 SCC 247 wherein it has been observed that : "A contract of sale does not of itself create any interest in, or charge on, the property. That is expressly declared in Section 54 of the Transfer of Property Act." Reference has also been made to the decision of the Hon'ble Apex Court in Suraj Lamp and Industries Pvt. Ltd. v. State of Haryana and Ors. 2012 1 SCC 656 wherein this position has been affirmed and it has been held: "Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of Transfer of Property Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53A of Transfer of Property Act). According to Transfer of Property Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of Transfer of Property Act enacts that sale of immoveable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter."

21. It is therefore a settled proposition of law that an Agreement to sell does not convey a property from one person to another, either in present or even in future. Agreement to sell is a promise of a future transfer of property ownership which outlines the terms and conditions under which the property will be transferred. An agreement to sell an immovable property is therefore a bilateral contract under which the two parties, i.e. the buyer and the seller, Company Appeal (AT) (Ins.) No.93 of 2022 agree to certain terms and conditions, subject to which the property in question would be transferred by the seller to the buyer for a decided sale consideration. It is only after such bilateral obligations are discharged that the execution of the sale deed kicks in and it is this sale deed, which is compulsorily registrable under the Registration Act, 1908, which upon being registered, would transfer the right, title and interest in the property in question on to the purchaser. In the present factual matrix, the agreement to sell was yet to culminate into a registered sale deed and therefore not ripe for transfer of the title of property in question from the Corporate Debtor to the Appellant.

22. For the above reasons, we therefore hold in negative the claim of the Appellant that upon execution of the Agreement to Sell, the ownership of the project land stood transferred from the Corporate Debtor to the Appellant. Point No. (ii)

23. *It is the Appellant's case that in terms of the Agreement to Sell entered between the Corporate Debtor and the Appellant, the right of ownership of the project land stood transferred to it and the Appellant had enjoyed complete right of possession and ownership in the said property. Only the act of registration and transfer of the rights registered with the Noida Authority was remaining which was to be executed on completion of construction. However, the Resolution Professional by including the said project land in the pool of assets of the Corporate Debtor had illegally disregarded the legal rights of the Company Appeal (AT) (Ins.) No.93 of 2022 Appellant and acted contrary to the provisions contained under Section 18 of IBC.*

24. *Admittedly, Section 18 enjoins upon the Resolution Professional to collect all information relating to the assets, finances and operations of the Corporate Debtor as well as control and custody of assets. However, the Explanation clause therein excludes assets owned by a third party in possession of the Corporate Debtor held under trust or under contractual arrangements. For reasons of clarity, the relevant portions of Section 18 is as reproduced below: -*

“18. Duties of interim resolution professional.-

.... ...”

25. *A plain reading of Explanation clause to Section 18 makes it amply clear that the term "assets" will not include the assets owned by a third party in possession of the Corporate Debtor under Trust or Contractual Agreement. Keeping in mind the facts of the present case; the clause of the Lease Deed and the Agreement to Sell; the provisions of the Transfer of Property Act,1882 and the Registration Act,1908 as expounded in judgments of the Hon'ble Apex Court, we have already come to the conclusion at Point No.1 above that the instant Agreement to Sell between the Corporate Debtor and the Appellant Company Appeal (AT) (Ins.) No.93 of 2022 which conferred construction, development and sale rights on the Appellant on the project land did not confer ownership rights on the Appellant. That being the case there are no grounds to find faults or illegality on the part of the Resolution Professional in including the project land in the pool of assets of the Corporate Debtor under CIRP.*

26. *It is incumbent upon the Resolution Professional under Section 18 of IBC to embark upon necessary steps to take control and custody of the assets of the Corporate Debtor and under Section 20 of IBC to protect and preserve the value of the property of the Corporate Debtor. Thus in having included the project land in the pool of assets of the Corporate Debtor, the Resolution Professional cannot be held to be remiss in the performance of his duties.*

27. *We find no cogent grounds to agree with the Appellant's contention that Resolution Professional had acted in a manner that transgressed the statutory framework of IBC or that his conduct did not inspire confidence in the credibility of the insolvency process undertaken by him. Point No. (iii).”*

XXIII. Learned Counsel further states that once the so-called Agreement for Development is *eschewed* from being considered for want of *proper stamp duty and registration*, the applicant is left with no other document worth reliable for establishing its so-called rights or possession in respect of the subject property. Therefore, the applicant is *neither a necessary nor a proper party* to IA No.625 of 2021, as such rightly, this Tribunal did not issue notice to the applicant before passing the impugned order in IA No.625 of 2021 and in this view of the matter the ruling *in re*, Union Bank of India, *supra*, relied on by the applicant on facts, is not applicable to this case.

In support of his contention that police aid was required in this case by the liquidator, Ld. Counsel relied on the following rulings.

S. Muthuraju Vs Commissioner of police and another, 2019

SCC Online NCLT 8010, wherein the following order was

passed:

“It has been stated in the application that liquidator has made attempts to enter the premise of the Corporate Debtor a group/mod of unknown person are hurling threats with weapons such as knives and not allowing the liquidator to carry out his functions as liquidator.

In view of the facts and circumstance recorded above the superintendent of police of concerned jurisdiction is directed to give adequate police protection to the liquidator so that he could be in a position to perform his duties. The Liquidator is directed to take certified copy of this order, and to deliver it to the concerned police officer for seeking assistance.”

(b) Alchemist asset Reconstruction Company Limited Vs.

Precision Fasters Ltd. 2019 SCC Online NCLT 8201.

“The Liquidator filed an application seeking possession of the flats under occupation of respondents. He submitted that refusal to hand over the flats owned by the corporate debtor is likely to affect the creditors who are entitled to liquidation proceeds. The respondents claimed that they had possession of the flat based on a letter issued by the corporate debtor. The Adjudicating Authority noted that the said letter cannot be treated as valid document whereby the alleged property has been transferred to the respondents. It ordered the respondents to vacate the flats and hand over the same to the Liquidator, failing which the liquidator would be entitled to get the possession in accordance with law with the help of police.”

(c) Mrs Dipti Mehta, Resolution Professional, Prag Distillery Private Limited Vs Shivani Amit Dahanukar and Ors., wherein the Tribunal held that:

“ it is clear that the impugned assets were transferred to the holding company with an intent to protect the value of the assets. However, there is no consideration received by the corporate debtor against the said transfer and the assets were not sold but only transferred to the holding company for its utilisation. Had the assets not being transferred, there was a risk of them getting wasted and spoiled. It is not disputed that the ownership of the assets is still with the corporate debtor and they are part of the liquidation estate of the corporate debtor. The respondents have submitted that the holding company agree to transfer the machinery back to the corporate debtor. Given the circumstances above, it is directed that the assets of the corporate debtor shall be returned and restored to the corporate debtor by the holding company within one month from the date of this order.”

XXIV. Ld. Counsel also contended that the property of the corporate debtor was never *encumbered* as per the encumbrance certificate dated 07.03.2021 (Annexure B/7 of Counter) issued by the competent Authority, as such the claim of entering into an Agreement for Development, *supra*, by the applicant is false.

Our analysis & findings

XXV. Having heard the Ld. Counsels for both sides, before proceeding further with our analysis, we wish to state that the issue as to the power of this Tribunal to recall of its own orders is no more *res integra*, as Hon'ble Supreme Court of India, has confirmed the order of the five-member Bench of the Hon'ble NCLAT, in Union Bank of India (Erstwhile Corporation Bank) Vs. Dinkar T. Venkatasubramanian & Ors., supra, wherein the Bench categorically held that,

“Power of recall of a judgment can be exercised by this Tribunal when any procedural error is committed in delivering the earlier judgment; for example; necessary party has not been served or necessary party was not before the Tribunal when judgment was delivered adverse to a party. There may be other grounds for recall of a judgment”.

Since the applicant herein is *strenuously* contending that despite, he being a necessary and proper party to IA No.625 of 2021, the applicant was not heard before passing the

impugned order, which plea has been *strongly denied* by the 1st respondent, it is essential for us to find, whether or not, the applicant has any *lawful right, title, interest or possession* over the subject property so as to say that the applicant is a *necessary and proper party* to IA No.625 of 2021.

XXVI. We therefore, proceed to examine *prima facie*, whether the documents relied on by both sides *namely*, (i) the unregistered and unstamped Agreement for Development dated 19.05.2007 (ii) the Mahazar dated 21.11.2007, and (iii) the Board Resolution dated 21.11.2007(iv) The letter dated letter dated 21.11.2007 (v) The Nil Encumbrance certificates dated 07.03.2021 and (vi) The Entry in the Revenue Records relating to the property of the corporate debtor, *confer/ deprive any legal right/ interest* over the subject property in favour of the applicant and

whether the claim of the applicant that he is in *possession* of the said property ever since 2007 can be traced from these documents?

Indisputably, the Agreement for Development dated 19.05.2007 is neither *stamped* nor *registered*, as such the very admissibility of the same is questioned seriously by the 1st respondent as referred to *supra*. We therefore, usefully refer to section 35 of the Stamp Act, which is as below;

"35 - Instruments not duly stamped inadmissible in evidence, etc. No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:

Provided that--

(a) any such instrument shall be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion ;

(b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;

(c) where a contract or agreement of any kind is affected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

(d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure 1898;

(e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government or where it bears the certificate of the Collector as provided by [section 32](#) or any other provision of this Act."

XXVII. Hon'ble Supreme Court of India, in M/s.
N.N. Global Mercantile Private Limited Vs Indo Unique
Flame Ltd & Others, 2021 SCC OnLine page 13, in para 51
of the order held that;

"This Court in Hindustan Steel Limited v. Dilip Construction Company, was dealing with the following set of facts:

An award was made by an Umpire under the Indian Arbitration Act, 1940, which was filed in the Court. The appellant applied to set aside the Award, inter alia, contending that it was unstamped. It contended that it was on that account, invalid, illegal and liable to be set aside. The respondent thereupon applied to the District Court to have the Award impounded and validated by the levy of stamp duty and penalty. The Award was impounded and visited with duty and penalty, which was duly paid and certified. The contention of the appellant was that, not only could an unstamped Award, be not admitted in evidence, but it could not be acted upon, as the instrument had no existence in the eye of law. It is thereupon that the Court had held, inter alia: " An instrument which is not duly stamped cannot be received in evidence by any person who has authority to receive evidence, and it cannot be

acted upon by that person or by any public officer. Section 35 provides that the admissibility of an instrument once admitted in evidence shall not, except as provided in Section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped. Relying upon the difference in the phraseology between Sections 35 and 36 it was urged that an instrument which is not duly stamped may be admitted in evidence on payment of duty and penalty, but it cannot be acted upon because Section 35 operates as a bar to the admission in evidence of the instrument not duly stamped as well as to its being acted upon, and the Legislature has by Section 36 in the conditions set out therein removed the bar only against admission in evidence of the instrument. The argument ignores the true import of Section 36. By that section an instrument once admitted in evidence shall not be called in question at any stage of the same suit or proceeding on the ground that it has not been duly stamped. Section 36 does not prohibit a challenge against an instrument that it shall not be acted upon because it is not duly stamped, but on that 61 account there is no bar against an instrument not duly stamped being acted upon after payment of the stamp duty and penalty according to the procedure prescribed by the Act. The doubt, if any, is removed by the terms of Section 42(2) which enact, in terms unmistakable, that every instrument endorsed by the Collector under Section 42(1) shall be admissible in evidence and may be acted upon as if it has been duly stamped.”

We may also profitably refer to paragraph-8 as well: “8. Our attention was invited to the statement of law by M.C. Desai, J., in Mst Bittan Bibi v. Kuntu Lal [ILR (1952) 2 All 984] : “A court is prohibited from admitting an instrument in evidence and a court and a public officer both are prohibited from acting upon it. Thus, a court is prohibited from both admitting it in evidence and acting upon it. It follows that the acting upon is not included in the admission and that a document can be admitted in evidence but not be acted upon. Of course it cannot be acted upon without its being admitted, but it can be admitted and yet be not acted upon. If every document, upon admission, became automatically liable to be acted upon, the provision in Section 35 that an instrument chargeable with duty but not duly stamped, shall not be acted upon by the Court, would be rendered redundant by the provision that it shall not be admitted in evidence for any purpose. To act upon an instrument is to give effect to it or to enforce it.” “In our judgment,

the learned Judge attributed to Section 36 a meaning which the legislature did not intend. Attention of the learned Judge was apparently not invited to Section 42(2) of the Act which expressly renders an instrument, when certified by endorsement that proper duty and penalty have been levied in respect thereof, capable of being acted upon as if it had been duly stamped.

We draw the following conclusions, as to what has been laid down by a Bench of three learned Judges in Hindustan Steel (supra):

- (i) The Stamp Act is a fiscal measure intended to raise revenue;*
- (ii) The stringent provisions of the Act are meant to protect the interest of the Revenue;*
- (iii) It is not intended to be used as a weapon by a litigant to defeat the cause of the opponent;*
- (iv) Upon the endorsement being made under Section 42(2) of the Stamp Act, the 63 documents would be admissible in evidence and can be acted upon.”*

Hon’ble Supreme Court of India, in R. Hemalatha v Kasturi,
2023 LiveLaw (SC) 304, held that,

“Thus, as per proviso to Section 49, an unregistered document affecting the immovable property and required by Registration Act to be registered may be received as evidence of a contract in a suit for specific performance under Chapter-II of the Specific Relief Act, 1877, or as evidence of any collateral transaction not required to be effected by registered document”.

Hon'ble High Court of Andhra Pradesh in T. Bhaskar Rao v.

T. Gabriel and others, AIR 1981 A.P. 175, held that:

"5. Section 35 of the Stamp Act mandates that an instrument chargeable with duty should be stamped so as to make it admissible in evidence. Proviso A to Section 35 of the Stamp Act enables a document to be received in evidence on payment of stamp duty and penalty if the document is chargeable, but not stamped or on payment of deficit duty and penalty, if it is insufficiently stamped. The bar against the admissibility of an instrument which is chargeable with stamp duty and is not stamped is of course absolute whatever be the nature of the purpose, be it for main or collateral purpose, unless the requirements of proviso (A) to Section 35 are complied with. It follows that if the requirements of proviso (A) to Section 35 are satisfied, then the document which is chargeable with duty, but not stamped, can be received in evidence."

It was further held: -

"7. It is now well settled that there is no prohibition under Section 49 of the Registration Act, to receive an unregistered document in evidence for collateral purpose. But the document so tendered should be duly stamped or should comply with the requirements of Section 35 of the Stamp Act, if not stamped, as a document cannot be received in evidence even for collateral purpose unless it is duly stamped or duty and penalty are paid under Section 35 of the Stamp Act."

Therefore, the subject agreement for development can be received in evidence *once* the requirements of section 35 of the Stamp Act are satisfied for *collateral* purposes only, as the same being an *unregistered document*.

The Mahazar dated 21.11.2007 and Board Resolution dated 21.11.2007, refer to the Agreement for Development dated

19.05.2007 and the letter dates 21.11.2007, categorically state that the *possession of the property referred to in the development agreement has been delivered to the applicant.*

Though the genuineness of these documents also has been *disputed* by the 1st respondent merely contending, inter alia, that the said documents are fabricated, passing of consideration of a sum of Rupees 29,00,000.00 out of the total consideration of Rupees 29,50,000.00, through a cheque transaction stands established *prima facie*, by virtue of the bank statements produced by the applicant. That apart, in exercise of our jurisdiction which is *summary*, it would be inappropriate on our part to embark upon an enquiry on the plea of *fabrication of documents* put forth by the 1st respondent and arrive at a finding on the said plea. However, having given our thoughtful consideration to the following undeniable facts and events, *namely*,

- i) That no record is produced before us to show that the subject property *formed part* of the ‘mortgage’ created by the Corporate Debtor in respect of the land measuring an extent of 30726.4 sq. mtrs in favor of the lenders while availing financial facilities;
- ii) There is no record to show that the subject asset admeasuring 30376.4 square meters formed part of the Information Memorandum prepared by the Resolution Professional;
- iii) No Asset Memorandum has been filed by the Liquidator disclosing the asset /property covered under the agreement for development.
- iv) i. The property schedule of the Agreement for Development dated 19.05.2007 describes the same as the land, factory building and the structures standing thereon, admeasuring 15,690 square meters out of

50,690 square meters forming part of larger piece of land known as 'Fatergally' bearing Survey No.174/1 situate at Village Xeldem, Taluka Duepem, District Goa, *besides* the land known as 'Arcegally' or 'Arxigally' situated at Village Xeldem, Taluka Quepem, District Goa, admeasuring 15,036.4 square meters bearing Survey No.167.

- ii. A perusal of the Revenue Entry in respect of land in Survey No.174 situated at Xeldem Village, Quepem Taluk, South Goa, Goa, a copy of which has been filed at page 54 of the Counter of the 1st respondent confirms that the land admeasuring 50,690 square meters forming part of the above survey number, the land admeasuring 15,036.4 square meters forming part of the survey number 167 stood

registered in the revenue records in the name of the Corporate Debtor.

- iii. The Valuation Report dated 13.03.2019 (ANNEXURE-11, pages 54-65 of Company Petition) obtained by the Resolution Professional appointed by this Tribunal for conducting Corporate Insolvency Resolution Process of the 1st respondent, is confined to the land admeasuring an extent of 36,690 square meters situate in Survey No.174 of Registered Sale Deed dated 29.11.2006 bearing No.24589 and land measuring 2307 square meters situated in Survey No.134 of Registered Sale Deed bearing No.24589 dated 29.11.2006, *besides* some more land belonging to the Corporate Debtor situated in

different survey numbers, which are admittedly unrelated to the subject property.

- iv. So much so, the fact that in the Information Memorandum, the Resolution Professional had mentioned only the land *ad measuring 36,690 square meters situate in Survey No.174/1*, despite mentioning in the said report that the total extent of the land that belongs to the Corporate Debtor in Survey number 174/1 even as 50,690 sq meters, and confined the valuation for said parcel of land only, *prima facie*, renders the plea of the liquidator that the entire land, i.e. an extent of 50,690 in Survey No.174/1 of Village Xeldem, Taluka Quepem, District Goa,

formed part of the Liquidation Estate,
baseless.

V. As per the Joint Report dated 15.10.2013 (page 41 of the petition) states that the physical possession of land admeasuring 36,690 square meters of Survey No.174/1 was proposed to be taken under the provisions of SERFEASI Act on 15.10.2023. However, no record is filed to show whether the physical possession of the said property has been taken or not by the Authorities. The subject property has been *separately* demarcated from the total extent of 50,690 square meters of land in Survey no.174/1 owned by the corporate debtor which is evident from the *plan* submitted.

VI. The documents such as Mahazar Board Resolution, and the letter of the corporate debtor, supra, also *prima facie*, discloses that the possession of the said property has been delivered to the applicant in pursuance of the Agreement for Development.

we have no hesitation in holding that a *cloud* over the 1st respondent's claim of *ownership* and *physical possession* of the of the subject asset/ property of the Corporate debtor, certainly *exists* even prior to filing of IA No.625 of 2021 in CP (IB) No. 497/7/HDB/2018 by the 1st respondent/Liquidator.

XXVIII. Having said so, we wish to refer to the ruling of Hon'ble High court of Andhra Pradesh, in B. Chandra Sekhar Reddy And Others vs K. Naga Raju Yadav and Another, 2013 (2) ALD p 626, wherein it was held that,

'29. However, whereas great caution is to be taken for granting ex parte ad-interim injunction equal measures are to be taken while granting police aid to enforce that order. Under the guise of an order of ad-interim injunction and also the corresponding police aid granted there may be a possibility of vacating from the property in the litigation a person who is in actual possession of the property as of right. Therefore, whenever such order of granting police aid is resisted it is advisable to hear both the parties to the litigation and dispose of the petition filed for interim injunction pending disposal of the main proceedings itself'. (Emphasis is ours)

Hon'ble High Court of Madras, in N. Karpagam and others v. P. Deivanaiammal and others: AIR 2003 Mad 219, held that the Civil Court can give direction to the Police authorities to render aid to the aggrieved party with regard to implementation of the injunction order passed by the Court.

His Lordship held:

"It is also relevant to refer the Division Bench decision of this Court reported in 1992 TLNJ 120 (cited supra), wherein after considering the relevant provisions relating to grant of injunction and Section 151 C.P.C. the Bench has concluded that, In view of the above

position of law, it has to be held that in appropriate cases, directions under Section 151 of the Code can be issued by the Civil Courts to the police authorities to render aid to the aggrieved parties for the due and proper implementation of the order of temporary injunction or a decree for permanent injunction granted by the Civil Court.
(Emphasis is ours)

XXIX. Therefore, from the rulings above it is quite clear that in appropriate cases, directions to the police authorities to render aid to the aggrieved parties for the due and proper **implementation of an order or a decree granted can be ordered but not when there is a possibility of evicting the person in actual possession of property or when there is a cloud over the claim of right, title , interest or possession of the party praying for grant of police aid.**

In the rulings, supra, relied on by the Ld. Counsel for the 1st respondent unlike the case on hand, there was no dispute as to the title or the right to be in possession by the Liquidator. Likewise the application in IA 625/2021 as not based on any Order of this Tribunal.

Therefore, having regard to the facts and circumstances of this case, we are of the firm view that the applicant is a

necessary and proper party to IA No.625 of 2021, in CP (IB) No. 497/7/HDB/2018. Therefore, the order dated 10.11.2021 passed in I.A. No.625 of 2021 in CP (IB) No. 497/7/HDB/2018, where by police aid has been ordered, since passed without hearing the necessary and proper party the same is liable to be recalled.

XXX. Accordingly, we hereby recall our order dated 10.11.2021 passed in I.A. No.625 of 2021 in CP (IB) No. 497/7/HDB/2018.

The point is answered accordingly.

Point 2.

Whether the Liquidator herein can be directed to *exclude* the property mentioned in this application schedule from the liquidation estate of the corporate debtor?

XXXI. In our discussion, *supra*, on point one, we, *inter alia*, clearly held that there is a cloud on the claim of

physical possession of the subject property by the Corporate Debtor.

XXXII. Here, it is pertinent to refer to subsection (3)(a) and (b) of section 36 of the IBC, 2016, which says that subject to *subsection (4)*, the liquidation estate shall comprise all liquidation estate assets which shall include,

*“(a) any assets over which the corporate debtor has **ownership rights**, including **all rights and interests therein** as evidenced in the balance sheet of the corporate debtor or an information utility or records in the registry or any depository recording securities of the corporate debtor or by any other means as may be specified by the Board, including shares held in any subsidiary of the corporate debtor;*

(b) assets that may or may not be in possession of the corporate debtor including but not limited to encumbered assets;”

XXXIII. Hon’ble NCLAT in M/s Jhanvi Rajpal Automotive Pvt Ltd Vs. R.P. of Rajpal Abhikaran Pvt Ltd. vide order dated 05.01.2023 in Company Appeal (AT) (Insolvency) No. 1417 of 2022, while upholding the order **directing eviction of the third party from the estate of the**

corporate debtor passed by the Adjudicating Authority,
categorically held that,

*“There is **no dispute as to the title of the Corporate Debtor** and as Lease Agreement which the third party claimed from the Corporate Debtor has already expired”*
(Emphasis is ours)

It is therefore quite clear that Hon’ble NCLAT, in re, Jhahnavi Raj Pal, *supra*, allowed eviction of the third party from the Liquidation Estate of the corporate debtor only upon arriving at a clear and undisputed finding that there is ***no dispute as to the title of the corporate debtor therein.***

The facts of this case unlike in Jahnnavi Raj Pal, pose a different challenge, and project a formidable dispute as to the ‘subsisting title’ and the ‘possession’ of the corporate debtor over the application schedule mentioned property.

XXXIV. In K.L. Jute Products Pvt Ltd. Vs. Tirupati Jute Industries Ltd., 2020 SCC OnLine, 426. Hon’ble NCLAT, held that,

“66. Insofar as, the eviction of 2nd Respondent is concerned, the Adjudicating Authority is not empowered to pass an order of eviction and it is for an 'Aggrieved party' to move the appropriate forum for redressal of its grievances in accordance with Law. In short, the Committee of Creditors had approved the Resolution Plan in utter disregard regard to the ingredient of Section 30(2)(e) of the I&B Code and as hence the same was rejected by the Adjudicating Authority. Moreover, the Adjudicating Authority had appointed a 'Liquidator' other than the 'Existing Resolution Professional.’”

In Embassy Property Development Pvt Ltd. Vs. State of Karnataka,
(2020) 13 SCC 308 (para 30)., Hon’ble Supreme Court, held that,

“30. The NCLT is not even a Civil Court, which has jurisdiction by virtue of Section 9 of the Code of Civil Procedure to try all suits of a civil nature excepting suits, of which their cognizance is either expressly or impliedly barred. Therefore NCLT can exercise only such powers within the contours of jurisdiction as prescribed by the statute, the law in respect of which, it is called upon to administer. Hence, let us now see the jurisdiction and powers conferred upon NCLT.”

In Liquidator of Precision Fasteners Ltd Vs. Siddhi Edible Pvt Ltd.,
(2020) Online NCLT 1446.

“16. At this juncture, it is beneficial to refer to the judgment of the Hon’ble Supreme Court in the case of Embassy Property Developments Pvt Ltd v. State of Karnataka (2020) 13 SCC 308, wherein it was held that:

“39. If NCLT has been conferred with jurisdiction to decide all types of claims to property, of the corporate debtor, Section 18(f)(vi) would not have made the task of the interim resolution professional in taking control and custody of an asset over which the corporate debtor has ownership rights, subject to the determination of ownership by a court or other authority. In fact an asset owned by a third party, but which is in the possession of the corporate debtor under contractual arrangements, is specifically kept out of the definition of the term “assets” under the Explanation to Section 18. This assumes significance in view of the language used in Sections 18 and 25 in contrast to the language employed in Section 20. Section 18 speaks about the duties of the interim resolution professional and Section 25 speaks about the duties of resolution professional. These two provisions use the word “assets”, while Section 20(1) uses the word “property” together with the word “value”. Sections 18 and 25 do not use the expression “property”. Another important aspect is that under Section 25 (2)

(b) of IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings. Section 25(1) and 25(2)(b) reads as follows:

“25. Duties of resolution professional –

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of subsection (1), the resolution professional shall undertake the following actions:

(a).....

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings.”

This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).”

17. Further it is beneficial to refer to the recent judgment of the Hon'ble NCLAT dated 20/02/2020 in the case of *K.L. Jute Products Pvt Ltd. Vs. Tirupati Jute Industries Ltd.*, (2020 SCC OnLine NCLAT 426), wherein NCLAT while upholding the rejection of approval of resolution plan by the Kolkata Bench of NCLT for the reason, inter alia among others, the resolution applicant cannot impose a condition that he will proceed with the resolution plan only when the Adjudicating Authority orders eviction of the tenant of the corporate debtor.

Para 65 of the order is extracted below:

“Insofar as, the eviction of 2nd Respondent is concerned, the Adjudicating Authority is not empowered to pass an order of eviction and it is for an 'Aggrieved party' to move the appropriate forum for redressal of its grievances in accordance with Law. In short, the Committee of Creditors had approved the Resolution Plan in utter disregard regard to the ingredient of [Section 30\(2\)\(e\)](#) of the I&B Code and as hence the same was rejected by the Adjudicating Authority. Moreover, the Adjudicating Authority had appointed a 'Liquidator' other than the 'Existing Resolution Professional'.

18. A doubt may be raised whether the above judgments dealing with the powers and duties of Resolution Professional can be made applicable to Liquidator. Section 32(1)(k) of the Code is a clear answer to this, wherein it is provided that, subject to the directions of the Adjudicating Authority, the Liquidator shall have the power to institute or defend any suit, prosecution or other legal proceedings, civil or criminal in the name of or on behalf of the Corporate Debtor.

19. *It is to be noted that the Hon'ble Supreme Court in the case of Embassy Property Developments Pvt Ltd, cited supra, in para 29 also held that NCLT is not a civil court and the same is extracted below:*

“The NCLT is not even a Civil Court, which has jurisdiction by virtue of Section 9 of the Code of Civil Procedure to try all suits of a civil nature excepting suits, of which their cognizance is either expressly or impliedly barred. Therefore NCLT can exercise only such powers within the contours of jurisdiction as prescribed by the statute, the law in respect of which, it is called upon to administer. Hence, let us now see the jurisdiction and powers conferred upon NCLT.”

20. *Section 63 and 231 of the Code provides as below:*

“63. Civil court not to have jurisdiction. - No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code. Civil court not to have jurisdiction.”

“231. Bar of jurisdiction. - No civil court shall have jurisdiction in respect of any matter in which the 1 [Adjudicating Authority or the Board] is empowered by, or under, this Code to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by such 1[Adjudicating Authority or the Board] under this Code.”

21. *the above provisions show that when the Adjudicating Authority is provided with a specific jurisdiction, the civil courts have no jurisdiction in respect of those matters such as preferential transactions (sections 43 and 44 of the Code), Undervalued transactions (sections 45 to 48 of the Code), etc. When these provisions are read in conjunction with other provisions of the Code such as 18(f)(vi), 25(2)(b) and 35(1)(k) of the code, the jurisdiction of the Adjudicating Authority does not extend to subjects such as recovery of money, specific performance, eviction proceedings, etc. which were to be dealt with by civil courts only. It is to be borne in mind that on the guise that the Insolvency and Bankruptcy Code is a complete Code, the Adjudicating Authority can neither enlarge nor amplify its jurisdiction.*

22. *In view of the ratio laid down by the Hon'ble Supreme Court and the Hon'ble NCLAT, this bench is of the view that recovery of rent from the tenant and the eviction of tenant from the property of the corporate debtor is in the exclusive domain of the civil courts and cannot be dealt with the Adjudicating Authority by invoking section 60(5) of the Code and the jurisdiction lies with the civil court/ Rent Control Court only.*

23. *In view of the fact that the respondent is paying rent all along for the property, which is an admitted fact, the liquidator is right in including this immovable property in the liquidation estate of the corporate debtor. The*

Liquidator may take steps to register the sale deed for the property in his favour, if so advised, so that there will be a clear title for the property.”

XXXV. In our discussion on point one, *supra*, we have firmly held that there is a cloud over the claim of ‘ownership and possession’ of the 1st respondent in respect of the subject property. Therefore, in the light of our discussion as above and the case law we referred above it would not be proper for us to venture in to a finding on whether or not the subject property forms part of the Liquidation Estate of the Corporate debtor herein. Hence we leave it to the aggrieved party to agitate the same before competent court.

The Point is answered accordingly.

XXXVI. Now coming to the yet another contention of the 1st respondent that, the established principle of law that a proprietorship

concern is not a perpetual entity which could be taken over as succession and shall become defunct upon the death of the proprietor, even assuming without conceding that, M/s Sir Cloth Manufacturer Co. was a proprietorship concern of Mr. Kishore G. Negandhi, consequent upon the death of Mr. Kishore G. Negandhi, the said M/s Sir Cloth Manufacturer Co, shall be deemed to have become defunct as such the application is not maintainable under law , the learned Senior Counsel for the applicant while strongly refuting the said contention, has relied on the ruling in Ashok Transport Agency Vs. Awadhesh Kumar, (1998) 5 SCC 567, wherein it was held that:

“6. A proprietary concern is only the business name in which the proprietor of the business carries on the business. A suit by or against a proprietary concern is by or against the proprietor of the business. In the event of the death of the proprietor of a proprietary concern, it is the legal representatives of the proprietor who alone can sue or be sued in respect of the dealings of the proprietary business. The provisions of Rule 10 of Order XXX which make applicable the provisions of Order XXX to a proprietary concern, enable the proprietor of a proprietary business to be sued in the business names of his proprietary concern. The real party who is being sued is the proprietor of the said business. The said provision does not have the effect of converting the proprietary business into a partnership firm. The provisions of Rule 4 of Order XXX have no application to such a suit as by virtue of Order XXX Rule 10 the other provisions of Order XXX are applicable to a suit against the proprietor of proprietary business "insofar as the nature of such case permits". This means that only those provisions of Order XXX can be made applicable to proprietary concern which can be so made applicable keeping in view the nature of the case.”

Thus, from the above ruling it is clear that in the event of the death of the proprietor of a proprietary concern, it is the legal representatives of the proprietor who alone can sue or be sued in respect of the dealings of the proprietary business. The averments in IA 625/2021, the rival complaints made before the respondents 2 and 3 just before filing IA 625/2021 clearly reveal that the relationship of the applicant with the deceased proprietor was not disputed. The liquidator specifically pleaded the acts of trespass by the applicant, his men and agents, in IA 625.2021. Therefore, we are of the view that the above contention of the first respondent is untenable.

XXXVII. In the light of our discussion as above, we hereby recall our order dated 10.11.2021 made in IA No.625/2021 in CP (IB) No.497/7/ HDB/ 2018 granting Police aid, consequently, IA 625/2021 stands *dismissed*. As regards the

respective claim of ‘Ownership & Possession’ of the application schedule mentioned property, we leave it to the aggrieved parties to agitate before competent court.

XXXVIII. In the result this application is partly allowed to the extent indicated above, however, there shall be no order as to costs.

SD/-

CHARAN SINGH
MEMBER (TECHNICAL)

SD/-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA
MEMBER (JUDICIAL)

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