

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
18-08-2023 AT 10:30 AM**

IA (IBC) 643/2022 in CP (IB) No. 325/7/HDB/2020
u/s. 7 of IBC, 2016

IN THE MATTER OF:
LIC Housing Finance Ltd

...Financial Creditor

VS

M/s. Butta Infrastructure Pvt Ltd

...Corporate Debtor

C O R A M:-

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

O R D E R

IA 643/2022 -

Orders pronounced, recorded vide separate sheets. In the result, this application is partly allowed and it is held that;

- (i) This Tribunal has jurisdiction to direct payment of rent/damages by the Respondent to the Applicant since the Respondent is found to be in possession of the property of the Applicant/Corporate Debtor.
- (ii) Consequent to the cancellation of the Registered Lease Deeds dated 23.02.2017, the status of the respondent effective from 06.09.2019 being 'tenant at sufferance', and as the respondent has not surrendered the vacant possession of leasehold properties situated at Banjara Hills & Madhapur to the Corporate Debtor, the Respondent is liable to pay damages till it vacates and delivers vacant physical possession of the above properties, to the Applicant.

Contd..2

Sd/-

Sd/-

- (iii) In so far as the quantum of arrears of rent payable by the respondent is concerned, as the Balance Sheet of the Corporate Debtor for the Financial Year 2017-'18 discloses that payment of rent has been waived for five years i.e. upto 31.03.2021, and as the validity or otherwise of the said claim will be decided in IA 788/2022, we hereby direct the respondent to pay rent/damages as below:

I. Banjara Hills Property:

- i. From 1st April, 2021 to till 31st December, 2021, i.e. for 9 months @ Rs.1,91,44,223/- per month, aggregating to Rs. 17,22,98,007/-.
- ii. From 1st January, 2022 to till 3rd July, 2022, the date of filing of this application, i.e. 6 months 3 days @ Rs.2,01,01,435/- per month, aggregating to Rs.12,26,18,753/-

II. Madhapur Property:

- i. From 1st April, 2021 to till 31st December, 2021, i.e. for 9 months @ Rs.1,91,44,223/- per month, aggregating to Rs. 17,22,98,007/-.
- iii. From 1st January, 2022 to till 3rd July, 2022, the date of filing of this application, i.e. 6 months 3 days @ Rs.2,01,01,435/- per month, aggregating to Rs.12,26,18,753/-

The above amount shall be deposited within one month from the date of receipt of this order to the credit of the liquidation account of the Corporate Debtor. If the details of the Liquidation Account are not furnished so far, the Liquidator shall furnish the same as early as possible. In default of deposit as above, the applicant is at liberty to approach this Tribunal for further orders.

Contd..3

Sd/-

Sd/-

:: 3 ::

iv. For determination of the amount payable by the respondent from the date of filing of this application, an Advocate Commissioner is appointed, who shall submit report within 45 days from the date of receipt of this order and thereafter necessary directions as regards the payment of future rent/damages will be passed.

For Advocate Commissioner's Report, list the matter on 05.10.2023.

Sd/-

MEMBER (T)

Syamala

Sd/-

MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

IA No. 643 OF 2022

IN

CP (IB) N. 325/7/HDB/2020

Application under Section 60 (5) of IBC

IN THE MATTER OF BUTTA INFRASTRUCTURE PRIVATE LIMITED

M/s. Butta Infrastructure Private Limited
Having its registered office at:
House No. 4/14,
Butta House, KPHB Road, Telangana- 500081
Madhapur, Hyderabad,
Through Mr. Gonugunta Murali
Liquidator

.....Applicant

Versus

Meridian Educational Society
8-2-541, Road No. 7,
Banjara Hills,
Hyderabad,
Telangana- 500034

...Respondent

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Coram:

Dr. Venkata Ramakrishna Badarinath Nandula,
Hon'ble Member Judicial
Shri Charan Singh, Hon'ble Member Technical

Appearance:

For Applicant: Shri Y. Suryanarayana, Advocate

For Respondent: Shri T. Niranjan Reddy, Senior Advocate assisted by
Ms.Sarvani Desiraju, Advocate

[PER BENCH]

ORDER

1. This is an Application filed by the Liquidator of Butta Infrastructure Private Limited (Corporate Debtor), seeking direction to the Respondent to forthwith pay the outstanding lease rental dues amounting to Rs. 281,67,10,552/-, to the Corporate Debtor.
2. The gist germane to the Application are:
 - 2.1 It is averred that this Tribunal vide order dated 24.02.2022, ordered liquidation of the Corporate Debtor and appointed the

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Applicant herein to conduct the liquidation of the Corporate Debtor. Upon taking over charge of Liquidator, the Applicant herein, while examining the records of the Corporate Debtor, noticed that an amount of Rs. 281,67,10,552/- as on 31.05.2022 is due from Respondent herein i.e. Meridian Educational Society towards the monthly lease rentals from the month of February, 2017 till date for the following properties located at Banjara Hills as well as Madhapur as per Schedule-3 of the sale deeds dated 15.02.2017 **(annexed and marked as Annexure-1)**.

- (i) All land and Building premises bearing No. 8-2-541, 8-2-540/1, 8-2-540/2, 8-2-438/4, Road No. 4 & 7, Banjara Hills, Hyderabad totally admeasuring 7321.12 sq.yards with a building thereon admeasuring 1,20,000 sq.ft.

(SCHEDULED PROPERTY-1)

- (ii) All land in plots in Survey nos. 11/4 & 11/4 Khanmet Village, Madhapur, Serilingampalli Mandal, Ranga Reddy District totally admeasuring 22,795 sq.yards and building

thereon admeasuring 1,20,000 sq.ft. (**SCHEDULED
PROPERTY-2**).

A working sheet reflecting the computation of lease rentals outstanding and payable by the Respondent to the Corporate Debtor is **annexed and marked as Annexure-2**.

2.2. It is averred that when the Liquidator got to know that premises of the Corporate Debtor are leased to the Respondent herein for running a school without paying any lease rentals, had issued a notice on 24.05.2022 demanding payment of the outstanding lease rentals. In turn the Applicant received reply from the Respondent vide letter dated 25.05.2022 that there is no valid lease agreement between the parties. Copies of notice sent by the Liquidator and reply received from the Respondent are **annexed and marked as Annexure-3**.

2.3. It is further stated by the Applicant that earlier also the notices sent on 22.12.2021 and 03.01.2022 by the erstwhile Resolution

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Professional of the Corporate Debtor, Mr. Krishna Komaravolu received the same response vide reply dated 07.01.2022.

- 2.4. The Applicant averred that Corporate Debtor in the year 2018 had secured loan to the tune of Rs. 310,00,00,000/- from LIC Housing Finance Limited by mortgaging the aforesaid properties.

Thus submitting, prayed the Tribunal for directions to Respondents to pay the outstanding lease rental dues of Rs.281,67,10,552/-

3. Respondent filed counter Counter, inter alia, stating that;
- (i) It is contended that the Liquidator is barred from approaching this Tribunal as per the provisions of Section 33 (5) of the Code and Explanation II to Section 11 of the Code and that this Tribunal lacks jurisdiction to adjudicate the dispute concerning recovery of amount under Section 60 (5) of the Code. It is further stated that however, the liquidator with the leave of the Tribunal, has a right only to pursue such claims before a court of law or

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other quasi judicial bodies. In this connection, the Respondent placed reliance *in, re. Embassy Property Developments Pvt. Ltd Vs. State of Karnataka & Ors. (Civil Appeal No. 9171 of 2019)* which held as follows:-

“37. It was argued by all the learned Senior Counsel on the side of the appellants that an Interim Resolution Professional is duty bound under Section 20(1) to preserve the value of the property of the Corporate Debtor and that the word “property” is interpreted in Section 3(27) to include even actionable claims as well as every description of interest, present or future or vested or contingent interest arising out of or incidental to property and that therefore the Interim Resolution Professional is entitled to move the NCLT for appropriate orders, on the basis that lease is a property right and NCLT has jurisdiction under Section 60(5) to entertain any claim by the Corporate Debtor.

38. But the said argument cannot be sustained for the simple reason that the duties of a resolution professional are entirely different from the jurisdiction and powers of NCLT. In fact Section 20(1) cannot be read in isolation, but has to be read in conjunction with Section 18(f)(vi) of the IBC, 2016 together with the Explanation thereunder. Section 18 (f) (vi) reads as follows:

...

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

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specifically kept out of the definition of the term “assets” under the Explanation to Section 18. ... 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, quasijudicial 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.”

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

37. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.

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- (ii) It is submitted that the Respondent has been running school since 1995 and obtained CBSE accreditation in 1999 and entered into registered lease deeds vide Doc Nos. 613 to 616 of 1999 dated 11.03.1999 and 644 of 1999 dated 12.03.1999 with B. Naganna & Ors, with regard to **Scheduled Property-I** for a period of 30 years w.e.f. 02.03.1999 and has leasehold rights over the said property till 2029.
- (iii) Another lease agreement was entered into on 20.03.2010 vide Doc. No. 1957/2010 dated 20.03.2010 with Mr. B.S. Neelakanta, B.S. Renuka, B.Shivakumar and B. Nagaraju, with respect to **Scheduled Property-II**, for a lease period of 30 years w.e.f. 01.02.2010 and has leasehold rights over the said property till 2040. Further based on the understanding with the owners of the said property, the Respondent was in possession through month to month lease agreements.
- (iv) At the request of Corporate Debtor, the Respondent entered into two lease agreements dated 23.02.2017 for both the properties vide document No. 1088 of 2017 and 2523 of 2017 with

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additional clauses commencing w.e.f. 01.04.2016. Later, the Respondent, being an educational society expressed its inability to bear the lease rentals and sought waiver of the lease payments. Accordingly, the lease deeds were modified making the lease rentals payable from 01.04.2021.

- (v) The lease agreements dated 23.02.2017 were later cancelled through cancellation deed dated 06.09.2019 vide Doc No. 5894 of 2019 and 15605 of 2019 and these agreements are no more in force. Despite cancellation of the lease deeds, the Respondent continued to be in possession of the said properties as per the terms of earlier lease deeds and the possession has not been challenged either by the Corporate Debtor or the original Lessors.
- (vi) The Respondent has sent a detailed note on 13.06.2022 explaining that there is no Lease Deed dated 15.02.2017 with a monthly lease rental of Rs. 2,20,00,000/- and requested for a certified copy from Sub-Registrar in case such a lease was ever executed and registered. It is contended that since there is no

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valid lease agreement with the Company in force, the Respondent is not paying lease rentals to Butta Infrastructure Private Limited/Corporate Debtor. It is stated that however, lease rents are being paid to the lessors as per the terms of lease agreement. It is contended by Respondent that despite apprising the Liquidator time and again that the lease deeds filed by the Liquidator are not executed by Respondent School, no action was taken by the Liquidator to obtain the certified copy of the registered lease deed.

- (vii) It is vehemently contended that the certified copy of the registered lease deed filed shows that all the sheets of the lease deeds have been changed / tampered and lease amount is shown as Rs.1,50,00,000/- executed on 23-02-2017 and not on 15-02-2022 and not for Rs.2,20,00,000/- as mentioned and claimed by the Applicant. Further, these registered lease deeds were cancelled through Cancellation Deeds dated 06-09-2019 vide Document No.5894 of 2019 and 15605 of 2019. Thus, the lease agreements vide document Nos. 1088 / 2017 and 2523 / 2017

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dated 23-02-2017 are neither existent nor in force. It is contended that the Respondent has to receive a sum of Rs.43,61,32,044/- in turn from the Corporate Debtor, for which a claim has already been submitted on 26-03-2022. As such, there is no due from the Respondent to the Applicant on account of outstanding lease rental dues and urged the Tribunal to dismiss the Application.

4. Rejoinder is filed by the Applicant rebutting to the contentions raised in the counter by the Respondent as under:-
 - 4.1 It is submitted by the Applicant that by virtue of Section 35 (1)(b) of IBC, the Liquidator is empowered to take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor”.
 - 4.2 The Applicant relied on Section 3(27) wherein the definition of “property” is defined, which *includes money, goods, actionable claims, land and every description of property situated in India or outside India and every description of interest including*

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present or future or vested or contingent interest arising out of, or incidental to, property, and submitted that the claims for lease rentals made in the instant application are legitimate and in accordance with the provisions of the Code. The lease deeds annexed in the counter by the Respondent clearly establishes that the properties in possession of the Respondent belong to the Corporate Debtor.

- 4.3 In response to the contention raised by the Respondent that NCLT has no jurisdiction to adjudicate the matters as it “*falls outside the purview of the IBC, 2016 especially in the realm of the public law*” (Embassy Property Developments Pvt, Ltd. State of Karnataka & Ors), the Applicant states that the Hon’ble Supreme Court in the same judgement has held that “*Section 60 (5) (c) of the Code is very broad in its sweep, in that it speaks about any question of law or fact, arising out of or in relation to insolvency resolution. But a decision taken by the government or a statutory authority in relation to a matter which is in the realm of public law, cannot, by any stretch of imagination, be brought*

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within the fold of the phrase “arising out of or in relation to the insolvency resolution”. A copy of the order passed by the Hon’ble Apex Court in Embassy Property Developments Pvt, Ltd. State of Karnataka & Ors. is annexed and marked as Annexure-1. The Applicant further contends that the present matter does not fall within the purview of public law nor there is any involvement of any statutory or government authority involved, as such this argument fails at the face of it and is not sustainable in the court of law.

- 4.4 The Applicant also relied on the Hon’ble Supreme Court of India judgement *in re Indus Biotech (P) Ltd. v. Kotak India Venture (Offshore) Fund*, wherein the Hon’ble Apex Court has remarked that the non-obstante clause, i.e., Section 238 of the IBC, where a dispute arising out of commercial contracts is in the context of insolvency proceedings, the NCLT shall, by virtue of section 238 of the IBC, have overriding jurisdiction on such disputes, as against what the parties might have agreed to in their contractual agreements. A copy of the order passed by the Hon’ble Apex

Court in Indus Biotech (P) Ltd. v. Kotak India Venture (Offshore) Fund is annexed and marked as Annexure-2.

4.5 The Applicant reiterates that the Corporate Debtor is legal and rightful owner of the Properties which is under unlawful possession of the Respondent herein. As per the Lease Deeds dated 15.02.2017, the properties located at Banjara Hills and Madhapur were brought in as capital by Mr. B.S. Neelakanta and B. Renuka, partners of erstwhile Butta Holdings and Investments (“Firm”), making the Firm the rightful owner of the Properties by virtue of Section 14 of the Partnership Act, 1932. When the Firm converted into a Private Limited Company under the Companies Act, 2013, the Properties were legally transferred to the Corporate Debtor’s name.

4.6 In response to the allegation of the Respondent that the Applicant has suppressed any document/ information, the Applicant denies the same and submitted that he has furnished all the relevant facts and documents as maintained at the office of the Corporate Debtor, and the instant application is filed to

claim the lease rental dues that the Respondent owes to the Corporate Debtor.

4.7 In response to the averments contained in Para 6 & 7 of the counter, the Applicant states that on 15.02.2017, two lease deeds have been entered between the Corporate Debtor and the Respondent herein. This clearly implies that the alleged lease agreements that were entered in the year 1999 and 2010, respectively stands determined even as per the provisions of Section 111 of The Transfer of Property Act. Hence, the said lease agreements do not bear any relevance to the instant petition. The lease rental dues that are claimed by the applicant herein are appropriate to the lease agreements that were entered in 2017.

4.8 In response to the averments contained in Para 8, the Applicant submits that as per the lease deeds provided to the Applicant/liquidator, the date of the lease agreements are shown as 15.02.2017, but as per the admission of the Respondent, it had entered into 2(two) lease agreements on 23.02.2017.

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4.9 It is submitted that the erstwhile Resolution Professional of the Corporate Debtor upon examining the records of the Sub-Registrar found that there are certain discrepancies in the Lease Deeds as provided by LIC Housing Finance Private Limited, which is dated 15.02.2017, and is contrary to the Lease Deed as available with the Sub-Registrar which is dated 23.02.2017. The erstwhile Resolution Professional had also sought clarification from LIC Housing Finance Limited vide email dated 23.12.2021 with regard to the said discrepancies and LIC Housing Finance Limited replied vide email dated 27.12.2021 stating that there is no implication reflecting as a result of the variations, with respect to the two lease deeds, as long as there is a registered document pertaining the scheduled property. Copy of the email dated 23.12.2021 sent by the erstwhile Resolution Professional to LIC Housing Finance Limited and copy of the reply email sent by LIC Housing Finance Limited to the RP are annexed and marked as Annexure-5.

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4.10 The Applicant submits that he is shocked to notice that a substantial amount of Rs. 2,81,67,10,552/- towards the lease rental dues arising out of the lease that was entered between the Corporate Debtor and the Respondent on 15.02.2017, was waived off with absolutely no legal tenability. Further, it is submitted that as per the sanction letter issued by LIC Housing Finance Limited there is a condition that any change in the terms and conditions of the Lease Deed would be only after prior permission of LIC Housing Finance Limited. Copy of the sanction letter issued by LIC housing Finance Limited is annexed and marked as Annexure-6.

4.11 Further, the Applicant emphasized on the following recitals of the cancellation deed annexed in the counter on the plea of the Respondent that it had cancelled the lease agreements dated 23.02.2017 through cancellation deeds dated 06.09.2019

paragraph 3 at Page 139

Whereas the Lessee decided to vacate the Demised Premises by cancelling the above said Lease Deed which was entered on

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23rd Day of February 2017 and Modification of lease Deed Dt: 07-01-2019 and Lessor has agreed to the cancellation of the said Lease Deed.

Para 8 at Page 5 of the counter

“further the above lease deeds were subsequently cancelled as it was realized that as the earlier lease deeds are valid and the subsequent lease deed is not enforceable.....

And this respondent continued to be in possession of the Schedule Properties as per the terms of the earlier lease deeds and the said possession was also not challenged by either the Corporate Debtor or the original lessor”.

4.12 Despite Respondent agreeing to vacate the premises as per the terms of the Cancellation Deeds, instead continued to enjoy the possession of the properties under a presumption of the continuity of the earlier lease deed. Though modifications were made to the lease rentals payable from 01.04.2021, the same has not been made good.

4.13 In response to the contention of the Respondent that “it is not paying lease rentals to Butta Infrastructure Pvt. Ltd., as there is no valid lease agreement in force” , it is stated that the Scheduled Properties which are taken on lease by the Respondent are owned by the Corporate Debtor and are mortgaged with LIC

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Housing Finance Limited by the Corporate Debtor and the charge form CHG-1 has been filed on the MCA Portal.

- 4.14 The Applicant stated that it is beyond his imagination as to how the rents of the Properties that are owned by the Corporate Debtor and on which a charge has been created, are not being paid despite being in possession of the Respondent.
- 4.15 The contention of the Respondent that upon cancellation of lease deeds entered in 2017, the earlier lease deeds become operative is denied as false and baseless as there are no provisions under any law that validates the said contention of the Respondent.
- 4.16 In response to the contentions made by the Respondent with regard to counter-claim of Rs. 43,61,32,044/- payable by the Corporate Debtor, it is stated that the said claim was rejected by the Liquidator as the same was submitted on 12-04-2022 long after the expiry of last date for submission of claims made in the Public Announcement i.e., 26-03-2022 by the Liquidator, which has been informed to the Respondent by email and in the said

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email the Liquidator has also conveyed to the Respondent to seek condonation of delay from this Tribunal to validate the claim of the Respondent. A Copy of email sent by the Liquidator is annexed and marked as Annexure- 9.

4.17 The Respondent has denied in its submissions regarding executing a Lease Deed dated 15-02-2017, which expressly provides for enhancement of rent amount from Rs. 1,50,00,000/- payable from 01.04.2016 – 28.02.2018 to Rs. 2,20,00,000/- from 01.03.2018. The Applicant states that the alleged Lease Deed dated 15-02-2017 is a deed which has been duly stamped and executed by the Corporate Debtor and the Respondent through their respective representatives.

4.18 It is stated that the Respondent's argument that they are in the possession of the Properties as per the registered lease deeds executed on 11.03.1999 (Doc. Nos 613-616 of 1999 and 644 of 1999) for Banjara Hills and registered lease deed executed on 20.03.2010 (Doc No. 1957/2010) for Madhapur and paying rent

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to the respective Lessors as per these Deeds is untenable as the Lease Deeds have been terminated and superseded by lease deeds executed on 23/02/2017 and relied on Clause 23 of the respective deeds.

“23. This Deed terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Deed may be modified only by a further writing that is duly executed by both parties”

4.19 It is reiterated that the Corporate Debtor has obtained a loan of Rs. 3,10,00,00,000/- from LIC Housing Finance Limited in the year 2018 by mortgaging the properties of the Corporate Debtor which are currently in possession of the Respondent. The lease rent has been waived off by the Corporate Debtor illegally, without adhering the due process and without the permission from LIC Housing Finance Limited towards any modifications in the lease deeds. It is contended that, had the Respondent expressed its inability to pay the substantial amount of lease rental dues owing it to be an educational society it could have

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relocated to a premises where it could afford to pay the lease rent of the property.

4.20 According to Applicant both the two entities i.e. Butta Infrastructure (Corporate Debtor) and M/s Meridian Educational Society (Respondent) are family owned entities, majorly controlled and managed by the members of the same family and that there is a collusion between them with an intent to defraud the Financial Creditors. It is further alleged that the collusion is lucid upon perusal of the sale deeds entered in 1999, wherein the Lessor Shri B.S. Neelakanta is a member of the suspended board of the Corporate Debtor and Lessee M/s Meridian Educational Society is also represented by the same person.

5. A memo dated 02.02.2023 has been filed by the Respondent stating that it is an entity constituted as educational society in the year 1992 and the governance and day to day operations of the society are governed by the Executive Committee Members in 1992, reconstituted Executive Committee in 2001, 2005, 2015 and as on 26.11.2016. It is further contended that Mr. B.S.

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Neelakanta and Ms. B. Renuka are not on the Executive Committee of Meridian Educational Society from 2016 onwards, i.e, much prior to the sanction of the loan on 26.03.2018 by the LIC Housing Finance Limited.

6. On 05.12.2022, the Applicant herein filed IA 1349/2022 seeking to take on record additional documents relevant to the case, in the interest of justice, which was allowed by this Tribunal vide order dated 05.12.2022.
7. It is submitted that, upon perusal of lease deeds that were entered in the year 1999, at Page 12, Page 19, Page 26, Page 33 and Page 40 of the Counter, it is obvious that the lessor is Sri B.S. Neelakanta and the lessee is M/s. Meridian Educational Society which is also represented by Sri B.S. Neelakanta, who happens to be the member of the Suspended Board of Directors of the Corporate Debtor. Also, at Page 45 and 47 of the counter in the lease deeds pertinent to the year 2010, one of the lessors and the representative of M/s Meridian Educational Society emerges to

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be Sri. B.S. Neelakanta. After verifying the official website of Meridian Educational Society, it can be seen that Mr. Neelakanta and Mrs. Renuka Butta are the founders of Meridian School for Boys and Girls (Annexure). it is thus clear that both the entities i.e., Butta Infrastructure and M/s Meridian Educational Society are family-owned entities and majorly controlled and managed by the members of the same family. It is clear that the Respondent is in collusion with the Corporate Debtor and has carefully devised their manoeuvres with an intent to defraud the Financial Creditors. It is submitted that the Applicant herein has also filed another application under Section 66 of the Code against the fraudulent acts of the management of the Corporate Debtor and others, the Applicant herein seeks the leave of this Hon'ble Tribunal to rely on the contents of the said application during the course of arguments. For the sake of brevity, the contents of the application filed under Section 66 are not reproduced herein.

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8. It is submitted that the instant counter filed by the Respondent is not supported by an affidavit verifying the counter which is in contravention of Rule 111 of NCLT Rules, 2016 read with other relevant rules. Hence, on this ground alone the instant counter cannot be taken into consideration.
9. Hence it is humbly submitted that there is no due from the Respondent to the Petitioner on account of outstanding lease rental dues and their application is liable to be dismissed.
10. In fact the applicant has no right under the law to make any claim against the respondent. The present application is based on ulterior motives and it appears that the applicant approached this Hon'ble tribunal with a hidden agenda and that there are absolutely no merits in the above IA and hence it is therefore prayed that this Hon'ble Court may be pleased to dismiss the present application along with exemplary costs in the interest of justice.

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11. In the light of the contest as aforementioned, the *points* that emerge for consideration by this Tribunal are;

1. Whether the respondent/tenant in occupation of the lease hold property by failing to surrender the possession to the lessors of the registered lease which has been cancelled can *avoid* payment of the arrears of rent/damages to the *lessors* on the plea that it has been paying rent to the *erstwhile lessors* on being represented that the *erstwhile lessors* are the owners of the leasehold property?
2. Whether the Adjudicating Authority under the Insolvency & Bankruptcy Code, has no jurisdiction to direct payment of arrears of rent/damages by the Tenant in occupation of the premises belonging to the corporate debtor when such tenant *disputes* the title of the Lessor/Corporate Debtor?
3. Whether the applicant herein is entitled for the claim of arrears of rent/damages against the respondent? if so, *for what amount*?

12. We have heard the Shri. Y. Suryanarayana, the Learned Counsel for the Applicant/Liquidator and Shri. T. Niranjan Reddy, Learned Sr. Counsel for the respondent. Perused the record, written submissions and the case law.

13. **Point.1**

Whether the Adjudicating Authority under the Insolvency & Bankruptcy Code, has no jurisdiction to direct payment of arrears of rent/damages by the Tenant in occupation of the premises belonging to the corporate debtor when such tenant *disputes* the title of the Lessor/Corporate Debtor?

- i. The *genesis* of the present interlocutory application appears to be the order of this Tribunal in CP (IB) No.325/7/HDB/2020 dated 01.03.2021, whereby this Tribunal has admitted M/s.Butta Infrastructure Pvt. Ltd., the *applicant* herein, into CIRP upon allowing a petition filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by LIC Housing Finance Limited from whom the applicant availed credit facilities and defaulted in repayment of the same.
- ii. It is pertinent to mention herein that as per the terms of the Loan Agreement for Rent Securitisation dated 28.03.2018, the Corporate Debtor and the respondent have agreed for assignment of lease rentals in favour of the Lender, M/s.LIC Housing Finance Limited. An Escrow Agreement was also entered into on 07.06.2018 between LIC Housing Finance Limited (the Lenders), Corporate Debtor, M/s.Butta Convention Services Pvt. Ltd., Meridian Edutech Solutions Pvt. Ltd. Mr. Neelakanta Siva and Mrs. Butta Renuka and Central Bank of India with Central Bank of India as an Escrow Agent. In terms of the Loan Agreement,

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supra, the borrowers (Corporate Debtor) shall deposit all the rentals receivable out of the properties mentioned in the schedule which admittedly includes both Banjara Hills and Madhapur properties and other receipts in the said Escrow Account.

- iii. As the Corporate Insolvency Resolution Process of the applicant did not fructify, an order directing initiation of liquidation process against the applicant has been passed and a liquidator has been appointed to carry on the liquidation of the applicant. The Liquidator so appointed had filed this application contending, *inter alia*, that the Respondent is a registered society and is in possession of the properties belonging to the applicant situated at Banjara Hills & Madhapur, more fully described in the schedules of the two Registered Lease Deeds dated 23.02.2017 registered as Document No.1088 and 2523 dated even, which the respondent had entered with the applicant covering a period of 33 years effective from 01.04.2016, which leases were later cancelled under separate registered cancellation deeds dated 06.09.2019. The applicant further contends that, though the

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respondent is bound in the terms of the lease cancellation deeds to surrender the physical possession of the leasehold property to the applicant/lessor it failed to deliver the possession by remaining in possession by running an educational institution in the leasehold properties. It is further stated that the respondent also *defaulted* in payment of the rent to the tune of Rs.281,67,10,552.00 to the applicant, hence the present application is filed for a direction to the respondent to forthwith pay the said outstanding lease rental dues.

- iv. Shri. Y. Suryanarayana, Learned Counsel for the Applicant/Liquidator, placing reliance on the two Registered Lease Deeds dated 23.02.2017 (Registered Document Nos.1088/2017 and 2523/2017), vehemently contended that the Respondent which was inducted into possession of the properties of the applicant situated at Banjara Hills & Madhapur, in pursuance of the Registered Lease Deeds dated 11.03.1999, 12.03.1999 and 20.03.2010, *consequent* upon the takeover and reconstitution of the lessors of the above leases into a Private

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Limited Company in the name and style of M/s. Butta Infrastructure Pvt. Ltd. (the applicant/corporate debtor herein), entered into *fresh lease* with the applicant/corporate debtor, under the two separate lease deeds dated 23.02.2017 for a period of 33 years effective from the date of the said leases, which were duly registered as Document Nos. 1088/2017 and 2523/2017). Ld. Counsel submits that under both the above leases, the Respondent, *inter alia*, agreed to pay the rent *as detailed in the Schedule-II* of the said Registered Lease Deeds. Learned Counsel would further contend that both the said Lease Deeds were later cancelled under the Cancellation Deeds dated 06.09.2019 which were also registered as Document Nos. 5894 and 15605 of 2019 thus, the lease between the corporate debtor stood determined effective from 06.09.2019. Learned Counsel submits that the cause for cancellation of the lease deeds, *supra*, is the *decision of the lessee to vacate the lease hold premises*, which is evident from the recitals of the said Cancellation Deeds. The certified copies of the above documents are available on record.

v. Learned Counsel further contended that even though the above Cancellation Deeds state that the term of lease contemplated in the Registered Lease Deed dated 23.02.2017 shall be deemed to have been *cancelled* and the respondent/ lessee shall vacate the demised premises by leaving the same in a reasonably good condition, the respondent failed to comply the same, and continued to remain in possession of the property without paying any rent/damages, as such, the present application is filed for a direction to the respondent to pay the arrears of rent. According to the Learned Counsel, the plea of the respondent that consequent upon cancellation of the lease deeds dated 23.02.2017, the respondent is paying rent to its *erstwhile* lessors of the Lease Deeds dated 11.03.1999, 12.03.1999 and 20.03.2010, as it was represented to the respondent that the leases that were *earlier entered* on 11.03.1999, 12.03.1999 and 20.03.2010 are *valid* and the *subsequent leases* entered on 23.02.2017 are *invalid*, apart from being false and unsubstantiated is untenable and unsustainable under law.

- vi. Learned Counsel submits that since the lease hold property is the absolute property of the Corporate Debtor which fact can be verified by lease deeds *supra*, itself, besides the Balance Sheet of the Corporate Debtor for the Financial Year 2017-18 copies of which are available on record, the rental income of the said properties should absolutely belong to the Applicant/ Corporate Debtor besides forms part of the liquidation estate of the corporate debtor, as such, the Applicant/Liquidator is absolutely entitled under law to demand and recover the said amount from the respondent.
- vii. Learned Counsel further contended that in terms of Section 35 of IBC, the Liquidator is entitled to take *custody* of all the assets of the Corporate Debtor under Liquidation and also *control* of the same. Therefore, the power to take *custody* and *control* the assets of the corporate debtor also includes the power to recover rents from the persons in occupation of the property of the Corporate Debtor. In support of this plea, Learned Counsel

referred to Section 35 of IBC, which refers to powers and duties of the Liquidator and Section 36 of the IBC, which defines the Liquidation Estate.

viii. Learned Counsel also placed reliance on the following rulings in support of the aforementioned submissions:

1. Embassy Properties Developments Pvt. Ltd., vs State of Karnataka & others, SCC wherein it was held that,

“Section 60 of the Code is very broad in its sweep, in that it speaks about any question of law or facts arising out of or in relation to insolvency resolution. It is only when a decision taken by the government or a statutory authority in relation to a matter which is in the realm of public law, cannot be adjudicated by the NCLT”

2. Indus Biotech (P) Ltd., Vs Kotak India Ventures (Offshore) Fund, SCC had held that,

“The position of law that the IB Code shall override all other laws as provided under Section 238 of the IB Code needs no Elaboration.’

3. Sangam (India) Ltd., Vs Aarti Suitings Pvt.Ltd., SCC had held that,

“the respondent therein to handover the possession of the property to the Resolution Professional (Kindly refer table of case laws below). This clearly establishes that this Hon’ble Tribunal has ample powers under the provisions of the Code to pass such directions which are necessary for effective resolution/liquidation of the Corporate Debtor”.

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4. M/s. Jhanvi Rajpal Automotive Pvt. Ltd., Vs R.P. of Rajpal Abhikaran Pvt. Ltd and Anr, in Company Appeal (AT) (Insolvency) No. 1417 of 2022, by Hon'ble NCLAT, Principal Bench, wherein it was held that;

“The present is not a case where lease in favour of the Appellant is subsisting. The lease has come to an end on 31st December, 2021. Further the lease renewal in favour of the Appellant was by RP himself on 17.09.2021 (Fresh Lease) which lease contained specific clause for eviction by 15 days' notice.

20. Accepting the contention of the Learned Counsel for the Appellant that RP is obliged to file a suit for eviction of the Appellant under MP Accommodation Control Act, 1961 even though lease in favour of the Appellant has expired shall be unduly prolonging the insolvency process which is a time bound process. When the Corporate Debtor has the ownership rights over the premises which premises can be taken in control by IRP/RP, we are of the view that for eviction of the Appellant especially in the event when lease in favour of the Appellant has come to an end, filing a suit is not contemplated in the statutory scheme contained in IBC.

21. Thus, the contention of the Appellant that RP has to file a suit for eviction of the Appellant under the MP Accommodation Control Act, 1961 cannot be accepted. We thus, in view of the foregoing discussions are of the considered opinion that Adjudicating Authority has rightly allowed - 21- Company Appeal (AT) (Insolvency) No. 1417 of 2022 the Application filed by the RP directing the Appellant to vacate from the premises so that Resolution Plan which has been approved can be implemented. We thus do not find any merit in the Appeal; the Appeal is dismissed.

14. Shri. T. Niranjan Reddy, Ld. Sr. Counsel for the respondent would contend that while the Lease under the registered lease deeds bearing Document Nos. 613 and 616 of 1999 dated 11.03.1999 and 644 of 1999 dated 12.03.1999 with *Mrs. Lakshamma and others*, hereinafter referred to as '*earlier lease deeds*' for short,

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were in vogue, the corporate debtor wanted the Respondent enter into two fresh lease deeds in respect of the very same leasehold properties stating that there was some restructuring of ownership of the properties of the corporate debtor covered by the above leases. Pursuant thereto, on 23.02.2017 the respondent entered into fresh lease, with the applicant/corporate debtor (M/s. Butta Infrastructure Pvt.Ltd.) commencing from 01.04.2016 and the same has been registered as document numbers 1088 and 2523 of 2017, hereinafter referred to as *subsequent lease deeds* for brevity. Ld. Sr. Counsel also contended that, the respondent being an educational society expressed its inability to bear the lease rentals payable under the *subsequent lease deeds* due to severe financial & operational difficulties and requested for waiver of the lease rentals and accordingly the *subsequent lease deeds* were modified making lease rentals *payable from 01-04-2021*.

15. According to the Ld. Sr Counsel, while it was so, it has been realised that the *earlier lease deeds* 1999 with *Mrs. Lakshamma and others*, are **valid** and the *subsequent lease deeds with the*

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Corporate Debtor are *not enforceable*, hence the ***subsequent lease deeds*** were cancelled through cancellation deeds dated 06-09-2019 registered as Document Nos.5894 of 2019 & 15605 of 2019, however the Respondent continued to be in possession of the Schedule Properties as per the terms of the ***earlier lease deeds*** by paying rent to the lessors of the ***earlier lease deeds***. Therefore, according to the Ld. Sr. Counsel, the present application since filed without disclosing the above facts though the same are within the knowledge of the Petitioner/Liquidator as the above facts were recorded by this Hon'ble Tribunal in the admission order, is liable to be dismissed.

16. *Our finding*

- (i) Admittedly, the respondent has been in possession of both Banjara Hills & Madhapur properties *prior to* and *post cancellation* of the two registered lease deeds dated 23.02.2017 having been initially inducted under the ***earlier lease deeds*** of the year 1999 and is running educational institutions therein. The ***subsequent registered*** lease deeds dated 23.02.2017,

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categorically state that, *'M/s.Butta Infrastructure Pvt.Ltd has been incorporated to take over the business of M/s. Butta Enterprises the Partnership Firm as a going concern without interruption and whereas the parties herein entered into fresh contract of lease.'*

Clause 23 of state that,

"23. This Deed terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Deed may be modified only by a further writing that is duly executed by both parties"

- (ii) In the registered cancellation deeds dated 06.09.2019 it has been stated that, *"the lessees decided to vacate the demised premises by cancelling the above lease deed which was entered on 23rd day of February 2017 and modification deed dated 07.01.2019 and the lessor had agreed to the cancellation of the lease deeds"*. The cancellation deeds further state the *"Lessee decided to vacate the Demised Premises by cancelling the above said Lease Deed which was entered on 23rd Day of February, 2017 and Modification of Lease Deed Dt: 07-01-2019 and Lessor has agreed to the cancellation of the said Lease Deed"*.

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(iii) However, the Respondent did not vacate the premises and continued to remain in possession of the leased premises.

(iv) The *undeniable* fact of the respondent being in possession of the demised premises *post cancellation* of the registered leases alters the 'status' of the respondent from that of a 'Tenant' to a '**Tenant at sufferance**' effective from 06.09.2019, the date on which the registered lease deeds in favor of the respondent were cancelled.

(v) Hon'ble Supreme Court in R.V. Bhupal Prasad v. State of A.P. and Ors., AIR 1996 SC 140, has stated that,

" Tenant at sufferance is one who comes into possession of land by lawful title, but who holds it, by wrong after the termination of the term or expiry of the lease by efflux of time. The tenant at sufferance is, therefore, one who wrongfully continues in possession after the extinction of a lawful title. There is little difference between him and a trespasser. "

(vi) The legal consequences of the Tenant being in possession of the leasehold property after the registered lease deed has been cancelled can be traced from *catena* of rulings of Hon'ble Supreme Court of India, and Hon'ble High Courts, and we prefer to *quote* herein, the latest of such rulings of the *Hon'ble Supreme Court of India, in re., Indian Oil Corporation Ltd. vs Sudera Realty Private Limited 2022 LiveLaw (SC) 744 | CA*

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6199 OF 2022, wherein Hon'ble Supreme Court, referred to its earlier ruling in Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd. (2005) 1 SCC 705, wherein it was observed that;

"A tenant continuing in possession after the expiry of the lease may be treated as a tenant at sufferance, which status is a shade higher than that of a mere trespasser, as in the case of a tenant continuing after the expiry of the lease, his original entry was lawful. But a tenant at sufferance is not a tenant by holding over. While a tenant at sufferance cannot be forcibly dispossessed, that does not detract from the possession of the erstwhile tenant turning unlawful on the expiry of the lease. Thus, the appellant while continuing in possession after the expiry of the lease became liable to pay mesne profits."

"...Once the lease comes to an end, the erstwhile tenant becomes a tenant at sufferance. He cannot be dispossessed, except in accordance with law. But he cannot, in law, have any right or interest anymore. Even though, under Section 108 of the Transfer of Property Act, if there is no contract to the contrary, the tenant may have the right, under Section 108(j), to transfer his interest absolutely or even by sub-lease or mortgage, when the lease expires by efflux of time, his interest as lessee would come to an end". (Emphasis is ours)

- ix. Therefore, the legal status of a tenant in possession of the leasehold property post cancellation of the registered lease, being tenant at sufferance, the respondent which is in possession of the leasehold properties even now, is unequivocally liable to pay rent/damages/*mesne* profits to the applicant/lessor as long as the respondent continues to be in occupation of the above mentioned properties.

- x. However, the Learned Senior Counsel for the Respondent submits that since it was *subsequently realized that the earlier lease deeds of the years 1999 are valid and the subsequent lease deeds with the Corporate Debtor are not enforceable, the subsequent lease deeds were cancelled, however, the respondent continues to remain in possession by paying rent to Mrs. Lakshamma and others, supra, the lessors of the earlier leases of both Banjara Hills & Madhapur* properties, as such the tenancy between the corporate debtor and the respondent under *subsequent lease deeds* stood extinguished, hence the respondent will not become a *tenant at sufferance under the lessors of the subsequent leases*, consequently, the question of payment of mesne profits to the applicant does not arise at all.
- xi. Having regard to the well-established legal position coupled with the *factual matrix* of this case, we are unable to appreciate this submission of the Ld. Sr. Counsel for more than one reason, which we summarise hereunder.

- xii. A bare perusal of the Registered Lease Deeds dated 23.02.2017, disclose that the Respondent has complete knowledge and information about the transfer of **ownership** of both Banjara Hills & Madhapur properties from *the erstwhile lessors Mrs. Lakshamma and others*, to the applicant/lessor, *M/s. Butta Infrastructure*, as indisputably, the subsequent registered lease deeds entered on 23.02.2017 categorically state that, *M/s. Butta Infrastructure Pvt.Ltd has been incorporated to take over the business of M/s. Butta Enterprises the Partnership Firm as a going concern without interruption. And where as the parties herein entered into fresh contract of lease.*” That apart, Clause 23 of the above lease deed state that, *“This Deed terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Deed may be modified only by a further writing that is duly executed by both parties”*
- xiii. Admittedly, both the *subsequent leases* were acted upon by parties to the lease and in fact the respondent itself claimed that on its representation, the Lessors of the subsequent leases have

waived the rents for a period of 5 years i.e. up to 31/03/2021. An entry to the said effect also has been found in the Balance Sheet of the corporate debtor for the FY 2017-18.

- xiv. The cancellation deeds further state the “*Lessee decided to vacate the Demised Premises by cancelling the above said Lease Deed which was entered on 23rd Day of February, 2017 and Modification of Lease Deed Dt: 07-01-2019 and Lessor has agreed to the cancellation of the said Lease Deed*”.
- xv. The respondent having *accepted and acted* upon the registered lease deeds dated 23.02.2017, enjoyed the benefit of waiver of rent, is *precluded* under law from *contradicting* the contents of the registered lease deeds dated 23.02.2017, by its oral assertion, by virtue of the bar under section 92 of Indian Evidence Act, which is as below.

92. Exclusion of evidence of oral agreement.—When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such

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instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms: Proviso

(1).—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, 1[want or failure] of consideration, or mistake in fact or law: (1).—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, 3[want or failure] of consideration, or mistake in fact or law;" Proviso (2).—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document: Proviso (3).—The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved: Proviso (4).—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents: Proviso (5).—Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved: Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract: Proviso (6).—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

In Smt. Gangabai w/o Rambilas Gilda v. Smt. Chhabubai w/o Pukharajji Gandhi 6 (1982) 1 SCC 46, Hon'ble Supreme Court, while dismissing Appeal of the defendant held as under:

"11. ...It is clear to us that the bar imposed by sub-section (1) of Section 92 applies only when a party seeks to rely upon the document embodying the terms of the transaction. In that event, the law declares that the nature and intent of the transaction must be gathered from the terms of the document itself and no evidence of any oral agreement or statement can be

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admitted as between the parties to such document for the purpose of contradicting or modifying its terms.

The sub-section is not attracted when the case of a party is that the transaction recorded in the document was never intended to be acted upon at all between the parties and that the document is a sham.” (Emphasis is ours)

- xvi. The Provisional Balance Sheet of the Partnership Firm filed along with the Form URC-1, for conversion of Firm into Private Limited company discloses the properties as Banjara Hills and Madhapur as the properties of the Partnership Firm.
- xvii. The Balance Sheets of the Corporate Debtor M/s. Butta Infrastructure Pvt., Ltd., categorically state that, all properties of the erstwhile partnership firm stood legally transferred into the Company's name, However, mutation of partners' name into Company's name in the records of Sub-Registrar is pending.
- xviii. The undated Tripartite Agreement (Stamp Paper dated 28.03.2018) entered among LIC Housing, Meridian School run by the respondent society and the Butta Infrastructure Pvt. Ltd, the corporate debtor herein, the Memorandum Deposit of Title

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Deeds MODT dated 20.04.2018, the undertaking by the respondent /Meridian Educational Society dated 21.03.2018, the letter dated 21.01.2017 by Mr. B.S. Neelakanta given at the time of conversion of the Partnership Firm into Private Limited company(corporate debtor) stating that he is the “Secretary of M/s.Meridian Educational Society and the *minutes* of the Stakeholders Committee meeting convened on 22.07.2022 by the petitioner wherein Mr. Butta Neelakanta one of the promoters of the Corporate Debtor reaffirmed that the properties at Banjara Hills and Madhapur belongs to the Corporate Debtor, unequivocally confirm that the corporate debtor’s ownership in respect of both Banjara Hills & Madhapur properties as on the date of execution of he registered lease deed dated 23.02.2017.

- xix. Except the *ipse dixit* of the respondent, no documentary proof has been placed to how the earlier lessors of the leases of the year 1999 which were admittedly determined regained Title and possession to the leasehold properties when the balance sheet of the erstwhile partnership firm and later the balance sheet of the

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applicant/corporate debtor, categorically show the leasehold properties as properties of partnership and company respectively.

- xx. The unilateral oral claim of revival of tenancy with the erstwhile lessors did not find place in either of the reply notices sent by the respondent to the IRP and the liquidators and has been raised for the *first time* in the counter filed in the present petition.
- xxi. Moreover, the plea of the Respondent that the Lease Deeds dated 23.02.2017 were cancelled as it was realised that the earlier lease deeds are valid and the subsequent deeds are not enforceable, is nothing but *approbate and reprobate* hence impermissible under law, hence the rule of *estoppel* squarely applies.
- xxii. The doctrine of estoppel well laid down in *Cuthberton v. Irwing*, 28 LJ Ex 306, has been reproduced by the Supreme Court in *Tej Bhan Madan vs. II Additional District Judge and Ors. (1988) 3 SCC*, and the same is as under: -

"This state of the law in reality tends to maintain right and justice and the enforcement of contracts which men enter into with each other - for so long as a lessee enjoys everything which his lease purports to grant how does it concern him what the title of the lessor ... is?" (Emphasis supplied)

In the same ruling it was further held that,

“After the creation of the tenancy if the title of landlord is transferred or devolves upon a third person the tenant is not estopped from denying such title. However, if the tenant having been apprised of the transfer, assignment or devolution of rights acknowledges the title of transferee either expressly or by paying rent to him, the rule of estoppel once again comes into operation for it is unjust to allow tenant to approbate and reprobate and so long as the tenant enjoys everything which his lease purports to grant how does it concern him what the title of the lessor is’.
(Emphasis is ours)

In Anar Devi (Smt.) vs. Nathu Ram , (1994) 4 SCC 250, the Apex Court considered the views of Jessel, M.R., who adverted to "doctrine of tenant's estoppel" in Stringer's Estate, Shaw v. Jones-Ford, where it was held as under:

"Where a man having no title obtains possession of land under a demise by a man in possession who assumes to give him a title as tenant, he cannot deny his landlord's title, as, for instance, if he takes for twenty-one years and he finds that the landlord has only five years' title, he cannot after five years set up against the landlord the jus tertii, though, of course, the real owner can always recover against him. That is a perfectly intelligible doctrine. He took possession under a contract to pay rent so long as he held possession under the landlord, and to give it up at the end of the term to the landlord, and having taken it in that way he is not allowed to say that the man whose title he admits and under whose title he took possession has not a title. That is a well-established doctrine. That is estoppel by contract."
(Emphasis is ours)

Hon’ble Supreme Court in S.K.Sarma vs. Mahesh Kumar Verma (2002) 7 SCC 505, where dealing with a case of lessor who was ought to be ejected under the provisions of Indian Railways Act, 1890, held as under:

"The rule of estoppel so enacted has three main features: (i) the tenant is estopped from disputing the title of his landlord over the tenancy premises

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at the beginning of the tenancy; (ii) such estoppel continues to operate so long as the tenancy continues and unless the tenant has surrendered possession to the landlord; and (iii) section 116 of the Evidence Act is not the whole law of estoppel between the landlord and tenant. The principles emerging from section 116 can be extended in their application and also suitably adapted to suit the requirement of an individual case. Rule of estoppel which governs an owner of an immovable property and his tenant would also mutatis mutandis govern a tenant and his sub-tenant in their relationship inter se. As held by the Privy Council in Currimbhoy & Co. Ltd. v. L.A. Creet [AIR 1933 PC 29] and Bilas Kunwar v. Desraj Ranjit Singh [AIR 1915 PC 96] the estoppel continues to operate so long as the tenant has not openly restored possession by surrender to his landlord. It follows that the rule of estoppel ceases to have applicability once the tenant has been evicted. His obligation to restore possession to his landlord is fulfilled either by actually fulfilling the obligation or by proving his landlord's title having been extinguished by his landlord's eviction by a paramount title-holder" (Emphasis is ours)

Hon'ble Supreme Court in Jaspal Kaur Cheema and another vs. Industrial Trade Links and others (2017) 8 SCC 592, held that;

“Section 116 of the Evidence Act deals with the estoppel of a tenant founded upon contract between the tenant and his landlord. It enumerates the principle of estoppel which is merely an extension of principle that no person is allowed to approbate and reprobate at the same time. The tenant who has been let into possession cannot deny his landlord's title. The principle of estoppel arising from contract of tenancy is based upon the principle of law and justice that a tenant who could not have got possession but for a contract of tenancy admitting the right of the landlord, should not be allowed to put his landlord in some inequitable situation taking undue advantage of the position that he got and any probable defect in the title of his landlord.

Now, the question is whether it is permissible for the respondent-tenant to deny his landlord's title having regard to Section 116 of the Indian Evidence Act. Section 116 of the Evidence Act reads as under:

"116 No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title

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to such immovable property; and no person who came upon any immovable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such license was given."

In *Bansraj Laltaprasad Mishra v. Stanley Parker Jones*, 2006 3 SCC 91, Honble Supreme Court, has enumerated the policy underlying Section 116 as follows:

"13. The underlying policy of Section 116 is that where a person has been brought into possession as a tenant by the landlord and if that tenant is permitted to question the title of the landlord at the time of the settlement then that will give rise to extreme confusion in the matter of relationship of the landlord and tenant and so the equitable principle of estoppel has been incorporated by the legislature in the said section.

14. The principle of estoppel arising from the contract of tenancy is based upon a healthy and salutary principle of law and justice that a tenant who could not have got possession but for his contract of tenancy admitting the right of the landlord should not be allowed to launch his landlord in some inequitable situation taking undue advantage of the possession that he got and any probable defect in the title of his landlord. It is on account of such a contract of tenancy and as a result of the tenant's entry into possession on the admission of the landlord's title that the principle of estoppel is attracted. Section 116 enumerates the principle of estoppel which is merely an extension of the principle that no person is allowed to approbate and reprobate at the same time."

In *Keshar Bai v. Chhunulal*, 2014 11 SCC 438, this Court has held that;

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“a tenant is precluded from denying the title of the landlady on the general principle of estoppel between the landlord and the tenant and this principle in its basic foundation, means no more than that under certain circumstances law considers it unjust to allow a person to approbate and reprobate”.

xxiii. Therefore, in the light of the law referred above and our discussion, we hold that the respondent is *precluded under law* and also in view of the facts of this case from asserting title in respect of the subject leasehold properties in party other than the applicant.

xxiv. The point is answered accordingly.

17. **Point.2**

Whether the Adjudicating Authority under the Insolvency & Bankruptcy Code, has no jurisdiction to direct payment of arrears of rent/damages by the Tenant in occupation of the premises which is found to be belonging to the corporate debtor when such tenant *disputes* the title of the Lessor/Corporate Debtor?

1. While the Ld. Counsel for the petitioner firmly asserts that this Adjudicating Authority has jurisdiction to direct the tenant in occupation of the property of the corporate debtor (Lessor) especially under the facts and circumstances of this case, Ld. Sr. Counsel for the respondent strenuously contended that this Tribunal

has no jurisdiction to dwell upon the issues relating to Tenancy as the same are specifically governed by separate laws, thus, the jurisdiction of this Adjudicating Authority is barred.

2. Ld. Counsel for the applicant in support of his submission that this Adjudicating Authority has Jurisdiction to direct the respondent to pay rent/arrears, relied on the following rulings;

i. Embassy Properties Developments Pvt. Ltd., vs State of Karnataka & others, wherein it was held that,

“Section 60 of the Code is very broad in its sweep, in that it speaks about any question of law or facts arising out of or in relation to insolvency resolution. It is only when a decision taken by the government or a statutory authority in relation to a matter which is in the realm of public law, cannot be adjudicated by the NCLT”

ii. **Indus Biotech (P)Ltd., Vs Kotak India Ventures (Offshore) Fund**, wherein it was held that,

“The position of law that the IB Code shall override all other laws as provided under Section 238 of the IB Code needs no elaboration.”

iii. Sangam (India) Ltd., Vs Aarti Suitings Pvt., Ltd., wherein an NCLT coordinate Bench, at Jaipur, had held that,

“the respondent therein to handover the possession of the property to the Resolution Professional. This clearly establishes that this Hon’ble Tribunal has ample powers under the provisions of the Code to pass

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such directions which are necessary for effective resolution/liquidation of the Corporate Debtor”.

- iv. M/s. Jhanvi Rajpal Automotive Pvt. Ltd., Vs R.P. of Rajpal Abhikaran Pvt. Ltd and Anr, in Company Appeal (AT) (Insolvency) No. 1417 of 2022, by Hon’ble NCLAT, Principal Bench, wherein it was held that;

“The present is not a case where lease in favour of the Appellant is subsisting. The lease has come to an end on 31st December, 2021. Further the lease renewal in favour of the Appellant was by RP himself on 17.09.2021 (Fresh Lease) which lease contained specific clause for eviction by 15 days’ notice.

20. “Accepting the contention of the Learned Counsel for the Appellant that RP is obliged to file a suit for eviction of the Appellant under MP Accommodation Control Act, 1961 even though lease in favour of the Appellant has expired shall be unduly prolonging the insolvency process which is a time bound process. When the Corporate Debtor has the ownership rights over the premises which premises can be taken in control by IRP/RP, we are of the view that for eviction of the Appellant especially in event when lease in favour of the Appellant has come to an end, filing a suit is not contemplated in the statutory scheme contained in IBC”.

21. “Thus, the contention of the Appellant that RP has to file a suit for eviction of the Appellant under the MP Accommodation Control Act, 1961 cannot be accepted. We thus, in view of the foregoing discussions are of the considered opinion that Adjudicating Authority has rightly allowed -21- Company Appeal (AT) (Insolvency) No. 1417 of 2022 the Application filed by the RP directing the Appellant to vacate from the premises so that Resolution Plan which has been approved can be implemented. We thus do not find any merit in the Appeal; the Appeal is dismissed”.

3. According to the Ld. Counsel for the petitioner the above rulings clearly establish that this Tribunal has jurisdiction under the provisions of the Code, to pass such actions which are necessary for effective resolution/liquidation of the Corporate Debtor including

the direction to pay the areas of rent by the tenant in possession of the corporate debtor's property.

4. *Per contra*, Ld. Sr. Counsel for the respondent submitted that “Section 33(5) and Section 35 (1) (k) of IB Code, only enables the Liquidator with the permission of the Tribunal, only to pursue the claims of the Corporate Debtor, if any, seeking mesne profits / lease rental amounts before court of law in terms of the provisions of Transfer of Property Act, 1872, having regard to the nature of the claim” but cannot by pass the same to approach this Hon'ble Tribunal under summary procedure for recovery of disputed rental amounts from third parties.

5. In this regard Ld. Sr. Counsel placed Reliance on the following rulings:

- i. Embassy Property Developments Pvt. Ltd. V. State of Karnataka & amp; Ors. (Civil Appeal No. 9171 of 2019, wherein it was held that,

“37. It was argued by all the learned Senior Counsel on the side of the appellants that an Interim Resolution Professional is duty bound under Section 20(1) to preserve the value of the property of the Corporate Debtor and that the word “property” is interpreted in Section 3(27) to include even actionable claims as well as every description of interest,

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present or future or vested or contingent interest arising out of or incidental to property and that therefore the Interim Resolution Professional is entitled to move the NCLT for appropriate orders, on the basis that lease is a property right and NCLT has jurisdiction under Section 60(5) to entertain any claim by the Corporate Debtor.

38. But the said argument cannot be sustained for the simple reason that the duties of a resolution professional are entirely different from the jurisdiction and powers of NCLT. In fact Section 20(1) cannot be read in isolation, but has to be read in conjunction with Section 18(f)(vi) of the IBC, 2016 together with the Explanation thereunder. Section 18 (f) (vi) reads as follows:

“assets subject to the determination of ownership by a court or authority”.

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 (f)(vi). 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
- 3) the resolution professional shall undertake the following actions:
 - a) 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.”

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“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). Therefore, in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.”

- ii. Gujarat Urja Vikas Nigam Limited v. Amit Gupta and Others, (2021) 7 SCC 2019 (Para 67 and 165 – wherein it was held that,

“the jurisdiction under Section 60(5)(c) can only be extended to adjudicate disputes arising solely from or which relate to the insolvency of the Corporate Debtor”.

6. According to the Ld. Sr. Counsel “*waiver and cancellation*” of lease deeds in the present case since were not in connection with the insolvency proceedings of the Corporate Debtor, as the said events occurred much before even the commencement of the CIRP Proceedings, in the light of the above ruling this Tribunal has no jurisdiction to direct payment of rent by the respondent and the present petition is liable to be dismissed.

7. Ld. Sr. Counsel, likewise, relied on the rulings *in re*, Tata Consultancy Services Limited v. Vishal Ghisulal Jain, Resolution

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Professional, SK Wheels Private Limited MANU/SC/1118/2021
(Para Nos. 22 – 30), IVRCL v. Hindustan Copper Limited,
MANU/NC/0651/2022 (Para Nos. 11-14), Sumit Binani, RP of KSK
Mahanadi Power Company Limited v. V. Venkatachalam, RP of
KSK Water Infrastructures Private Limited (Para 65 Onwards) and
Precision Fasteners Limited v. Siddhi Edibles Private Limited,
NCLT Mumbai Bench (Para 21) wherein it was categorically held
that

“Tribunal’s jurisdiction 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, and under the guise that the IBC which is a complete code, the adjudicating authority can neither enlarge or amplify its jurisdiction.

8. Nand Ram v. Jagdish Prasad (2020) 9 SCC 393 at Paras 29 and 38, wherein it was held that,

29. The defendant was inducted as a lessee for a period of 20 years.

“The lease period expired on 23 rd September, 1974. Even if the lessee had not paid rent, the status of the lessee would not change during the continuation of the period of lease. The lessor had a right to seek possession in terms of clause 9 of the lease deed. The mere fact that the lessor had not chosen to exercise that right will not foreclose the rights of the lessor as owner of the property leased. After the expiry of lease period, and in the absence of payment of rent by the lessee, the status of the lessee will be that of tenant at sufferance and not a tenant holding over. Section 116 of the TP Act confers the status of a tenant holding over on a yearly or monthly basis keeping in view the purpose of the lease, only if the lessor accepts the payment of lease money. If the lessor does not accept the lease money, the status of the lessee would be that of tenant at sufferance. This Court in the judgments reported as Bhawanji Lakhamshi and Others v. Himatlal Jamnadas Dani and Others¹³, Badrilal v. Municipal Corpn. of Indore¹⁴ and R.V. Bhupal Prasad v. State of A.P and Others ¹⁵ and

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also a judgment in *Sevoke Properties Ltd. v. West Bengal State Electricity Distribution Company Ltd.*¹⁶ examined the scope of Section 116 of the TP Act and held that the lease would be re- newed as a tenant holding over only if the lessor accepts the pay- 13 (1972) 1 SCC 388 14 (1973) 2 SCC 388 15 (1995) 5 SCC 698 16 Civil Appeal No. 3873 of 2019 decided on 11.04.2019 ment of rent after the expiry of lease period”. This Court in *Bhawanjii Lakhamshi* held as under:

“9. The act of holding over after the expiration of the term does not create a tenancy of any kind. If a tenant remains in possession after the determination of the lease, the common law rule is that he is a tenant on sufferance. A distinction should be drawn between a tenant continuing in possession after the determination of the term with the consent of the landlord and a tenant doing so without his consent. The former is a tenant at sufferance in English Law and the latter a tenant holding over or a tenant at will. In view of the concluding words of Section 116 of the Transfer of Property Act, a lessee holding over is in a bet- ter position than a tenant at will. The assent of the land- lord to the continuance of possession after the determina- tion of the tenancy will create a new tenancy. What the section contemplates is that on one side there should be an offer of taking a new lease evidenced by the lessee or sub-lessee remaining in possession of the property after his term was over and on the other side there must be a definite consent to the continuance of possession by the landlord expressed by acceptance of rent or otherwise.”

38. Thus, the suit of the plaintiffs filed within 12 years of the determination of the tenancy by efflux of time is within the period of limitation. The defendant has not proved forfeiture of tenancy prior to the expiry of lease period. Mere non-payment of rent does not amount to forfeiture of tenancy. It only confers a right on the landlord to seek possession. The plaintiffs have filed a suit for possession against the defendant on the basis of determination of tenancy, such suit is governed by Article 67 alone.

9. Vishal N. Kalsaria v. Bank of India and Others (2016) 3 SCC 762 wherein it was held that,

“30. It is a settled position of law that once tenancy is created, a tenant can be evicted only after following the due process of law, as prescribed under the provisions of the Rent Control Act. A tenant cannot be arbitrarily evicted by using the provisions of the SARFAESI Act as that would amount to stultifying the statutory rights of protection given to the tenant. A non-obstante clause (Section 35 of the SARFAESI Act) cannot be used to bulldoze the statutory rights vested on the tenants under the Rent Control Act. The expression ‘any other law for the time being in force’ as appearing in Section 35 of the SARFAESI Act cannot mean to extend to each and every law enacted by the Central and State legislatures. It can only extend to the laws operating in the same field”

10. Referring to the ruling *in re*, M/s. Jhanvi Rajpal, *supra*, relied on by the Ld. Counsel for the petitioner, Ld. Sr. Counsel contended that, unlike in Jhanvi Rajpal, in the case on hand the title of the lessors of the leasehold property covered under the *subsequent leases* since disputed, by the respondent on facts the ruling *in re*, Jhanvi Rajpal is not applicable to the case on hand.

18. *Our Finding*

1. Having given our thoughtful consideration to the submissions of the Ld. Counsels and on careful perusal of the afore mentioned rulings, we are of the considered view that, the submissions of the Ld. Sr. Counsel for the respondent are unacceptable and untenable in the backdrop of our discussion under Point 1, *supra*, and in the light of the ruling of Hon'ble Supreme Court of India, in *Victory Iron Works Ltd. vs Jitendra Lodha & Anr, 2023 Live Law (SC)*, wherein Hon'ble Supreme Court of India, after having taken note of the facts narrated in para, 37 of the above case, which are as below:

- (i) series of documents such as (i) the MoU dated 24.01.2008;
- (ii) the shareholders agreement dated 24.01.2008;

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(iii) the flow of the consideration from the Corporate Debtor to the UCO Bank and to Energy Properties;

(iv) the Development Agreement dated 16.06.2008;

(v) the Memorandum Recording Possession dated 02.03.2010 executed by the original shareholders of Energy Properties;

(vi) the Memorandum Recording Possession dated 24.06.2010 executed by Energy Properties in favor of the Corporate Debtor;

(vii) the Leave and License Agreement primarily executed by the Corporate Debtor in favor of Victory, which was merely confirmed by Energy Properties as a confirming party, some of these bundles of rights and interests, partake the character and shade of ownership rights, held that,

“ these *rights and interests* in the immovable property are definitely liable to be included by the Resolution Professional in the Information Memorandum and the Resolution Professional is duty bound under Section 25(2)(a) to take custody and control of the same”.

2. The present case also contains pleadings and documents dealing with the applicant’s *rights and interests in the leasehold property*, which are as below;

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- (i) The recitals in the subsequent registered lease deeds entered on 23.02.2017 state that: *M/s. Butta Infrastructure Pvt. Ltd. (the corporate debtor) has been incorporated to take over the business of M/s. Butta Enterprises, partnership firm as a going concern without interruption and whereas the parties herein entered into a fresh contract of lease.*
- (ii) *Provisional Balance Sheet of the Partnership Firm filed along with the Form URC-1 for conversion of Firm into Private Limited company mentioning properties as “Land and B hills and Mdp” (Banjara Hills & Madhapur).*
- (iii) *The Balance Sheets of the Corporate Debtor M/s. Butta Infrastructure Pvt., Ltd., that, all properties of the erstwhile partnership firm stood legally transferred into the Company’s name, however, mutation of partners’ name into Company’s name in the records of Sub-Registrar is pending.*
- (iv) Loan Agreement for Rent Securitisation dated 28.03.2018.
- (v) Tripartite Agreement dated 28.03.2018 (Stamp Paper date) among LIC Housing, Meridian School the respondent and the Butta Infrastructure Pvt. Ltd, the corporate debtor.
- (vi) The Memorandum Deposit of Title Deeds MODT dated 20.04.2018.

- (vii) The Undertaking by the respondent/Meridian Educational Society dated 21.03.2018.
- (viii) The letter dated 21.01.2017 by Mr. B.S. Neelakanta, given at the time of conversion of the Firm into Private Limited company stating that he is the “Secretary of M/s.Meridian Educational Society.
- (ix) Minutes of the Stakeholders Committee meeting convened on 22.07.2022 by the petitioner wherein Mr. Butta Neelakanta, one of the promoters of the Corporate Debtor reaffirmed that the properties at Banjara Hills and Madhapur belongs to the Corporate Debtor.
3. Therefore, when on the basis of the *factual matrix, supra, in re., Victory Iron Works*, it has been held by the Hon’ble Supreme Court that the Resolution Professional can *include* the “*properties in the Information Memorandum and duty bound under Section 25(2)(a) to take custody and control of the same, the liquidator, having been similarly empowered under section 35 (1) (b) (d) of IB Code, to take into his custody or control all the assets, property, effects & actionable claims of the corporate debtor and to take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary, cannot be said to be lacking the power to take necessary measures for recovery of*

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rents/arears/damages in respect of the property of the corporate debtor, as recovery of arears of rent/damages from the respondent herein is nothing but an act ancillary /incidental besides necessary, in the process of securing the custody or control of the asset of the corporate debtor forming part of the liquidation estate.

4. In re, *Jhanvi Rajpal, supra*, Hon'ble NCLAT, has held that, *in matters where the Corporate Debtor has the ownership rights over the properties the same can be taken into control by IRP/RP, and in the event when lease in favor of the tenant comes to an end, filing a suit for eviction of such tenant is not contemplated in the statutory scheme contained in IBC.* Therefore, initiation of measures for recovery of rents/arears/damages in respect of the property of the corporate debtor, being an act *ancillary/incidental and in fact necessary* to secure *custody or control* of the asset forming part of the liquidation estate of the corporate debtor, we are unable to buy the submission of the respondent that Adjudicating Authority has no jurisdiction to direct payment of rent by the tenant in possession of the property of the corporate debtor who committed default in payment of rent.

5. In so far as the rulings in re, *Embassy properties, Gujrat Urja and TATA Sons*, relied on by the respondent are concerned, in re., *Victory Iron Works*, it has been held by Hon'ble Supreme Court, as below;

“42. Embassy Property Developments Private Limited (supra) arose out of a case where, under the guise of preserving and protecting the interests of the Corporate Debtor, NCLT issued a direction to the Government of Karnataka to grant renewal of a mining lease, in terms of the deeming provision in Section 8A (6) of the Mines and Minerals (Development and Regulation) Act, 1957. Raising the question of jurisdiction of the NCLT to issue such a direction, the Government of Karnataka approached the High Court by way of a writ petition, instead of filing a statutory appeal to NCLAT. The jurisdiction of the High Court to entertain the said writ petition and also grant interim stay, was what was questioned before this Court in the said decision. The right to have a mining lease granted by the Government, was neither a statutory right nor a contractual right. A person applying for a mining lease may at the most be entitled to have his application considered along with the applications of others and to a fair treatment. Once a mining lease is granted, the terms and conditions of such grant may be subject to the covenants contained in the grant as well as the statutory provisions. Therefore, the ratio laid down in Embassy Property Developments Private Limited (supra) may not go to the rescue of the appellants in a case of this nature where Energy Properties became the owner only on account of the money paid by the Corporate Debtor and a bundle of very valuable rights and interests in immovable property was created thereafter in favor of the Corporate Debtor”.

“43. The decision of this Court in Gujarat Urja Vikas Nigam Limited (supra) may not also go to the rescue of the appellants, since the same arose out of a termination of Power Purchase Agreement¹³. In fact, this Court made a distinction in the said case, between (i) a dispute that arose out of the termination of PPA solely on account of insolvency on the one hand; and (ii) the other disputes relating to the PPA on the other hand.

“44. The decision in Tata Consultancy, rather than helping the appellants, actually supports the case of the Corporate Debtor. In fact, the decision in Gujarat Urja Vikas Nigam Limited was distinguished in Tata Consultancy (by the very same author), on the ground that if the termination was on an ipso facto clause i.e., the fact of insolvency itself, then NCLT will have jurisdiction,

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but that there was no residuary jurisdiction for NCLT, if the termination of a contract is based on grounds unrelated to the insolvency”.

“45. Thus, none of the decisions relied upon by the appellants revolve around the rights and interests that a Corporate Debtor has in an immovable property”.

6. Therefore, we are of the firm view that the above rulings relied on by the respondent cannot come in aid of the submissions made on behalf of the respondent.

7. In so far as the ruling in Vishal N. Kalsaria Case (supra) it is to be noted that, Hon’ble Supreme Court of India, in ***Bajrang Shyamsunder Agarwal vs Central Bank of India***, Criminal Appeal No. 1371 OF 2019 (Arising out of SLP (CRL.) NO. 9590/2015), having referred Vishal N. Kalsaria (supra), held that,

“the second case which dealt with the issue of tenants’ rights under the SARFAESI Act is Vishal N. Kalsaria Case (supra)”.

“This Court was concerned with the question Whether a “protected tenant” under the Maharashtra Rent Control Act, 1999 can be treated as a lessee and whether the provisions of the SARFEASI Act, will override the provisions of the Rent Act?”

8. Therefore, it is clear that the said ruling has a limited application. Even otherwise, it has been specifically held in the above ruling that,

“In any case, if any of the tenants claim that he is entitled to possession of a secured asset for a term of more than a year, it has to be supported by the execution of a registered instrument. In the absence of a registered instrument, if the tenant relies on an unregistered instrument or an oral agreement accompanied by delivery of possession, the tenant is not

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entitled to possession of the secured asset for more than the period prescribed under Section 107 of the T.P. Act.”

“The lower Courts are correct in ordering delivery of possession to the respondent no. 1- bank as the tenancy stands determined”

9. We are therefore of the view that the ruling in Vishal N. Kalsaria, is helpful to the petitioner rather than the respondent.

10. The point is answered accordingly.

19. **Point 3.**

Whether the applicant is entitled for the claim of arrears of rent from the respondent? if so, for what amount?

- i. According to the Ld. Counsel for the applicant as the financial records of the Corporate Debtor did not show payment of the rent not only during the *subsistence* of the Registered leases but also post *cancellation* and admission of the Corporate Debtor/Lessor into CIRP, the IRP, vide letter dated 07.01.2022 and later the Liquidator appointed by this Tribunal, vide his letter dated 24.05.2022 have demanded payment of arrears of rent. The respondent in its replies dated 07.01.2022 and 25.05.2022 contended that it is not aware of the lease deed dated 15.02.2017. Therefore, the Interim Resolution Professional, in his letter dated 03.01.2022 had brought the registered numbers of the lease deeds entered between the applicant and the respondent to the notice of the respondent, but the

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respondent did not pay the arrears of rent. Hence the present petition has been filed for realization of the rent which is outstanding. Ld. Counsel further submits that the so-called waiver of rent up to March 2021 is a *fraudulent act done in collusion* with the members of the suspended management of the corporate debtor *besides* a related party transaction, hence invalid. Ld. Counsel reiterated that the plea of the respondent that subsequently as it was realized that the *earlier lease deeds* are valid and the *subsequent lease deeds* are *not enforceable*, the *subsequent lease deeds* were cancelled through cancellation deeds dated 06-09-2019 vide Document Nos.5894 of 2019 & 15605 of 2019, as such the *subsequent lease deeds* are no more in existence, however the Respondent continue to remain in possession of the Schedule Properties as per the terms of the *earlier lease deeds*, and has been paying rent to the lessors of the *earlier lease deeds* are all factually incorrect and legally unsustainable.

- ii. ***Per Contra***, the Ld. Sr. Counsel for the respondent reiterated the submission that after executing lease deeds for Banjara Hills & Madhapur properties on 23.02.2017 vide registered document numbers 1088 and 2523 of 2017 with additional clauses, commencing from 01.04.2016, the respondent which is an educational society, expressed its inability to bear the lease rentals payable under the *subsequent lease deeds* due to severe financial & operational difficulties and requested for waiver of the lease

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payments and accordingly the *subsequent lease deeds* were modified making lease rentals payable from 01-04-2021. Ld. Sr Counsel further contended that, subsequently as it was realized that the *earlier lease deeds* are valid and the *subsequent lease deeds* are *not enforceable*, the *subsequent lease deeds* were cancelled through cancellation deeds dated 06-09-2019 vide Document Nos.5894 of 2019 & 15605 of 2019, as such the *subsequent lease deeds* are no more in existence, however the Respondent continues to be in possession of the Schedule Properties as per the terms of the *earlier lease deeds*, and has been paying rent to the lessors of the *earlier lease deeds* and which act is not challenged either by the Corporate Debtor or the original Lessors. Therefore, according to the Ld. Sr. Counsel, the present application in the absence of relationship of lessor and lessee between the applicant and the respondent is liable to be dismissed.

20. *Our finding*

- i. Before we proceed further, we prefer to quote Hon'ble Supreme Court, in *Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.* (2005) 1 SCC 705, wherein it held that,

"A tenant continuing in possession after the expiry of the lease may be treated as a tenant at sufferance, which status is a shade higher than that of a mere trespasser, as in the case of a tenant continuing after the expiry of the lease, his original entry was lawful. But a tenant at sufferance is not

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*a tenant by holding over. While a tenant at sufferance cannot be forcibly dispossessed, that does not detract from the possession of the erstwhile tenant turning unlawful on the expiry of the lease. **Thus, the appellant while continuing in possession after the expiry of the lease became liable to pay mesne profits.***

- ii. In our discussion on Points 1&2 in the proceeding paragraphs we have held that post cancellation of the registered lease deed the respondent is a tenant at sufferance. Since the respondent failed to deliver vacant physical possession of the leasehold property to the applicant/lessor it is liable to pay the rent/damages to the lessor of the cancelled leases. We have also held that the plea setting up title in third party post cancellation of the lease with the corporate debtor, by the respondent is *legally unsustainable*. Except the *ipse dixit* of the respondent that it has been paying rent to the erstwhile lessors the *quantum* of rent it allegedly paid/paying, how and when the same has been paid is not even pleaded, leave alone placing of any record. Moreover, the assertion of revival of tenancy between the respondent and the lessors of the leases of the year 1999 is *unilateral*, as not even a piece of paper has been placed before us to show that there is an express or implied acceptance of tenancy by the said lessors.

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Therefore, under these circumstances we consider that it is appropriate to *rely* on the rent that the respondent accepted to pay under the registered lease deeds executed on 23.02.2017 and also claimed that it got waiver until 31.03.2021, for the purpose of this application. In so far as the plea of waiver of rent up to 31.03.2021 is concerned, since in IA 788/2022 also this plea has been raised, we wish to discuss the sustainability or otherwise of the waiver in IA 788/2022. Hence, we exclude the same from the quantum of areas of rent/damages payable by the respondent to the applicant under this petition and hereby direct the respondent to pay rent/damages as below:

I. Banjara Hills Property:

- i. From 1st April, 2021 to till 31st December, 2021, i.e. for 9 months @ Rs.1,91,44,223/- per month, aggregating to Rs. 17,22,98,007/-.
- ii. From 1st January, 2022 to till 3rd July, 2022, the date of filing of this application, i.e. 6 months 3 days @ Rs.2,01,01,435/- per month, aggregating to Rs.12,26,18,753/-

II. Madhapur Property:

- i. From 1st April, 2021 to till 31st December, 2021, i.e. for 9 months @ Rs.1,91,44,223/- per month, aggregating to Rs. 17,22,98,007/-.
- iii. From 1st January, 2022 to till 3rd July, 2022, the date of filing of this application, i.e. 6 months 3 days @ Rs.2,01,01,435/- per month, aggregating to Rs.12,26,18,753/-
- iii. We further direct the respondent to deposit the above-mentioned amount within one month from the date of receipt of this order, to the credit of the liquidation account of the Corporate Debtor. If the details of the Liquidation Account are not furnished so far, the Liquidator shall furnish the same as early as possible. In default of deposit as above, the applicant is at liberty to approach this Tribunal for further orders.
- iv. In so far as the *future* rent/damages payable by the respondent from the date of filing of this application till it delivers vacant possession or orders of this Tribunal, we are of the view that an authentic data as to the rents prevailing in the area where the leasehold properties are situated is essential, hence we hereby appoint Ms. Rubaina Khatoon, Advocate Ph. No.9885470634 as Commissioner, who shall on the basis of an authentic data on the rents prevailing in the area where the leasehold properties are situated besides by taking

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into consideration such other records/documents that the parties herein may furnish which in the considered view of the Commissioner is relevant, necessary or useful, ascertain the rent/damages payable by the respondent from 3rd July, 2022, (the date of filing of this application), and submit her report *within 45 days* from the date of receipt of this order. Directions as to deposit the rent/damages will be passed after examining the Advocate Commissioner's report. The fee of the Advocate Commissioner is *tentatively* fixed at Rs. 75000.00 per month and Rs 15,000.00 as expenses payable by the petitioner and be treated as liquidation expenses/costs.

v. The Point is answered accordingly.

21. Therefore, in the light of our discussion on the points above, we allow this petition *in part*, and it is held that;

- (i) *Consequent* to the cancellation of the Registered Lease Deeds dated 23.02.2017, the status of the respondent *effective* from 06.09.2019 being '*Tenant at sufferance*', and as the respondent has not surrendered the vacant possession of leasehold properties situated at Banjara Hills & Madhapur to the Corporate Debtor, and not paid the rents the **Respondent is liable to pay damages** till it *vacates and delivers* vacant physical possession of the above properties, to the Applicant.

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- (ii) This Adjudicating Authority **has jurisdiction** to direct payment of rent/damages by the Respondent to the Applicant, since the Respondent is found to be in possession of the property of the Applicant/Corporate Debtor Tenant at sufferance.
- (iii) The respondent is hereby directed to **pay rent/damages** as below:

Banjara Hills Property:

From 1st April, 2021 to till 31st December, 2021, i.e. for 9 months @ Rs.1,91,44,223/- per month, aggregating to Rs. 17,22,98,007/-.

From 1st January, 2022 to till 3rd July, 2022, the date of filing of this application, i.e. 6 months 3 days @ Rs.2,01,01,435/- per month, aggregating to Rs.12,26,18,753/-

Madhapur Property:

From 1st April, 2021 to till 31st December, 2021, i.e. for 9 months @ Rs.1,91,44,223/- per month, aggregating to Rs. 17,22,98,007/-

From 1st January, 2022 to till 3rd July, 2022, the date of filing of this application, i.e. 6 months 3 days @ Rs.2,01,01,435/- per month, aggregating to Rs.12,26,18,753/-

22. We further direct the respondent to deposit the above-mentioned amount within **one month** from the date of receipt of this order, to the credit of the liquidation account of the Corporate Debtor. If the details of the Liquidation Account are not furnished so far, the Liquidator shall furnish the same as early as possible. In default of

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deposit as above, the applicant is at liberty to approach this Tribunal for further orders.

23. Ms. Rubaina Khatoon, Advocate Ph. No.9885470634, is hereby **appointed as Commissioner**, for ascertaining the *future* rent/damages payable by the respondent, i.e. from 3rd July, 2022, (the date of filing of this application), and submit her report *within 45 days* from the date of ascertain the rent/damages payable by the respondent and submit her report within 45 days from the date of receipt of this order. For commissioner's report call on

24. In the result, this petition is partly allowed to the extent indicated above. No order as to costs.

Sd/-

**CHARAN SINGH
MEMBER (TECHNICAL)**

Sd/-

**DR. N.V.RAMA KRISHNA BADARINATH
MEMBER (JUDICIAL)**

Binnu/Syamala