

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

Company Appeal (AT) (Insolvency) No. 959 of 2025

[Arising out of Order dated 27.05.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench - I in I.A. No.908 of 2023 in C.P. (IB) No.760/MB/2021]

IN THE MATTER OF:

Aaj Ka Anand Publications LLP & Ors.

...Appellants

Versus

Vineeta Maheshwari & Ors.

...Respondents

Present:

For Appellant: Mr. Pawan Reley, Mr. Akshay Lodhi, Mr. Tanish Rawat and Mr. Utkarsh, Advocates.

For Respondents: Mr. Krishnan Venugopal, Sr. Advocate with Mr. Rahul Dev, Mr. Arjun Amin, Ms. Avina Karnad and Ms. Nandini Kaushik, Advocates for R1/Liquidator.

Mr. Sandeep Shinde, Sr. Advocate with Mr. Aditya Krishna, Mr. Atul Dhadiwala and Ms. Madhura C., Advocates for R2, R3 and R4.

With

Company Appeal (AT) (Insolvency) No. 960 of 2025

[Arising out of Order dated 27.05.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench - I in I.A. No.908 of 2023 in C.P. (IB) No.760/MB/2021]

IN THE MATTER OF:

Ritu Anand Agarwal & Ors.

...Appellants

Versus

Jitender Kumar Jain & Ors.

...Respondents

Present:

For Appellant: Mr. Sandeep Shinde, Sr. Advocate with Mr. Aditya Krishna, Mr. Atul Dhadiwala and Ms. Madhura C., Advocates.

Cont'd.../

For Respondents: Mr. Krishnan Venugopal, Sr. Advocate with Mr. Rahul Dev, Mr. Arjun Amin, Ms. Avina Karnad and Ms. Nandini Kaushik, Advocates for R1/Liquidator.

Mr. Pawan Reley, Mr. Akshay Lodhi, Mr. Tanish Rawat and Mr. Utkarsh, Advocates for R2, R3 and R4.

J U D G M E N T

Ashok Bhushan, J.

These two appeals have been filed challenging the same order dated 27.05.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench – I in I.A. No.908 of 2023 in in C.P. (IB) No.760/MB/2021. Application I.A. No.908 of 2023 was filed by the Resolution Professional under Section 66 of the I&B Code praying for various reliefs. Appellants were Respondents in the above application. The Adjudicating Authority by the impugned order allowed the application. Aggrieved by the order dated 27.05.2025 these appeals have been filed.

2. Company Appeal (AT) (Ins.) No.959 of 2025 has been filed by the Appellants who were Respondent Nos.4, 5 and 6 in I.A. No.908 of 2023. In the appeal, Appellants have prayed for setting aside the order dated 27.05.2025 passed in I.A. No. 908 of 2023.

3. Company Appeal (AT) (Ins.) No.960 of 2025 has been filed by three Appellants who were Respondent Nos. 1, 2 and 3 in the I.A. No.908 of 2023.

In the appeal, Appellants has also prayed for setting aside the order dated 27.05.2025.

4. Brief facts of the case necessary to be noticed for deciding these appeals are:

4.1 The Corporate Debtor – Aaj Ka Anand Papers Limited was incorporated on 14.12.1993. The Corporate Debtor had been publishing three newspapers namely Aaj Ka Anand (Hindi Daily), Sandhyanand (Marathi Daily), Life 365 (English Daily). The Corporate Debtor had obtained various financial facilities from the State Bank of India and other Banks. To secure the financial facilities, the Corporate Debtor in addition to Deed of Hypothecation of the goods and assets dated 26.09.2014 have also executed a Deed of Mortgage dated 26.12.2014 of its immovable assets including the plant and machinery. Default was committed by the Corporate Debtor in repayment of its debt.

4.2 A notice under Section 13(2) of the SARFESI Act, 2002 was issued on 08.09.2017 to the Corporate Debtor and its Guarantors. The notice mentioned total outstanding amount to the State Bank of India of Rs.111,54,74,995/-. Notice further put on notice that in terms of Sub-Section (13) of Section 13 of the Act, the Corporate Debtor shall not, after the receipt of notice, transfer, by way of sale, lease or otherwise, any of the Secured Assets listed in Schedule 2 to the notice, without obtaining the written consent from all the lenders.

The lenders exercised their right under Section 13(4) and took symbolic possession of the assets. On 29.08.2018 possession was taken of movable property, hypothecated current assets, hypothecated plant and machinery as well as hypothecated receivables and equipment.

4.3 The parties in this judgment are being referred as described in I.A. No.908 of 2023. The State Bank of India filed an application under Section 7 of the I&B Code on 12.04.2021 claiming a default of Rs.248,46,99,997/-. Respondent No.5 and 6, Anand Shyam Agrawal and Navin Shyam Agrawal, who were promoter and guarantor of the Corporate Debtor resigned from the Board of Directors on 02.09.2020 and the Respondent No.1, 2 and 3 to the application, who are Appellants in Company Appeal (AT) (Ins.) No.960 of 2025, were inducted as Directors in September, 2020. After the Section 7 application was filed by the State Bank of India, Respondent Nos. 5 and 6 to the application, Anand Shyam Agrawal and Navin Shyam Agrawal constituted Aaj Ka Anand Publications LLP on 12.05.2021. A Leave and Licence Agreement was executed on 30.06.2021, leasing out one floor of the property to Aaj Ka Anand Publications LLP. On 03.08.2021, the Corporate Debtor and the LLP executed a Deed for Usage granting rights of tradename, trademark, brand name and plant and machinery for a consideration of Rs.15 Lakhs. The LLP sold the products amounting to Rs.1,37,34,660/-.

4.4 Section 7 application filed by the State Bank of India was admitted and Vinita Maheshwari was appointed as Resolution Professional. On 30.12.2022, the Resolution Professional filed an application I.A. No.908 of 2023 under Section 66 of the I&B Code praying for various reliefs. In the application filed by the Resolution Professional, notices were issued, reply was filed by Respondent No.4 – Aaj ka Anand Publications LLP and other Respondents. The Adjudicating Authority directed for liquidation and appointed a Liquidator vide order dated 12.04.2023. The Liquidator filed a Rejoinder Affidavit in I.A. No.908 of 2023. An Affidavit and Sur-rejoinder was also filed on behalf of Respondent No. 4, 5 and 6 in the application. An Additional Affidavit was filed by the Liquidator. Parties also filed their written submissions before the Adjudicating Authority in I.A. No.908 of 2023.

4.5 The Adjudicating Authority after hearing the parties, by the impugned order has allowed I.A. No.908 of 2023. Operative portion of the order of the Adjudicating Authority contained in Para 46 is as follows:

“46. In view of the above, we pass the following order:

a. Agreement(s) dated 3.8.2021 and 30.6.2021 shall stand cancelled forthwith and the Respondent No. 4 to 6 shall cease to use any of the assets of the Corporate thereunder with immediate effect.

They shall further allow the possession and control of all the assets used by them under both these agreement(s) within 15 days of this Order. The Senior Police Inspector, Mahalunge MIDC Police Station, MIDC Chowk, Chakan Talegaon Dhabhale Road, Mahalunge, Khed, Pune 410501 as well other District Authorities are requested to extend necessary co-operation to the Applicant, who is discharging his public duties in terms of provisions of Code, for this purpose.

b. Respondent No. 1 to 6 shall be liable to pay, individually or jointly, a sum of Rs. 2,60,10,411/- within 30 days from the date of this order, failing which, they shall be liable to pay an additional amount as interest @ 12% p.a. on the amount remaining unpaid after 30 days till the date the whole of the amount ordered is paid by them. It is clarified that interest shall first be appropriated out of amounts paid after 30 days from date of this order, and the remainder, if any, shall be appropriated against principal amount payable under this order.

c. The Applicant shall forward the copy of this Order to the IBBI for initiating appropriate proceedings in terms of Section 68 and 69 of the Code.”

4.6 Aggrieved by the order dated 27.05.2025, these appeals have been filed.

5. We have heard Shri Pawan Reley, learned counsel for the Appellants in Company Appeal (AT) (Ins.) No.959 of 2025 and Shri Sandeep Shinde, learned senior counsel for Appellants in Company Appeal (AT) (Ins.) No.960 of 2025. We have also heard Shri Krishnan Venugopal, learned senior counsel for the Liquidator. Learned counsel for the Appellant in Company Appeal (AT) (Ins.) No.960 of 2025, Shri Sandeep Shinde has also appeared for Respondents 2, 3 and 4 in Company Appeal (AT) (Ins.) No.959 of 2025. Shri Pawan Reley, learned counsel for the Appellants in Company Appeal (AT) (Ins.) No.959 of 2025 has also appeared for Respondents 2, 3 and 4 in Company Appeal (AT) (Ins.) No.960 of 2025. Submissions made on behalf of Aaj ka Anand Publications LLP, who are Appellants in Company Appeal (AT) (Ins.) No.959 of 2025 shall be referred as submissions of LLP whereas submission made on behalf of Appellants in Company Appeal (AT) (Ins.) No.960 of 2025 shall be referred as submissions of Suspended Directors and the submissions on behalf of the Liquidator shall be referred as submissions of Liquidator.

6. Learned counsel appearing for the LLP challenging the impugned order submits that the Adjudicating Authority committed error in quashing the Leave and License Agreement dated 30.06.2021 and the Deed of Usage dated 03.08.2021 whereas application I.A. No.908 of 2023 was filed only under Section 66-67 pf the I&B Code and in exercise of jurisdiction under Section 66-67, the Adjudicating Authority could not have cancelled the Leave and License Agreement and Deed of Usage. It is submitted that the Adjudicating Authority in the impugned order has also observed that the

deeds cannot be cancelled in exercise of power under Section 66, however, the Adjudicating Authority treated the application as a composite application under Section 45, 49 and 66 and has exercised the jurisdiction under Section 45, 49 for cancelling the Leave and License Agreement as well as Usage Deed, which was beyond jurisdiction. The application filed by the Resolution Professional; I.A. No.908 of 2023 being an application only under Section 66, no jurisdiction could have been exercised by the Adjudicating Authority under Section 49 of the I&B Code. It is submitted that there was no pleading in I.A. No.908 of 2023 with respect to any ingredients under Section 45 of I&B Code and there being no pleading, the Respondents to the application had no occasion to rebut the allegations. It is submitted that exercise of power under Section 49 is uncalled for and the order of the Adjudicating Authority cancelling the Leave and License Agreement and Usage Deed was without jurisdiction. It is further submitted that the transaction of Leave and License Agreement dated 30.06.2021 as well as Usage Deed dated 03.08.2021 cannot be held to be fraudulent trading. Ingredients of Section 45 were not even pleaded and proved, hence, order passed by the Adjudicating Authority is bad in law.

7. Learned counsel for the LLP elaborating his submission further contends that findings returned by the Adjudicating Authority that there was planned resignation of Directors of the Corporate Debtor is not correct. The Directors have become disqualified, hence, they have to resign and appoint new Directors. Finding that Directors resigned with intent to defraud the creditors is not supported by any evidence. Directors came to

know about filing of Section 7 application only subsequently. Payment of Rs.15 Lakhs was only meagre payment and was undervalued consideration is also not supported by any evidence. There was no income of Rs.643.92 Lakhs, which was misconstrued by the Adjudicating Authority. The said amount was only the turnover and not income. The Corporate Debtor was suffering continuous losses for four consecutive years. Arrangements by agreement dated 30.06.2021 and 03.08.2021 were to help the Corporate Debtor to revive. Printing of newspaper was no longer a profitable business. There was no pleading within meaning of Section 45, 46 or 49 of the I&B Code. The application was filed under Section 66 and 67 of the I&B Code. There being no pleading, the power under Section 49 could not have been exercised by the Adjudicating Authority. There was no sufficient pleading to exercise power under Section 49. Direction to make contribution is also uncalled for. The Impugned order is nonspeaking. The ingredients of undervalued transaction were not made out. Personal liability could have been imposed only on the person of the Corporate Debtor involved in fraudulent trading and does not empower the Adjudicating Authority to impose liabilities on third parties.

8. Learned counsel appearing for the Suspended Director submits that the High Court of Bombay by order dated 23.04.2024 passed in a Writ Petition filed by the Liquidator has already directed the LLP to vacate the premises on or before 03.07.2024 and to pay arrears of rent. The premises having already been vacated by the LLP and possession handed over to Liquidator, the relief (c) claimed in the application has become infructuous.

Learned counsel submitted that in so far as relief (d), direction for contribution of amount of Rs.2,68,00,701/- is concerned, the said direction is unsustainable. It is submitted that direction at best has to confine to payment of electricity dues which was paid by the Corporate Debtor. Direction for contribution of other amounts cannot be sustained. Ingredients of fraudulent trading was not proved. It is submitted that direction for initiating proceeding under Section 68 and 69 of the Code were also uncalled for. It is submitted that the application filed by the Resolution Professional was filed under Section 66 and it cannot be treated as composite application under Section 66, 45 and 49. The Adjudicating Authority committed error in treating the application as composite application and there being no pleadings within the meaning of Section 45 has wrongly directed for cancellation of Leave and License Agreement and Usage Deed. The Suspended Directors can at best be made liable for payment of electricity dues and water charges. As far as payment of salary to the staff that cannot be directed to be refunded.

9. Learned counsel for the Suspended Director elaborating their submission submits that in absence of pleadings under Section 45 and 49, the Suspended Directors were prejudiced to place relevant materials to substantiate that transaction was not undervalued. It is submitted that the pleadings require mention of specific materials to bring into mischief of Section 45, 46 and 47. Allegations of different provisions have to be separately made. There being no pleading under Section 45, the Adjudicating Authority could not have exercised jurisdiction under Section

49 to annul the agreements. The Suspended Directors were deprived from notice and opportunity to contest specific allegations, which is violation of principles of natural justice. New allegations were introduced in the rejoinder. The finding of undervalued transaction is unsupported by any material. There was no evidence to prove that plant and machinery of the Corporate Debtor was worth Rs.5 Crores. The amount of Rs.1.37 Crore, which is contribution directed by the Adjudicating Authority is fundamentally misconceived. The sum corresponds to the amount receivable by the Corporate Debtor from the LLP as recorded in the Company's books and confirmed by ledger statements furnished by the IRP but the direction for contribution is double recovery, which cannot be sustained. Standard of proof under Section 66 was not fulfilled. There is no material to establish that business was carried out with intent to defraud the creditors or for any fraudulent purpose. The burden of proof squarely lies on the Resolution Professional and standard of proof is higher than a mere balance of probabilities. The ingredients of Section 66(2) were neither present nor proved. There was no knowledge of impending insolvency. The titles of newspapers do not belong to the Corporate Debtor, which was registered in the name of Shyam Agarwal, father of the former Promoters and Directors of the Corporate Debtor.

10. Learned counsel for the Liquidator refuting the submissions of learned counsel for the Appellant submits that after issuance of notice under Section 13(2) on 08.09.2017, there was no authority in the Suspended Directors of the Corporate Debtor to grant any leave and license or hand

over the assets of the Corporate Debtor to any third party. No prior permission of the Lenders was obtained to execute the Leave and License Agreement dated 30.06.2021 and Usage Deed dated 03.08.2021. The transaction dated 30.06.2021 and 03.08.2021 being void and non-est were also fraudulent transactions. Respondent Nos. 5 and 6 who were Promoter and Director of the Corporate Debtor resigned on 20.09.2020 and inducted their wives and son as Director of the Corporate Debtor. After filing of Section 7 application by the State Bank of India on 12.04.2021, LLP was formed on 12.05.2021 with intent and purpose to fraudulently take over the assets of the Corporate Debtor, which design came to be true when Leave and License Agreement was executed on 30.06.2021 of the assets of the Corporate Debtor and Usage Agreement dated 03.08.221 by which entire business of the Corporate Debtor including plant and machinery was handed over to the LLP. The sequence of events and facts which took place clearly prove the fraudulent design and is clear proof of fraudulent trading by the Suspended Directors. It is submitted that even though in the application under Section 66, Section 45 and 49 were not mentioned, but there was sufficient pleading for undervalued transaction in addition to allegation of fraudulent transactions and before the Adjudicating Authority there were sufficient material to indicate that the transactions dated 30.06.2021 and 03.08.2021 were undervalued transactions. In the financial statements of the Corporate Debtor for the year 2020-21, the revenue from sale of newspaper is shown as Rs.6,43,92,000/-. Assets of the Corporate Debtor were more than Rs.5 Crores and transfer of the entire assets of the

Corporate Debtor along with business for Rs.15 Lakhs was clearly undervalued and fraudulent transaction which has been rightly set aside. The electricity expenses, water charges, rent and salary on behalf of Respondent No.4 were paid by the Corporate Debtor, which are reflected in the statement of the LLP and books of the Corporate Debtor. Hence, the Adjudicating Authority has rightly directed for contribution from the Respondents. Section 45 and 49 are not mentioned in the application, however, the Adjudicating Authority is not precluded from exercising its jurisdiction. It is submitted that Section 13(2) notice having already been issued on 08.09.2017 and the assets of the Corporate Debtor being taken possession in exercise of Section 13(4) of SARFESI Act, action of the Corporate Debtor in executing Leave and License Agreement and Usage Agreement is void and non-est and could have very well be ignored by the Adjudicating Authority. Thus, the order of the Adjudicating Authority setting aside the said transaction need no interference in the present appeals, at the instance of the Appellants. Liquidator, however, does not deny that under the orders of the High Court of Bombay dated 24.04.2024, immovable assets of the Corporate Debtor as covered by Leave and License Agreement dated 30.06.2021 has already been handed over to the Liquidator.

11. Learned counsel for the both the parties have relied on judgments of this Tribunal and the Supreme Court which we shall refer to hereinafter.

12. We have considered the submissions of learned counsel for the parties and perused the record.

13. We need to first notice the prayers and certain pleadings in the application filed by the Resolution Professional. Application mentioned 'Application U/S 66 R/W 67 of Insolvency and Bankruptcy Code, 2016'. Under the heading III of the application, facts of the case have been given. In Para 4, 5, 6 and 7 following has been pleaded:

"4. The applicant submits that SBI filed application for initiation of CIRP on 12.4.2021. After filing of the petition before the Hon'ble Adjudicating Authority, the suspended management of Corporate Debtor formed one Limited Liability Partnership (for short LLP) in the name of "AajKaAnand Publications LLP on 12.5.2021.

5. The applicant submits that the Corporate Debtor and the said LLP entered into a Deed dated trademark/brand name and plant and machinery 3.8.2021 for usage of rights of tradename/(hereinafter referred to as the Deed). The Deed provided for transfer of the entire business undertaking including all the assets and liabilities from the Corporate Debtor into the LLP for a meagre consideration of Rs. 15,00,000/-. The applicant begs to annex a copy of the Deed dated 3.8.2021 at Annexure-B.

6. The applicant submits that the current suspended directors of the Corporate Debtor are as follows:-

i. Mrs. RituAnand Agrawal

ii. Mrs. Sarika Navin Agrawal

iii. Mr. Hiren Anand Agrawal

7. The applicant submits that the partners of LLP are as follows:-

i. Mr. Anand Shyam Agrawal

ii. Mr. Navin Shyam Agrawal

The applicant submits that Mr. Anand Shyam Agrawal is Husband of Mrs. Ritu Agrawal, and Father of Mr. Hiren Agrawal, while Mr. Navin Shyam Agrawal is the Husband of Mrs. Sarika Navin Agrawal. Thus, it is clear that the LLP has been formed by the immediate relatives/ related parties of the suspended directors of the Corporate Debtor.”

14. There is categorical pleading in the application that the Corporate Debtor transferred the entire business to the LLP to defraud the creditors of the Corporate Debtor. In Para 8 following has been pleaded:

“8. The applicant submits that the suspended directors of the Corporate Debtor were aware that the CIRP was going to be initiated against the Corporate Debtor as one application was already pending applicant submits that knowing fully well about the before the Hon'ble Adjudicating Authority. The applicant submits that knowing fully well about the pendency of petition u/s. 7 of IB Code, the promoters of the Corporate Debtor transferred the entire business to the LLP to defraud the creditors of the Corporate Debtor. The above act committed by the

suspended management of Corporate Debtor amounts to fraudulent trading or wrongful trading and attracts Sec. 66 of IB Code. For the ready reference of this Hon'ble Adjudicating Authority, the applicant begs to reproduce Section 66 of the IB Code herein below:-"

15. With respect to contribution as claimed for total amount of Rs.2,68,00,701/- detailed pleadings have been made in Para 9 to 14. In the application following reliefs were sought:

"[A] That this Hon'ble Tribunal may be pleased to allow this application;

[B] That this Hon'ble Tribunal may be pleased to pass appropriate orders/ directions, cancelling the Deed dated 3.8.2021 (Annexure-B) and further directing the respondents to forthwith return the entire business back to the Corporate Debtor including plant machinery, in the interest of justice; and

[C] That this Hon'ble Tribunal may be pleased to pass appropriate orders/ directions, cancelling Leave and Licence Agreement dated 30.6.2021 (Annexure-E) executed between the Corporate Debtor and the Respondent no.4 and further be pleased to direct the Respondent no.4 to vacate the rented premises and hand over peaceful possession of the rented premises back to Corporate Debtor, in the interest of justice;

[D] That this Hon'ble Tribunal may be pleased to pass appropriate orders/ directions in terms of Section 66 r/w. Section 67 of the IB Code against respondents to make contribution of Rs. 2,68,00,701/- (as referred in

Para 9 to 11 of this application) for appropriate distribution amongst creditors of the Corporate Debtor, in the interest of justice;

[E] That this Hon'ble Tribunal may be pleased to stay the implementation, operation and execution of Deed dated 3.8.2021 (Annexure-B), pending the admission, hearing and final disposal of this Application;

[F] That this Hon'ble Tribunal may be pleased to grant any ancillary or consequential directions or such other and further reliefs as may be deemed fit and proper by this Hon'ble Tribunal, in the interest of justice;"

16. As noted above, in I.A. No.908 of 2023, reply, rejoinder affidavit, sur-rejoinder, affidavit and additional affidavits were filed. The Adjudicating Authority in the detailed order noticed the case of the Resolution Professional as well as the Respondents. The Adjudicating Authority has clearly noticed that by Section 13(2) notice the Corporate Debtor was prohibited from transferring, by way of sale, lease or otherwise, any of the Secured Assets and possession of the assets were taken on 29.08.2018 which observation has been returned in Para 22 of the order, which is as follows:

"22. In the present case, the account of Corporate Debtor was classified as NPA on 27.09.2014 and the proceedings under SARFAESI Act were initiated on 8.9.2017 prohibiting the Corporate Debtor from transferring, by way of sale, lease or otherwise, any of the secured assets i.e. the assets/properties

owned by the Corporate Debtor, the subject matter of the present IA. Further, symbolic possession of the secured asset was taken on 29.08.2018 and the Corporate Debtor and Guarantors (Respondents. 1, 5 and 6 and others) were informed of the same by SBICAP Trustee Company Ltd. on 10.09.2018. An Application u/s 7 of the Code was filed on 12.4.2021, which was admitted on 31.3.2002 commencing the CIRP in case of Corporate Debtor. The assignment agreement was executed on 3.8.2021 transferring the business of Corporate Debtor to Respondent no. 4, who was incorporated on 12.5.2021, and a Leave & license agreement in relation one of premises of corporate debtor was executed 30.6.2021 in favor of Respondent no. 4. The assignment agreement dated 3.8.2021 and the Leave & license agreement dated 30.6.2021 were executed by Respondent No. 3, the son of Respondent No. 5, on behalf of Corporate Debtor and by Respondent No. 5 on behalf of Respondent no. 4.”

17. The Adjudicating Authority has also noticed the Respondent Nos. 5 and 6, who were Directors resigned from the Board of Directors on 02.09.2020 and appointed their immediate relatives as Directors on 07.09.2020. The Adjudicating Authority has returned finding that events clearly demonstrated that Respondent No. 5 and 6 has taken all actions to fraudulently transfer the assets of the Corporate Debtor and LLP has been only constituted on 12.05.2021, after filing of Section 7 application. The sequence of events clearly indicates and prove the fraudulent design of constituting LLP to take over the business of the Corporate Debtor. As

noted above, notice under Section 13(2) was issued to the Corporate Debtor and its Promoters and Guarantors pm 08.09.2017. A copy of the notice has been brought on the record, which notice is addressed to the Corporate Debtor, the Guarantors and Mortgagers. It is useful to notice the initial part of the notice including subject, which is as follows:

“BY REGISTERED POST WITH A.D.

Ref No.:2095/SBILTOL/LEGAL/RRB/ST/2017-18

08th September, 2017

To,

<i>1. Aaj Ka Anand Papers Limited 365/6 Shivaji Nagar, Aaj Ka Anand Building, Pune 411005</i>	<i>2. Mr. Shyam Gyaniram Agarwal (Guarantor and Mortgagor) H-501, 1 Modi Baug Co-operative Housing Society, Ganeshkhind Road. Pune 411016</i>
<i>3. Mr. Anand Shyam Agarwal, (Guarantor and Mortgagor) B-501, 1 Modi Baug Co- operativo Housing Society. Ganeshkhind Road, Pune 411016</i>	<i>4. Mr. Navin Shyam Agarwal (Guarantor) B-501, 1 Modi Baug Co-operative Housing Society, Ganeshkhind Road, Punc-411016</i>
<i>5. Mrs. Vidya Shyam Agarwal (Guarantor and Mortgagor) B-501, Modi Baug Co-operative Housing Society, Ganeshkhind Road, Pune - 411016</i>	<i>6. Mrs. Ritu Anand Agarwal (Guarantor) B-501, 1 Modi Baug Co-operative Housing Society, Ganeshkhind Road, Pune 411016</i>

Sir(s),

*Sub.: Demand Notice under sub-section 2 of Section
13 of the Securitisation and Reconstruction of
Financial Assets and Enforcement of Security Interest
Act, 2002 (hereinafter referred to as the "Act") read*

along with Rule 3 of the Security Interest (Enforcement) Rules, 2002 ("Rules")."

18. In Para 10 and 13 of the notice following has been stated:

"10. In view of the defaults committed by the Notices No. 1, you Notice(s) No. 2,3,4,5 and 6, as Guarantor(s) are also called upon to pay to the Lenders Rs.133,92,02,312.85 (Rupees One Hundred Thirty Three Crores Ninety Two Lakhs Two Thousand Three Hundred Twelve and Eighty Five Paisa Only) the outstanding amount as mentioned in Schedule 5. Further, the Guarantor(s) are also liable to discharge the outstanding liability due to the Lenders.

13. All of you are also put on notice that in terms of sub-section 13 of Section 13 of the Act, you shall not, after the receipt of this notice, transfer, by way of sale, lease or otherwise, any of the Secured Assets listed in Schedule 2 to this notice, without obtaining the express written consent from all the Lenders and/or SBICTCL."

19. Details of secured assets are provided in the Schedule-2. Part A deals with immovable property. Part B deals with Hypothecation of Printing Press Machinery, Hypothecated Current Assets, Hypothecated Plant and Machinery, Hypothecated Receivables and Equipments, which are part of the notice dated 08.09.2017, which is on record. Section 13 (13) of the SARFAESI Act has been referred to in the notice, which provides as follows:

"13. Enforcement of security interest.

(13) No borrower shall, after receipt of notice referred to in sub-section (2), transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor.”

20. Leave and License Agreement dated 30.06.2021 by which entire floor of the Corporate Debtor was rented out to the Respondent No.4 – LLP and Deed of Usage dated 03.08.2021 by which entire business of the Corporate Debtor was transferred to the LLP are in clear breach of the above statutory provision.

21. Learned counsel for the Respondent has relied on judgment of the Hon’ble Supreme Court in ***(2019) 2 SCC 198, Hindon Forge Private Limited & Anr. vs. State of Uttar Pradesh***”, where the Hon’ble Supreme Court has laid down that after Section 13(4) of the SARFAESI is invoked after issuance of notice under Section 13(2), Section 13(13) interdicts the borrower from transferring the secured assets. It is useful to notice Para 25 of the judgment:

“25. When we come to Section 13(4)(a), what is clear is that the mode of taking possession of the secured assets of the borrower is specified by Rule 8. Under Section 38 of the Act, the Central Government may make rules to carry out the provisions of the Act. One such rule is Rule 8. Rule 8(1) makes it clear that "the authorised officer shall take or cause to be taken possession". The expression "cause to be taken" only

means that the authorised officer need not himself take possession, but may, for example, appoint an agent to do so. What is important is that such taking of possession is effected under sub-rule (1) of Rule 8 by delivering a possession notice prepared in accordance with Appendix IV of the 2002 Rules, and by affixing such notice on the outer door or other conspicuous place of the property concerned. Under sub-rule (2), such notice shall also be published within 7 days from the date of such taking of possession in two leading newspapers, one in the vernacular language having sufficient circulation in the locality. This is for the reason that when we come to Appendix IV, the borrower in particular, and the public in general is cautioned by the said possession notice not to deal with the property as possession of the said property has been taken. This is for the reason that, from this stage on, the secured asset is liable to be sold to realise the debt owed, and title in the asset divested from the borrower and complete title given to the purchaser, as is mentioned in Section 13(6) of the Act. There is, thus, a radical change in the borrower dealing with the secured asset from this stage. At the stage of a Section 13(2) notice, Section 13(13) interdicts the borrower from transferring 9 the secured asset (otherwise than in the ordinary course of his business) without prior written consent of the secured creditor. But once a possession notice is given under Rules 8(1) and 8(2) by the secured creditor to the borrower, the borrower cannot deal with the secured asset at all as all further steps to

realise the same are to be taken by the secured creditor under the 2002 Rules.”

22. The submissions which has been much pressed by learned counsel for the LLP and learned counsel for the Suspended Director is that there being no pleading in I.A. No.908 of 2023 within meaning of Section 45 of I&B Code, the Adjudicating Authority could not have exercised jurisdiction under Section 49 to cancel the agreement dated 30.06.2021 and 03.08.2021. Learned counsel for the Appellant has placed reliance on judgment of Hon’ble Supreme Court in **“Anuj Jain, Resolution Professional for Jaypee Infratech Ltd. vs. Axis Bank Limited, (2020) 8 SCC 401”**. Hon’ble Supreme Court in Para 32.1 laid down following:

“32.1. However, we are impelled to make one comment as regards the application made by IRP. It is noticed that in the present case, the IRP moved one composite application purportedly under Sections 43, 45 and 66 of the Code while alleging that the transactions in question were preferential as also undervalued and fraudulent. In our view, in the scheme of the Code, the parameters and the requisite enquiries as also the consequences in relation to these aspects are different and such difference is explicit in the related provisions. As noticed, the question of intent is not involved in Section 43 and by virtue of legal fiction, upon existence of the given ingredients, a transaction is deemed to be of giving preference at a relevant time. However, whether a transaction is undervalued requires a different enquiry as per Sections 45 and 46 of the Code and

significantly, such application can also be made by the creditor under Section 47 of the Code. The consequences of undervaluation are contained in Sections 48 and 49. Per Section 49, if the undervalued transaction is referable to sub-section (2) of Section 45, the adjudicating authority may look at the intent to examine if such undervaluation was to defraud the creditors. On the other hand, the provisions of Section 66 related to fraudulent trading and wrongful trading entail the liabilities on the persons responsible therefor. We are not elaborating on all these aspects for being not necessary as the transactions in question are already held preferential and hence, the order for their avoidance is required to be approved; but it appears expedient to observe that the arena and scope of the requisite enquiries, to find if the transaction is undervalued or is intended to defraud the creditors or had been of wrongful/fraudulent trading are entirely different. Specific material facts are required to be pleaded if a transaction is sought to be brought under the mischief sought to be remedied by Sections 45/46/47 or Section 66 of the Code. As noticed, the scope of enquiry in relation to the questions as to whether a transaction is of giving preference at a relevant time, is entirely different. Hence, it would be expected of any resolution professional to keep such requirements in view while making a motion to the adjudicating authority.”

23. The Hon’ble Supreme Court in the above case has clarified that specific material pleadings are required to be pleaded if a transaction is

sought to be brought under the mischief sought to be remedied by Sections 45/46/47 or Section 66 of the Code. Another judgment of the Hon'ble Supreme Court in **“Piramal Capital & Housing Finance Ltd. v. 63 Moons Technologies Ltd., (2025) 256 Comp Cas 707”**. Para 61 is relied where Hon'ble Supreme Court laid down following:

"61. In view of the above, the applications filed in respect of "fraudulent and wrongful trading carried on by the CD, could not be termed as "avoidance applications" used for the applications filed under sections 43, 45 and 50 to avoid or set aside the preferential, undervalued or extortionate transactions, as the case may be. There is clear demarcation of powers of the Adjudicating Authority to pass orders in the avoidance applications filed by the resolution professional under sections 43, 45 and 50 falling under Chapter III and the applications filed by the resolution professional in respect of the fraudulent and wrongful trading of the CD, under section 66 falling under Chapter VI of the IBC, If the resolution professional has filed common applications under sections 43, 45, 50 and also under section 66, the Adjudicating Authority shall have to distinguish the same and decide as to which provision would be attracted to which of the applications, and then shall exercise the powers and pass orders in terms of the provisions of the IBC."

24. In the above case, the Hon'ble Supreme Court laid down that there is clear demarcation of powers of the Adjudicating Authority to pass orders in

the avoidance applications filed by the Resolution Professional under Sections 43, 45 and 50 falling under Chapter III and the applications filed by the Resolution Professional in respect of the fraudulent and wrongful trading of the Corporate Debtor, under section 66 falling under Chapter VI of the IBC.

25. We have noticed above few of the contents of the application filed by the Resolution Professional. The application refers to an application under Section 66/67 of the I&B Code. Application neither in its heading nor in the body of the application even refers to Section 45, 46, 49 of the I&B Code. Apart from the pleading that business of the Corporate Debtor was transferred for meagre sum of Rs.15 Lakhs, there is no other pleadings contained in the application. It is true that a composite application under Section 45, 46 and 66 can be filed by the Resolution Professional, however, ingredients of the above sections being different, specific pleadings with respect to each Section has to be there in the application to invoke the power of the Adjudicating Authority under Section 49. Adjudicating Authority in the present case was conscious that application of the Resolution Professional has although sought cancellation of Leave and License Agreement dated 30.06.2021 and Usage Deed dated 03.08.2021 in terms of Section 66 but has no specific pleading in terms of Section 45 and 49. The said observations have been made by the Adjudicating Authority in Para 26 of the impugned order, which is as follows:

“26. Indubitably, the Applicant has sought cancellation of Assignment Agreement dated 3.8.2021 and Leave & License Agreement dated 30.6.2021 in terms of Section 66 of the Code and has not specifically pleaded the case in terms of Section 45 or 49 of the Code, where under this Tribunal is vested powers to cancel these agreement(s), except stating that "The Deed provided for transfer of the entire business undertaking including all the assets and liabilities from the Corporate Debtor into the LLP for a meagre consideration of Rs.15,00,000/-".”

26. Learned counsel for the Liquidator has relied on the judgment of Hon’ble Supreme Court in **“Kumaradasan Nair J. & Another vs. Iric Sohan & Others, (2019) 12 SCC 175”**, where Hon’ble Supreme Court held that non-mentioning of any provision of law would, by itself be not sufficient to take away the jurisdiction of a court if it is otherwise vested in it in law. In Para 18 following has been laid down:

“18. It is also now a well-settled principle of law that mentioning of a wrong provision or non-mentioning of any provision of law would, by itself be not sufficient to take away the jurisdiction of a court if it is otherwise vested in it in law. While exercising its power, the court will merely consider whether it has the source to exercise such power or not. The court will not apply the beneficent provisions like Sections 5 and 14 of the Limitation Act in a pedantic manner. When the provisions are meant to apply and in fact found to be applicable to the facts and circumstances of a case, in our opinion, there is no reason as to why

the court will refuse to apply the same only because a wrong provision has been mentioned. In a case of this nature, sub-section (2) of Section 14 of the Limitation Act per se may not be applicable, but, as indicated hereinbefore, the principles thereof would be applicable for the purpose of condonation of delay in terms of Section 5 thereof.”

27. There can be no dispute to the proposition of law laid down by the Hon’ble Supreme Court in the above case. Non-mentioning of provisions of Section 44, 45 and 49 may not be relevant, however, the pleading is essential ingredient which require to be proved for falling the transaction in above sections. Even if provision of Sections 44, 45 and 49 are not mentioned in the order, the Adjudicating Authority does not lack jurisdiction to exercise jurisdiction if there are sufficient pleadings and material on record. Present is a case where apart from application being not referred to be application under Section 44/45/46/47, there are no specific pleadings with respect to ingredients of above avoidance transactions. Learned counsel for the Suspended Director and LLP are right in their submission that even if a composite application is permitted under Section 44, 45 and 66, application must contain relevant pleadings. The application of the Resolution Professional was filed praying for reliefs under Section 66/67, we, thus, are of the view that the application filed by the Resolution Professional could not be treated to be a composite application under Section 45, 49 and 66, hence, the Adjudicating Authority could not have exercised power under

Section 49 for cancelling the Usage Agreement and Leave and License Agreement.

28. Even though the Adjudicating Authority could not have exercised power under Section 49 to set aside the agreement dated 30.06.2021 and 03.08.2021, both the above agreements were non-est and void due to the restriction under Section 13(13) of the SARFAESI Act, 2002, as noted above. The Adjudicating Authority in Para 22 of the impugned order has noted that the Corporate Debtor was classified as NPA on 27.09.2014 and proceedings under SARFAESI Act was initiated on 08.09.2017 and symbolic possession of the assets of the Corporate Debtor was taken on 29.08.2018 by the creditors. We have already noticed the copy of notice issued under Section 13(2) of the SARFAESI Act dated 08.09.2017 to the Corporate Debtor and the Guarantor, which has been noticed in Para 14 as above. Para 13 of the notice which we have noticed above clearly directed that *“All of you are also put on notice that in terms of sub-section 13 of Section 13 of the Act, you shall not, after the receipt of this notice, transfer, by way of sale, lease or otherwise, any of the Secured Assets listed in Schedule 2 to this notice, without obtaining the express written consent from all the Lenders and/or SBICTCL.”*

29. The Leave and License Agreement dated 30.06.2021 as well as Usage Deed dated 03.08.2021 were executed by the Corporate Debtor subsequent to receipt of above notice and subsequent to the Corporate Debtor put to notice about the statutory provision of section 13(13) of the SARFAESI Act.

When there is statutory restriction on the Corporate Debtor from transferring, by way of sale, lease or otherwise, any of the Secured Assets, the Corporate Debtor was clearly statutorily enjoined from executing the Leave and License Agreement or execute the Usage Deed by which entire business of the Corporate Debtor was sought to be transferred. At this stage we need to notice certain clauses of Deed of Usage dated 03.08.2021. Clause 1 of the Deed provides as follows:

*“1. In pursuance of the said Agreement and in consideration of the sum of **Rs. 15,00,000/ (Rupees Fifteen Lakhs Only)** to be paid by the said Assignee to the Assignor in due course and also in consideration of the covenants and conditions hereunder contained to be observed and performed on the part of the said Assignee, the said Assignor does hereby and hereunder grant, sell, transfer, assign and assure unto the use of the said assignee all that the trade or business carried under the name and style of **AAJ KA ANAND, SANDHYANAND and LIFE 365** with all beneficial interest and goodwill of the said assignor, in the said trade and business so carried on by him as aforesaid.*

In case any amount recovered by assignee on account of book debts of assignor. The assignee shall remit the said amount time-to-time to the assignor as and when received”

30. Clause 8 of the Deed clearly stipulates that the Assignee has obtained absolute usage rights in the intangible property and plant and machinery of the Assignor. Para 8 is as follows:

“8. Assignment

The Assignee has obtained absolute usage rights in the intangible property and Plant & Machinery of the Assignor. Approval of the Assignor shall not be required for any such further assignment.”

The Usage Deed was thus, clearly in breach of the provisions of Section 13(13) of the SARFAESI Act.

31. In view of the foregoing discussion, we are of the view that even though the Adjudicating Authority could not have exercised power under Section 49 to cancel the Leave and License Agreement dated 30.06.2021 and Usage Deed dated 03.08.2021 but in view of the statutory provision of Section 13(13), restraining the Corporate Debtor from any transfer, by way of sale, lease or otherwise, any of the Secured Assets of the Corporate Debtor, which provision and restrain continues to operate, both the agreement dated 30.06.2021 and 03.08.2021 have to be treated as non-est and unenforceable. Due to this reason, we are not persuaded to interfere with the order of the Adjudicating Authority directing for avoidance of the aforesaid two agreements.

32. Learned counsel for the Appellant has also contended that there was no sufficient pleading or material on record to prove the ingredients of

Section 66 in the present case. Section 66 of the I&B Code provides as follows:

“66. Fraudulent trading or wrongful trading –(1)

If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may on the application of the resolution professional pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.

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

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

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

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

Explanation.—For the purposes of this section a director or partner of the corporate debtor, as the case may be, shall be deemed to have exercised due diligence if such diligence was reasonably expected of a person carrying out the same functions as are carried out by such director or partner, as the case may be, in relation to the corporate debtor.”

33. The sequence of the events and facts, as noted above, clearly indicate that although the Corporate Debtor was strictly restrained from dealing with the assets of the Corporate Debtor by notice under Section 13(2), the Directors of the Corporate Debtor resigned on 03.09.2020 and appointed their wives and son of one Director as new Director of the Corporate Debtor and the two Directors i.e. Respondent No. 5 and 6, Anand Shyam Agrawal and Navin Shyam Agrawal, constituted Aaj Ka Anand LLP on 12.05.2021. The execution of Leave and License Agreement by Corporate Debtor to the LLP was done so as to keep assets of the Corporate Debtor away from creditors. The Resolution Professional in application under Section 66 has clearly pleaded that business of the Corporate Debtor has been carried out

with intent to defraud the creditors of the Corporate Debtor. Execution of Leave and License Agreement and the Usage Agreement, dated 30.06.2021 and 03.08.2021, respectively was with intent to defraud the creditors of the Corporate Debtor. The said course was adopted to keep the assets out of the reach of the creditors and vested in LLP, which was constituted on 12.05.2021 by two Ex-Directors who resigned. There has been categorical pleading in the application under Section 66 and sufficient materials have been brought by the Resolution Professional to prove the ingredients under Section 66(1), in transferring the assets by executing Leave and License Agreement and Usage Agreement. We, thus, are satisfied that the Adjudicating Authority has rightly returned the finding that ingredients of Section 66(1) were fully proved. In Para 36 of the judgment, the Adjudicating Authority made following observation:

"36. The Applicant has pleaded in the Rejoinder that "the intent of Respondents is to divert the revenue generated from the business of the Corporate Debtor and also to acquire back the business / assets of the Corporate Debtor by making them disputed properties /assets and thereby lowering their valuation under the IBC". It has further been pleaded that "the Liquidator vide email dated 16 June 2023 made an enquiry from the statutory auditor of the Corporate Debtor about the Deed and its impact for the financial year 2021-22 and the statutory auditor inter-alia replied that 'However, the mentioned Usage Agreement, which you have stated is under investigation, was not provided to us during the time

of our audit and therefore was not subject to our inspection. As auditors, we rely on the information provided to us by our clients and cannot audit what has not been made available to us.?" These pleadings clearly make out a case of putting assets of Corporate Debtor beyond reach of its creditors illegally. Though, in the present case, the heading of the application reads as "Application u/s 66 R/W 67 of Insolvency and Bankruptcy Code, 2016", it becomes pertinent to take note of fact that relief in terms of prayer (b) and (c) are not sought in terms of Section 66 of the Code in contradiction of prayer (d) where the relief has specifically been sought under section 66 leading to conclusion that the present application is a composite application seeking avoidance of transaction as well contribution u/s 66 of the Code."

34. We are in full agreement with the findings of the Adjudicating Authority that ingredients of Section 66(1) was fully proved and both the transactions were fraudulent transactions.

35. We further notice that under the orders passed by the High Court of Bombay dated 23.04.2024, passed in Writ Petition No.1044 of 2023 filed by the Liquidator, immovable assets which were leased out to the LLP has already been handed back to the Corporate Debtor. High Court in the said judgment dated 23.04.2024 issued following directions in Para 7:

"7. Since the leave and licence agreement in any event expires on 30th June, 2024, the LLP shall vacate the premises occupied by them and hand over

physical possession of the said premises to the If for any reason, the Liquidator on or before 3rd July, 2024. aforesaid direction is not complied with, the Shivaji Nagar Police Station, Pune shall give all necessary assistance to the Liquidator to ensure that physical possession of the licensed premises is taken by the Liquidator and that the same is vacated by the LLP, or any one else occupying the same, failing which the concerned Senior Police Inspector of the Shivaji Nagar Police Station, Pune shall be liable for contempt. It is needless to clarify that charges, if any, that are required to be paid for the police assistance shall be paid out of the Liquidation account of Aaj Ka Papers Limited [Corporate Debtor].”

36. It is admitted case that immovable assets have already been handed over to the Liquidator. High Court has also noted that Leave and License Agreement expired on 30.06.2024. Learned counsel appearing for the Suspended Director has also submitted that relief (c) has become infructuous. The above is also a reason that order of the Adjudicating Authority cancelling the Leave and License Agreement dated 30.06.2021 does not warrant any interference.

37. Now we come to the direction of the Adjudicating Authority directing for contribution. The Resolution Professional in his application in details have given the evidence and calculation with regard to amount to which Corporate Debtor was made to suffer after Usage Agreement 03.08.2021. The Adjudicating Authority also in the impugned order has separately noted the electricity charges as well as other different amounts claimed in the

prayer (d) of the application. In Paras 43, 44 and 45, the Adjudicating Authority has noted in detail the facts and figures, which are as follows:

“43. As regards prayer (d), the leave & license agreement dated 11.6.2020, in relation to which electricity charges of Rs.7,90,290/- pertaining to premises located at Citi Hotel, have been claimed in terms of prayer (d), has already been cancelled by Hon'ble Bombay High Court passed in Civil Writ Petition No. 10244 of 2023 directing the licensee to pay the license charges in terms of License Agreement dated 11.6.2020. It is relevant to note that the claim of the applicant herein is arising from clause 11.1 of said agreement, accordingly, nothing remains in this prayer forming part of sum of Rs.2,68,00,701/-, as the said amount of Rs. 7,90,290/- is already payable in terms of order in view of order dated 23rd April, 2024 passed by Hon'ble Bombay High Court.

44. As regards second components of prayer (d) i.e. (i) sum of Rs. 1,22,75,751/- paid by Corporate Debtor on behalf Respondent No. 4 in relation to (i) electricity, rent and water of Chakan Factory premises and Staff Salaries, even after execution of purported assignment agreement dated 3.8.2021, in terms of the assignment agreement, the Respondent No. 4 had acquired the right to usage of Plant & Machinery, accordingly, Respondent No. 4 is also liable to pay the amounts incurred in running of the said Plant & Machinery. Hence, the Respondent No. 1 to 6 are liable to contribute a sum of Rs. 1,22,75,751/- on account of electricity, rent and water of Chakan

Factory premises and Staff Salaries paid by the Corporate Debtor.

45. As regards second components of prayer (d) i.e. (ii) sum of Rs. 1,37,34,660/-, being the amount of products sold by Respondent No. 4 pursuant to fraudulent transfer of the entire business of Corporate Debtor in terms of assignment agreement dated 3.8.2021, it has been observed by us at Para 24 above, a sum of Rs. 1,37,34,660/- is due and payable by Respondent No. 4, being amount of material transferred to Respondent No. 4 and rent as reduced amounts paid by Respondent No. 4, the said amount is unauthorised retained despite their obligation to pay arising in terms of assignment agreement dated 3.8.2021 on supply of material and usage of plant & machinery. The fact of supply and usage of plant & machinery has not been denied by the Respondents. Hence, the Respondent No. 1 to 6 are also liable to contribute a sum of Rs. 1,37,34,660/-."

38. Learned counsel for the LLP challenging the order passed by the Adjudicating Authority directing for contribution has contradicted that in view of the order of the Hon'ble Supreme Court in **"Gluckrich Capital P. Ltd. vs. State of West Bengal & Ors., 2023 SCC OnLine SC 1187"**, direction for contribution cannot be made to the third party. In Para 10 of the judgment following has been laid down:

"10. We are of the considered opinion that in such circumstances, it is for the resolution professional or

the successful resolution applicant, as the case may be, to take such civil remedies against third party, for recovery of dues payable to the corporate debtor, which may be available in law. The remedy against third party, however, is not available under section 66 of the IBC, and the civil remedies which may be available in law, are independent of the said section.”

39. The present is a case where direction for contribution has not been made against the third party. The Suspended Director as well as both the Members of LLP were also Directors of the Corporate Debtor and direction for contribution in the impugned order has been made against all Respondent Nos.1 to 6 to the application, individually or jointly. We, thus, do not find any error in direction of contribution on this account.

40. Learned counsel for the Suspended Director submitted that amount of Rs.1.37 Crores is the sum corresponds to the amount receivable by the Corporate Debtor from the LLP, which is recorded in the company's books and confirmed by ledger statements furnished by the Resolution Professional. It is submitted that the direction for contribution of the said amount shall be double recovery.

41. The Adjudicating Authority in the present case was exercising jurisdiction under Section 66, after finding the transaction fraudulent and directed contribution which is in relation to the recovery which has to be made from the liquidation estate. The amount of Rs.1.37 Crores is the amount received by the LLP by sale of the product of the Corporate Debtor

and in pursuance of transfer of the entire business of the Corporate Debtor. The fact that LLP has acknowledged the amount due to the Corporate Debtor in its books cannot absolve the LLP from refunding back the said amount. We, thus, find no error in the direction of the Adjudicating Authority directing contribution of Rs.1,37,34,660/- from Respondent Nos.1 to 6.

42. With respect to sum of Rs.1,22,75,751/- to be paid on account of electricity, rent and water of Chakan Factory premises and staff salaries, the Adjudicating Authority has rightly directed the said amount to be contributed since the said amount was paid from the assets of the Corporate Debtor whereas the liability was not on the Corporate Debtor for payment of aforesaid amount. We, thus also affirm the decision taken by the Adjudicating Authority with respect to amount of Rs.1,22,75,751/-.

43. We have already noticed that in so far as the relief (a), which was prayed for in the application for taking possession and control of the assets, the Delhi High Court has already passed an order, as noted above, and the property covered by Leave and License Agreement dated 30.06.2021 has already been handed over to the Corporate Debtor/ Liquidator. We although have come to the conclusion that the Adjudicating Authority could not have exercised power under Section 49 cancelling the Agreement dated 30.06.2021 and 03.08.2021, however, we have held that both the Agreements were in violation of the statutory restraint under Section 13(13) of the SARFAESI Act and both the agreements were liable to be ignored

being non-est, having been in violation to the above statutory provision. We are not persuaded to interfere with the direction whereby both the agreements were cancelled.

44. In view of the foregoing discussion, we do not find any error in the order of the Adjudicating Authority allowing I.A. No.908 of 2023. There is no merit in the Appeals. Both the Appeals are dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

19th December, 2025

Archana