



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH**

IA(IBC)/219/KOB/2024

IN

CP(IB)/28/KOB/2023

(Under Section 66 of the IBC, 2016)

In the matter of:

M/s. Greenlace Builders and Developers Private Limited

Memo of Parties:

Mr. Sreenivasan P R,
IBBI Registration Number: IBBI/IPA-001/IP-P-02174/2021-2022/13722#9A,
Jawahar Nagar, Kadavanthra, Kochi – 682 020.

... Applicant.

-Versus-

1. Mr. Kakkanatil Siraj Mather Abdul Rahiman
Suspended Director of Greenlace Builders and Developers Private Limited,
The Promensde, Mather Projects Pavor Road,
Padivattom, Edappally P O., Cochin,
Kerala- 682 034. Email: sirajmather@gmail.com.
2. Mr. Kakanatil Raffi Mather Ibrahimkutty Muhammed,
Suspended director of Greenlace Builders and Developers Private Limited, A Ivory Height
Panampilly Nagar, Ernakulam, Kerala – 682034.
Email: rafimather123@gmail.com
3. M/s. Asten Realtors Private Limited
No. 33/2440 F, Compass Chakkaraparambu,
NH 47 Bye Pass, Thammanam P O., Kochi
Ernakulam – 682 032.



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

IA(IBC) /219/KOB/2024
IN
CP(IB)/28/KOB/2023

In re: M/s. Greenlace Builders and Developers Private Limited.

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4. Mr. Sajin
S/o Chepputhara Sukumaran
Thathappilli Room, Kottuvalli Village,
Paravoor-683520
5. Mr. Shibu T S
Thaithara House, Puthukkadu,
Karumalloor Village, Paravoor Taluk
Ernakulam-683511.
6. Mr. Vikas P. A.
S/o Ayyappan P.S.
Pattathil House, Parambil Road,
Thazhekkadu Village,
Chalakkudi Taluk, Thrissur-680697
7. Mr. Kailas R. Kartha
33/1785, Ambadi House,
Puthiya Road, Edappally North Taluk,
Vennalla, Edappally-682018
- ...

... Respondents.

Order delivered on: 30.07.2025

Coram:

HON'BLE MEMBER (JUDICIAL) : SHRI. VINAY GOEL

HON'BLE MEMBER (TECHNICAL) : SMT. MADHU SINHA

Appearances:

For the Applicant : Mr. Akhil Suresh, Advocate

For the Respondent Nos. 1 to 2 : Mr. Rohan Kumar, Advocate



For the Respondent Nos. 3 : Mr. Vinod P V, Advocate
For the Respondents No. 4 & 5 : Mr. Sankar P Panicker, Advocate
For the Respondents No. 6 & 7 : Mr. Zibi Jose, PCS

ORDER

Per: Coram

1. The present application has been filed under Section 66 of the IBC, 2016, by the Applicant, who is the Resolution Professional of the Corporate Debtor M/s. Greenlace Builders and Developers Private Limited is seeking appropriate orders against the Respondents.

The Brief facts of the case are as follows: -

2. That M/s. Piramal Trusteeship Services Private Limited initiated insolvency proceedings under Section 7 of IBC, 2016, read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, against M/s. Greenlace Builders and Developers Private Limited before this Tribunal. There was no dispute about debt and default, and after considering rival contentions, this Tribunal admitted the application, appointed the applicant as Resolution professional. as the Resolution Professional for the Corporate Debtor.
3. In pursuance of the order passed by this Tribunal, the applicant had published Form A public announcement on 19.02.2024 in two newspapers, inviting claims from Financial Creditors and other various stakeholders of the Corporate Debtor.



4. In pursuance of the said public notice, M/s. Asten Realtors Pvt Ltd (under CIRP), through its Resolution Professional, alleging itself as the Financial Creditor of Corporate Debtor, M/s. Greenlace Builders and Developers Private Limited, being a subsidiary company of the Corporate Debtor, with 98.6% shareholding under the control and management of Respondents No.1 and 2, filed one claim on Form C for an amount of Rs.5,88,08,710/-. As per the claim form, the said claim amount was secured by 81.92 acres of land in pursuance of an Inter-Corporate Deposit (ICD) agreement dated 01.08.2016 between the Corporate Debtor and the Respondent No. 3, coupled with a promissory note for Rs. 5 Crores carrying 12% interest. The applicant has annexed a copy of the Form C filed by Respondent No. 3 dated 28.02.2024 as Annexure A1 with the IA.

5. As per the Inter-Corporate Deposit (ICD) agreement executed between the Corporate Debtor and Respondent No.3, it reflects the following vital aspects:

- a. The Corporate Debtor has requested the 3rd Respondent to provide an Inter Corporate Deposit of Rs. 5 Crores in one or more tranches.*
- b. The outstanding in the ICD shall not exceed the said amount at any time during the continuation of this agreement.*
- c. The ICD is repayable unconditionally on demand or at the expiry of 36 months from the date of the agreement, whichever is earlier.*
- d. The ICD may be available for a period of 36 months only and the corporate debtor shall repay the facility before the expiry of the said period.*
- e. The ICD shall carry an interest at 12% p.a. on daily balances, the parties to this agreement acknowledge their awareness and knowledge of rate of interest and of the fact that the same will fluctuate throughout the tenure of the ICD.*
- f. The corporate debtor agrees and accept that the rate of interest as may, from time to time be declared by the 3rd respondent be binding on them.*
- g. The interest rate as agreed upon shall be paid before the 5th of every month.*
- h. If the corporate debtor does not comply with the interest rate as informed by the 3rd respondent, the CD shall be liable to return the due amounts immediately.*
- i. As consideration to the ICD facility, the securities mentioned in the schedule attached to the agreement were delivered to the 3rd respondent as an exclusive charge to Asten under the ICD account.*

j. It is agreed that the 3rd respondent would have a lien and right of set-off on all moneys belonging to the corporate debtor and/or the Guarantor standing to their credit in any account whatsoever with 3rd respondent. If upon demand by 3rd respondent, the balance outstanding in the ICD account is not repaid within the prescribed time, such credit balance in any account may be adjusted towards the dues under the ICD account. In case of any deficit, the deficit amount may be recovered by the 3rd respondent from the Corporate Debtor and/or the Guarantor.

k. If at any time, the value of the said securities falls so as to create a deficiency in covering the liability, the Corporate Debtor shall within seven days of the notice from 3rd respondent, deposit with the 3rd respondent additional security in the form of cash or such other securities which may be acceptable to 3rd respondent, failing which 3rd respondent at its discretion sell dispose off or realize any or all of the said securities without being liable for any loss or damage or diminution in value sustained thereby.

l. In case of expiry of the term or in case of any of the events happening as stated hereinbefore, the 3rd respondent would have the full rights to realize the said securities and apply the net proceeds towards the satisfaction of the balance outstanding in the ICD account including charges, expenses etc.

m. Any default in payment of dues would entail an additional interest charge of 2% per month on the entire facility, leviable from the date of the default, without prejudice to the other rights available to the 3rd respondent as per this agreement.

n. The ICD agreement has been executed between the suspended directors of the Corporate Debtor whereby the 2nd respondent had signed on behalf of the Corporate Debtor and the 1st respondent had signed on behalf of the 3rd respondent.

6. The Respondent No.3 came as a creditor on the basis of a security interest created in its favour, so the applicant admitted the submitted claim as 'secured debt' and Respondent No.3 as 'Secured Financial Creditor'. However, the applicant was shocked after knowing from the books of accounts of the Corporate Debtor that the Corporate Debtor sold the scheduled property secured in favour of Respondent No.3 to Respondents Nos. 4, 5, and 6 through three different sale deeds and annexed with the application as Annexure A-3 to A-5, detailed herein under:

a. An extent of 28.25 ares (69.7778 cents) vide sale deed No. 1545/2020 to Mr. Sajin (4th respondent) for a consideration of Rs.10,47,100/-. A True Copy of Sale deed No. 1545/2020 dated 27-08-2020 along with its English translation is produced herewith and marked as Annexure A-3.

b. An extent of 25.75 ares (63.6025 cents) vide sale deed No.3442/2019 to Mr. Shibu (5th respondent) for a consideration of Rs. 9,55,000/-. A True Copy of Sale deed No. 3442/2019 dated 26-11-2019 along with its English translation is produced herewith and marked as Annexure A-4.

c. An extent of 31.22 ares (77.1134 cents) vide sale deed No.314/2020 to Mr. Vikas P.A. (6th respondent) and Kailas R. Kartha for a consideration of Rs. 11,57,200/-. A True Copy of Sale deed No. 314/2020 dated 27-08-2020 along with its English translation is produced herewith and marked as Annexure A5.

7. The Corporate Debtor sold the property for a total sale consideration of Rs. 31,59,300/-, which, according to the applicant, was secured assets in favour of Respondent No. 3 as an exclusive charge over the scheduled property. So, the sale deeds annexed as Annexure A3 to A5 and the transfer of ownership are void and liable to be reversed.

8. The applicant submitted that the said sale is a fraudulent transaction carried out by the Suspended Directors of Corporate Debtor, with the intent to dissipate the assets and money of the Corporate Debtor, leaving barely enough assets for distribution among the creditors. The explanations given by the suspended directors in this regard are not satisfactory. As such, sought the following reliefs:

i. Direct the Respondents 1 to 2 to jointly or severally pay an amount of Rs.31,59,300/- (Rupees Thirty-One Lakhs Fifty-Nine Thousand and Three Hundred Only) or the amount equivalent to the market value of the properties sold, whichever is higher, on account of the loss incurred to the Corporate Debtor pursuant to the sale of property;

ii. Pass an order to cancel the Sale deed no. 3442 of 2019, Sale deed no. 314 of 2020, Sale deed no. 1545 of 2020 registered at Sub Registrar Office, Chengamanad and issue direction to the Sub Registrar Office, Chengamanad to cancel the sale deed from the books of the registry and declare the sale as fraudulent.



iii. Pass an order directing the respondent 4 to 7 to execute and register sale deed for transferring the schedule property in favor of the Corporate Debtor.

iv. Pass an order directing respondents No. 1, 2, 4, 5, 6 and 7 to pay the cost of stamp duty, registration charge and all expenses towards execution and registration of the above land in favor of the Corporate Debtor.

V. Such other order or orders as this Hon'ble Tribunal may deem fit and proper.

9. Upon notice, Respondents No. 1 to 7 appeared before this Tribunal and filed their counters individually.

The Reply dated 11.09.2024 filed by Respondents No. 1 and 2:

10. Respondent Nos. 1 & 2 pleaded that the application filed is false and not maintainable in the eyes of law, and the transaction does not come within the ambit of Section 66 of IBC, 2016. The Application itself is barred in law by operation of Section 14 of IBC, 2016, as applicable to Respondent No. 3, which is also under CIRP.
11. Respondent Nos. 1 & 2 pointed out that during the pendency of CIRP against Respondent No. 3 no proceedings, or a suit could be instituted against the Corporate Debtor as the application was filed on 17.05.2024, whereas the moratorium came into force from 25.01.2023, the day the application to initiate CIRP was admitted against Respondent No.3. No charge or security interest was created in favour of any financial Creditor including Respondent No. 3 as gathered from the records of the Registrar of Companies.



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12. Respondent Nos. 1 & 2 are of the view that the Corporate Debtor sold the property, comprising 81.92 Ares of land, to Respondent Nos 4 to 7 in its ordinary course of business, and the Resolution Professional has erred in identifying the sale transactions as out of the ordinary course of business. From the records of the Registrar of Companies, pertaining to the Corporate Debtor, there is no form CHG-1 filed and registered for securing debt. There is no evidence that any security interest was created in favour of Respondent No. 3, and as per Section 77(3), no charge created shall be taken into account even under the provisions of IBC,2016. Unless it is duly registered with the Registrar of Companies on Form CHG-1, and a certificate is issued in Form CHG-2. The applicant, without verifying the correctness of seeking additional documents, wrongly entertained the claim of Respondent No.3. The Resolution Professional has failed to form an opinion and determination as applied under Regulation 35A of the correctness and, if any, the same is false, misleading, and misconceived.
13. Respondent Nos. 1 & 2 also pointed out that the Resolution Professional has failed to specify whether the Resolution Professional has filed this application under 66(1) or 66 (2) of IBC, 2016, and as the applicant has failed to make such distinguishment, the instant application merits dismissal. According to R1 & R2, the Respondent Nos. 4, 5,6 & 7 are bona fide purchasers of the land for consideration, purchased in the ordinary course of business of the Corporate Debtor; as such, no relief can be granted against them and this adjudicating authority lacks jurisdiction to grant any such relief.



The Reply dated 19.09.2024 filed by Respondents No. 3:

14. Respondent No. 3 in his reply submitted that Respondent No.3, *Asten Realtors Pvt. Ltd.*, is currently undergoing Corporate Insolvency Resolution Process (CIRP) as per the order dated 25.01.2023 passed by this Tribunal in CP(IBC)/54/KOB/2022. Respondent No.3 is represented through its Resolution Professional and supports the contentions of the Applicant in the present application.
15. The parent company of Respondent No.3 is *Greenlace Developers and Builders Pvt. Ltd.*, Corporate Debtor. On 01.08.2016, Respondent No.3 advanced an Inter-Corporate Deposit (ICD) of Rs.5 Crores to the Corporate Debtor under an agreement stipulating 12% annual interest and an additional 2% in case of default. To secure this loan, the Corporate Debtor created an exclusive charge over 81.92 Ares of its land in favour of Respondent No.3.
16. Respondent No. 3 also submitted that despite the security interest, Respondents No.1 and 2 fraudulently sold the secured land to Respondents No.4 to 7 through Sale Deeds No. 3442/2019, 314/2020, and 1545/2020 for a meagre sum of Rs.31,59,300/-. These transactions were carried out without settling the dues of Respondent No.3, adversely impacting its creditors during its ongoing CIRP.
17. Respondent No.3 has filed and the RP had admitted a claim of Rs.5,88,08,710/- under the said ICD in its CIRP. It is further submitted that Respondent No.3 is engaged in real estate projects and has outstanding



obligations towards home buyers and financial creditors. While project-wise resolution plans have been approved and liquidation is in progress for remaining assets, the improper sale of secured land has impaired the ability of the Corporate Debtor to repay its creditors.

18. The Respondent No. 3 conceded with the prayers of the RP to declare the sale transactions carried out by the Corporate Debtor through Sale Deed Nos. 3442 of 2019, 314 of 2020, and 1545 of 2020 as fraudulent. It is further prayed that this Tribunal may give directions for the removal of these fraudulent registrations from the Registry and vest the concerned properties back as assets of the Corporate Debtor, thereby allowing Respondent No. 3 to exercise rights over them.

The Reply dated 24.07.2024 filed by Respondents No. 4:

19. Respondent 4 submitted that the application filed against them is not legally maintainable under Section 66 of the Insolvency and Bankruptcy Code, 2016 (IBC), either on facts or in law.
20. It is submitted that Respondent No. 4 is a Non-Resident Indian (NRI) and a bona fide purchaser who acted in good faith throughout the transaction, which was concluded by payment of the sale consideration to the company's bank account. There has been no unlawful enrichment or violation of any laws.



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21. It is submitted that Respondent 4 holds a possession certificate issued by the Government of Kerala and has paid the applicable land tax. Therefore, the transaction is valid and cannot be revoked.
22. With regard to the relief sought by the applicant for a direction to execute and register a sale deed in the name of the Corporate Debtor, Respondent No. 4 pointed out that this Tribunal under Section 66 does not have jurisdiction to grant such relief. According to Respondent No. 4, this ground alone, the application is liable to be dismissed at the threshold, and Respondent No. 4 should be removed from the array of parties.
23. It is submitted by Respondent No. 4 that the transaction in question is an “arm’s length transaction” between unrelated and independent parties, conducted without any collusion or affiliation. Respondent No. 4 is not a “related party” to the Corporate Director or its directors as defined under the IBC, 2016 and hence inclusion of Respondent No. 4 in the proceedings is misconceived and a misapplication of law.

The Reply dated 24.07.2024 filed by Respondents No. 5:

24. Respondent No. 5 submitted that he is a bona fide purchaser and acquired the property of Corporate Debtor in good faith, following all applicable laws. Respondent No. 5, a farmer engaged in Pokkali rice farming, relied on constructive notice from fundamental company documents (Memorandum and Articles of Association) showing that Corporate Debtor was involved in real estate development. Therefore, the land sale



was within the Corporate Debtor's ordinary course of business. Respondent No. 5 was also provided with a Board resolution dated 20/08/2019 authorizing Respondent No.2 to sell company assets. Accordingly, the sale deed no. 3442/2019 dated 26/11/2019, for Rs 9,55,000/-, was executed, confirming completion of the transaction.

25. Respondent No. 5 submitted that the prayer of the applicant to cancel sale deeds 3442 of 2019, 314 of 2020, and 1545 of 2020, and direct the transfer of the property back to the Corporate Debtor, lacks jurisdiction under Section 66 of the Code, which does not empower it to grant specific performance—an authority vested in civil courts of the relevant area. Respondent No.5 holds a possession certificate issued by the Government of Kerala and has paid land taxes.
26. Respondent No. 5 asserts that he is neither a shareholder, director, nor related party of CD. The transaction was an 'arm's length' deal between unrelated parties, conducted independently and in self-interest, complying with all relevant laws. Granting the Applicant's request based on a misinterpretation of Section 66 of the IBC would cause grave injustice and prejudice to Respondent No. 5.

The Reply dated 24.06.2024 filed by Respondents No. 6 and 7:

27. Respondent Nos. 6 & 7 submitted that they have been unnecessarily dragged into this case and made parties without sufficient cause.
28. The Respondents No.6 and 7 had jointly purchased an immovable property comprising 31.22 Ares situated in Sy. No. 363/1/1/7/3 and Sy.



No. 363/1/2/4/2 of Karumalloor Village, Paravoor Taluk, Ernakulam District, through Sale Deed No. 314/1/2020, executed on 16.01.2020. The total consideration of Rs.11,57,200/- was paid directly into the bank account of the Corporate Debtor, through proper banking channels.

29. Respondent No. 6 & 7 submitted that the reliefs sought by the Applicant are factually misleading and appear to be aimed at unjust enrichment. Reliefs Nos. 1 and 2, if granted, would result in duplication of the sale consideration already paid, thereby causing undue gain to the Applicant. This is in addition to the full consideration already paid to the Corporate Debtor.
30. Respondent Nos. 6 & 7 denied the allegations of fraudulent transactions by the suspended directors . According to them, the Applicant has failed to produce any material evidence or substantiation to support such claims. Similarly, the allegation of undervaluation is also baseless and unsupported by any documentary proof.
31. At the time of purchase, the Respondents Nos. 6 & 7 exercised due diligence by verifying the original title deeds available at the registered office of the Corporate Debtor, held by Respondents Nos. 1 and 2. Furthermore, the Respondents verified the master data of the Corporate Debtor on the official website, and confirmed that there were no charges created or any lien marked on the subject property. The respondent sold the property and executed the sale deed on June 1, 2024, and handed over possession to the new purchasers on the same day.



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32. The Respondents also state that they have no knowledge of the alleged documentation referred to as the "ICD agreement" produced by the Applicant as Annexure A2 in the IA.

Common Rejoinder filed by the Applicant: -

33. The applicant denies the contents of the counter affidavit filed by the respondents. With regard to the maintainability of the application under Section 66 of the I&B Code, 2016, the applicant submits that the application is maintainable and that the respondents' contentions are devoid of any legal merit. The applicant alleges that respondents 1 and 2, who were in charge of the corporate debtor engaged in fraudulent conduct by granting an inter-corporate deposit secured by 81.92 Ares of land and subsequently selling the properties with an underlying charge, thereby attracting the provisions of Section 66.
34. The applicant also responds to the respondents' contentions, arguing that non-registration of the charge under Sections 77 and 78 of the Companies Act, 2013, does not nullify the security interest or alter the status of the creditor. The applicant asserts that respondents 1 and 2, being fiduciaries and in management of the corporate debtor, were fully aware of the charge and its implications, and cannot plead ignorance or confer a better title upon third parties.
35. The applicant relies on the principles of "nemo dat quod non habet" (no one can confer a better title than they themselves possess) and "commodum ex injuria sua nemo habere debet" (no one should benefit



from their own wrong). The applicant seeks to hold respondents 1 and 2 liable under Section 66(1) and/or Section 66(2) of the I&B Code for fraudulent and wrongful trading, and prays that the application be allowed in the interest of justice.

FINDINGS:

36. Heard both sides and also gone through the records. This is an application filed by the Resolution Professional of the Corporate Debtor M/s. Greenlace Builders and Developers Private Limited, under Section 66 of the IBC, 2016, for appropriate orders against the respondents.
37. First of all, we deem it appropriate to appreciate the provisions of Section 66 of IBC which is reproduced as under: -

"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.

(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."

38. Section 66 of the Insolvency and Bankruptcy Code, 2016, it entails that two distinct types of transactions: (i) 'Fraudulent Trading' under Section 66(1), and (ii) 'Wrongful Trading' under Section 66(2). Section 66(1) specifically addresses situations where any person knowingly participates in carrying on the business of the Corporate Debtor with the intent to defraud creditors. For a transaction to fall within the ambit of Section 66(1), the following essential conditions must be satisfied:

- (a) Liability can be fixed upon any person' including but not limited to the Directors;
- (b) Such business of the Corporate Debtor undergoing insolvency has been carried on with a dishonest intention to defraud the creditors or for any other fraudulent purpose; and



- (c) The said persons have participated in the carrying on of business of the Corporate Debtor knowingly i.e., with the knowledge that the transactions they were participating in were intended to defraud the creditors of the company or were in some other way fraudulent.

All the above ingredients are required to be fulfilled so as to make a transaction fall under Section 66(1) of the IBC.

39. As far as Section 66(2) is concerned, following ingredients must be satisfied before invoking the charge of 'wrongful trading':-

- a) The act in question has taken place before the insolvency commencement date.
- b) The directors of the Corporate debtor knew or ought to have known that there was no reasonable prospect of avoiding the commencement of CIRP.
- c) The directors did not exercise the due diligence in minimising the potential loss to the creditors of the Corporate Debtor.
- d) A director of the Corporate Debtor 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 in relation to the Corporate Debtor.

40. It emerges that the definition of 'Wrongful Trading' under Section 66(2) of the Insolvency and Bankruptcy Code, 2016, lacks clarity regarding the specific acts by a director that would constitute such trading. Notably, the concept of 'Wrongful Trading' has been borrowed from the UK Insolvency Act, 1986. Given the nascent stage of this provision in India, guidance can



be drawn from English court judgments, which have established that the following acts may amount to 'Wrongful Trading':

- i. Repaying the director loan made to the company while other creditors were not paid;
- ii. Repayment of a loan to a family member;
- iii. A director paying his own salary while the salary for the employees was not paid;
- iv. Buying goods on credit when there is no means to pay for them;
- v. Using customer deposits for cash-flow purposes with no means of supplying goods;
- vi. Repaying bank personal guarantees over other creditors;
- vii. Not keeping proper accounting records;
- viii. Falsification of company records; and
- ix. Any transfer or sale of assets at anything less than a fair and reasonable commercial value.**

41. We now examine whether the Application filed by the Resolution Professional presents a prima facie case of fraudulent or wrongful trading against the Respondents. Upon reviewing the primary facts, it is observed that Respondent No. 3 has submitted an Inter-Corporate Deposit (ICD) agreement dated 01.08.2016, wherein a loan of Rs. 5 crore was extended to the Corporate Debtor. Although the agreement references a property as security for loan repayment, there are no separate registered documents creating a security interest in favor of Respondent No. 3. A mere reference to the property in the schedule is insufficient to establish a valid and legal charge or security interest.



42. Furthermore, there is no evidence of an equitable mortgage through the deposit of title deeds. At best, the reference to the land in the ICD agreement may create a negative lien, which, as per settled law, does not constitute a charge. We concur with the Respondents' contention that no valid security interest existed in favor of Respondent No. 3, as claimed by the Applicant based on the ICD agreement. Additionally, the Applicant has failed to provide the collateral price index of the properties in the concerned area to determine their market value. Whereas, in the sale deeds executed by the Corporate Debtor through its directors, there is a reference to fair value and addition of stamp duty. As per fair value, the difference between the fair value and actual price is negligible and would not push this transaction within the ambit of a fraudulent and undervalued transaction. Though fraudulent and undervalued transactions come under different provisions of IBC and this application has been primarily filed under Section 66 of IBC, the applicant has failed to prove any valid security interest in favor of respondent No. 3. At this juncture, we can rely upon the judgment of the ***Hon'ble High Court of Kerala in the matter of Narayanikutty vs. Kallyanikutty***, wherein the Hon'ble Court held that an unregistered document cannot be relied upon to prove possession or create interest in immovable property. The Hon'ble Court further noted that the agreement only grants a license, giving permission to use the property as security for debt repayment, without conferring any interest or easement in the property, as per the Indian Easement Act, 1882, Section 52. The relevant portion of the judgment is reproduced here as under: -

"11. However, the term 'licence' is defined under section 52 of the Indian Easements Act, 1882 as follows:-

"52. "License" defined.-Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license."

12. The question before this Court is as to whether the agreement creates any interest in this property. The answer is an emphatic "no". On the face of it, it is only a permission and does not create any interest in the property. There is no question of any easement being created. Ext.A1 merely gives a right by the defendant to use the property as a security for payment of debt. The right does not either confer an easement or any interest in the immovable property. Further, Ext.A1 is not a registered deed in accordance with the Registration Act. Assuming for the sake of argument, Ext.A1 is a licence deed as contended by the learned counsel for the appellant, still the defendant granted licence to the plaintiff without creating any interest in the immovable property. It cannot, therefore, be said that the licence is coupled with a transfer of property or that any such transfer is in force within the meaning of Section 60(a) so as to make the licence irrevocable."

43. As per the provisions of the Transfer of Property Act, 1882, a security interest exceeding Rs. 100 requires compulsory registration. However, the applicant has failed to produce any documents showing that the charge in favor of Respondent No. 3 has been duly registered with the Registrar of Companies (RoC) in accordance with the law. Furthermore, there is no evidence that the alleged charge has been registered with the central registry. In the absence of such requisite legal compliances, it would not be appropriate to consider the existence of any charge on the land in favor of



Respondent No. 3. It was the duty of the Resolution Professional (RP) to first verify the existence of a valid and legally enforceable charge and then evaluate the sale price of the alleged properties as per the market or collateral price index value. However, the application is silent on these aspects.

44. The alleged sale deeds were executed on 26.11.2019, and 27.08.2020, whereas this Tribunal initiated the Corporate Insolvency Resolution Process (CIRP) on 19.02.2024. Although the transactions are prior to the CIRP initiation date, falling outside the look-back period of two years preceding the initiation of CIRP would generally exempt them from scrutiny, but if the transactions are found to be fraudulent, they can still be examined under relevant provisions. To bring the transaction within the purview of Section 66 of the Insolvency and Bankruptcy Code, the applicant must convince this adjudicating authority with documentary evidence to prove the nature of the transaction and the ill intention behind it. In this case, the applicant has miserably failed to produce any such evidence, and we are not convinced by the contentions made in the application.
45. Though this is an application filed by the RP under Section 66 of the IBC, 2016, it is astonishing that RP in a mechanical and casual manner categorised the R3 under the heading of 'Secured Financial Creditor'. Whereas, there was no such legally valid and enforceable security interest ever adjusted in favour of R3. It is expected that RP would do the needful to remove such inconsistencies in accordance with the law.



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46. We find force in the contentions made by R4 to R7 that they had purchased the property for valuable consideration in good faith and are bona fide purchasers who purchased the property under the ordinary course of business, once the property has been sold at a price that is compatible and in synchronisation with the fair price fixed by the Government.
47. As a result, IA (IBC)/219/KOB/2024 is, therefore, **dismissed** and disposed of accordingly.
48. RP is directed to reclassify the claim of R3 as 'unsecured Financial Debt' and make consequent changes in their rights as CoC members in terms of IBC provisions in this regard.
49. The Registry is directed to send e-mail copies of the order forthwith to all the parties, inclusive of the Counsel.
50. Urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.
51. File be consigned to records.

SD/-
MADHU SINHA
(MEMBER TECHNICAL)

SD/-
VINAY GOEL
(MEMBER JUDICIAL)

Signed on this the 30th day of July 2025

Steno_1&4