

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT NO.-I)
KOLKATA**

**I.A (IB) No. 180/KB/2026
In
C.P (IB) No. 359/KB/2024**

***An Application under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016 read with Rule 11 of the National
Company Law Tribunal Rules, 2016.***

IN THE MATTER OF:

Indian Bank

.....Financial Creditor

Versus

M/s United Royalfab Engineering Private Limited

.....Corporate Debtor

And

IN THE MATTER OF:

**Niraj Agarwal, Resolution Professional of United Royalfab
Engineering Private Limited**

.....Applicant

Versus

1. Debasis Roy, Partner of M/s Royal Engineering Company

2. Kabita Khan Roy, Partner of M/s Royal Engineering Company

.....Respondents

3. Indian Bank

.....Performa Respondent

Date of Pronouncement: 12.06.2026

Coram:

Smt. Bidisha Banerjee (Judicial)

Cmde. Siddharth Mishra, Member (Technical)

Appearances (via Physical / Hybrid Mode):

For the RP:

Mr. Shaunak Mitra, Adv.

Mr. Riyanshu Agarwal, Adv.

Mr. Niraj Agarwal, RP.

For the Respondents:

Mr. Rishav Banerjee, Adv.

Mr. Supriyo Gole, Adv.

For the Respondent No. 3:

Mr. Santosh Kr. Ray, Adv.

Ms. Ashmita Lohia, Adv.

Ms. Varsha Khowala, Adv.

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The present Interlocutory Application has been filed by Niraj Agarwal, the Resolution Professional (“RP”) of United Royalfab Engineering Private Limited under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “IBC”) read with Rule 11 of the National Company Law Tribunal Rules, 2016 (herein refer to as “NCLT Rules”) *inter alia* seeking following reliefs:

- a) *Pass an order permitting and authorising the Resolution Professional to prepare, finalise and issue the Information Memorandum and the Request for Resolution Plan, incorporating the said land (with appropriate disclosures) over which the sole Financial Creditor holds a security interest;*
- b) *Pass an order permitting and authorising the Resolution Professional to conduct the Corporate Insolvency Resolution Process of the Corporate Debtor in a manner that enables*

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Prospective Resolution Applicants to formulate and submit Resolution Plan by taking into consideration all assets of the Corporate Debtor, and also the said land over which the sole Financial Creditor holds a security interest;

- c) Pass an order permitting the Committee of Creditor to invite, consider and evaluate Resolution Plan which may provide for the treatment, release, substitution or enforcement of the security interest of the sole Financial Creditor over the said land;*
- d) Grant ad-interim reliefs in terms of prayers (a), (b) and (c) hereinabove, pending final disposal of the present Application;*
- e) Pass such further and/or other(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case, in the interest of justice, value maximisation and effective resolution of the Corporate Debtor.*

2. Factual Matrix

- 2.1 The Corporate Debtor had availed various credit facilities from Allahabad Bank, which subsequently amalgamated with Indian Bank with effect from 01.04.2020. Consequent upon such amalgamation, all rights, title, interests and securities held by Allahabad Bank in respect of the facilities granted to the Corporate Debtor stood vested in Indian Bank by operation of law.
- 2.2 The credit facilities initially sanctioned to the Corporate Debtor vide Sanction Letter dated 11.04.2016 were renewed and enhanced from time to time, including vide Sanction Letters dated 18.08.2017, 26.09.2018 and 20.05.2020. To secure the said facilities, the Corporate Debtor created security interests in favour of the Bank over its movable and immovable assets. The security package, inter alia, included an equitable mortgage over land ad-measuring

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118 decimals situated at Dakshin Raipur and owned by Royal Engineering Company, together with the plant and machinery situated thereon, as well as the guarantee furnished by Royal Engineering Company. The aforesaid securities were duly acknowledged and reaffirmed under the subsequent sanction letters. The copies of the above Sanction letter are marked as Annexure- B and C.

- 2.3 The security interests created in favour of the Bank were duly perfected and recorded through the filing of requisite charge creation forms with the Registrar of Companies, which were modified and continued from time to time in accordance with the revised credit facilities. The said securities continued to remain valid, subsisting and enforceable for securing the outstanding dues of the Corporate Debtor. Copies of CHG-1 filings and charge document executed in favor of the Bank are marked as Annexure- D.
- 2.4 Upon default committed by the Corporate Debtor in repayment of its liabilities, the Bank initiated proceedings under the SARFAESI Act, 2002 and issued a demand notice dated 07.08.2021 under Section 13(2) thereof. Consequent upon the failure of the Corporate Debtor and its guarantors to discharge the outstanding dues, the Bank took measures under Section 13(4) of the SARFAESI Act and issued a possession notice dated 07.12.2021, taking possession of the mortgaged land along with the plant, machinery and equipment constituting the secured assets. A copy of demand notice is marked as Annexure- E.
- 2.5 Thereafter, Corporate Insolvency Resolution Process against the Corporate Debtor was initiated pursuant to the order dated 03.12.2025 passed by this Adjudicating Authority in C.P. (IB) No. 359/KB/2024 on an application filed by Indian

Bank under Section 7 of the Insolvency and Bankruptcy Code, 2016, whereby the Applicant was appointed as the Interim Resolution Professional and was subsequently confirmed as the Resolution Professional of the Corporate Debtor.

3. Submission of the Resolution Professional

- 3.1 Ld. Counsel for the Applicant submits that pursuant to the commencement of the Corporate Insolvency Resolution Process, a public announcement was duly made inviting claims from all stakeholders. Upon verification of the claims received, it was found that Indian Bank is the sole Financial Creditor of the Corporate Debtor and accordingly the Committee of Creditors was constituted with Indian Bank holding 100% voting share.
- 3.2 It is submitted that during the course of the CoC meetings, the Financial Creditor informed the Resolution Professional that the principal plant and machinery of the Corporate Debtor are situated on a parcel of land owned by Royal Engineering Company, a partnership firm in which the suspended directors of the Corporate Debtor are partners. The said land has been mortgaged in favour of Indian Bank as collateral security and proceedings under the SARFAESI Act, 2002 have already been initiated in respect thereof.
- 3.3 Ld. Counsel further submits that although the audited financial statements of the Corporate Debtor reflect an entry under the head 'Land', the Corporate Debtor does not own any freehold or leasehold land in its name and the amount reflected therein pertains only to land development and allied expenditure incurred on the said property.
- 3.4 It is submitted that the Corporate Debtor neither possesses any registered title nor any proprietary interest in the said land. However, the principal plant and machinery and other

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operational assets of the Corporate Debtor are located thereon and are functionally integrated with the said land. It is therefore contended that any attempt to separate the assets of the Corporate Debtor from the underlying land would render the business operations commercially unviable and would substantially impair the prospects of a successful resolution.

- 3.5 It is further submitted that the Committee of Creditors, after considering the factual and commercial realities of the matter, was of the view that a meaningful and value-maximising resolution of the Corporate Debtor could be achieved only if prospective resolution applicants were afforded an opportunity to formulate resolution plans by taking into account the assets of the Corporate Debtor together with the aforesaid land, subject to complete disclosure regarding the ownership and legal status of the land. Accordingly, in the 2nd meeting of the Committee of Creditors, the sole Financial Creditor, in exercise of its commercial wisdom, authorised the Resolution Professional to conduct the CIRP in a manner that would permit submission of feasible and viable resolution plans considering the said land along with the assets of the Corporate Debtor.
- 3.6 Ld. Counsel lastly submits that the present application has therefore been filed seeking appropriate directions and clarifications from this Adjudicating Authority at the present stage of the CIRP, before finalisation of the Information Memorandum and issuance of the Request for Resolution Plans, so as to ensure transparency, value maximisation and an effective resolution of the Corporate Debtor in furtherance of the objectives of the Code.

4. Submission on behalf of the Respondent

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- 4.1 Ld. Counsel appearing for the Respondents submits that the present application proceeds on an admitted factual premise that the land sought to be brought within the ambit of the CIRP does not belong to the Corporate Debtor but is owned by M/s Royal Engineering Company, a partnership firm. It is submitted that the credit facilities extended by Allahabad Bank (now Indian Bank) to the Corporate Debtor were secured, inter alia, by mortgage of the said land owned by the partnership firm and the Bank was fully aware of such ownership position from the inception of the lending relationship. In this regard, reliance is placed upon the various sanction letters issued by the Bank, which specifically record that the mortgaged property belongs to M/s Royal Engineering Company and was furnished as collateral security for the facilities availed by the Corporate Debtor. It is further submitted that the title of the partnership firm over the said land is evidenced by the registered Sale Deed dated 06.08.2010 and the ownership thereof has never been disputed by any of the parties.
- 4.2 Ld. Counsel further submits that although the audited financial statements of the Corporate Debtor may reflect an entry under the head "Land", the same merely represents expenditure incurred towards development of the land and allied infrastructure and does not confer any ownership, leasehold, possessory or proprietary rights upon the Corporate Debtor. It is contended that the Corporate Debtor does not possess any registered conveyance, lease deed or other document evidencing title in respect of the said land. At best, the Corporate Debtor was permitted to use the premises under an unregistered tenancy arrangement executed between the partnership firm and the Corporate

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Debtor. Mere occupation or use of the property for carrying on business activities cannot convert a third-party asset into an asset of the Corporate Debtor.

- 4.3 Ld. Counsel also submits that upon default committed by the Corporate Debtor, Indian Bank invoked its security interest under the SARFAESI Act, 2002 and initiated measures against the mortgaged property belonging to the partnership firm. Possession notices and sale notices were issued in accordance with law and the SARFAESI proceedings are presently under challenge before the Debt Recovery Tribunal. It is therefore contended that the Bank cannot, after having invoked its rights as a secured creditor over a third-party asset, seek to bring the same within the CIRP of the Corporate Debtor under the guise of value maximisation.
- 4.4 It is further submitted that the powers and duties of the Interim Resolution Professional and the Resolution Professional under the Insolvency and Bankruptcy Code, 2016 are confined to assets over which the Corporate Debtor has ownership rights. Reliance is placed upon Section 18 of the Code to contend that assets owned by third parties are specifically excluded from the control and custody of the Resolution Professional. Similarly, Regulation 36 of the CIRP Regulations contemplates inclusion only of the assets of the Corporate Debtor in the Information Memorandum. Therefore, an asset admittedly owned by M/s Royal Engineering Company, which is neither a Corporate Debtor nor undergoing CIRP, cannot legally form part of the Information Memorandum or the resolution process of the Corporate Debtor.
- 4.5 Ld. Counsel contends that the decision of the Committee of Creditors to permit prospective resolution applicants to

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formulate plans by taking into account the said land is contrary to the provisions of the Code and cannot be justified on the basis of commercial wisdom. It is submitted that the doctrine of commercial wisdom does not empower the CoC to disregard statutory provisions or appropriate assets belonging to a separate legal entity. The Corporate Debtor and M/s Royal Engineering Company are distinct legal entities and the assets of the latter cannot be pooled with the assets of the Corporate Debtor merely because the promoters or management are common. According to the Respondents, neither the alleged relinquishment of security interest by Indian Bank nor the resolutions passed in the meetings of the Committee of Creditors can have the legal effect of bringing a third-party asset within the CIRP estate of the Corporate Debtor. Accordingly, the Respondents pray for dismissal of the present application as being contrary to the provisions of the Insolvency and Bankruptcy Code, 2016 and the regulations framed thereunder.

5. Reply Affidavit on behalf of the Respondent No. 3

5.1 Ld. Counsel appearing for the Proforma Respondent/Indian Bank submits that the present application has been filed by the Resolution Professional under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 seeking appropriate directions in relation to the conduct of the CIRP and the consideration of the land owned by M/s Royal Engineering Company along with the assets of the Corporate Debtor for the purposes of value maximisation. It is submitted that Indian Bank is the sole Financial Creditor of the Corporate Debtor and constitutes the Committee of Creditors with 100% voting share. The Proforma Respondent supports the present application and the reliefs sought therein.

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- 5.2 Ld. Counsel further submits that during the 1st meeting of the Committee of Creditors held on 29.12.2025, it was noted that the principal plant and machinery of the Corporate Debtor are situated on land owned by M/s Royal Engineering Company, which stands mortgaged in favour of Indian Bank as collateral security for the financial facilities availed by the Corporate Debtor. It is submitted that the Bank has already exercised its rights under Section 13(4) of the SARFAESI Act, 2002 and has taken possession of the said land. Consequently, the Bank, as mortgagee, possesses enforceable rights over the secured asset, including the right to realise the security in accordance with law. It is further submitted that apart from the mortgage over the said land, the credit facilities are also secured by personal guarantees of the Directors and the guarantee furnished by M/s Royal Engineering Company.
- 5.3 Ld. Counsel submits that considering the peculiar facts of the case, the Committee of Creditors deliberated upon the issue in its 2nd meeting held on 28.01.2026 and, in exercise of its commercial wisdom, resolved to authorise the Resolution Professional to conduct the CIRP in a manner that would permit prospective resolution applicants to formulate and submit resolution plans by taking into consideration the assets of the Corporate Debtor together with the said land, with complete disclosure regarding the ownership and legal status thereof. According to the Proforma Respondent, the principal plant and machinery of the Corporate Debtor are functionally integrated with the said land and any attempt to separate the assets from the land would materially diminish the value of the Corporate Debtor and adversely affect the prospects of a successful resolution.

- 5.4 Ld. Counsel further places reliance upon Regulation 37 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and submits that a resolution plan may provide for such measures as may be necessary for insolvency resolution and value maximisation of the assets of the Corporate Debtor, including the sale of assets whether subject to security interest or otherwise. It is submitted that the decision taken by the Committee of Creditors is intended solely to facilitate value maximisation and effective resolution of the Corporate Debtor and is consistent with the objectives of the Code. Reliance is also placed upon the judgments of the Hon'ble NCLAT in *Vanguard Credit and Holdings Private Limited v. Kshitiz Chhawchharia, RP of Ramsarup Industries Limited* and *Ayan Mallick v. Pratim Bayal* in support of the contention that the present application deserves to be allowed.
- 5.5 Accordingly, Ld. Counsel submits that the Resolution Professional has rightly approached this Adjudicating Authority at the present stage of the CIRP, before finalisation of the Information Memorandum and issuance of the Request for Resolution Plans, and prays that the reliefs sought in the application be granted in the interest of justice and in furtherance of the objectives of the Insolvency and Bankruptcy Code, 2016.

6. Rejoinder on behalf of the Resolution Professional

- 6.1 Ld. Counsel for the Applicant submits that the Respondents have, in fact, admitted all material facts necessary for adjudication of the present application. It is submitted that there is no dispute that the land in question is owned by M/s Royal Engineering Company, a partnership firm in which the promoters/directors of the Corporate Debtor are partners, and that the said land has been mortgaged in

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favour of Indian Bank as collateral security for the financial facilities availed by the Corporate Debtor and that Indian Bank constitute the CoC of the Corporate Debtor with 100% voting rights. It is further submitted that the Respondents have expressly admitted the existence, validity and enforceability of the security interest created over the said land and have also admitted that the principal plant and machinery of the Corporate Debtor, constituting its core operational assets, are situated thereon. The Respondents have further acknowledged that the said security interest continues to subsist and secure the dues of the Corporate Debtor and that the Bank has already exercised its rights thereunder by taking possession of the land under the provisions of the SARFAESI Act, 2002.

- 6.2 Ld. Counsel further submits that the audited financial statements of the Corporate Debtor demonstrate that substantial expenditure exceeding ₹3.86 Crores has been incurred towards development of the said land. Such expenditure includes permanent civil and industrial infrastructure, including land filling, boundary walls, RCC foundations, industrial flooring, internal roads, drainage systems, reservoirs and other foundational works forming part of an integrated manufacturing unit. According to the Applicant, the said expenditure constitutes a substantial portion of the asset base of the Corporate Debtor and establishes that the business and revival prospects of the Corporate Debtor are inextricably linked with the said land. It is contended that the land cannot be viewed in isolation as a mere third-party asset when the operational and productive assets of the Corporate Debtor are permanently affixed thereto and function as part of a composite industrial undertaking.

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- 6.3 Ld. Counsel also submits that any attempt to separate the plant and machinery from the said land would result in substantial destruction of value and would reduce the productive assets of the Corporate Debtor to scrap value, thereby frustrating the very objective of the Corporate Insolvency Resolution Process. It is contended that no prospective resolution applicant would be in a position to formulate a feasible or viable resolution plan if the said land is excluded from consideration, as the Corporate Debtor cannot be revived as a going concern without access to the land upon which its entire manufacturing infrastructure is situated. Therefore, permitting resolution applicants to consider the said land, to the extent of the security interest held by the Financial Creditor and with complete disclosure of its ownership and legal status, is necessary for value maximisation, effective resolution and preservation of the Corporate Debtor as a going concern in furtherance of the objectives of the Insolvency and Bankruptcy Code, 2016.
- 6.4 Lastly Ld. Counsel submits that the issue sought to be raised by the Respondents is no longer *res integra* and stands settled by the judgment of Hon'ble National Company Law Appellate Tribunal in Vanguard Credit & Holdings Pvt Ltd Vs Kshitiz Chhawchharia, Resolution Professional of Ramswarup Industries Ltd.

7. Supplementary Affidavit dated 25.03.2026 on behalf of the Respondent

- 7.1 Ld. Counsel submits that the present supplementary affidavit has been filed to bring certain documents on record and further submits that the Tenancy Agreement dated 03.01.2019 stood terminated vide letter dated 02.01.2022. It is contended that, consequent upon such

termination, the Corporate Debtor ceased to have any right to occupy the premises and is presently in unauthorized occupation thereof, having failed to hand over peaceful and vacant possession of the said premises despite termination of the tenancy.

8. Supplementary Affidavit dated 31.03.2026 on behalf of the Resolution Professional

- 8.1 In response to the supplementary affidavit, Ld. Counsel for the Applicant submits that the alleged termination notice dated 02.01.2022 is stated to have been issued by Respondent No. 1 in his capacity as a partner of M/s Royal Engineering Company and is purportedly shown to have been received on behalf of the Corporate Debtor by an unidentified person on an unspecified date, at a time when the affairs and management of the Corporate Debtor were admittedly under the control of the Respondents themselves.
- 8.2 It is submitted that the said document is ex facie suspicious, appears to be backdated, and has been brought on record as an afterthought with a view to frustrate the present Corporate Insolvency Resolution Process.
- 8.3 Ld. Counsel further points out that the purported notice contains an inherent inconsistency inasmuch as it alleges termination of the tenancy with effect from 03.04.2022 while simultaneously calling upon the Corporate Debtor to vacate the premises by 03.04.2023, thereby casting serious doubt on its authenticity and reliability. It is further submitted that even assuming such notice was issued, the Respondents have failed to demonstrate that any steps were taken in accordance with law to recover

possession of the premises or to evict the Corporate Debtor thereafter.

- 8.4 According to the Applicant, the continued occupation and use of the land by the Corporate Debtor, coupled with the absence of any eviction proceedings or other legal action, clearly establishes that the alleged termination remained ineffective and was never acted upon, rendering the same devoid of any legal consequence.

9. **Finding and Analysis**

- 9.1 We have heard the Learned Counsel appearing for the parties and have carefully considered the pleadings, the documents placed on record, and the rival submissions advanced on behalf of the parties.

- 9.2 Before advertent to the issues arising for consideration in the present matter, it is apposite to refer to the 2nd Meeting of the Committee of Creditors held on 28.01.2026, wherein the sole Financial Creditor, namely Indian Bank, expressed its decision to relinquish its security interest over the mortgaged land with a view to facilitating an effective and value-maximising resolution of the Corporate Debtor and voted in favour of the Resolution. The relevant extract of the minutes of the 2nd CoC Meeting is reproduced hereinbelow:

*“Accordingly, **the Financial Creditor expressed its decision to relinquish its security interest in the mortgaged land** (not in the name of CD) and to bring the said land within the fold of the CIRP of the CD, so that the same may be considered as part of the overall resolution and sale process, subject to orders of the Hon'ble NCLT. The Financial Creditor, therefore, requested the RP to move an appropriate application before the Hon'ble NCLT seeking necessary directions for consolidation and*

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coordinated resolution of the assets, in accordance with the provisions of the Code and applicable laws.

To enable the Financial Creditor to relinquish its security interest in the mortgaged land and to bring the said land within the fold of the CIRP, the Committee discussed the matter in details and after due discussion agreed that the RP shall file an appropriate application and seek necessary permission from Hon'ble NCLT.”

(Emphasis Added)

- 9.3 It is not in dispute that a Tenancy Agreement dated 03.01.2019 was executed by M/s Royal Engineering Company in favour of the Corporate Debtor in respect of the premises situated at 77, Mallickpur Road, Dakshin Raipur, South 24 Parganas. It is further undisputed that the Corporate Debtor was carrying on its business operations from the said premises and had incurred substantial expenditure towards its development, as reflected in the audited financial statements for FY 2023-24 and 2024-25. It is also an admitted position that the said premises stands mortgaged in favour of Indian Bank as collateral security for the credit facilities availed by the Corporate Debtor and that the principal plant and machinery, constituting the core assets of the Corporate Debtor, are situated thereon. Further, owing to the default committed by the Corporate Debtor, Indian Bank has already exercised its security interest under the provisions of the SARFAESI Act, 2002 by taking possession of the said premises and it is the Indian Bank which has 100% voting rights in the CoC. Therefore, whether by way of resolution plan or sarfaesi sale the ultimate beneficiary will be the Indian Bank.
- 9.4 It is the case of the Learned Counsel for the Applicant that the land on which the principal plant and machinery of the

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Corporate Debtor are situated is owned by M/s Royal Engineering Company, the same stands mortgaged in favour of Indian Bank, the sole Financial Creditor, as security for the credit facilities availed by the Corporate Debtor. According to the Applicant, the said land is functionally and commercially inseparable from the business operations and core assets of the Corporate Debtor, and any attempt to resolve the Corporate Debtor without factoring in the said land would render the resolution process commercially unviable and significantly increase the likelihood of liquidation. It is therefore contended that the Committee of Creditors, in exercise of its commercial wisdom, resolved to permit prospective resolution applicants to formulate resolution plans by taking into consideration the assets of the Corporate Debtor along with the said land, with full disclosure regarding its ownership and legal status, so as to facilitate value maximisation and effective resolution of the Corporate Debtor.

- 9.5 It is the case of the Learned Counsel for the Respondent that Assets owned by a third party in possession of the 'Corporate Debtor' could not have been taken custody and control of by the RP and only those Assets over which the 'Corporate Debtor' has 'Ownership Rights' as recorded in the Balance Sheet or any information utility could have been taken custody and control of by the RP. Further submits that the asset which is mortgaged with the Bank is not the property of the Corporate Debtor but of a third party cannot form part of the Information Memorandum.
- 9.6 In this background, we address to the issue as to "**Whether such Leasehold Rights/Tenancy Rights constitute an**

'Asset' of the Corporate Debtor to be included in the Information Memorandum

9.7 At this juncture, Section 18(f) of the Code is reproduced here for ready reference:

18. Duties of interim resolution professional. –

The interim resolution professional shall perform the following duties, namely: –

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including –

(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

(ii) assets that may or may not be in possession of the corporate debtor;

(iii) tangible assets, whether movable or immovable;

(iv) intangible assets including intellectual property;

(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;

(vi) assets subject to the determination of ownership by a court or authority;

Explanation. – For the purposes of this 1[section], the term “assets” shall not include the following, namely:-

(a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;

(b) assets of any Indian or foreign subsidiary of the corporate debtor; and

(c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.”

- 9.8 Section 18(f) of the Code discusses both Tangible and Intangible Assets which can be taken control and custody of by the RP. Since, the term ‘Intangible Assets’ has not been expressly defined under the Code, we rely on Explanation 32(1) of the Income Tax Act, 1961, which defines Tangible and Intangible Assets as follows:

Explanation 3 to 32(1) of Income Tax Act, 1961:

For the purposes of this sub-Section, the expression, ‘Assets’ and ‘block of Assets mean – (a) Tangible Assets, being building, machinery, plants and furniture.

(b) Intangible Assets, being know-how – patents, copyrights, trademarks, licenses, franchisees or any other business or commercial rights of similar nature.

- 9.9 The reading of the words ‘any other business or commercial rights of similar nature’ in Clause B of Explanation 3 indicates that Leasehold Rights which have commercial nature would fall within this definition. The principle of *ejusdem generis* would strictly apply while interpreting the said expression which finds place in Explanation 3(b). We also place reliance on the definition of ‘Intangible Assets’ as defined by the Indian Accounting Standard (‘IAS’) 26. The same is being reproduced as hereunder:

“6. The following terms are used in this Standard with the meanings specified:

6.1 An intangible asset is an identifiable non-monetary asset, without physical substance, held for use in the production or supply of goods or services, for rental to others, or for administrative purposes.

6.2 An asset is a resource:

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(a) controlled by an enterprise as a result of past events;

and

(b) from which future economic benefits are expected to flow to the enterprise.

6.3 Monetary assets are money held and assets to be received in fixed or determinable amounts of money.

6.4 Non-monetary assets are assets other than monetary assets.....”

(Emphasis Added)

- 9.10 According to above decision and relevant provision stated, this Adjudicating Authority is of the view that ‘Leasehold Rights’ is an ‘Asset’ under ‘Intangible Assets’ falling within the ambit of Section 18(f)(iv). It is the consistent stand of the Respondent that *‘the said premises is not owned by the ‘Corporate Debtor’, but it has only Leasehold Rights over it’*. We are of the considered view that the Tenancy Rights accrued to the ‘Corporate Debtor’ vide the Tenancy Agreement, is a right vested with the ‘Corporate Debtor’ and is an ‘Intangible Assets’ and the ownership is only to the extent of these Leasehold Rights based on which the ‘Corporate Debtor’ can be continued as ‘a Going Concern’. It is also significant to mention that the Respondent has never initiated any proceedings or chosen to exercise their rights to invoke any of the Clauses of the Lease Deed for cancellation of the subject Deed.
- 9.11 Further, the respondent have filed an supplementary affidavit to bring on record the termination letter dated 02.01.2022. A bare perusal of the said notice reveals fatal inconsistency which clearly demonstrate that the documents is unreliable and lack credibility.
- 9.12 Now coming to the issue as to whether the leasehold rights in a land could be transferred is also now no more *res*

integra and has been put to rest by the Hon'ble Appellate Tribunal and Hon'ble Supreme Court in catena of judgments.

- 9.13 The Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 71 of 2024, **Shristi Infrastructure Development Corporation Ltd. vs. Avishek Gupta, Resolution Professional [Sarga Hotel Pvt. Ltd.] & Anr.**, decided on 04.04.2024 held as under:

*“19. As per the above definition, lease of the immovable property is a transfer of a right to enjoy such property, made for a certain express or implied, or in perpetuity, in consideration of a price paid or promised. The present is a case where on payment of monthly rent as reserved in the lease deed, Corporate Debtor has given possession and right to erect building of the land. Thus, by lease, Appellant has acquired a right to enjoy the property. **Leasehold rights which has been granted to the Corporate Debtor is property within the meaning of Section 3(27) and has to be treated as an asset for the purposes of Section 18(1)(f).** Much reliance has been placed by the Appellant on explanation (a) and what is sought to be contended is that the land under the lease is owned by the Appellant, hence, the possession of the said land ought not to have been taken by the Resolution Professional. The expression ‘assets’ occurring in explanation (a) has wide meaning which meaning encompasses itself the immovable land as well as leasehold rights.*

*20. The leasehold rights which are owned by the Corporate Debtor consists of right to enjoy the immovable property by virtue of Registered Lease Deed dated 31.03.2007. **Explanation (a) does not come into way of***

the Corporate Debtor in enjoying the leasehold rights i.e. enjoyment of the property by virtue of Registered Lease Deed. We, thus, do not find any substance in the submission of the Appellant that the leasehold rights should be excluded from the assets of the corporate debtor”.

(Emphasis Added)

From the aforesaid order, it is evident that the Hon'ble NCLAT has categorically held that the leasehold rights vested in the Corporate Debtor under a registered lease deed constitute assets of the Corporate Debtor and are not liable to be excluded from the assets of the Corporate Debtor.

- 9.14 After considering **Victory Iron Works Ltd V. Jitendra Lohia & Anr. Civil Appeal No.1743 of 2021** the Hon'ble NCLAT in the above case further held-

22. We, thus, **have no hesitation to hold that the leasehold rights which was granted to the Corporate Debtor by virtue of Registered Lease Deed dated 31.03.2007 is right to enjoy the property and erect building of the land is a right which is an ‘asset’ within the meaning of Section 18(1)(f) and the said asset is owned by the corporate debtor by virtue of Registered Lease Deed”.**

(Emphasis Added)

- 9.15 In **New Okhla Industrial Development Authority vs Mr. Nilesh Sharma Resolution Professional of Dream Procon Pvt.** COMPANY APPEAL (AT) (INSOLVENCY) No. 288 of 2021 decided on 08.03.2022, wherein prior approval from the lessor has not been taken before subleasing portion of the land to the ‘Corporate Debtor’ for

development of the Housing Project by the lessee, the Hon'ble NCLAT while upholding the sublease held as under:

“24. Keeping in view the decision of the Hon'ble Supreme Court in 'Rajendra K. Bhutta' (Supra), we are of the view that 'development rights' construe 'Property' of the 'Corporate Debtor' and hence we hold that the Resolution Professional has duly performed his duties as per Section 18(1)(a)(iii) and has taken control and custody of the assets of the 'Corporate Debtor' mentioned in the Balance Sheet in compliance of the provisions of Section 18(1)(f) and resultantly we do not find any deficiency of service on behalf of the RP.”

9.16 The Hon'ble NCLAT in **New Okhla Industrial Development Authority vs Mr. Amit Agarwal Resolution Professional of Boulevard Projects Pvt. Ltd.** decided on 21 st October, 2022, relying on the law laid down Hon'ble Supreme Court in 'New Okhla Industrial Development Authority' Vs. 'Anand Sonbhadra' in while considering leasehold rights concluded as under: –

*“20. We are of the view that the **'Leasehold Rights' is an 'Asset' under 'Intangible Assets' falling within the ambit of Section 18(f)(iv).** It is the consistent stand of the Respondent that 'the said Plot is not owned by the 'Corporate Debtor', but it has only Leasehold Rights over it'. We are of the considered view that **the Leasehold Rights accrued to the 'Corporate Debtor' vide the Lease Deed, is a right vested with the 'Corporate Debtor' and is an 'Intangible Assets' and the ownership is only to the extent of these Leasehold Rights based on which the 'Corporate Debtor' can be continued as 'a Going Concern'.** It is also significant to mention that the Appellant has never initiated any*

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proceedings or chosen to exercise their rights to invoke any of the Clauses of the Lease Deed for cancellation of the subject Deed.”

(Emphasis Added)

9.17 In **Victory Iron Works Ltd. Vs. Jitendra Lohia and Ors., MANU/SC/0229/2023** the Hon'ble Supreme Court after considering the factual matrix of that case came to a conclusion that by executing lease of land in favour of Corporate Debtor a bundle of rights and interests were created in favour of the Corporate Debtor, over the immovable property in question and goes on to held as under: –

*“37. Therefore, it is not very difficult to conclude, that a bundle of rights and interests were created in favour of the Corporate Debtor, by a series of documents such as (i) the MoU dated 24.01.2008; (ii) the shareholders agreement dated 24.01.2008; (iii) the flow of the consideration from the Corporate Debtor to the UCO Bank and to Energy Properties; (iv) the Development Agreement dated 16.06.2008; (v) the Memorandum Recording Possession dated 02.03.2010 executed by the original shareholders of Energy Properties; (vi) the Memorandum Recording Possession dated 24.06.2010 executed by Energy Properties in favour of the Corporate Debtor; and (vii) the Leave and License Agreement primarily executed by the Corporate Debtor in favour of Victory, which was merely confirmed by Energy Properties as a confirming party. Some of these bundle of rights and interests, partake the character and shade of ownership rights. **Therefore, these rights and interests in the immovable property are definitely liable to be included by the Resolution Professional in the Information Memorandum and***

the Resolution Professional is duty bound Under Section 25(2)(a) to take custody and control of the same.”

(Emphasis Added)

- 9.18 Lastly, in the matter of **Vanguard Credit & Holdings Pvt Ltd Vs. Kshitiz Chhawchharia, Resolution Professional of Ramswarup Industries Ltd** [Appeal (AT) (Ins.) No. 1125 of 2019] the assets in question, though not owned by the Corporate Debtor, were mortgaged to the lenders and were integrally connected with the business and operations of the Corporate Debtor. Similarly, in the present case the said premises is mortgaged to the Indian Bank and the entire plant and machinery of the Corporate Debtor are situated thereon, and the revival of the Corporate Debtor is inseparably linked with the same. Now relevant part of the order is extracted below:

171. It is also important to point out that land is an essential part of the corporate debtor's business. The entire wire business of the Corporate Debtor being run on the Durgapur unit, which is situated on the said land, forms an essential part of the business of the Corporate Debtor. Therefore it is an essential part of the Resolution Process. *The value arrived in the ‘CIRP’, the purported liquidation value, all includes the value of the land and the same has always been the essence of the business of the Corporate Debtor. It is also pertinent to mention that Mr Ashish Jhunjhunwala, who had himself filed the Application before the Adjudicating Authority, had relied on the valuation of the corporate debtor’s assets. Such a list of assets includes the property at Durgapur. **Thus it appears that the present Appeal is only a mischievous attempt to segregate a portion***

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**of the property from the Corporate Debtor, which
was already considered as the assets of the
Corporate Debtor by the Appellant as well as Mr Ashish
Jhunjhunwala.**

(Emphasis Added)

- 9.19 Thus, in view of the aforesaid precedents and the facts of the present case, we are of the considered view that the tenancy rights created in favour of the Corporate Debtor were subsisting as on the insolvency commencement date and constituted a valuable right available to the Corporate Debtor. Consequently, such rights cannot be diverted from the CIRP and ought to be appropriately reflected in the Information Memorandum so as to facilitate value maximisation and ensure an effective and meaningful resolution of the Corporate Debtor in accordance with the objectives of the IBC.
10. Accordingly, for the reasons recorded hereinabove, the present Application deserves to be allowed. Consequently, the reliefs sought in prayer clauses **(a), (b) and (c)** are hereby granted in accordance with law.
11. **I.A (IB) No. 180/KB/2026** is **allowed** and **disposed**.
12. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
13. The certified copy of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties, subject to compliance with all requisite formalities.

(Cmde. Siddharth Mishra)
Member (Technical)

(Bidisha Banerjee)
Member (Judicial)

Order signed on the 12th day of June, 2026.

S.T. (LRA)