

Reserved On : 25/08/2025

Pronounced On : 13/10/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 9402 of 2024****With****CIVIL APPLICATION (FOR VACATING INTERIM RELIEF) NO. 1 of 2024****In R/SPECIAL CIVIL APPLICATION NO. 9402 of 2024****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE NIRAL R. MEHTA**

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Approved for Reporting	Yes	No
	✓	
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FIVEBRO WATER SERVICES PVT LTD & ANR.**Versus****BIJAY MURMURIA & ORS.****Appearance:**MR SN SOPARKAR, SENIOR ADVOCATE with MR ARJUN R SHETH(7589)
for the Petitioners

MR KUNAL P VAISHNAV(5111) for the Respondent(s) No. 1

NOTICE SERVED BY DS for the Respondent(s) No. 2,3

VYUVRAJ G THAKORE(7785) for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE NIRAL R. MEHTA**CAV JUDGMENT**

1. By way of the present petition, preferred under Articles 226 and 227 of the Constitution of India, the petitioners have assailed the legality, propriety, and validity of the order dated 21.06.2024 passed by the learned National Company Law Tribunal, Ahmedabad Bench (hereinafter referred to as “the

Tribunal”) in I.A. No. 63 of 2022 and I.A. No. 94 of 2022 in C.P. (IB) No. 59 of 2019, whereby the Tribunal has directed the petitioners to vacate the premises in question, to pay the arrears of rent due thereon, and to hand over vacant and peaceful possession of the said premises to respondent No.1 – Liquidator within a period of seven days from the date of the said order.

2. The facts of the case, in nutshell, can be stated as under :

2.1 The petitioner No.1 and petitioner No.2 are the lessee and licensee of the premises in question. The respondent No.1 is the Liquidator of the Corporate Debtor i.e. Doshion Pvt. Ltd. and respondent Nos.2 and 3 are the suspended management of the Corporate Debtor.

2.2 On 29.9.2020, the Corporate Debtor executed a lease deed in favour of petitioner No.1 for a period of 2 years qua its property being House No.9, Sigma Corporate, B/h.Rajpath Club, Bodakdev, Ahmedabad 380 054.

2.3 Similarly, on 20.7.2021, the Corporate Debtor executed a licence agreement in favour of petitioner No.2 for a period of 5 years qua its property being Office No.203, 2nd Floor, “A” Wing, Godrej Colliseum, Eastern Express Highway, B/h.Everad Nagar (E), Mumbai 400022.

2.4 It is the case of the petitioners that the Corporate Debtor

resolved to give the property to the petitioner No.1 through registered lease deed by way of Board Resolution dated 26.7.2021 and accordingly, the registered lease deed dated 31.8.2021 was executed between the Corporate Debtor and the petitioner No.1 for a period of 119 months and 29 days.

2.5 The Corporate Debtor was admitted into insolvency by the Tribunal vide its order dated 31.8.2021. The Resolution Professional vide letter dated 24.11.2021 called upon the petitioners to pay the rent and licence fee to the CIRP account of the Corporate Debtor.

2.6 Thereafter, on and around 17.1.2022, the Resolution Professional of the Corporate Debtor filed applications being Nos.1963 of 2022 and 94 of 2022 against the petitioners respectively and the suspended management of the Corporate Debtor seeking, inter alia, direction for possession of the properties on the ground of non-payment of rent and licence fee.

2.7 Pursuant to the aforesaid applications, the petitioners have filed affidavit that the Tribunal has no jurisdiction to entertain the said applications as the issue involved is with regard to non-payment of rent and licence fee which does not fall within the jurisdiction of Tribunal under the provisions of the Insolvency and Bankruptcy Code, 2016 (for short 'the IB Code') and the question involved is not in relation to the insolvency resolution.

2.8 On 3.10.2023, the Corporate Debtor was admitted to liquidation and thereby, the respondent No.1 was appointed as Liquidator of the Corporate Debtor.

2.9 On 8.3.2024, the Liquidator filed the rejoinder against the affidavit of the petitioners wherein breach of lease agreement and licence agreement was highlighted. As against that, on 27.4.2024, the petitioners have filed an affidavit contending, inter alia, that the dispute should be resolved by the Arbitration as the lease deed and leave and licence agreements are genuine in nature.

2.10 The Liquidator, in turn, on 6.5.2024, filed further affidavit wherein the validity of the lease agreement and licence agreement was disputed.

2.11 Thereafter, on 21.6.2024, the Tribunal has passed the impugned common order in both the IAs.

3. Being aggrieved and dissatisfied by the aforesaid, the petitioners have approached this Court by way of this petition under Articles 226 and 227 of the Constitution of India for the appropriate writ, order or direction.

4. Heard Mr.S.N. Soparkar learned Senior Advocate with Mr.Arjun Sheth learned advocate for the petitioners and Mr.Kunal Vaishnav learned advocate with Mr.Yuvraj Thakor learned advocate for respondent No.1. The respondent No.3, though served, has chosen not to appear and contest the

present proceedings.

5. Mr.S.N. Soparkar, learned Senior Advocate appearing with Mr. Arjun Sheth, learned Advocate for the petitioners, assailed the impugned order and made the following submissions:

(1) Learned Senior Counsel, Mr. Soparkar, vehemently contended that the impugned order passed by the learned Tribunal is wholly without authority of law and, therefore, without jurisdiction, rendering the same unsustainable in the eye of law. To substantiate this submission, reliance was placed upon Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 (for short, "the IBC"). It was urged that the jurisdiction of the Tribunal under the said provision can be invoked only upon a prior declaration under Sections 43, 45, or 49 of the IBC. In the absence of any such declaration, the Tribunal could not have assumed jurisdiction to pass the impugned order. Learned Senior Counsel submitted that, admittedly, no proceedings or orders under Sections 43, 45, or 49 of the IBC have been passed, and therefore, the impugned order is ex facie without jurisdiction and liable to be quashed and set aside.

(2) Learned Senior Counsel further submitted that the controversy in the present case pertains to the validity and genuineness of the lease agreement and the leave and licence agreement, which issues, by their very nature, do not fall within the ambit of insolvency resolution or liquidation

proceedings. Hence, the Tribunal, by adjudicating upon matters beyond its statutory competence, has acted in excess of its jurisdiction. In support of this proposition, reliance has been placed upon the judgment of this Court in Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta, (2021) 7 SCC 209, wherein the scope of jurisdiction under Section 60(5) of the IBC has been delineated.

(3) Upon being confronted with the issue of availability of an efficacious alternative remedy, learned Senior Counsel fairly conceded that an appeal under Section 61 of the IBC would lie before the National Company Law Appellate Tribunal (NCLAT), New Delhi. However, placing reliance on the decision of this Court in Radha Krishan Industries v. State of Himachal Pradesh & Ors., (2021) 6 SCC 771, it was submitted that the existence of an alternate statutory remedy would not operate as an absolute bar to the exercise of jurisdiction under Article 226 of the Constitution of India, particularly where the impugned order is *ex facie* without jurisdiction. It was thus urged that this Court, in exercise of its constitutional powers under Article 226, may entertain the present petition, as the impugned order suffers from a fundamental lack of jurisdiction and warrants interference.

6. *Per contra*, Mr.Kunal Vaishnav, learned counsel appearing for respondent No.1 - Liquidator, at the very threshold, raised a preliminary objection touching upon the maintainability of the present petition on the ground of availability of an efficacious alternative statutory remedy as

envisaged under Section 61 of the Insolvency and Bankruptcy Code, 2016 (for short, “the IBC”). In support of his contention, learned counsel placed reliance on the decisions of this Court in Bank of Baroda v. Faruk Ali, 2025 SCC OnLine SC 346, and Mohammed Enterprise (Tanzania) Ltd. v. Faruk Ali Khan & Ors., 2025 SCC OnLine SC 23, to contend that once the statute provides a self-contained mechanism for redressal of grievances by way of an appeal, recourse to the writ jurisdiction under Article 226 of the Constitution of India would be wholly unwarranted.

6.1 Learned counsel next submitted that the petitioners have failed to approach this Court with clean hands and have deliberately suppressed material facts from the record. It was urged that the petitioners and the Corporate Debtor, which is under liquidation, are inter-related entities and that the suspended management of the Corporate Debtor continues to exercise control and influence over the petitioners. Such conduct, according to the learned counsel, disentitles the petitioners from seeking any equitable relief under the extraordinary writ jurisdiction of this Court.

6.3 Adverting to the factual matrix, learned counsel submitted that respondents Nos.2 and 3 herein are Directors of petitioner No.2 company and that the entire transaction pertaining to the execution of the lease and leave and licence agreements was nothing but a colourable and fraudulent device intended to defeat the object and purpose of the corporate insolvency resolution process. It was submitted that

the said arrangements were contrived solely to retain possession of the property of the Corporate Debtor, thereby frustrating the liquidation process. Accordingly, learned counsel urged that this Court, while exercising jurisdiction under Article 226 of the Constitution of India, ought not to extend any indulgence to the petitioners who have approached the Court with unclean hands. It was therefore submitted that the petition be dismissed with exemplary costs.

6.4 Learned counsel further contended, with considerable emphasis, that the petitioners and respondents Nos.2 and 3 have acted in concert and collusion to subvert the ongoing proceedings under the IBC. Elaborating on this contention, it was pointed out that the property known as “Sigma Corporate” at Ahmedabad was leased on 29.09.2020 for a period of two years through an unregistered lease deed. Similarly, another property situated at Mumbai was given on leave and licence on 20.07.2021 for a term of five years through a notarized agreement. Learned counsel submitted that the petition against the Corporate Debtor was heard on 24.08.2021 and reserved for orders. Notwithstanding the subsistence of the earlier lease agreement dated 29.09.2020, a fresh agreement was executed on 25.08.2021, evidently in anticipation of an adverse order against the Corporate Debtor. It was further submitted that on 31.08.2021 at 10:30 a.m., the Tribunal pronounced its order admitting the petition, appointing an Interim Resolution Professional (IRP), and declaring a moratorium. Despite having full knowledge of the said order, the petitioners presented the lease agreement for

franking on the same day and, at 4:45 p.m., presented it before the Sub-Registrar for registration. Learned counsel contended that such conduct was a deliberate attempt to perpetrate fraud upon judicial proceedings and to defeat the mandate of the moratorium. The Tribunal, while passing the impugned order dated 21.06.2024, has rightly taken note of this fraudulent conduct, and therefore, no fault can be found with the impugned order on any count.

6.5 Proceeding further, learned counsel submitted that the IBC constitutes a complete code in itself. To fortify this submission, reliance was placed on Sections 35 and 36 of the Code, which vest the Liquidator with wide-ranging powers to take custody and control of the assets of the Corporate Debtor and to deal with the same in accordance with law. It was urged that, by virtue of Section 60(5) of the IBC, the National Company Law Tribunal (NCLT) is vested with exclusive jurisdiction to entertain and determine all questions of law and fact arising out of or in relation to insolvency, liquidation, or property of the Corporate Debtor. Consequently, the issue relating to possession of the property, allegedly held under collusive agreements, squarely falls within the statutory domain of the Tribunal.

6.6 In support of the aforesaid submissions, learned counsel placed reliance on the judgment of this Court in *Santanu T. Ray v. Pawan Vikram Sahjwani*, arising from an order of the NCLT, Mumbai, which was upheld by the NCLAT, New Delhi, and finally affirmed by this Court vide order dated 01.04.2024

passed in Civil Appeal No. 4372 of 2024. Relying on the ratio laid down therein, it was contended that the Tribunal, being the Adjudicating Authority under the Code, acted well within its jurisdiction in directing the petitioners to hand over possession of the premises in question. Accordingly, learned counsel submitted that the impugned order suffers from no legal infirmity or jurisdictional error and that the present petition, being devoid of merit and filed with an oblique motive to delay the liquidation process, deserves to be dismissed in limine.

7. Having given thoughtful consideration to the submissions advanced by the learned counsel appearing for the respective parties and upon perusal of the material placed on record, the precise question that arises for determination before this Court is — Whether the impugned order dated 21.06.2024 passed by the learned National Company Law Tribunal, Ahmedabad, can be said to suffer from a fundamental lack of jurisdiction or to have been passed in excess of the jurisdiction vested in it under the Insolvency and Bankruptcy Code, 2016, so as to warrant interference by this Court in exercise of its extraordinary writ jurisdiction under Article 226 of the Constitution of India, notwithstanding the availability of a statutory appellate remedy under Section 61 of the said Code?

8. The settled position of law governing the exercise of writ jurisdiction under Article 226 of the Constitution of India, in the face of availability of a statutory remedy, is too well

entrenched to warrant any elaborate exposition. The Hon'ble Supreme Court, in a long line of authoritative pronouncements, has delineated the contours of the High Court's jurisdiction under Article 226 in such circumstances. It has been consistently held that the power conferred upon the High Court under Article 226 is wide, plenary, and discretionary in nature, and the mere existence of an alternative statutory remedy does not, by itself, operate as an absolute bar to the exercise of such jurisdiction. However, it has been equally emphasized that the High Court, in the exercise of its extraordinary jurisdiction, is guided by certain self-imposed restraints and ordinarily refrains from entertaining a petition where an efficacious statutory remedy is available, save in exceptional circumstances where the interest of justice so demands. The Hon'ble Supreme Court, over the passage of time, has crystallized certain well-recognized exceptions wherein interference under Article 226, notwithstanding the existence of an alternative remedy, would be justified. These exceptions, succinctly stated, are as follows:

- (1) Where the impugned order has been passed in violation of the principles of natural justice;
- (2) Where the proceedings are initiated or the order is passed in infringement of the fundamental rights guaranteed under Part III of the Constitution;
- (3) Where the order impugned is wholly without jurisdiction

or has been passed in excess of the jurisdiction vested in the authority; and

- (4) Where the vires of any statutory provision is under challenge.

9. To understand the aforesaid, at this stage, it would be profitable to take note of a landmark decision of the Apex Court in the case of Whirlpool Corporation v. Registrar of Trademarks, reported in (1998) 8 SCC 1. Relevant Para.14 and 15 of the said decision are reproduced below;

“14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose.

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative a remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

10. In yet another decision in the case of Harbanslal Sahnia & Ors. v. Indian Oil Corporation & Ors., reported in (2003) 2 SCC 107, following the dictum of the decision in the case of Whirlpool Corporation (Supra), the Apex Court has held as under:

“7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. v. Registrar of Trade Marks¹.) The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings.”

11. The Apex Court has, in the case of Radha Krishan Industries v. State of Himachal Pradesh & Ors., reported in (2021) 6 SCC 771, has observed, thus;

“27. The principles of law which emerge are that :

27.1 The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

27.2 The High Court has the discretion not to entertain a

writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

27.3 Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

27.4 An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

27.5 When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion;

27.6 In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

12. Keeping in mind the aforesaid position of law, let us consider the aspect of jurisdiction as has been sought to be canvassed by the petitioner to entertain this petition in wake of availability of statutorily remedy. Thus, at this stage, relevant provision of the IB Code, deserve to be considered.

" '18. Duties of interim resolution professional. — The interim resolution professional shall perform the following duties, namely:—

(a) xxx xxx xxx
 (b) xxx xxx xxx
 (c) xxx xxx xxx

(d) xxx xxx xxx
 (e) xxx xxx xxx

(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;'

'25. Duties of resolution professional.—

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

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely:—

(a) take immediate custody and control of all the assets of the corporate debtor, including the business records of

the corporate debtor;

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

(c) raise interim finances subject to the approval of the committee of creditors under section 28;

(d) appoint accountants, legal or other professionals in the manner as specified by Board;

(e) maintain an updated list of claims;

(f) convene and attend all meetings of the committee of creditors;

(g) prepare the information memorandum in accordance with section 29;

[(h) invite prospective resolution applicants, who fulfill such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans.].

(i) present all resolution plans at the meetings of the committee of creditors;

(j) file application for avoidance of transactions in accordance with Chapter III, if any; and

(k) such other actions as may be specified by the Board.'

'35. Powers and duties of liquidator.—

(1) Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely:—

(a) xxx xxx xxx

(b) to take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor;

(c) xxx xxx xxx

(d) xxx xxx xxx

(e) xxx xxx xxx

(f) xxx xxx xxx

(g) xxx xxx xxx

(h) xxx xxx xxx

(i) xxx xxx xxx

(j) xxx xxx xxx

(k) xxx xxx xxx

(l) xxx xxx xxx

(m) xxx xxx xxx

(n) xxx xxx xxx

2) xxx xxx xxx'

13. A plain and harmonious reading of Rules 18, 25, and 35 of the Insolvency and Bankruptcy (Liquidation Process) Rules, 2016, makes it abundantly clear that the Legislature has, by virtue of these provisions, cast an affirmative duty upon the Interim Resolution Professional (IRP), Resolution Professional (RP), and Liquidator to act vigilantly and in the best interest of the Corporate Debtor, particularly in relation to the protection, preservation, and administration of its assets and properties during the course of insolvency and liquidation proceedings. The underlying legislative intent behind the said Rules is to ensure that the assets of the Corporate Debtor are preserved, protected, and ultimately realized to their optimum potential so as to secure the maximum value for all stakeholders within the framework of the Code. Thus, the Legislature, in its wisdom, has entrusted the IRP, RP, and

Liquidator with both statutory duties and corresponding powers to safeguard the assets of the Corporate Debtor and to take all measures necessary for fulfilling the objects and purposes of the Code. Consequently, in the facts of the present case, the Liquidator is not only empowered but indeed duty-bound to take all actions as may be warranted to secure, protect, and realize the assets of the Corporate Debtor during the pendency of proceedings before the Adjudicating Authority.

13.1 Furthermore, the Legislature has expressly vested the National Company Law Tribunal (NCLT), as the Adjudicating Authority under the Code, with the jurisdiction to adjudicate any dispute or question arising in relation to the assets, properties, or rights of the Corporate Debtor. The legislative intention is, therefore, manifestly clear — that the Tribunal, before which the insolvency or liquidation proceedings are pending, is also empowered to decide all incidental and ancillary issues pertaining to the possession, control, custody, management, or disposition of the assets of the Corporate Debtor, which bear a direct nexus to the proceedings before it.

‘43. Preferential transactions and relevant time.—

(1) Where the liquidator or the resolution professional, as the case may be, is of the opinion that the corporate debtor has at a relevant time given a preference in such transactions and in such manner as laid down in sub-section (2) to any persons as referred to in sub-section (4), he shall apply to the Adjudicating Authority for avoidance of preferential transactions and for, one or

more of the orders referred to in section 44.

(2) A corporate debtor shall be deemed to have given a preference, if—

(a) there is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor; and

(b) the transfer under clause (a) has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53.

(3) For the purposes of sub-section (2), a preference shall not include the following transfers—

(a) transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee;

(b) any transfer creating a security interest in property acquired by the corporate debtor to the extent that—

(i) such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest and was used by corporate debtor to acquire such property; and

(ii) such transfer was registered with an information utility on or before thirty days after the corporate debtor receives possession of such property

Provided that any transfer made in pursuance of the order of a court shall not, preclude such transfer to be deemed as giving of preference by the corporate debtor.

Explanation.—For the purpose of sub-section (3) of this section, “new value” means money or its worth in goods,

services, or new credit, or release by the transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the liquidator or the resolution professional under this Code, including proceeds of such property, but does not include a financial debt or operational debt substituted for existing financial debt or operational debt.

(4) A preference shall be deemed to be given at a relevant time, if— (a) it is given to a related party (other than by reason only of being an employee), during the period of two years preceding the insolvency commencement date; or

(b) a preference is given to a person other than a related party during the period of one year preceding the insolvency commencement date.'

'45. Avoidance of undervalued transactions.—

(1) If the liquidator or the resolution professional, as the case may be, on an examination of the transactions of the corporate debtor referred to in sub-section (2) 1*** determines that certain transactions were made during the relevant period under section 46, which were undervalued, he shall make an application to the Adjudicating Authority to declare such transactions as void and reverse the effect of such transaction in accordance with this Chapter.

(2) A transaction shall be considered undervalued where the corporate debtor—

(a) makes a gift to a person; or

(b) enters into a transaction with a person which involves the transfer of one or more assets by the corporate debtor for a consideration the value of which is significantly less than the value of the consideration provided by the corporate debtor, and such transaction has not taken place in the ordinary course of business of the corporate debtor.'

'49. Transactions defrauding creditors.—Where the

corporate debtor has entered into an undervalued transaction as referred to in sub-section (2) of section 45 and the Adjudicating Authority is satisfied that such transaction was deliberately entered into by such corporate debtor—

(a) for keeping assets of the corporate debtor beyond the reach of any person who is entitled to make a claim against the corporate debtor; or

(b) in order to adversely affect the interests of such a person in relation to the claim, the Adjudicating Authority shall make an order—

(i) restoring the position as it existed before such transaction as if the transaction had not been entered into; and

(ii) protecting the interests of persons who are victims of such transactions:

Provided that an order under this section—

(a) shall not affect any interest in property which was acquired from a person other than the corporate debtor and was acquired in good faith, for value and without notice of the relevant circumstances, or affect any interest deriving from such an interest, and

(b) shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.'

14. A plain and conjoint reading of Rules 43, 45, and 49 of the Insolvency and Bankruptcy (Liquidation Process) Rules, 2016, makes the legislative intent manifestly clear. The Legislature, in its wisdom, has conferred specific powers and corresponding duties upon the Resolution Professional (RP) and the Liquidator to act in cases where any preferential,

undervalued, or fraudulent transaction has been undertaken by the Corporate Debtor, and to seek appropriate adjudication for avoidance of such transactions. The statutory framework thus empowers the RP and the Liquidator to move the Adjudicating Authority whenever it is found that any transaction entered into by the Corporate Debtor is designed to defeat, delay, or defraud the creditors, or is otherwise detrimental to the insolvency resolution or liquidation process. The overarching legislative objective, therefore, is to safeguard and preserve the assets of the Corporate Debtor from any act or transaction that may impair the legitimate interests of the creditors or frustrate the purposes of the Insolvency and Bankruptcy Code, 2016.

‘60. Adjudicating authority for corporate persons.—

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) xxx xxx xxx

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

(6) xxx xxx xxx' “

15. Keeping in mind the aforesaid provisions of law, so as to decide the question raised in this petition, certain facts are also necessary to be kept in mind, viz. –

(1) The unregistered sale deed dated 29.9.2020 was executed by the Corporate Debtor for its property at Ahmedabad in favour of petitioner No.1 for a period of 2 years.

(2) On 20.7.2021, the Corporate Debtor executed unregistered licence agreement for the property in question situated at Mumbai in favour of petitioner No.2 for a period of 5 years.

(3) On 14.8.2021, the Tribunal reserved CP No.59 of 2020 for orders.

(4) On 25.8.2021, although unregistered lease agreement dated 29.9.2020 was subsisting, ignoring such agreement, a new agreement was executed and registration fees for the new lease agreement was paid with respect to property at Ahmedabad.

(5) On 31.8.2021 at 10.30 a.m., the order in CP No.59 of 2020 was pronounced and IRP was appointed and moratorium was declared against the corporate debtor. However, being fully aware with the pronouncement of the said order, the corporate debtor proceeded for registration of lease agreement at 5.45 p.m. in the office of Sub-Registrar.

(6) Importantly, once the IRP was appointed and moratorium was declared, the management would not have any power to execute any agreement as the management is said to have been suspended.

(7) Undisputedly, the suspended management has control over the petitioners. Evidently, the respondent Nos.2 and 3 are the Directors of the petitioner No.2 company and also have their registered office in the same property. Likewise, in petitioner No.2 company also, the respondent Nos.2 and 3 are the Directors.

(8) Even before the Tribunal, upto certain stage, the petitioners and the respondent Nos.2 and 3 have engaged a common lawyer and common affidavit-in-reply was filed.

16. Keeping in mind the aforesaid peculiar fact as well as the provisions of the IB Code, now let me examine the bone of contentions of Mr.S.N. Soparkar with regard to jurisdiction of the Tribunal.

17. Mr.S.N. Soparkar, learned Senior Advocate, has

advanced two alternative submissions for the proposition that the Tribunal either lacked jurisdiction or exceeded the same in passing the impugned order. So far as the plea of excess of jurisdiction is concerned, I am not persuaded. Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 plainly vests the Tribunal with jurisdiction to entertain “any question of priorities or any question of law or fact arising out of or in relation to the insolvency resolution or liquidation proceedings” of a corporate debtor. The language employed is wide and purposive and must be read in the light of the statutory object of the Code — namely, to protect and realise the assets of the corporate debtor for the benefit of its creditors and other stakeholders. A lease or leave-and-licence agreement executed by, or on behalf of, a corporate debtor in respect of property which is claimed to form part of the liquidation estate cannot be treated as a matter wholly divorced from the liquidation process; where, as alleged, the corporate debtor (or persons acting under its control) has sought to carve out assets from the estate or to effect transactions which, if established, would frustrate the liquidation, such transactions plainly have a direct nexus to the liquidation proceedings. To hold otherwise would be to permit parties to frustrate the statutory scheme by resorting to parallel fora and thereby frustrate the very objects of the Code. Accordingly, the submission that the Tribunal has exceeded its jurisdiction in considering the validity and effect of the impugned agreements is untenable and must be rejected.

18. So far as the alternative submission advanced by Mr.S.N. Soparkar, learned Senior Advocate, is concerned, it is urged that the Tribunal has wrongly assumed jurisdiction under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016, without first making any formal declaration as envisaged under Sections 43, 45, or 49 of the Code. In essence, the argument is that, in the absence of such declaration, the impugned order is wholly without jurisdiction. On a careful consideration, while the contention advanced by Mr.Soparkar may appear, at first blush, to carry some logical appeal, it is, in fact, internally inconsistent with his earlier submission. Be that as it may, even if the argument is considered independently and on its own merit, it does not establish that the Tribunal lacked jurisdiction entirely. At most, the contention would suggest that the Tribunal, in the process of passing the impugned order, may have overlooked or not expressly addressed the provisions of Sections 43, 45, or 49 of the Code. Such an omission, however, would, at best, constitute a question of legality or procedural propriety of the order on merits, which is amenable to challenge by way of a statutory appeal under Section 61 of the Code. It cannot, by any stretch of imagination, be said that the mere non-mention or non-application of certain provisions of the Code would render the order of the Tribunal, ipso facto, devoid of jurisdiction. Jurisdiction is inherent in the statutory scheme and is not obliterated by procedural lapses or omissions. Consequently, the impugned order cannot be characterised as wholly without jurisdiction merely on this basis.

19. In addition to the foregoing, this Court is of the view that it would not be appropriate to invoke its extraordinary discretionary jurisdiction under Article 226 of the Constitution of India in the present case, having regard to the nature of the facts. The petitioners have conspicuously failed to disclose that respondent Nos. 2 and 3, who constitute the suspended management of the Corporate Debtor, are also Directors in petitioner Nos. 1 and 2 companies. Equally material is the fact that after executing unregistered agreements initially, a fresh lease agreement was executed on 31.08.2021 — the very day on which the Interim Resolution Professional was appointed, the moratorium was declared, and the management of the Corporate Debtor was suspended. It is a settled principle that the extraordinary jurisdiction under Article 226 is exercised in favour of litigants who approach the Court with clean hands. In view of the seriousness and deliberate nature of the omissions and acts on record, this Court declines to exercise its discretionary powers under Article 226. It is, however, open to the parties to raise their grievances before the appropriate authority by way of the statutory remedy available under the Code.

I answer the question accordingly.

20. In view of above discussion, the present petition being devoid of any merits, the same deserves to be dismissed and is hereby dismissed. Notice is discharged. Interim relief granted earlier shall stand vacated forthwith.

21. In view of order passed in main petition, Civil Application No.1 of 2024 does not survive and is disposed of accordingly.

(NIRAL R. MEHTA,J)

FURTHER ORDER

After pronouncement of the judgment, learned advocate for the petitioners has requested to extend the interim relief granted earlier by this Court during the pendency of this petition.

Request of the learned advocate for the petitioners is not accepted and is hereby rejected.

(NIRAL R. MEHTA,J)

V.J. SATWARA