NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-II), CHANDIGARH

IA(IBC/2486(CH)/2024
In
CP(IB) No.180/Chd/Pb/2022
(Admitted)

(*An Application under Sections 19, 25 and 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 30 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016)*

In the matter of IA(IBC/2486(CH)/2024

Mr. Navneeet Gupta
Resolution Professional of Majestic Hotels Ltd.
1598, Level -1, Sector 22 B Chandigarh
Email: navguptaca@gmail.com

……Applicant

VERSUS

Mr. Jasbir Singh Khangura
(Member of Suspended Board of Directors of the Corporate Debtor)
H. No. 25-D, Sarabha Nagar, Ludhiana, Punjab
Also at: 9th Floor, Hotel Park Plaza, Bhai Bala Chowk,
Ferozpur Road, Ludhiana, Punjab
Email: ik@jassikhangura.com

……Respondent No.1

Committee of Creditors of Majestic Hotels Ltd.
(Through UV Asset Reconstruction Company Limited)
704, Deepali Building 92, Nehru Place, New Delhi

……Respondent No.2

Tru Prime Private Limited
H-294, Plot 2A, 1st Floor Kehar Singh Estate,
Saidulajab, Lane No.2, New Delhi
Email: cs@primemilk.in

……Respondent No.3

Mrs. Raman Khangura
(Wife of Respondent No. 1- Mr. Jasbir Singh Khangura,
and shareholder of Majestic Hotels Limited)
9th Floor, Hotel Park Plaza, Bhai Bala Chowk,
Ferozpur Road, Ludhiana

……Respondent No.4

And IN THE MATTER OF CP(IB) No.180/Chd/Pb/2022:

(An Application under Section 7 of the Insolvency & Bankruptcy Code, 2016)

In the matter of

UV Asset Reconstruction Company Limited ... Petitioner/Financial Creditor

Versus

Majestic Hotels Limited ... Respondent/Corporate Debtor

Order delivered on: 17.03.2026

CORAM: MR. K. BISWAL, MEMBER (JUDICIAL)
MR. KAUSHALENDRA KUMAR SINGH, MEMBER (TECHNICAL)

Present:-

For the RP-Applicant in IA(IBC)/2486(CH)2024	**:**	Mr. Nitin Kaushal, Ms. Moulshree Shukla, Advocates with Mr. Navneet Gupta, RP in person
For the COC in IA(I.B.C)/2486(CH)2024	**:**	Mr. Dhruv Dewan, Ms. Sanjukta Roy, Advocates
For the Respondent No.1 in IA(IBC)/2486(CH)2024,	**:**	Mr. Aalok Jagga, Mr. Sahil Lohan, Ms. Vibhu Aggarwal Mr. APS Madaan, Advocates
For the Respondent No.3 in IA(I.B.C)/2486(CH)2024	**:**	Mr. Pulkit Goyal, Advocate
For the Respondent No.4 in IA(I.B.C)/2486(CH)2024	**:**	Mr. Viren Sibal, Advocate

ORDER

1. This Application has been filed under Sections 19, 25 & 60(5) of the IBC, 2016 (hereinafter referred to as the Code) by the Resolution Professional (RP)-Mr. **Navneet Gupta** for seeking directions to the Respondent No.1 namely Mr. **Jasbir Singh Khangura,** the Suspended Director of the Corporate

Debtor (CD), along with his wife **Mrs. Raman Khangura** (Respondent No.4)/friends/relatives/acquaintances to vacate the Corporate Debtor premises forthwith and hand over the vacant and peaceful possession of the CD premises in terms of the provisions of the Code; and also to direct the Police Authorities to take necessary steps to secure possession of the said premises.

2. Such an Application is filed in reference to the Corporate Insolvency Resolution Process (hereinafter referred to as a "CIRP") initiated against the Corporate Debtor namely-**Majestic Hotels Private Limited,** vide Order dated 03.07.2024 by admitting the Company Petition No.180 of 2022 filed under Section 7 of the Code by **UV Assets Reconstruction Company Limited-Financial Creditor (FC).** The Applicant Mr. Navneet Gupta has been appointed to act as IRP/RP of the Corporate Debtor (CD).

3. The Corporate Debtor owns a five-star hotel property named ***"Hotel Majestic Park Plaza"*** situated in Ludhiana on a piece of land admeasuring 6558 square yards, which is operated by ***"Sarovar Hotels Private Limited"*** (Park Plaza group) since 1996 under the Hotel Operations Agreement dated 30.05.1996.

4. The Application is filed requiring the Respondent No.1 along with his wife/friends/relatives/acquaintances to vacate the following portions of the hotel building: -

i. A salon at the 2nd floor.

ii. 13 shops at the 3rd floor.

iii. Room Nos.1802 to 1806 at the 8th floor.

iv. Entire 9th floor used by R1 and his wife for their residence.

5. During the course of hearing, it was brought to our notice that the premises as mentioned above in para 4 at Serial No.(i) to (iii) i.e. a salon at the 2nd floor, 13 shops at the 3rd floor and Room Nos.1802 to 1806 at the 8th floor are in the possession of the Company named **Tru Prime Private Limited**, whereas, the premises as mentioned above at Serial No.(iv) i.e. the 9th floor are in the possession of **Mrs. Raman Khangura** wife of Respondent No.1. Accordingly, vide Order dated 05.05.2025, the Applicant was directed to implead them too as a Respondent party. Accordingly, **True Prime Private Limited and Mrs. Raman Khangura** have been arrayed as **Respondent Nos.3 and 4 respectively** as per the amended memo of parties.

6. The True Prime Private Limited (R3) has been supplying milk and milk products to the Corporate Debtor. It is claimed that second floor salon named ***"Beau Chic"*** is given to the Tru Prime Private Limited on the basis of Private Sharing Agreement (PSA) dated 17.06.2019 allegedly valid for 08 years for sharing of profit to the extent of 15% with the Corporate Debtor, whereas 12 shops out of 13 shops on the 3rd floor are given to them (Tru Prime Private Limited) based on another Private Sharing Agreement (PSA) dated 13.03.2020 allegedly valid for 10 years till 2030. Further the five rooms i.e. "Room Nos.1802 to 1806" on 8th floor are also given to the "Tru Prime Private Limited" in lieu of commercial barter agreement wherein the Tru Prime Private

Limited had supplied milk and milk products to the Corporate Debtor; and the Corporate Debtor in return provided accommodation services to the **Key Managerial Personnel ("KMP")** namely Mrs. Amandeep Khangura for use as her residence.

Mrs. Raman Khangura (R4) is stated to be occupying the portion of 9th floor along with her husband Mr. Jasbir Singh Khangura (R1) and other family members as per an agreement dated 05.11.2015 with the Corporate Debtor which specifically provided for occupancy rights to her in the said portion of the hotel as her residential property located at House No.237 Sector 9C Chandigarh comprising of 4312 square yards, which was mortgaged against the loan availed by the CD, was auctioned by the **lender-Punjab and Sind Bank.**

It is the case of the Applicant–Resolution Professional (RP) that Respondent No. 1 and his associates are illegally occupying the said part of the premises of the hotel on the strength of fabricated documents and a collusive arrangement, thereby undermining the interests of the stakeholders and the sanctity of the CIRP.

7. The respondents-R1, R3 and R4 have filed their replies which are placed on record and the Applicant-RP has also filed rejoinder thereon. We have heard Ld. Senior Counsel Ms. Munisha Gandhi appearing on behalf of the RP and Mr. Aalok Jagga, Advocate for R1, Mr. Dhruv Dewan, Advocate for R2 (CoC), Mr. Pulkit Goyal, Advocate for R3 (Tru Prime Private Limited) and

Mr. V.K. Sachdeva and Mr. Viren Sibal, Advocates for R4 (Mrs. Raman Khangura).

8. The Ld. Counsel Mr. Dhruv Dewan, appearing on behalf of R2 (CoC) has adopted the arguments put-forth by the Ld. Senior Counsel Ms. Munisha Gandhi for the Applicant-RP itself. The Ld. Counsels for the parties were asked to file a brief note of arguments/submissions. The same have been accordingly filed and placed on record. The submissions so made by the Applicant and the defence placed for the Respondents (R1, R3 and R4) have been summarized by the Ld. Counsels in these brief notes and therefore for ready reference the same are reproduced (after re-paragraphing) herein:-

8.1 WRITTEN SUBMISSIONS ON BEHALF OF THE APPLICANT/ RESOLUTION PROFESSIONAL

I. INTRODUCTION

8.1.1. The present written submissions are being filed on behalf of the Applicant i.e., Mr. Navneet Gupta, the resolution professional ("Resolution Professional/Applicant") of Majestic Hotels Limited ("Corporate Debtor"), in the captioned Application being I.A. No. 2486 of 2024 in C.P. (IB)(Chd) No. 180 of 2022 ("Application") filed under Sections 19, 25 & 60 (5) of the Insolvency and Bankruptcy Code, 2016 ("Code") read with Regulation 30 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations").

8.1.2. The Applicant by way of the Application is inter alia seeking an order directing the eviction of Mr. Jasbir Singh Khangura (the promoter & suspended director of the Corporate Debtor) being the Respondent No.1 ("Respondent No. 1") along with his family/friends/relatives/acquaintances (collectively "Affiliates") including Tru Prime Private Limited ("Respondent No. 3/ Tru Prime") and Mrs. Raman Khangura ("Respondent No. 4") from the Majestic Park Plaza Hotel ("Concerned Property") and hand over the vacant and peaceful possession of the relevant portions of the Concerned Property to the Applicant. Pertinently, the aforementioned Respondents are in unauthorised and illegal possession of substantial portions of the Concerned Property, including: (i) a salon located on the 2nd floor; (ii) thirteen shops on

the 3rd floor; (iii) Room Nos. 1802 to 1806 on the 8th floor; and (iv) the entire 9th floor, including the two cubicles and the plaza area ("CD Premises").

8.1.3. As a brief background, the corporate insolvency resolution process ("CIRP") was initiated against the Corporate Debtor pursuant to an order of admission dated 03 July 2024 passed by this Hon'ble Tribunal wherein this Hon'ble Tribunal ("Admission Order") inter alia ordered (i) suspension of all the powers of the board of directors of the Corporate Debtor including the Respondent No.1 and vested the management and affairs of the Corporate Debtor with the Applicant, (ii) direction to the directors, personnel and the persons associated with the management of the Corporate Debtor to extend all cooperation to the Applicant for taking custody of the assets of the Corporate Debtor, and (iii) that the Applicant can take assistance of the police authorities in enforcing the Admission Order.

8.1.4. The captioned Application is necessitated in view of the continued, illegal, and unauthorized occupation of the Concerned Property by the Respondents and their affiliates, which has gravely prejudiced and is in flagrant violation of the Admission Order and the statutory mandate of the Code.

8.1.5. Respectfully, the Respondents in the present case are seeking to frustrate the CIRP by fabricating documents, orchestrating collusive arrangements, and withholding possession of the assets of the Corporate Debtor, thereby undermining the interests of the stakeholders and the sanctity of the CIRP.

II. ARGUMENTS ON MERITS

A. OWNERSHIP OF THE CD PREMISES:

8.1.6. Admittedly, the ownership of the Concerned Property constructed on premises measuring 6,558 sq. yards at Bhai Bala Chowk, Ferozpur Road, Ludhiana including the unauthorizedly occupied CD Premises, vests with the Corporate Debtor as evident from (i) the copies of the title deeds evidencing purchase by the Corporate Debtor, (ii) balance sheet of the Corporate Debtor for the financial years 2022-2023 and 2023-2024, (iii) the copies of the property tax receipts pertaining to the Concerned Property for the years 2022-23 & 2023-24, and the same has not been disputed by Respondent No.1 at any point in time prior to the commencement of the CIRP.

B. STATUTORY MANDATE OF THE RESPONDENTS UNDER THE CODE TO VACATE THE CD PREMISES:

8.1.7. Upon commencement of the CIRP, the Code statutorily mandates legal handover of control and custody of the assets of the Corporate Debtor to the resolution professional by all persons who are in custody of the assets:

(i) As per Section 17 of the Code, upon initiation of the CIRP, the Board of Directors of the Corporate Debtor stand suspended and all management and affairs of the Corporate Debtor stood vested in the Applicant. Even in terms of the Admission Order, the Affiliates were to handover the control and custody of the CD Premises to the Applicant and cooperate with the Applicant.

(ii) The mandate of Sections 18, 20 read with Section 25 of the Code casts a duty upon the Applicant to take control and custody, preserve and protect all the assets of the Corporate Debtor which includes taking control and custody of the CD Premises including assets that may or may not be in possession of the Corporate Debtor.

(iii) Section 19 of the Code requires the personnel of the Corporate Debtor, its promoters or any other person associated with the management of the Corporate Debtor, or any other person required to cooperate, to extend all assistance and cooperation to the resolution professional as required to manage the Corporate Debtor's affairs. The mandatory nature of section 19 of the Code has been reaffirmed in several judicial precedents with appropriate directions for handover of the possession of the assets/properties of a corporate debtor passed by the Ld. Adjudicating Authority in view of non-cooperation.

8.1.8. Pertinently, with similar facts this Hon'ble Tribunal in Punjab National Bank v. M/s. James Hotels Ltd., CA 37 of 2018 in CP (IB) No. 15 of 20176 directed the suspended directors who were occupying rooms in the corporate debtor's hotel unit to be evicted with further liberty to the resolution professional to approach the District Police Chief in case of non-compliance. Notably, the said order has been upheld by the Hon'ble Appellate Authority as well as the Hon'ble Supreme Court in a contempt petition in relation to the corporate insolvency resolution of the corporate debtor.

C. THE PURPORTED DEFENCE SOUGHT TO BE SET UP BY THE RESPONDENTS IS A SHAM

(a)RE: Illegal and unauthorized occupation of the 2nd floor and 3rd floor by Tru Prime:

8.1.9. Tru Prime is in illegal and unauthorised possession of (i) a salon named 'Beau Chic' on the 2nd floor and (ii) 12 out of the 13 shops on the 3rd floor of the Concerned Property which it is not letting to be accessed by the Applicant for the conduct of the CIRP. It is the case of Tru Prime that its occupation of the salon on the 2nd floor can be justified on the basis of an alleged profit-sharing agreement dated 17 June 2019 ("**2nd Floor PSA**") allegedly valid for a period of eight (8) years for sharing profit to an extent of 15%. Further, Tru Prime claims occupation of 12 out of the 13 shops on the 3rd floor based on a Profit-Sharing Agreement dated 13 March 2020, allegedly valid for 10 years till 2030 ("**3rd Floor PSA**") (collectively referred to as the (**PSAs**")).

8.1.10. The said claim is a sham, appears to be based on instruments concocted after commencement of CIRP and legally untenable for the following reasons:

(i) No record of the PSA in the records of the Corporate Debtor

8.1.11. The purported PSAs are not found in the official records, books of account, or statutory filings of the Corporate Debtor. The PSAs have surfaced for the first time only after the present proceedings were initiated and was never produced to the Applicant or the CoC during the CIRP, despite repeated requests and directions from this Hon'ble Tribunal. In fact, the members of the suspended board of the Corporate Debtor have feigned complete ignorance regarding these PSAs in every meeting of the CoC.

8.1.12. In fact, the fabrication of the PSAs becomes more evident from the fact the PSAs are neither registered under Section 17 read with Section 49 of the Registration Act, 1908 nor adequately stamped as required under section 35 of the Indian Stamp Act, 1899 ("Stamp Act"). (See Interplay Between Arbitration Agreements under Arbitration, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1, Para 235 (7 Judge Bench)).

8.1.13. Arguendo even if assumed to exist, a profit-sharing agreement cannot confer any right of possession or authorize sub-letting of premises as it is neither a tenancy agreement, nor a lease, nor a licence. The arrangement, although non-existent in the record of the Corporate Debtor, on its face, cannot legitimize continued occupation of the Concerned Property.

(ii) No consideration ever received under the PSAs:

8.1.14. Besides the fact that the PSAs are non-existent in the books of the Corporate Debtor, the Corporate Debtor's financial statements, monthly management information system reports, and bank statements do not reflect any profit, revenue, or consideration received from Tru Prime in respect of the PSAs. Not a single payment has been received by the Corporate Debtor under this purported arrangement despite the purported arrangements having been in place for over six (6) years.

8.1.15. While Clause 17 of the both the PSAs required Tru Prime to furnish six-monthly profit and loss statements to the Corporate Debtor, no such statements have ever been provided. Tru Prime's reliance on a single profit sharing statement for the period between October 2024 and March 2025, despite the 2nd Floor PSA being dated as far back as June 2019, underscores that for over five years of alleged occupation basis the 2nd Floor PSA, not a single profit or payment was ever shared with or received by the Corporate Debtor, thereby exposing the afterthought and malafides in Tru Prime's claim.

(iii) The terms of the PSAs are unconscionable and reek of fabrication

8.1.16. The PSAs contains unconscionable terms viz. nil security deposit, all maintenance/utilities borne by the Corporate Debtor, and termination costs of INR 2 lakhs/month for the 2nd floor and INR 5 lakhs/month for the 3rd floor, designed to unduly benefit Tru Prime. No six-monthly profit and loss statements or credible financial records have ever been produced; the only statement shared by Tru Prime for 3rd floor arbitrarily covers the period October 2024 - March 2025, which is insufficient and inconsistent with the alleged arrangement. Furthermore, Tru Prime admits 12 of the 13 shops are occupied by temporary exhibitors on rotation, with Tru Prime earning commissions, despite no privity of contract.

8.1.17. The Applicant has no means of identifying the actual operators or sub-occupants of the salon, as no information or documentation has been provided by Tru Prime or the suspended management, despite repeated requests. Notably, upon being asked, none of the sub-lettees have disclosed any contractual basis for occupation

8.1.18. It is curious to note that as per the Memorandum of Association and statutory filings of Tru Prime, it is engaged in the dairy sector. Accordingly, the occupation of the 2nd & the 3rd floor for a salon / shops by a dairy company is wholly incongruous and points to a collusive arrangement.

(b)RE: Occupation of the 8th floor:

(i) Fabrication of documents & no corresponding reflection in Corporate Debtor's records

8.1.19. It is the contention of Tru Prime as regards the five rooms (Room Nos. 1802–1806) supposedly in the form of a luxury apartment along with Cubicle-I, Cubicle-III and Plaza-I on the 9th floor, there was a commercial barter arrangement wherein Tru Prime supplied milk and milk products to the Corporate Debtor, and the Corporate Debtor in return provided accommodation services to the Key Managerial Personnel ("KMP") of Tru Prime since "at least" April 2023.

8.1.20. In support of its albeit fabricated claim, while no written lease or rental agreement exists, invoices and ledgers have been produced to show that allegedly payments for the rooms were made or set off against the value of goods supplied, with a purported Confirmation Letter dated 24 June 2024 addressed to Mrs. Amandeep Khangura (director of Tru Prime) (only for one room, not all five). The said letter is not found anywhere in the records of the Corporate Debtor, not stamped, not on company letterhead, and not supported by board resolution or company seal and is interestingly signed by Mr. Kewal Krishan Sharma, who is a suspended director, and had repeatedly denied knowledge of any such arrangement in all the CoC meetings.

8.1.21. It is the Applicant's case that the documents relied upon by Tru Prime are fabricated and added as an afterthought in continuation of their acts of manipulation of records to somehow remain in possession of the occupied space without any legal right as explained hereinbelow:

a. There is no valid written agreement for tenancy as required under Section 4(1) of the Punjab Rent Act, 1995. Contrary to Tru Prime's recent addition to its concocted story, the concerned space on the 8th floor is not a luxury apartment, and is a non-residential as per property tax records.

b. The alleged 40 invoices raised by Tru Prime towards the supply of ghee to the Corporate Debtor. between 1 January 2024 and 30 June 2024 relate to approximately 7,000 litres of ghee purportedly purchased by the Corporate Debtor in the 6 months preceding the insolvency commencement date i.e., 03 July 2024 ("ICD") are grossly disproportionate general usage of the product in the hotel which is approximately 40-50 litres per month (Ref. Para 4(c)(ii) @Pg. 4 of the Applicant's Additional Affidavit dated 13 July 2025 ("Additional Affidavit")).

c. Further, 18 out of the 40 alleged invoices have not been reported by Tru Prime in the GST portal.

d. The subsequent supplies of ghee from April 2024 till June 2024 were belatedly reported by Tru Prime on ICD and 11 October 2024 (when the Application was already filed).

e. The inflated ghee invoices are an afterthought since they have appeared in the ledger only from January 2024 onwards till the ICD. Curiously, the serial number/journal number of the invoices are in seriatim starting from 420 albeit placed apart monthly and the same is out of place with the serial number of other invoices/entries.

f. In April 2023, the total amount of invoices raised by Tru Prime on the Corporate Debtor for the supply of milk and milk products was INR 60 thousand but in June 2024, it shot up more than 15 (fifteen) times to INR 9.95 Lakhs. As per the records, this fabricated invoicing spiked up after April 2024 which belies any commercial logic.

g. There is a serious mismatch within Tru Prime's 'gate outward challan' and tax invoices receipts issued by the Corporate Debtor. The delivery–billing mismatch shows document engineering wherein the gate challans issued by Tru Prime pre-date invoices by months. While the said invoices are dated between 01 January 2024 and 30 June 2024, the outward challan of Tru Prime are dated from October 2023 onwards. For instance, reference is made to the 'Gate Outward Challan' dated 05 January 2024 numbered 5373 issued against 178 litres of Ghee to the Corporate Debtor, while Tru Prime issued an invoice for the said 'Gate Outward Challan' only 3 months thereafter on 05 April 2024.

h. There is no record of the receipt & consumption of the above quantum of ghee in the records of the Corporate Debtor and nor is there any inward receipt of the goods found in the records of the Corporate Debtor.

i. The ledger entries from April to June 2024 demonstrate that the surreptitious and inflated invoices were fabricated to create set-offs against the alleged rental dues for the 8th floor.

j. Tru Prime admits that it had transactions with the Corporate Debtor since 2012, yet, adjustments against the occupied rooms were never made until 2024 just prior to the ICD. No TDS has been deducted by Tru Prime till date on the said invoices as required under Section 194I of the Income Tax Act, 1961. Tru Prime's ledger also reveals that there are even instances where personal income tax of Mrs. Amandeep Khangura has been paid by the Corporate Debtor.

k. Further, Tru Prime's tax invoices for the alleged rental covering the period from April 2023 to March 2026 were raised belatedly – some as late as 21 June 2024, just days before the ICD. Notably, one invoice dated June 21, 2024, pre-adjusts rent from December 2025 to March 2026, which is highly suspicious, especially since it was generated after this Hon'ble Tribunal had reserved orders in the Section 7 petition.

l. All the journal entries for these invoices issued on different dates are in seriatim starting from entry 364, which is inconsistent with normal business practice and suggests fabrication. These entries were made to set off alleged rental dues against purported supplies of milk and milk products by Tru Prime.

m. Even on a conservative basis, the notional tariff for the five rooms on the 8th floor alone (excluding the cubicles and the plaza on the 9th floor) over 36 months would be about INR 2.7 crores, while the total set-off claimed by Tru Prime is only INR 38.23 lakhs. This vast discrepancy leaves Tru Prime with no legal right or basis whatsoever to claim a right of tenancy or continued illegal occupation.

n. In this regard, it is pertinent to note the contents of Tru Prine's counter affidavit dated 04 August 2025, which is characterized by a notable lack of specificity wherein no efforts whatsoever have been made to reveal the real facts.

8.1.22. In light of the above, Tru Prime's claim to possession rests entirely on post-facto fabricated documents that fail to establish a valid tenancy, legitimate consideration or credible records. Inflated and back-dated invoices, delivery-billing mismatches, post-facto serialised journal entries and belated rental bills are contrived to prop up a sham barter narrative aimed at obstructing the CIRP and retaining unlawful occupation, which ought to be seen as a clear abuse of the process of law warranting strict action against Tru Prime.

(ii) Relationship between the erstwhile management & Tru Prime Pvt. Ltd.

8.1.23. It is submitted that Tru Prime is a related party of the Corporate Debtor as per Section 5 (24) (f) of the Code and Section 2(76)(vi) of the Companies Act, 2013 as Mr. KK Sharma has been a common director of both companies between 30 September 2012 and 27 May 2019 and a shareholder of Tru Prime as well as a close aide of R-1.

8.1.24. Further, Mrs. Amandeep Khangura (Director of Tru Prime) is also accustomed to act as per instructions of R-1 & Mr. KK Sharma as she has been a co-director with R-1 in Caring XL Consultants Pvt. Ltd. (a company with same registered address as the Corporate Debtor) ("Caring XL") in which R- 1 was also a shareholder. Even the Chief Financial Officer of the Corporate Debtor is a director in Caring XL. Further, Harbinder Singh Grewal (signatory of the Alleged Profit-Sharing Agreement on behalf of the CD) was also a director in Caring XL while also being the Managing Director of the Corporate Debtor. She and Mr. KK Sharma have also been co-directors in Prime Exhibitions Pvt. Ltd. and Prime Bovine Pvt. Ltd in the past.

(c)RE: Occupation of the 9th floor:

8.1.25. Admittedly, the 9th floor of the Concerned Property is in the occupation of Respondent Nos. 1 & 4 who are spouses, along with their family members. Mrs. Raman Khangura claims occupancy rights over the 9th floor of the Concerned Property based on a purported Memorandum regarding Occupancy Rights dated 05 November 2015 along with an addendum dated 12 November 2015 (collectively, the "Occupancy Agreement"); and an Arbitral Award dated 19 March 2019 ("Arbitral Award"), which she asserts crystallizes her right to remain in possession of the premises until her alleged dues are paid by the Corporate Debtor unaffected by any insolvency and / or change of management of the Corporate Debtor (the Occupancy Agreement and the Arbitral Award are collectively referred to as "Documents"). The Applicant strongly disputes the validity, authenticity, and enforceability of these documents as explained below:

(i) Related Party Transaction, Collusion, and Fabrication:

8.1.26. The Documents are not found in the statutory records, books of account, or official documents of the Corporate Debtor. They are also absent from board reports and financial statements. The Occupancy Agreement is not registered under the Registration Act, 1908, and both the Documents are insufficiently stamped under the Stamp Act rendering them inadmissible and unenforceable in law.

8.1.27. There is no mention of the Documents in any of the financing agreements with secured creditors (e.g., UVARCL), nor are they referenced in the Corporate Debtor's balance sheets. On the other hand, loans to other

creditors like UVARCL or Punjab and Sind Bank have been explained with notes to the Balance Sheet.

8.1.28. Further, the Arbitral Award, passed over five years ago, has not sought to be enforced ever. In any event, any enforcement of such award as a decree is subject to the rights of a secured creditor, who has a priority charge over the property.10 In any case, the Arbitral Award cannot be enforced during CIRP since the same is impressible under Section 14 of the Code.

8.1.29. It is more so shocking that Mrs. Khangura was a director and a shareholder at the time of execution of the Occupancy Agreement holding 11.05% equity share as on 31 March 2016 whereas Mr. Jasbir Khangura (Respondent No. 1 and husband of Respondent No. 4) was the managing director and 28.81% shareholder. Further, at the time of the Arbitral Award, Mrs. Khangura was holding 41.3% equity share as on 31 March 2019 and was a director and signatory to the books of the Corporate Debtor, which highlights the collusive/fabricated nature of these arrangements.

8.1.30. Further, by virtue of Mrs. Khangura being director / shareholder of the Corporate Debtor, the Occupancy Agreement is a related party transaction ("RPT") which is violative of section 188 & 189 of the Companies Act, 2013 in the absence of (i) prior approval by a resolution of the shareholders, (ii) nondisclosure of the purported arrangement in the Board's report; and (iii) non-disclosure of the Documents in register of RPTs. In fact, Mrs. Khangura was a director at the time of execution of the purported Occupancy Agreement as well as the Arbitral Award and having certifying the statutory financial statements in the director's report at the relevant time, she is estopped from claiming the existence of the Documents which are not part of the official records.

8.1.31. Without prejudice to the above, the Occupancy Agreement purports to grant rights not only to Mrs. Khangura but also to her husband who is Respondent No. 1 and his parents with a declaration that his parents have been longstanding occupants of 9th Floor. Mrs. Khangura's mother-in-law Mrs. Gurdial Khangura has also been a shareholder (holding 6.97% as on 31.03.2016 & 33.7% shareholding as on 31.03.2019), and was also the Managing Director of the Corporate Debtor at the time of passing of the Arbitral Award. By granting occupant rights to both Mrs. Raman Khangura and Mrs. Gurdial Khangura, who were also the majority shareholders as on 31 March 2019 (just around the time of Arbitral Award) and in control of the Corporate Debtor. This demonstrates that the so-called Occupancy Agreement is nothing more than an intra-family transaction, and the alleged Arbitral Award stems from what appears to be a "friendly match" between family members, the very existence of which is dubious and, in any event, plainly collusive and self-serving.

8.1.32. Additionally, the veracity of the said Documents is further under scrutiny in view of the fact that while Mr. K.K. Sharma, has professed

ignorance of any contractual arrangement in all the CoC meetings yet in para 23 of the Arbitral Award he has purportedly appeared as a witness and given evidence in support of the Corporate Debtor in the arbitral proceedings.

8.1.33. Equally, R-1's stand in the 1st CoC meeting that he/his associates were in possession of the 9th floor and that 9th Floor is his family home as a perquisite enjoyed by the promoter raises serious questions on the

veracity of the so called Occupancy Agreement and Arbitral Award, which are evidently ante-dated, contrived and a sham devised to legitimise unlawful possession.

8.1.34. At this juncture, it would be pertinent to draw the attention of this Hon'ble Tribunal to the judgment of the Hon'ble Supreme Court in Ramesh Kumar & Anr., v. Furu Ram & Anr., (2011) 8 SCC 6111 wherein after looking into the modus operandi of the parties, the Hon'ble Apex Court held that the arbitral award was not genuine and that the court will not and in fact cannot make such an award a rule of the court. The relevant extract is reproduced below:

> "48. If an award was not genuine, but was collusive and sham, the court will not and in fact cannot make it a rule of the court.. ...If all these facts which have a bearing on the making of the award and the validity of the award are suppressed before the court and the court was misled into making decrees in terms of the awards, necessarily the proceedings are fraudulent and amounted to committing fraud on the court..."

8.1.35. Further, in The State of Uttar Pradesh v. R.K. Pandey (2025 INSC 48)12, the Hon'ble Supreme Court set aside the arbitral award as "null and void ab initio " on the ground that there was no record or mention of this agreement in any official document, thereby negating its legal legitimacy, emphasizing that the existence of a valid arbitration agreement is a sine qua non for any arbitral proceedings. The Hon'ble Supreme Court drew extensively from various jurisprudence to uphold the principle of "fraud vitiates everything," and particularly relied on Bilkis Yakub Rasool v. Union of India and Others, (2024 INSC 24) wherein it was reiterated that fraud and justice cannot coexist. Litigants cannot secure illicit advantages by producing false evidence or employing fraudulent tactics.

(ii) Unjust enrichment of Mrs. Khangura through rent-free occupation of Concerned Premises

8.1.36. At the outset, there is no legal basis for Mrs. Khangura to claim any right of recovery / occupation of the CD Premises in her capacity as a mortgagor under the Indian Contract Act, 1872 on account of enforcement of the said mortgage by the creditors of the Corporate Debtor.

8.1.37. Since 2015 when Mrs. Khangura stepped in as a creditor, no amounts have ever been paid, set off, or adjusted in the Corporate Debtor's books for the occupation of the 9th floor by Mrs. Khangura, her family, or guests. Mrs. Khangura's ledger account maintained by the Corporate Debtor shows no such adjustment.

8.1.38. Further, the Occupancy Agreement does not contemplate any payment or consideration for the occupancy, nor does it provide for any reduction of the loan amount against the permitted occupancy. The amount due to Mrs. Khangura as per the balance sheet is INR 10 crores as on 31 March 2024. Given the absence of any adjustment, by way of an average/conservative estimation, the total (notional) amount due to the Corporate Debtor for the occupancy period is around INR 26.44 crores which by far exceeds the loan amount shown in the balance sheet.

8.1.39. Without prejudice, the claim of Mrs. Khangura is at best a pre-CIRP Claim, which would be dealt as per the provisions of the Code. However, Mrs. Khangura has not filed any claim with the Applicant. In any event, an attempt to set off or adjust pre-CIRP claims during the CIRP is strictly barred by Section 14 of the Code.14 Therefore, having failed to file a claim in the CIRP, the unlawful occupation by Mrs. Khangura in a bid to recover her pre-CIRP dues amounts to a preferential and unjust enrichment in violation of Section 14.

D. OVERRIDING EFFECT AND MANDATE OF THE CODE:

8.1.40. Section 238 of the Code provides that the provisions of the Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. This non-obstante clause is designed to ensure that the Code prevails over all other statutes, contracts, and instruments to the extent of any inconsistency. The Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta (2021) 7 SCC 20915 and Tata Consultancy Services Ltd. v. SK Wheels (P) Ltd. (2022) 2 SCC 58316 has clarified that the term "instrument" in Section 238 is to be interpreted broadly, covering not only statutory contracts but also private agreements and arbitral awards. Thus, any private arrangement, lease, license, profit-sharing agreement, or arbitral award that is inconsistent with the Code is rendered unenforceable to the extent of such inconsistency. The relevant portion of the of the Gujarat Urja judgment is reproduced below:

> "80. Section 238 of IBC provides: 238. Provisions of this Code to override other laws.-The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. "
>
> 82. It has been urged on behalf of the appellant that Section 238 does not apply to a bilateral commercial contract between a corporate debtor and a third party and only applies to statutory contracts or instruments entered

into by operation of law. The basis of this submission is that the word "instrument" should be given a meaning ejusdem generis to the provision "contained in any other law". We do not find force in this argument. Section 238 does not state that the "instrument" must be entered into by operation of law; rather it states that the instrument has effect by virtue of any such law. In other words, the instrument need not be a creation of a statute; it becomes enforceable by virtue of a law. Therefore, we are inclined to agree with the view taken by NCLT. Section 238 is prefaced by a non obstante clause. NCLT's jurisdiction could be invoked in the present case because the termination of PPA was sought solely on the ground that the corporate debtor had become subject to an insolvency resolution process under IBC." (Emphasis Supplied)

8.1.41. As regards Respondent No. 1's reliance on Regulation 10 of the IBBI (Liquidation Process) Regulations, 2017 to argue that only a liquidator can disclaim or terminate onerous property or contracts, it is submitted that the comparison between the liquidation regime and the CIRP framework is wholly misplaced. Further, in the present proceeding, the Applicant is not seeking any disclaimer but is in fact (a) seeking to exercise its rights under Sections 18(1)(f) and 25(2)(a) of the Code; and (b) questioning the very existence of the documents sought to be relied.

8.1.42. Respectfully, the relief sought in the present Application is for the handover of possession of the Corporate Debtor's assets unlawfully occupied, which is distinct from the "disclaiming an onerous property" in liquidation. Even assuming a pre-CIRP contract exists, Section 238 of the Code overrides any inconsistent term in such a contract and section 14 bars self-help enforcement of pre-CIRP claims. Jurisprudence under the Code, as set in succeeding paragraphs including Pavan Vikram Sahjwani v. Santanu Ray (2024 SCC OnLine NCLAT 333)17 and Punjab National Bank v. James Hotels Ltd. (CA 37 of 2018), has recognised this Hon'ble Tribunal has authority and jurisdiction to order eviction of such claimants during CIRP itself notwithstanding any pre-existing arrangements.

Re: Jurisdiction of this Hon'ble Tribunal to order eviction of the Respondents:

8.1.43. Sections 18 and 25 of the Code mandate the Resolution Professional to take control and custody of all assets of the corporate debtor, including those not in the possession of the corporate debtor. This Hon'ble Tribunal has the jurisdiction to pass orders necessary to facilitate the CIRP, including eviction of unauthorized occupants.

8.1.44. Without prejudice, it is submitted that even as per the best-case scenario of the Respondents who can claim to be licensees, a license does not create any interest in the immovable property. The Supreme Court in Victory Iron Works Ltd. v. Jitendra Lohia (2023) 7 SCC 22719 and Ld. Adjudicating Authority and the Ld. Appellate Authority in several cases including Vineeta

Maheshwari v. Kwality Catering Services (2023 SCC OnLine NCLT 321)20 and Pavan Vikram Sahjwani v. Santanu Ray (2024 SCC OnLine NCLAT 333) have held that a licensee cannot claim any right to retain possession against the corporate debtor, especially after the commencement of CIRP. In any event, this Hon'ble Tribunal is well within its jurisdiction to pass directions for handover of a corporate debtor's assets. The following precedents are being relied upon in this regard.

(i) **Pavan Vikram Sahjwani v. Santanu Ray** (2024 SCC OnLine NCLAT 333):

"11. Even otherwise, the issue of passing an eviction order qua immovable properties forming part of assets of Corporate Debtor, despite injunctions, have been discussed in various judgements. In Jhanvi Rajpal Automotive Pvt Ltd versus RP of Rajpal Abhikaran Pvt Ltd & Anr Company Appeal No.1417 of 2022, this Hon'ble Tribunal has taken a view in case of M.P. Accommodation Control Act, 1961 that where the Corporate Debtor has ownership right over the premises, the premises can be taken in control by IRP/.RP... This issue once again came up for consideration before this Tribunal in the case of Nitin Jan V, Universal Tutorial Pvt Ltd, COMPANY Appeal No.337 of 2021 where the NCLT refused to grant orders for taking possession and eventually this Hon'ble 7 Tribunal has allowed the application in view of the orders passed by this Hon'ble Tribunal.

13. ...However, the issue is not qua the stage of the proceedings but is whether the Tribunal has jurisdiction to entertain such an application and it was conclusively held the Tribunal has jurisdiction and the liquidator is not required to file a suit and can approach the Ld. Tribunal.

(ii) **Punjab National Bank v. James Hotels Ltd**., CA 37 of 2018 in CP(IB) No. 15 of 2017:-

43. Having given our thoughtful consideration to the contention on behalf of the respondents, we are unable to accept the submission that respondents No.1 and 2 can be permitted to continue n occupation of the hotel accommodation despite the corporate debtor undergoing the insolvency resolution process. Respondent No.1 is claiming some right on the basis of a resolution dated 12.02.2017 in his favour, which has been seriously attacked by the Resolution Process as ante dated document, but the respondent No.2 even does not have any material on record to justify his occupation in the portion of the hotel accommodation.

44. In view of the above discussion and finding no justification in the defence of respondents No. 1 and 2, we allow this application and direct respondents No.1 and 2 to vacate the hotel accommodation within a period of three weeks from the date of receipt of the certified copy of this order, failing which the Resolution Professional shall have the right to eject the respondents with the police help by moving appropriate application before

the District Police Chief as well as to the District Administration Chandigarh, who would provide the necessary assistance.

8.1.45. Once CIRP is initiated, the proceedings under the Code attain the status of in rem and create third-party rights for all creditors as stakeholders in the process which are to be respected in the priority of the rights as provided in the waterfall mechanism in terms of Section 53 of the Code. Reliance is placed in this regard on GLAS Trust Company LLC v BYJU Raveendran & Ors., 2025 (3) SCC 62521 and Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17.

8.1.46. The Occupancy Agreement and Arbitral Award are also inconsistent with the vires and object of the Code as it is effectively giving priority to an unsecured related party of the Corporate Debtor which has not filed its claim with the Corporate Debtor over and above, the secured financial creditors of the Corporate Debtor. The Hon'ble Supreme Court has clearly upheld respecting priority of rights of a secured creditor over an unsecured creditor in Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17; Essar Steel India Ltd. Committee of Creditors v. SatishKumar Gupta, (2020) 8 SCC 53123; India Resurgence ARC Pvt. Ltd. v. Amit Metaliks Ltd. & Anr., (2021) 19 SCC 67224 in as much as the security interest of a secured creditor must be protected and treated in priority as laid down under Section 53 of the Code.

Re: Distinguishing inapplicable precedents:

8.1.47. The Applicant has addressed and distinguished contrary authorities such Sumati Suresh Hegde v. Anand Sonbhadra and K.L. Jute Products Pvt. Ltd. v. Tirupati Jute Industries Ltd., which are being relied upon by Tru Prime by clarifying that these relate to protected tenancies under rent control statutes, which are not applicable to the present facts where there is no tenancy involved.

8.1.48. Further, the judgment in Embassy Property Developments (P) Ltd. v. State of Karnataka, (2020) 13 SCC 308 is distinguishable since it involved a decision within public law domain, and the judgment in Realpro Realty Solutions Pvt. Ltd. v. Sanskar Projects and Housing Ltd., CA(AT)(Ins.) No. 374 of 2023 and Prashant Shekara Shetty v. Alcuris Healthcare Pvt. Ltd., CA(AT)(Ins.) No. 359 of 2022 are inapplicable too since the question involved therein was whether petitions under Sections 7 and 9 of the Code could be admitted on the basis of PSAs, while the Applicant in the instant case is questioning the genuineness of the PSAs and illegal occupancy of the property of the Corporate Debtor basis the said PSAs.

E. CONCLUSION:

8.1.49. In light of the above, it stands conclusively established that the Respondents' continued occupation of the Concerned Property is bereft of any legal right or entitlement and is sustained only through unregistered, inadequately stamped and collusive instruments, namely the PSAs, the

Occupancy Agreement and the Arbitral Award. None of the said instruments find place in the Corporate Debtor's statutory records and are clearly fabricated and ante dated documents, drawn up by the Respondents to render the CIRP of the Corporate Debtor otiose.

8.1.50. Further, these arrangements, even if assumed to exist, are overridden by Section 238 of the Code for being contrary to the statutory mandate of Sections 18 and 25, which require the RP to take control and custody of the Corporate Debtor's assets "wherever located." The in rem character of the CIRP, as recognised by the Hon'ble Supreme Court, demands that all assets be preserved and made available for resolution in accordance with the provisions of the Code, without being usurped through self-serving pre-CIRP arrangements by the promoters and their related parties.

8.1.51. The Respondents' conduct in fabricating documents, withholding possession and frustrating the objectives of the Code constitutes a blatant abuse of process, unjust enrichment and wilful defiance of the Admission Order passed by this Hon'ble Tribunal and this Hon'ble Tribunal, as the custodian of the process, is ought to exercise its plenary jurisdiction under Sections 18, 25, and 60(5) to direct the immediate eviction of the Respondents and their affiliates from all portions of the Concerned Property as any indulgence to the Respondents would embolden the circumvention of the Code, dilute the sanctity of the present CIRP, and irreversibly erode the Corporate Debtor's value to the prejudice of all stakeholders.

8.2 WRITTEN SUBMISSIONS ON BEHALF OF RESPONDENT NO.1

8.2.1 The 1st argument of the RP is that under Section 18, 20 read with Section 25 it is duty-bound to take control and custody of all assets of CD. While referring to Section 20, RP is equally bound by agreements entered into by the CD prior to the onset of CIRP as is evident from Section 20 (2) (B) which states that RP is entitled to amend or modify the contracts which were entered into before commencement of CIRP. Prayer of RP cannot be considered in contravention of Section 20 (2) (B). It is well settled that merely on account of onset of CIRP previous contracts do not get obliterated and continue to be binding on CD because onset of CIRP only replaces management with the RP while retaining corporate entity as it is. Reliance is placed upon the judgment of this Hon'ble Tribunal in the case of SIDBI Vs. International Mega Food Park Ltd., IA No.412/2021 in CP (IB) No.174/Chd/CHD/2018 (Para 12, 14, 16 &17).

8.2.2 That still further, there is no prayer in the application i.e., IA No. 2486 of 2024 filed by the RP praying for setting aside of the agreement dated 05/11/2015 and award 19/03/2019 and therefore it is well settled that a relief not claimed cannot be granted by Court / NCLT. Reliance in this regard is placed on the judgment in the case of Messrs. Trojan & Co. Ltd. Vs. Rm.N.N. Nagappa Chettiar, AIR 1953 SC 235 wherein it has been held as under:

"*It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the Court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case.*"

Reliance is further placed upon the judgment of the Hon'ble Supreme Court in the case of Bharat Amratlal Kothari & Anr. Vs. Dosukhan Samadkhan Sindhi & Ors., AIR 2010 SC 475.

"*Though the Court has very wide discretion in granting relief, the* Court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner."

8.2.3. Further the contention that Mr. KK Sharma pleaded ignorance of any contractual arrangement, is absolutely unsustainable because in reply by respondent No. 1 to the instant IA No. 2486 of 2024 in para No. 12 at page No. 8 it has already been highlighted that the entitlement and occupation of respondent to the 9th floor is on account of contractual arrangement between corporate debtor and also the same has been adjudicated, crystallized and is on the basis of such legally and judicially recognized rights.

8.2.4. The judgment in the case of Gujrat Urja is not applicable because that was a case of termination of an agreement. Secondly Section 238 does not override any agreement which has been admittedly entered into between the parties. Further, NCLT in the present case is not exercising any jurisdiction of avoidance of any transactions under Section 43, 45/66 nor is the present application under Regulation 10 of the liquidation Regulations which permits the disclaimer of onerous agreement. Further, the judgment of Hon'ble Supreme Court is not a case where it permits RP to avoid any agreement. Section has not been interpreted the manner in which RP is projecting that RP is entitled to disobey the agreement entered into prior to the onset of CRP. Section 20 permits RP to modify the agreement but that can only be done by bilateral consent because agreements are bilateral in nature and Section 20 does not permit the RP to unilaterally modify an agreement. Further this also shows that the agreement is binding upon the RP. Further, the aforesaid judgment of Gujrat Urja was subsequently dealt with in the case of Tata consultancy in which it was held as under:-

"27. It is evident that the appellant had time and again informed the Corporate Debtor that its services were deficient, and it was falling foul of its contractual obligations. There is nothing to indicate that the termination of the Facilities Agreement was motivated by the insolvency of the Corporate Debtor. The trajectory of events makes it clear that the alleged breaches noted in the termination notice dated 10 June 2019 were not a smokescreen to terminate the agreement because of the insolvency of the Corporate Debtor. Thus, we are of the view that the NCLT does not have

any residuary jurisdiction to entertain the present contractual dispute which has arisen dehors the insolvency of the Corporate Debtor. In the absence of jurisdiction over the dispute, the NCLT could not have imposed an ad-interim stay on the termination notice. The NCLAT has incorrectly upheld he interim order of the NCLT."

Further, the Hon'ble NCLAT, in the case of Brihanmumbai Electric Supply & Transport Undertaking Vs. Ashok Kumar Golecha, CA (AT) (INS) No. 281 of 2025 has held as under:

"11. Given this backdrop, the Adjudicating Authority also did not commit any infirmity in upholding the decision of the Liquidator that the deposit was interest-free and that neither the Liquidator nor the Adjudicating Authority can read into the agreement terms beyond what is explicitly contained therein. We are also of the considered view that the Adjudicating Authority in the exercise of its summary jurisdiction is not capacitated to determine the terms and conditions of the contractual agreement. The Adjudicating Authority is not expected to go into the commercial intent of the parties in trying to interpret the contractual provisions in the IA beyond a plain reading of the same...."

8.2.5. Regulation 10 of the IBBI (liquidation process) Regulations, 2016 reads

as under:-

Regulation 10: Disclaimer of onerous property.

(1) Where any part of the property of a corporate debtor consists of-

(a) land of any tenure, burdened with onerous covenants;

(b) shares or stocks in companies;

(c) any other property which is not saleable or is nof readily saleable by reason of the possessor thereof being bound either to the performance of any onerous act or to the payment of any sum of money; or

(d) unprofitable contracts;

the liquidator may, notwithstanding that he has endeavored to sell or has taken possession of the property or exercised any act of ownership in relation thereto or done anything in pursuance of the contract, make an application to the Adjudicating Authority within six months from the liquidation commencement date, or such extended period as may be allowed by the Adjudicating Authority, to disclaim the property or contract.

(2) The liquidator shall not make an application under sub-regulation (1) if a person interested in the property or contract inquired in writing whether he will make an application to have such property disclaimed, and he did not

communicate his intention to do so within one month from receipt of such inquiry.

(3) The liquidator shall serve a notice to persons interested in the onerous property or contract at least seven days before making an application for disclaimer to the Adjudicating Authority:

A perusal of the above would reveal that entitlement of the liquidator to claim disclaimer of onerous property is only provided under Regulation 10 and there is no such similar provision under CIRP Regulations, 2016. Entire argument of the RP, even in absence of any such prayer in the application is seeking disclaimer of the onerous property according to him, which can only be considered under Regulation 10 while the corporate debt is under liquidation and not during the resolution process. Even in the written submissions of the RP particularly para No. 16 of page No. 3 RP again is claiming that various agreements including profit-sharing agreements are unconscionable. Therefore, such argument cannot be considered in absence of there being any provision under the CIRP Regulations and admittedly Regulation 10 is not applicable as the corporate debt is not under liquidation. The next contention of the RP is that agreements are not available in the record of the CD. Firstly it is submitted that there is no such provision under IBC which permits assumption of such nature, merely because RP assumingly has not been able to find the said agreement. Further, it is the assertion of the respondent that the said agreement are available in the records of the CD. IA No. 1110 of 2025 was filed by the answering respondent seeking permission to inspect the administrative office of the CD in order to assist the RP to find documents which he asserts he has not been able to find. RP has opposed request of the answering respondent dated 04.06.2025 in his reply dated 07.06.2025 wherein he has refused inspection of the office of the CD. All these documents are within the office premises of the CD. Secondly, the contention of the RP is factually and legally incorrect because on one hand he is contending that he has access to all the records and therefore on accessing the same he has not been able to find either profit-sharing agreement or memorandum of understanding, but on the other hand he has filed Section 19 application claiming that the records of the CD have not been made fully available to the RP. Not only this, in the 3rd & 4th COC meeting held on 11.10.2024 and 07.11.2024 which appear at page No. 127 & 130 of I.A. No. 614 of 2025 respectively, it is mentioned that the records of the CD in its entirety are not available with the RP and therefore Section 19 application has been filed. Thus, once it is the RP's own case of the RP that it does not have the custody of the entire records of the CD, therefore he cannot contend that the aforesaid agreement and not part of the records of the CD.

8.2.7. The next contention of the RP is that the agreements do not appear to be genuine. Firstly, it is submitted that the agreements are bilateral in nature. Secondly, if 2 parties to the agreement do not dispute the same are 3rd party does not have any locus standi to contend that the said agreements do not exist. Thirdly, as highlighted before it is the RP's own case of the RP

under Section 19 that is IA No. 614 of 2025 that complete records are not available. Therefore, RP cannot contend that it has examined the entire records. IA No. 1110 of 2025 was filed seeking inspection pursuant to request dated 04.06.2025 which was rejected by the RP not permitting the answering respondent to inspect. In case of RP would have permitted answering respondent would have assisted the RP. It is incorrect to allege that the said documents are not within the records of the said. Fourthly, financial statements/Records of the CD are not the sole test to determine whether the said documents exist or not. Reliance in this regard in placed upon a decision of this Hon'ble Tribunal in the case of Tajinder Pal Setia Vs. Arvind Kumar, I.A. 2105 of 2023, CP(IB) No. 248/CHD/CHD/2019, relevant extract of the same is reproduced hereunder:

> *26 We do not find any merit in the submission of the Applicant that the claim of the Respondent Nos. 2 and 3 are liable to be rejected as the same do not appear in the audited balance sheets. Balance sheet is not the sole basis for proving or admission of claim. Hence, mere non reflection of the claim amount in the Balance Sheet cannot be the sole ground of rejection."*

8.2.8. The next contention of the RP is that the profit-sharing agreement is not registered. It is well settled that in a case of profit-sharing agreement possession remains joint that is of the CD and the other party of the agreement. Such agreement does not require registration. No provision of law or any judgment has been cited by the RP to support that profitsharing agreement requires registration. It is the positive case of the answering respondent that profit-sharing agreement which does not include any transfer of ownership or exclusive possession, does not require registration under Section 17. Profit-sharing agreement has been entered into by hotels usually to manage shopping arcade and beauty salon to provide guest services within the hotel as a part of marketing strategy. It is a common practice in the hotel industry. RP has admitted in his rejoinder in paragraph 15 (E) at page No. 9 of the rejoinder that it appears that the salon was in operation since long.

Obviously, since CD was not managing the salon even as per the records of the CD which is admittedly in operation since long even as per the RP it is obvious that the said salon was being run by the thirdparty and that is on account of the aforesaid profit-sharing basis. Merely By contending that profit-sharing statement has not been provided for the last one year does not extinguish the contractual agreement. It is well settled that previous agreements are binding. Merely by contending that the agreement is fictitious does not give any credence.

8.2.9. The next contention is that there is no agreement for providing 8th floor to respondent No. 3. Firstly, the agreement is evident because invoices have already been issued which have been appended along with the reply of respondent No. 1 (Diary No. 03234/2 dated 15.01.2025) at page No. 72. Secondly, on the basis of such invoices possession have been handed over which is in the ordinary course of business. Thirdly, contention that letter

written by suspended Director Kewal Sharma that booking of the rooms have been confirmed does not find in the records of the CD is not relevant because, even according to Section 19 application of RP he does not have the possession of the complete records as highlighted before and Section 19 application is pending. Fourthly, even if that letter of Mr. Sharma is ignored because invoices have already been issued, no separate letter is required as Invoices are Self-sufficient and do not require anything else to show concluded transaction.

8.2.10.Still further contention of the RP in para No. 20 at page 4 is that no written lease or rent agreement exist for providing rooms on the 8th floor. It is submitted that CD is in the business of hotel industry and provides rooms to its customers. This does not amount to renting of the premises and therefore no lease deed is required for providing and assigning rooms to its customers. Consequently Section 4 (1) of the Punjab Rent Act, 1995 has no applicability in cases of rooms provided by the hotel as this does not amount to leasing of the premises and therefore entire does not apply. Even currently when the RP is managing the hotel, he is not entering into any kind of a lease deed with the customers were staying in the premises. Concept of rent it is alien to hotel industry.

8.2.11. The next contention of the RP is that there is a common Director between the 2 Companies and a shareholder of respondent No. 3 is a close aide of respondent of 1. Amandeep Khangura is not related to respondent No. 1 even remotely as contended in the reply to which there is no counter in the rejoinder nor any relationship has been established. secondly, Amandeep Khangura is not accustomed to Act on the instructions of the respondent no. 1 or Mr. KK Sharma and even assuming she has been co-director with the respondent no 1 in one of the company that does not in any way prove that any decision has been taken by her which is on the basis of instructions imparted by respondent no. 1. It is well settled that merely being common Director is not enough to prove that there is any assumption of one party acting on the basis of instructions imparted by the other.

8.2.12. The next contention of the RP is that no consideration has been received from the respondent no. 3. Mutual set-off of the amount which is payable by the CD to respondent No. 3 to have been adjusted against the room rent is contended by the RP to be illegal and objectionable. The submission of the answering respondents that mutual set-off is recognised to be an acceptable method of dealing and even IPC recognises the same. Under Regulation 29 of the Liquidation Regulations, 2016 it is stated that where there are mutual dealings between the corporate debtor and the other party, the sum due from one party shall be set off against the sum due from the other to arrive at the net amount payable. In case of mutual set-off was an alien concept and not recognised in the eyes of law, then liquidation Regulations would not have permitted the same to be adopted. Therefore, aforesaid contention of the RP is not liable to be accepted. Still further, the present application does not invoke the jurisdiction of this Hon'ble Tribunal

under Section 43 or 45 nor this is an application for avoidance of any transaction. It is not the case of the RP that the said transaction is preferential or undervalued or fraudulent in nature as even assuming this would have been the contention of the RP then remedy is to file an application under the aforesaid 3 provision that Section 43, 45 or 66 whereas the present application is not under any of the aforesaid provisions. Further, there is no such prayer of seeking avoidance or cancellation or setting aside of the contractual arrangement between the CD and respondent No. 3. This means that present application has to be adjudicated in wake of existing documents validity of which is not within the prayer clause of the IA nor avoidance of such agreements is sought for. It is well settled that no relief in excess of what has been pleaded can be granted by the Court as per judgments cited above.

8.2.13. As regards the contention that respondent No. 3 is engaged in dairy sector and has no competence to manage salon or commercial arcade it is submitted that though it is for R3 to answer but keeping in view the documentary evidence which has come on record, the Memorandum and Articles of Association of respondent No. 3 itself evidently states that the respondent no. 3 is entitled act as collaborators in any hotels in India as the objects of the company at serial no. 4 of the MoA at page No. 94 of rejoinder to reply of respondent no. 1 in I.A. No. 2486 of 2024.

8.2.14. Further, the judgment relied upon by the RP in the case of Pavan Vikram is not applicable because there was no agreement or an arbitration award providing for entitlement of occupational rights on account of payment already made to the CD. The facts of the cited case Bare completely different. Even in the case of James Hotel facts of the case are completely different as the Director was enjoying the premises without there being any agreement and only on the ground that he being a Director was entitled to the said premises. The facts are different. In the case of Victory Iron, the Hon'ble Supreme Court does not hold that the previous agreements entered into by the CD prior to the onset of CIRP are not binding. Again, in the said judgment there was no Contention regarding availability of an agreement or an arbitration award. Similar is the case of Vineeta Mahewshwari. It is equally true that no doubt the assets of the corporate debtor pass on to the RP, but previous agreements entered into by the CD also simultaneously bind the said property and RP is equally bound by the said agreement. None of the cited judgment laid down the law that NCLT has the jurisdiction to override the agreement and the arbitration award passed by the arbitrator.

8.3 WRITTEN SUBMISSIONS ON BEHALF OF RESPONDENT NO.3-M/s Tru

Prime Pvt. Ltd.

8.3.1. That the above mentioned IA no. 2486 of 2024, has been filed by the resolution professional u/s 19, 25 and 60(5) of the IBC, 2016, with the prayer clause seeking directions against the respondent no.1 the suspended director of the above mentioned corporate debtor alongwith his family/ friends/

relatives/ acquaintances to vacate the premises of the CD and to handover vacant possession of the CD.

8.3.2. That at the outset the answering respondent no.3 has denied each and every averment made which is inconsistent to the facts and circumstances and allegations raised in the application under reply, being false, concocted and baseless, unless specifically admitted.

8.3.3. Respondent No. 3, originally Prime Milk Specialities Pvt. Ltd., later renamed Tru Prime Pvt. Ltd. (TPPL), is not related to Respondent No. 1 and was impleaded only at a belated stage, without proper amendment in the prayer clause. The application is, therefore, not maintainable against Respondent No. 3 on this ground alone.

8.3.4. The CD entered into valid profit-sharing agreements with Respondent No. 3 for operating a salon and 13 shops within its hotel premises; both agreements include clear termination and exit clauses that have not been invoked.

8.3.5. Respondent No. 3 is legally occupying certain hotel rooms and retail spaces under documented business arrangements, including payment of rent through settled invoices and set-off of dues for 41 supplies provided to the CD. Copies of GST invoices, ledger accounts, and confirmations of payments up to March 2026 are already furnished.

8.3.6. The RP's prayer for eviction is premature and misconceived; no effort was made to coordinate or seek access for valuation purposes before filing this application.

8.3.7. Business arrangements are in line with normal commercial practice. The RP cannot set aside or terminate existing contracts without approaching the appropriate forum or following due procedure, as supported by several NCLAT and Supreme Court judgments.

8.3.8. Allegations of fabricated invoices, forged documents, and lack of due stamp duty are unsubstantiated. Any defects in stamp duty are curable and do not render agreements void.

8.3.9. Possession by Respondent No. 3 is legal and backed by enforceable contracts; RP has not obtained any competent civil court order declaring this occupation illegal.

8.3.10. It is respectfully prayed that IA No. 2486 of 2024 be dismissed as against Respondent No. 3 for want of maintainability, prematurity, and absence of cause of action, and the existing contractual and legal rights of Respondent No. 3 be protected in the ongoing Corporate Insolvency Resolution Process.

FACTS

TERMS/ CONTRACTUAL OBLIGATIONS BETWEEN THE CORPORATE DEBTOR AND THE ANSWERIGN RESPONDENT NO.3/ TPPL.

8.3.11. The Corporate Debtor (CD) and Tru Prime Pvt. Ltd. (TPPL) have entered into two profit-sharing agreements: one for a salon (75:25 ratio, valid until 17.06.2027) and another for 13 shops in the Arcadium Exhibition Mall (87.5:12.5 ratio, valid until 13.03.2030), both featuring exit clauses requiring significant termination payments for the balance contract term.

i) Profit Share Agreement dated 17.06.2019.

Salon Agreement (17.06.2019): CD and TPPL agreed to share profits from a salon located on the 2nd floor of the CD's hotel, giving 25% of profits to the CD. Term: 8 years, up to 17.06.2027.

ii) Profit Share Agreement dated 13.03.2020.

Arcadium Shops Agreement (13.03.2020): For 13 retail shops on the 3rd floor (Arcadium Exhibition Mall), the CD is entitled to 12.5% of profits from TPPL's operations. Term: 10 years, up to 13.03.2030.

8.3.12. **Termination Clauses.** Both agreements grant either party the right to terminate at clause 10, before expiry by paying:

- Rs. 2 lakhs/month for the remaining term (salon agreement).
- Rs. 5 lakhs/month for the remaining term (shops agreement).

8.3.13. **Operation and Usage of Shops**

- Of the 13 Arcadium shops, 12 are operated by TPPL, with one unit run by the CD.
- The venue functions as an exhibition space for temporary and rotating exhibitors, with TPPL collecting a 15% commission on their sales.
- Typically, 30-60 different exhibitors use these shops annually, maintaining a dynamic retail presence.

8.3.14. The Arcadium situated on the 3rdfloor is an exhibition venue with temporary exhibitors, occupying the space of the shops on rotational basis. The shops/ units are used by various exhibitors for a short term period, varying from weekly, monthly, quarterly or half yearly basis, and some for a much longer timeframe. The stock for temporary exhibitors is sold by the answering respondent (Tru Prime Pvt. Ltd.) on behalf of the exhibitors on a 15% commission basis. Further it is worth here to mention that during any given year there are chances of around 30-60 different exhibitors, who are putting up their shops/ exhibition in the aforesaid 12 shops for sale and promotion of their goods.

8.3.15. It is worth to submit that there are times when the shops setup by exhibitors do not generate much revenue and thus leaving the answering respondent no.3 dry on cashflow at majority of the time. Further it is worth here to submit that the Arcadium on 3rdfloor rather adds much to the panache of the Lobby Level of any hotel apart from providing a shopping place, and it is not unusual for hotel retail units to trade nominally, as their presence adds much to hotel guests' overall experience. However the answering respondent has attached the profit and loss account statements for the above said saloon on 2nd floor and the shops at the 13 shops at the 3rdfloor, for better understanding of the revenue generated by the Answering respondent in second half of the last financial year ending 31.03.2025.

8.3.16. **Judicial Precedent**

The validity of such profit-sharing arrangements under the IBC has been confirmed by the

Hon'ble NCLAT, including in:

- Realpro Realty Solution Pvt. Ltd. vs Sanskar Projects and Housing Ltd. (13.12.2023)

- Prashanth Shekara Shetty vs Alcuris Healthcare Pvt. Ltd. (20.12.2022).

Accommodation on the 8th floor

8.3.17. There was a longstanding commercial arrangement between the Corporate Debtor (CD) and Respondent No. 3 (TPPL) since 2012 which was that of supplier and receiver of goods, whereby TPPL supplied milk and milk products to the CD (hotel), often on credit, with payments being made by the corporate debtor/ hotel of the corporate debtor in parts/tranches by bank transfer and by way of set-off for providing various services to the answering respondent no.3, including serviced accommodation on the 8th floor in rooms numbering 1802, 1803, 1804, 1805 & 1806 (which form part of luxury apartment) and the said transactions were in routine course of business.

8.3.18. All supplies and accommodation transactions were invoiced, including GST-compliant bills, and are duly reflected in both parties' GST records, ledger entries, and GST returns.

8.3.19. That the balance due to the answering respondent no.3/ TPPL by the corporate debtor as on 30.06.2024 was Rs.13,75,778.

8.3.20. That the answering respondent has been in occupation/ availing the services of accommodation from the corporate debtor by renting out the above mentioned rooms numbering 1802, 1803, 1804, 1805 and 1806 on the 8th floor of the hotel premises of the CD, forming part of the luxury apartment including storage space as Cubicle —I & III, and children's play area at Plaza-I, since April of 2023. Further the invoices for the accommodation services

bear the stamp of payment made/ paid. The said GST invoices have been duly accounted for by the answering respondent no.3 in the GST record by taking input credit for the same.

8.3.21. That there were commercial barter arrangement between TPPL and CD, wherein TPPL supplied goods, namely milk and milk products to CD (Hotel), and CD provided accommodation services to TPPL by way of letting out the luxury apartment at the 8th floor comprising of 5 rooms i.e. 1802, 1803, 1804, 1805 and 1806. Further the said luxury flat also comprised of storage area on cubicles at the 9thfloor along with a children's play area, not the entire 8th floor as alleged by the RP.

However the remaining rooms and area comprising of around 19 rooms is accessible to the RP and TPPL has no control whatsoever on the said part and is not in occupation of the remaining area/ wings of the 8thfloor. Set-Off of Invoices by the CD.

8.3.22. The Corporate Debtor (CD) owed payments to Respondent No. 3 (TPPL) for supplies of goods and dairy products. To repay this debt, the CD set off the amounts due against the accommodation services provided to TPPL, which is a usual business practice.

- Thus invoices raised by the CD for accommodation have been paid in full or have been setoff from the amount due towards the answering respondent by the corporate debtor.

- TPPL (Resp. no. 3) has been in occupation of the above said rooms since April of 2023, under the commercial set-off arrangement, regularly adjusting dues for accommodation tariffs against supply of goods (milk/ dairy products) payments in the normal course of business.

- TPPL has prepaid the tariffs for the hotel rooms on the 8th floor up to March 2026, and this prepayment has been confirmed by the CD as of 24.06.2024. Copy of the said confirmation is attached with the short reply as Annexure R-3/7. (Pg no. 39-58 of Short Reply D.no. 03234/13) RP not accepting general norms of business and accounting transactions

8.3.23. The Resolution Professional (RP) is not acknowledging the established norms of business and accounting between the Corporate Debtor (CD) and Respondent No. 3 (TPPL), which involves legitimate commercial transactions and contractual rights.

8.3.24. The RP is attempting to avoid liability for outstanding payments due to TPPL for supply of milk and dairy products and is also trying to terminate valid contracts/ contractual arrangement without following due legal process.

8.3.25. It is worth here to submit that the above mentioned rooms have been rented out by the CD to the answering respondent while raising invoices for the same regularly, and for the said invoices the complete payments has been

made/ setoff, and as such, a contractual agreement between the corporate debtor and the answering respondent subsists and the relationship of that of a Landlord and Tenant subsists and the same is covered under by the provisions of the India contact act, and the contract being a general legislation setting out general principles of law, and the present act of the applicant RP by filing the present application cannot override the general principles of law. Moreover it is further worth here to submit that the said contract between the corporate debtor

and the answering respondent still sustains and does not get terminated on initiation of the CIRP process against the corporate debtor, as on admission of the corporate debtor into the CIRP process only the management of the corporate debtor changes and any contact and agreement between the parties shall continue to be valid.

8.3.26. Respondent no.3 TPPL has supplied CD with milk and milk products since 2012 on a regular basis, mostly on credit basis. These supply transactions continued briefly even after CIRP initiation. As of 31.03.2024, the balance due was Rs. 31,54,183, and as of 30.06.2024, Rs. 13,75,778, all documented with GST invoices recorded on both parties' GST portals.

8.3.27. The CD owed TPPL money for supplies but instead of paying, set off the amounts with rent for accommodation provided to TPPL, which is a standard business practice.

8.3.28. Further during the month of march, it came to the knowledge of the answering respondent no.3 that the corporate debtor may be subject to insolvency proceedings and as such the answering respondent had requested the corporate debtor to account for the sum due to it by the CD, and to pay of the sum due to the answering respondent. In view of the same, the corporate debtor by matter of adjustment had set-off the amount of supply of milk and milk products with the supply of services in the present case with the rental of the residence as provided to the answering respondent. In view of the same the corporate debtor had raised its invoices for services provided to the answering respondent form the month of April 2023 until April of the 2026.

8.3.29. This shows the RP disregards legitimate commercial and legal arrangements, and cannot unilaterally terminate contracts or ignore payment obligations outside established legal processes.

LEGAL CONTENTIONS OF RESPONDENT NO.3 TRU PRIME PVT. LTD. (TPPL)

PREMATURE APPLICATION/ NON MAINTAINABLE

8.3.30. The present application filed by the Resolution Professional (RP) is premature and nonmaintainable for the following reasons:

• The RP never approached Respondent No. 3 (TPPL) to seek details or access regarding the occupation of rooms 1802, 1803, 1804, 1805, and 1806 on the 8th floor during the entire Corporate Insolvency Resolution Process (CIRP). There was no attempt to conduct valuations or gather necessary information beforehand. Hence, the relief sought in this application is premature and misconceived, warranting dismissal on this ground alone.

• The application is filed under Section 19 of the IBC, 2016, which applies exclusively to seeking cooperation from personnel of the Corporate Debtor, its promoters, or persons associated with its management. The Respondent does not fall under any of these categories, making the application non-maintainable against Respondent No. 3.

• Necessary documents and information provided to the RP (Application infructuous). Respondent No. 3 has already provided all necessary documents and information requested by the RP in connection with the non-cooperation application. The RP's failure to seek this information directly and instead filing the present application further underscores its prematurity and lack of merit.

Accordingly, the application is liable to be dismissed as premature, non-maintainable, and infructuous against Respondent No. 3

RP TYING TO CANCEL CONTARCT INDIRECTLY

8.3.31. The Resolution Professional (RP) is misusing the legal process by attempting to cancel the contract between the Corporate Debtor (CD) and the Respondent No. 3 indirectly through this application, rather than pursuing the proper legal channels.

8.3.32. It is a settled legal principle that contractual agreements between parties remain binding even after the initiation of the Corporate Insolvency Resolution Process (CIRP). The admission order changes management but does not affect the existing rights and obligations under those contracts.

8.3.33. The Insolvency and Bankruptcy Code (IBC), 2016 does not annul contracts entered into by the CD before CIRP commencement. The RP's attempt here to set aside or terminate the contract without following due legal procedure and without approaching the appropriate forum is improper and unauthorized.

8.3.34. Therefore, the RP's approach to indirectly extinguishing contractual rights through this application lacks legal basis and should be rejected.

RP INTENDS TO DO ACT INDIRECTLY WHICH HE CANNOT DO DIRECTLY

8.3.35. The present application by the Resolution Professional (RP) is an abuse of the legal process with mala fide intent, aiming to indirectly cancel

valid contractual arrangements between the Corporate Debtor (CD) and Respondent No. 3 (TPPL) without following proper legal procedure or approaching the appropriate forum.

8.3.36. Applicant RP by seeking possession of the premises of the CD, truly intends to cancel contractual obligations between the CD and TPPL, indirectly which he cannot do directly.

8.3.37. Application has been filed by RP only to escape the contractual liabilities under profit-sharing agreements dated 17.09.2019 and 13.03.2020, only to escape payment on termination of the profit sharing agreements dated 17.09.2019 and 13.03.2020, all of which would form part of the CIRP cost, and would have to be paid in priority to the answering respondent no. 3.

8.3.38. These agreements remain valid and enforceable under the Indian Contract Act, and the contract act being a general legislation setting out general principles of law, and the present act of the applicant RP by filing the present application cannot override the general principles of law. Moreover the said contract between CD and TPPL still sustains and does not get terminated on initiation of the CIPR process, as CIRP affects only management and not the parties' rights and obligations under pre-existing contracts.

8.3.39. By filing this application, the RP improperly tries to terminate the contracts indirectly, which he cannot do directly, violating the principles of law and due process.

On these grounds, the application is liable to be dismissed for being premature, lacking cause of action, and filed with malicious intent.

CONTENSTION BY RP AND COUNTER BY THE RESPONDENT NO.3/ TPPL

8.3.40. RP has alleged that the answering respondent no.3 has not made any payment to the corporate debtor towards the rental for the residence at the 8thfloor, and by way of the same is trying to seeking the eviction of the answering respondent no.3.

- However it is worth here to submit that the applicant has failed to consider/ acknowledge the barter arrangement that existed between the answering respondent no.3 and the corporate debtor, and further failed to acknowledge that it was the corporate debtor which had owed a huge sum of amount to the answering respondent no.3, in view of which as an adjustment/set-off the corporate itself had adjusted the amount payable towards supply of milk and milk goods with the amount due from the rental of the residence to the answering respondent no.3. The said set-off was as per general norms of business practice.

8.3.41. That further the RP had alleged that supply of dairy products/ especially the ghee as supplied by the answering respondent to the corporate

debtor are not reflected in the ledger of the answering respondent as maintained by the corporate debtor.

• However the same is a false statement as the ledger attached by the RP himself with the affidavit dated 13.07.2025, provides for the details of the invoices and supplies of the ghee made by the answering respondent to the corporate debtor.

8.3.42. It has been alleged that 40 invoices have been raised by the answering respondent between 01.01.2024 to 30.06.2024 for supply of 7000 litres of ghee, and out of the said invoices GST has not been paid for 18 invoices.

• However it is worth here to mention that the corporate debtor was the sole bulk purchaser of ghee from the answering respondent no.3, and as such the supplies were made prior in time, and invoices were raised subsequently. Further the supplies of the ghee were made by the answering respondent in smaller lots none of which exceeded Rs.50,000/- and as such there was no requirement of e-way bill, and thus bills were not raised on each supply of ghee, but were only raised by the answering respondent together for different supplies under a single consolidated bill.

•Further it is worth here to mention that under general business transaction norms it is common to raise an invoice for providing goods or services at given point of time such as prior to supply of the goods, or at the time of the goods, or post the supply of the goods. Similarly in the present matter the ghee was supplied over a period of time and the invoices for the same were raised as consolidated invoices on a single date. For the GST part the nonpayment of the GST for the 18 invoices is an administrative error on part of the answering respondent, and a curable defect, further the answering respondent is taking steps to rectify the same, further it is worth here to mention that the non-deposit of the GST of the said 18 invoices does not vitiate the transactions undertaken between the parties.

8.3.43. It has been further alleged that the invoices raised by the answering respondent and the challans mismatch with the record available with the CD.

• However it is worth here to mention that as enumerated above that the bulk sales of ghee as booked by the corporate debtor used to be supplied at an earlier point of time, however the invoices for the same were raised at a later date. In view of the same the challans for period of October would have been billed in January, and further worth here to mention that since the invoices were raised at a later date than from the date of the supply, there are also chances of clerical error on part of the clerical staff looking into the dispatch and invoicing.

8.3.44. Further the RP has alleged that the no ghee had ever been supplied by the answering respondent, as there in no record of the receipt of the ghee of the above quantum in the records of the CD.

• For the same it is worth here to mention that as enumerated above the ghee were supplied in smaller lots, however since the booking for the ghee was consolidated, therefore the Bills were raised for a consolidated amount of bulk supply. Further it is the fault of the CD/suspended management to provide for the answer as to why the supply of the ghee so made by the answering respondent has not been recorded in their records as alleged. The answering respondent does not have access to the books and records of the CD and is unable to confirm whether or not the said entries exist in the said records.

8.3.45. The applicant alleges that the renovation in the Corporate Debtor's premises on the 8th floor was carried out by the suspended management in the month of April of 2024, and further alleged that the luxury apartment was not part of the hotel's original plan but was renovated to accommodate Respondent No. 3.

• However, Respondent No. 3 states that the hotel is divided into various areas and wings, and the renovation occurred in areas not occupied by Respondent No. 3, which remain accessible to the RP. Moreover, the luxury apartment was rented to Respondent No. 3 by the CD, and whether it formed part of the original floor plan is beyond Respondent No. 3's knowledge and must be clarified by the suspended management.

ALLEGATION OF FORGED AND FABRICATED INVOICES CANNOT BE ENTERTAINED IN APPLICATION U/S 19(2) OF IBC, 2016.

8.3.46. The applicant RP has alleged that the invoices raised by the Respondent for ghee supplies and accommodation services are false, fabricated, and ante-dated. However, such allegations cannot be addressed u/s 19 of the IBC, 2016. Since this application seeks possession of the Corporate Debtor's assets, it is not the proper forum to declare the transactions fraudulent or frivolous, which requires a separate application under the relevant provisions of the IBC.

8.3.47. RP has alleged that the invoices as raised by TPPL Respondent no.3 are fabricated and fictitious entries and are ante dated invoices, and further alleged that the same in drawn from the fact that the journal number for the invoices for supply of the ghee are in seriatim. For the same it is submitted that the journal entries in the records of the corporate debtor would be in seriatim, in view of the fact that the corporate debtor was yet to reconcile the invoices which had been duly raised by the answering respondent which were already accounted for by the corporate debtor in its accounts, however only the reconciliation would have been delayed in view of the facts of bulk purchase of ghee which were supplied to the CD in smaller lots.

8.3.48. The invoices raised by both the Corporate Debtor and Respondent No. 3 are GST-compliant, duly accounted for by both parties, with GST paid and input credit claimed. Some invoices were even accounted for by the CD after the commencement of the CIRP under the supervision of the applicant RP.

Therefore, the applicant cannot use this application to verify the genuineness of these apparently valid transactions nor convert this Tribunal, which has summary jurisdiction, into a civil court for such matters, especially not under Section 19 of the IBC.

PROFIT SHARE AGREEMENT NEED NOT BE REGISTERED

8.3.49. The applicant RP has alleged that the Profit Share Agreements (PSAs) are neither registered nor adequately stamped, suggesting they may be fabricated. However, it is submitted that PSAs are commercial contracts between two parties and there is no legal mandate requiring their registration under relevant laws. If the RP's contention were accepted, it would imply that all commercial contracts must be registered, which is not the intention of the law.

8.3.50. The applicant RP has alleged that the Profit Share Agreements (PSAs) are not adequately stamped. However, the RP has failed to substantiate this allegation, which remains a mere assertion. The RP refers to page 179 of its written submission to para 235 regarding the stamping deficiency, but this does not support their claim, as the cited provision clarifies that inadequately stamped agreements are not void, void ab initio, or unenforceable; rather, non-stamping is a curable defect.

8.3.51. All the above thus points that the Profit Share agreements are Valid and enforceable.

8.3.52. Further the Hon'ble NCLT does not have power to adjudicate on the issue of stamping of documents especially in an application u/s 19 or 60(5) of the IBC, 2016, that jurisdiction vests with the civil Courts.

LEGAL CONTENTIONS

"CORAM NON JUDICE"

8.3.53. That this Hon'ble Tribunal is "coram non judice" in the present matter, and the same has also been held by the Hon'ble Apex Court in the matter of 'Embassy Property Developments Pvt. Ltd. v. State of Karnataka &Ors. vide order dated 03.12.2019', whereby the SC held that the NCLT does not have jurisdiction over decisions in the public law realm, emphasising the limitations outlined in Section 60(5) of the I & B Code.

8.3.54. The NCLT and NCLAT are constituted under the Companies Act, which broadly defines their powers, while the IBC specifically delineates their jurisdiction over insolvency resolution and liquidation of corporate entities. Section 60 of the IBC designates the NCLT as the adjudicating authority in such matters, specifying its jurisdiction and powers along with case transfer provisions. The Hon'ble Supreme Court's judgment in Embassy Property

Developments Pvt. Ltd. v. State of Karnataka & Ors. dated 03.12.2019 is attached in the short reply filed earlier as Annexure R-3/5 clarifies this. (Pg no. 59-83 of Short Reply D.no. 03234/13). This judgment was also considered by the Hon'ble NCLAT, New Delhi, in K L. Jute Products Pvt. Ltd. Vs. Tirupati Jute Industries Ltd. dated 20.02.2020.

8.3.55. That apart from the above a recent judgment of the Hon'ble NCLAT, New Delhi dated 09.01.2025 in the matter of Sumati Suresh Hegde & Ors vs Anand Sonbhadra, RP of Champalaji Finance Pvt. Ltd. &Ors', has upheld the law laid down in Hon'ble NCLAT, New Delhi, in the matter of `K. L. Jute Products Pvt. Ltd. Vs. Tirupti Jute Industries Ltd. ', and that laid by Hon'ble Apex Court in the matter of 'Embassy Property Developments Pvt. Ltd. v. State of Karnataka &Ors., while supporting the contention that the Adjudicating Authority under the IBC, 2016 does not have power to pass eviction orders. Further the Hon'ble NCLT has relied upon its judgment in the case of Raj Builders Vs. Raj Oil Mills Limited and Anr, and another judgment of in the case of Devendra Padamchand Jain Vs. Sandhya Prakash & Ors, which provides that sub-section (f) of Section 18 of the Insolvency and Bankruptcy Code, 2016 provides for duty of insolvency resolution professional which includes is to take over assets that may or may not be in possession of the Corporate Debtor, however the same does not mean the insolvency resolution professional can remove the tenant. Further provides that if the tenant is not paying the rent, it is also open to the insolvency resolution professional to move before the appropriate forum/court of law.

RP CANNOT CONVERT NCLT HAVING SUMMARY JURISDICTION INTO CIVIL COURT OF ORIGINAL JURISDICTION TO ADJUDICATE FORGERY.

8.3.56. That in view of the submissions above it is once again reiterated that the applicant RP by way of the present application is merely abusing the provisions of law, and is attempting to convert this Hon'ble Tribunal which has summary jurisdiction, into a full-fledged civil court of original jurisdiction, which was never the intent of the legislative as been held by the Hon'ble NCLAT in the matter of Tulip Hotel Pvt. Ltd. vs JC Flowers Asset Reconstructions Pvt. Ltd. &anr vide order dated 09.04.2024, wherein the NCLAT held that 'We are also of the considered opinion that such disputes which involve fraud and forgery in respect of contractual documents cannot be investigated and decided by the Adjudicating Authority which has only been conferred the benefit of summary jurisdiction. Such issues can be raised only in a civil suit and hence any attempt to convert the proceedings under the IBC into civil proceedings akin to a trial cannot meet our approval since it clearly transgresses the legislative intent behind the IBC framework '

8.3.57. Further the Hon'ble NCLAT in the matter of the corporate debtor M/s Suchi Paper Mills Ltd., in the matter titled as Rakesh Kumar vs Flourish Paper & Chemicals Ltd., dated 27.09.2023 has held that the Adjudicating Authority has summary jurisdiction.

Therefore from the above judgment is it clear that the Adjudicating Authority has Summary Jurisdiction and cannot be converted into Civil Courts.

8.3.58. The RP cannot challenge or set aside contracts and transactions between the Corporate Debtor and Respondent No. 3 made before the CIRP without approaching the appropriate legal forum with jurisdiction over forgery claims. These commercial decisions were made by the CD's management prior to CIRP and cannot be invalidated by the RP bypassing legal procedures.

GENUINENESS OF PROFIT SHARE AGREEMENT CANNOT BE ENTERTAINED

BEFORE THE NCLT

8.3.59. It is reiterated that the NCLT does not possess civil jurisdiction, and issues regarding the genuineness of documents, contracts, or transactions cannot be adjudicated by the Hon'ble NCLT in applications under Sections 19 or 60(5) of the IBC, 2016. By filing this application and amended pleadings, the RP is improperly attempting to convert the NCLT, which has summary jurisdiction, into a civil court, contrary to established legal principles and judicial precedents.

NCLT CANNOT TERMINATE CONTRACTS

8.3.60. That further the answering respondent seeks to rely on the judgment of the Hon'ble NCLAT, New Delhi in the matter of Deepak Sakharam Kulkarni and another vs Manoj Kumar Agarwal (RP) and others, dated 01.07.2024. Where in it was held that 'The IBC does not contemplate termination of all contractual agreements, creating legal rights in favour of third parties. There can be cases, where Corporate Debtor even during currency of the CIRP can terminate contractual agreements as per the Clauses of the agreements. But, IBC cannot be used for purpose of extinguishing of contractual agreement, negating rights of third parties.

FRAUD CANNOT BE ADJUDICATED IN PROCEEDINGS UNDER SECTION 19 OR 60(5) OF IBC, 2016.

8.3.61. The applicant RP, through its affidavit and rejoinder, has shifted its position from seeking vacation of the Corporate Debtor's premises to seeking adjudication that transactions between the CD and Respondent No. 3 are fraudulent. However, the RP cannot obtain such an order in an application under Sections 19 and 60(5) of the IBC, 2016. The IBC lays down specific provisions and procedures for adjudicating fraudulent or preferential transactions, which the RP has not followed or demonstrated authority to pursue under these sections.

POSSESSION WITH RESPONDENT NO. 3 LEGAL

8.3.62. It is submitted that Respondent No. 3 holds valid legal possession of the Corporate Debtor's premises under the Profit Sharing Agreements. This includes the luxury apartment on the 8th floor comprising five rooms (1802, 1803, 1804, 1805, and 1806), storage cubicles I and III on the 9th floor, and a children's play area known as Plaza. The GST invoices for accommodation have been raised by the CD and duly accounted for by both the CD and Respondent No. 3 in theirrespective returns.

8.3.63. It is submitted that Respondent No. 3 holds valid legal possession of the Corporate Debtor's premises under the Profit Sharing Agreements. This includes the luxury apartment on the 8th floor comprising five rooms (1802, 1803, 1804, 1805, and 1806), storage cubicles I and III on the 9th floor, and a children's play area known as Plaza. The GST invoices for accommodation have been raised by the CD and duly accounted for by both the CD and Respondent No. 3 in their respective returns.

NECESSARY DOCUMENTS AND INFORMATION PROVIDED TO THE RP

8.3.64. Respondent No. 3 has already provided the information and documents sought by the applicant RP in the application for non-cooperation filed under Section 19 of the IBC, 2016. Therefore, the present application is liable to be dismissed as infructuous. Instead of seeking documents and information directly, the applicant RP prematurely filed this application.

PLANS CAN BE CALLED PENDING CONTRACTUAL OBLIGATIONS OF THE CD.

8.3.65. It is further submitted that the RP may call for resolution plans for the present Corporate Debtor while honoring its contractual obligations, as the Profit Share Agreement does not impede the CIRP process in any way. Moreover, the applicant has never objected to the RP conducting valuations of the CD’s premises.

RP NOT INTENDING TO KEEP CD AS GOING CONCERN

8.3.66. It is submitted that, as a common practice in the hospitality industry, businesses receive advance payments for services such as accommodation and events to be provided later. Similarly, Respondent No. 3 has made advance payments to the Corporate Debtor for rooms on the 8th floor. The applicant RP cannot selectively refuse to acknowledge these prepayments made before the RP's appointment, as doing so would unfairly discriminate against one party. Furthermore, as the Corporate Debtor's business is being maintained as a going concern, the RP is obligated to accept all advance payments received and cannot treat Respondent No. 3's prepayments as anything other than legitimate business transactions.

8.3.67. It is submitted that the RP has a fundamental duty to manage the Corporate Debtor's business efficiently to enhance the prospects of a resolution plan being accepted and implemented. This duty cannot be fulfilled by rejecting prebooked business. Seeking eviction of a customer who has prepaid for serviced accommodation would amount to contract cancellation, which overrides general legal principles and is not permitted under the IBC, 2016. Furthermore, this Hon'ble Tribunal lacks jurisdiction to cancel a lease arrangement, as explained earlier.

COUNTER TO JUDGMENTS RELIED BY THE APPLICANT RP

Educomp Infrastructure & School Management Ltd.

8.3.68. The said judgment at Para 86 as relied by the applicant RP provides that the application u/s 19 cannot be filed against the third parties and as such the present application filed by the RP against the answering respondent no.3 (being unrelated third party) is not maintainable, and the ground raised by the applicant RP finds no force in the present judgment.

Punjab National Bank vs M/s James Hotels Ltd.

8.3.69. The said judgment relied by the applicant does not apply to the facts and circumstances of the present matter, as in the said matter the respondent suspended directors were not in legal possession of the premises of the CD. Whereas in the present matter the answering respondent no.3 is in valid legal possession of the premises of the CD as already demonstrated above.

Jhanvi Rajpal Automotive P. Ltd. vs RP of Rajpal Abhikaran Pvt Ltd.

8.3.70. The said judgment does not apply to the present matter because, in that case, the respondents' lease rights had already expired. In contrast, Respondent No. 3 holds valid legal contracts through Profit Share Agreements for the salon on the 2nd floor and shops on the 3rd floor, and has paid for accommodation on the 8th floor up to 31.03.2026.

Bharti Airtel Limited and another vs Vijay Kumar V.Iyer and others

8.3.71. The RP's reliance on Paragraph 26 of the said judgment regarding the issue of set-off is misplaced. In this case, the set-off claimed by Respondent No. 3 was actually undertaken by the Corporate Debtor, which adjusted its liabilities against amounts due from Respondent No.3. This set-off occurred prior to the initiation of the CIRP and aligns with standard business practices, making the judgment inapplicable to the present facts and circumstances.

Gujarat Urja Vikas Nigam Ltd. vs Amit Gupta, and,

Tata Consultancy Services Ltd. vs SK Wheels Pvt. Ltd.

8.3.72. The applicant/RP' s reliance on the cited judgment is misconceived, as that judgment involved cancellation of the contract based on a clause allowing termination upon initiation of the CIRP against the Corporate Debtor. In contrast, the contractual obligations in the present case contain no such termination clause.

8.3.73. The judgment in the Tata Consultancy Services Ltd. case does not apply to the present matter, as it focused on protecting the Corporate Debtor's rights to continue as a going concern by preventing contract revocation, cancellation, or termination that could lead to corporate death. In this case, Respondent No. 3's possession of the Corporate Debtor's premises under the Profit Sharing Agreement does not hinder the CIRP process or threaten the Corporate Debtor's existence. Additionally, Respondent No. 3 is willing to continue the terms of the agreement even after its expiry.

Vineeta Maheshwari vs Kwality Catering Services

8.3.74. In the present judgment the Hon'ble NCLT has held that any contract being terminated against the corporate debtor subsequent to the initiation of the CIRP would fall within the ambit of residuary jurisdiction of the Adjudicating Authority.

GLAS Trust Company LLC vs BYJU Raveendran & Ors

8.3.75. The present judgment does not apply to the facts of the present case as the said judgment is in reference to the proceedings under CIPR being proceedings 'in rem', further more the said judgment is with respect to the intervention of the creditors in an application for withdrawal of the CIPR prior to constitution of the COC u/s 12A of the IBC, 2016.

8.3.76. Further, the answering respondent no.3 further wants to rely upon the judgement of Ld. National Company Law Tribunal, Kolkata in the case of Victory Iron Works Ltd. vs. Jitendra Lohia (RP) and Ors. dated 03.01.2025, where the Hon'ble Tribunal observed that under no circumstances the Resolution Professional can short circuit the procedure and seek approval of a resolution plan that leads to cancellation of the leave and license, on the ground that it has been approved by the CoC. (internal judgment page no. 36, 37, at Para 46, 47)

Relevant extract reproduced as under:

> "46. At this *juncture*, we have already noted the submission advanced by the Learned Counsel Ms. Urmila Chakrabarty on 22.05.2024 that the Resolution Applicant has no objection to the deletion of the offending portion of the plan annexed and the Successful Resolution Applicant by

way of an affidavit on 13.06.2024, has agreed to the deletion of the paragraphs contained in Clause 5(a) in the Resolution Plan, thus, at this stage, nothing is left for adjudication and determination the rights and interest of the Applicant Victory Iron. Borrowing the analogy indicated in the judgment supra, it is clear that this Adjudicating Authority does not have any jurisdictional power to consider the issue concerning the determination of the terms and validity of the Leave and License Agreement. However, the Section 25 of the I&B Code casts a duty upon the RP to represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi judicial and arbitration proceedings, which includes its right to get the leave and license legally terminated by a due process of law so that a clear title passes on to the Successful Resolution Applicant. But under no circumstances the Resolution Professional can short circuit the procedure and seek approval of a resolution plan that leads to cancellation of the leave and license, on the ground that it has been approved by the CoC.

47. Hence, we direct the RP to delete the offending portion at Clause 5(a) in the Resolution Plan, as confirmed by the Learned Counsel Ms. Urmila Chakrabarty appearing on behalf of the Successful Resolution Applicant and as per the Affidavit filed by the Successful

Resolution Applicant on 13.06.2024 in the instant matter."

8.4 WRITTEN SUBMISSIONS ON BEHALF OF RESPONDENT NO.4

8.4.1. That the Respondent No. 4 was impleaded as a party to the present application by way of an application dated 15.05.2025, which was filed in view of the order dated 05.05.2025 passed by the Ld. National Company Law Tribunal, Chandigarh granting permission to the applicant herein to file an amended Memo of Parties to include the relevant parties in the captioned Application.

8.4.2. That the Corporate Debtor caused the Respondent No. 4 to lose her house situated in Sector 9, Chandigarh by defaulting on a loan from the Punjab and Sind Bank, the security for which was Respondent No. 4's residential house. The default and later auctioning of the house caused a loss of ~Rs. 64 Crores to the Respondent No. 4.

8.4.3. That it is to be brought to this Ld. Tribunal's kind notice that the Respondent No. 4 had entered into an agreement dated 05.11.2015 with Majestic Hotels Ltd. (Corporate Debtor) which specifically provided for Occupation Rights to the Respondent No.4 which is sufficiently evident from Clause 6 of the Agreement. (Annexure R-4/1)

8.4.4. That when a series of disputes arose between the parties in relation to the Agreement, the parties in consonance with the Arbitration Clause contained in the Agreement referred the issue for adjudication via Arbitration

by a sole Arbitrator, namely, Mr. K.C. Gupta (Additional District and Sessions Judge (Retd.), Ludhiana).

8.4.5. The Ld. Arbitrator in a detailed decision ruled in favour of Respondent No. 4, holding that Mrs. Raman Khangura was rendered homeless on account of fault of Majestic Hotels Ltd. and upheld her Occupancy Rights for the premises. (Annexure R-4/3).

➢ **ARGUMENTS:-**

I. VALIDITY AND ENFORCEABILITY OF OCCUPANCY RIGHTS

1. That a bare perusal of Clause 6 of the Memorandum regarding Occupancy Rights (Annexure R-4/1), crystallizes the Occupancy and Tenancy rights of the Respondent No.4 for the premises occupied by her.

2. The relevant extract of the Memorandum regarding Occupancy Rights (Annexure R-4/1) has been reproduced herein below:-

"6. Occupation Rights

6.1 Occupation Rights:

- The First Party shall provide the Second Party, her Direct Family Members (Mr. Jasbir Singh Khangura, Ms. Sabina Khungura, Mr. Jaibir Singh Khangura), and guests (at her sole discretion) with fully maintained and serviced accommodation at the First Party's expense in the Premises in Question at the Park Plaza Hotel, Ludhiana, until the Compensation Amount is paid in full or the First Part's Obligation is fulfilled under Clause 5, whichever is earlier.

- The Premises in Question shall he co-shared with Mr. Jagpal Singh Khangura and Mrs. Gurdial Kaur Khangura, parents of Mr. Jasbir Singh Khangura, who are longstanding occupants of the Penthouse and have expressly agreed to share their rights in respect of the Penthouse with the Second Party and her family.

- The Second Party shall have exclusive rights to three bedrooms within the Premises in Question not occupied by Mr. Jagpal Singh Khangura and Mrs. Gurdial Kaur Khangura, and shared rights to all common areas, including the drawing room, family room, kitchen, utility room, study, W/C, bathroom, storage rooms, storage cubicles numbered 1 und 3, and open terraces.

- The Second Party shall have the right to house her Direct Family Members and guests in the Premises in Question at her sole discretion.

.....

6.4 Nature and Protection of Occupation Rights:

- The Occupation Rights granted to the Second Party under this Agreement are a fundamental right protected by law, and any attempt to breach or interfere with these rights shall be considered a criminal act.

- These Occupation Rights are independent of the First Party's solvency and shall continue irrespective of the sale of the Park Plaza Hotel or a change of control of the First Party."

8.4.3. That the Ld. National Company Law Appellate Tribunal in its Judgement in the matter of Sumati Suresh Hegde & Ors. Vs Anand Sobhadra, RP of Champalaji Finance Pvt. Ltd. & Ors. (CA (AT) (Ins) 884 of 2024) in a similar matter pertaining to Tenancy Rights ruled in favour of the tenants holding the decision of the Ld. Tribunal as patently erroneous. The relevant portion of the Judgement delivered by Ld. Appellate Tribunal is reproduced herein below:

> "29. ..... In the present case, there has been no change of the tenancy rights of the Appellants by way of a contract and the law which is to operate in respect of termination of tenancy are the provisions of the Act and not the Code. .....
>
> 30. It is also otherwise well settled that once a tenant always a tenant unless the status changes by contract or by operation of law and in this regard reference may be had to the decision of MR Sahni (Supra), M/s Jagdambey Builders Pvt. Ltd. (Supra) and Vishal N. Kalsaria (Supra). The Application under Section 60(5) of the Code is only maintainable if the issue involved is related to insolvency resolution process in view of the decisions of the Hon'ble Supreme Court in the case of Embassy Property Development P. Ltd. (Supra) and Gujarat Urja Vikas Nigam Limited (Supra)."

8.4.4. That in another Judgment of the Ld. National Company Law Appellate Tribunal in the matter of K. L. Jute Products Private Limited vs Tirupati Jute Industries Ltd. (2020 SCC OnLine NCLAT 426) it was held that the Adjudicating Authority is not empowered to pass an order of eviction. The relevant portion of the Judgement has been reproduced herein below:

> "65. Insofar as, the eviction of 2nd Respondent is concerned, the Adjudicating Authority is not empowered to pass an order of eviction and it is for an 'Aggrieved party' to move the appropriate forum for redressal of its grievances in accordance with Law. In short, the Committee of Creditors had approved the Resolution Plan in utter disregard regard to the ingredient of Section 30(2)(e) of the I&B Code and as hence the same was rejected by the Adjudicating Authority. Moreover, the Adjudicating Authority had appointed a 'Liquidator' other than the 'Existing Resolution Professional'."

II. FALSE AND MISLEADING ALLEGATIONS MADE BY THE APPLICANT

8.4.5. That it is also pertinent to bring to this Ld. Tribunal's kind notice that the Respondent No. 4 is only possession of a part of the 9th Floor at Park Plaza Hotel, Ludhiana and the remaining revenue-generating portions of the 9th Floor are under uninterrupted control of the Resolution Professional.

8.4.6. That the averments made by the applicant in Para 3 of the Rejoinder dated 24.07.2025 with regards to the Respondent No. 4 being in possession of the entire 9th Floor are completely false and fabricated and ought to be considered as an act of perjury.

III. MEMORANDUM REGARDING OCCUPANCY RIGHTS IS A DULY STAMPED DOCUMENT

8.4.7. That the Memorandum regarding Occupancy Rights (Annexure R-4/1) is a duly stamped document and as such legally binding upon the Corporate Debtor and the Adjudicatory Authority's scope of interfering with the same is minimal as evident by the judgements referred to earlier.

8.4.8. That the Memorandum regarding Occupancy Rights dated 05.11.2025 is validly stamped with Rs. 500/-. Further, this agreement has already been adjudicated upon by the Ld. Sole Arbitrator and an award dated 19.03.2019 has been passed in the favour of Respondent No. 4 holding the said agreement to be enforceable in the eyes of law. The Resolution Professional has even failed to provide any proof as to how Mmuch the admissible stamp limit is ought to be for a memorandum of understanding under the Indian Stamps Act, 1899.

8.4.9. That the judgment relied upon by the Resolution Professional, i.e. Interplay Between Arbitration Agreement as under the Arbitration and Conciliation Act, 1996 and Stamp Act, 1899 in Curative Petition No. 44 of 2023 decided on 13.12.2023 is not applicable in the present case because firstly, the agreement has not been shown to be insufficiently stamped, even as per paras 54, 58, 67 and 220 even assuming an agreement to be insufficiently stamped it does not result in instrument becoming invalid and the Stamp Act does not render such an instrument as void. Thus, this judgment does not advance the case of Resolution Professional. Rather it supports the aforesaid argument of the answering respondent wherein in paras 76, 81, 82 and 185 it has been held that the principle of judicial noninterference in arbitration proceedings respects the autonomy of the parties to determine the arbitral procedures. Still further it has been held that considering Section 5 of the Arbitration Act, 1996, it restricts the extent of judicial intervention in various matters which are governed by Part I of the Arbitration and Conciliation Act, 1996.

8.4.10. That it is further stated that the averments made in Para 6 of the Rejoinder dated 24.07.2025 are legally untenable as the Corporate Debtor has repeatedly pleaded before this Ld. Tribunal that he does not have access to

the Statutory Records and the same are being withheld by the Directors. If this pleading of the Corporate Debtor is to be considered true, there is no way for him to verify the existence of the Occupancy Agreement and the Addendum (Annexure R-4/2).

8.4.11. That the Applicant in Para 28 of the Rejoinder dated 24.07.2025 further alleges that the Occupancy Agreement is for an "indefinite period" but a bare perusal of the Memorandum regarding Occupancy Rights (Annexure R4/1) would clarify that the occupancy shall only persist till the period that the Corporate Debtor does not fulfill their obligations towards the Respondent No. 4.

IV. SANCTITY AND BINDING NATURE OF THE ARBITRAL AWARD:-

8.4.12. That at the outset, the averments made by the Applicant before this Hon'ble Tribunal with regards to the Arbitral Award (Annexure R-4/3) needing ratification by Court are legally unsustainable as the provision requiring the ratification of an Arbitral Award is from the erstwhile Arbitration Act, 1940's Section 17 which has no equivalent provision in the present Arbitration and Conciliation Act, 1996. Moreover, no provision or judgment has been cited by the RP in support of the aforesaid argument, which in view of the new Act, 1996 is unsustainable. Rather, to the contrary Section 36 of the Act, 1996 reads as under:-

> **"36. Enforcement**
>
> (1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of subsection (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court."

8.4.13. A perusal of Section 36 (1) would reveal that any award made under the Act, 1996 shall be an award which shall be enforced in accordance with the provisions of the Code of Civil procedure and the same manner as if it was a decree of the Court. Thus, there is no provision of making award as a Rule of Court under Section 36. No similar provision like Section 17 in the Arbitration Act, 1940 exists under the entire Arbitration and Conciliation Act, 1996.

8.4.14. That Clause 10.2 of the Memorandum regarding Occupancy Rights (Annexure R-4/1) states that in the event of a dispute not being resolved by negotiation, it shall be referred to Arbitration under the Arbitration & Conciliation Act, 1996. The relevant clause is reproduced herein:-

> **"10.2 Arbitration:**
>
> • If the dispute is not resolved within 30 days of negotiation, it shall be referred to arbitration under the Arbitration and Conciliation Act, 1996.

• Both parties have agreed that should any arbitration be required under this Agreement it shall be conducted by Mr K C Gupta, Retired Additional District and Session Judge, operating from Chamber 5014, 5th floor, Lawyer's Complex, Ludhiana District Courts, subject to his availability at the time.

• In the event that Mr K C Gupta is not available for whatever reason an alternative sole arbitrator will be mutually appointed by the Parties. If the Parties fail to agree on an arbitrator within 15 days, the Arbitrator shall be appointed by the High Court of Punjab and Haryana.

• The seat and venue of arbitration shall be Ludhiana, Punjab, and the proceedings shall be conducted in English.

• The Arbitrator's award shall be final and binding on the Parties."

8.4.15. That to this effect when disputes arose between the Corporate Debtor and the Respondent No. 4, the same were referred to Arbitration by the sole Arbitrator, namely, Mr. K.C. Gupta (Additional District and Sessions Judge (Retd.), Ludhiana).

8.4.16. That the Ld. Sole Arbitrator was pleased to decide in favour of the Respondent No. 4 and the Occupancy Rights were the subject of one of the key issues framed by the Ld. Arbitrator for the purposes of adjudication of the dispute.

8.4.17. That the sanctity of the Arbitral Award is also upheld by the Corporate Debtor as it has been duly signed by a Director of Majestic Hotels Ltd.

V. THE ARBITRAL AWARD ON THE OCCUPANCY AGREEMENT

8.4.18. That at the Applicant's abject disregard for the Memorandum regarding Occupancy Rights is a matter of grave concern and clearly exhibits their apathy towards the exponential loss caused by the Corporate Debtor to the Respondent No. 4 on account of no fault of hers. The Applicant's negation of the document is squarely put to rest by the Arbitral Award (Annexure R-4/3). Issue No. 1 of the Award deals with the obligations of the Corporate Debtor towards the Respondent No. 4 in terms of this very Occupancy Agreement that the Applicant refuses to acknowledge for reasons best known to him. The Ld. SoleArbitrator in his detailed Award answers it as:-

"29. It is also contended by the respondent that the terms and conditions of the agreement are oppressive. Further, once the respondent has been given residential accommodation there arises no question of further payment.

It is to be noticed that the said agreement dated 5.11.2015 was entered into between the parties knowing fully well its consequences and outcome. The respondent company had entered into the said agreement after having

taken decision to do so, pursuant to decision taken by the Board of Directors in its meeting held on 30.10.2015. The signatory of the said agreement has been duly authorised by the said resolution. Once there is a collective decision taken by the Board of Directors of the company the same is required to be implemented. The respondent is a corporate entity, and such decisions bind the company irrespective of its management since company itself is a juristic entity. The submission reflects as if respondent intends to back out from the agreement in question. I hold that the respondent company is-bound by the said agreement and is required to comply with the terms and conditions stipulated therein in letter and spirit."

8.4.19. That the Corporate Debtor was the Respondent Company in the Arbitral proceedings and fiercely contested the Occupancy Agreement and the terms contained therein. It is legally untenable for the Applicant to negate an Arbitral Award that he was a signatory of. The Applicant's denial to acknowledge the Occupancy Rights of the Respondent No. 4 in IA 2486 is apathetic and turns a blind eye to all legally binding obligations of the Corporate Debtor which consummated much prior to the initiation of the CIRP process.

8.4.20. That Issue No. 2 of the Arbitral Award (Annexure R-4/3) specifically deals with the Respondent No. 4's occupation of the premises. The relevant portion of the Arbitral Award has been reproduced herein below:-

"ISSUE NO. 2.

32. Coming on to the second issue as to whether the claimant is entitled to remain in occupation of the premises in question, it is relevant to notice Clause 2 of the agreement in question. As per the said Clause, the respondent has acknowledged the loss suffered by the claimant and also the corresponding obligation of the respondent to compensate, in accordance with the terms of the agreement. Clause 2.3 read with Clause 5.2 clearly provides that the intent of both the parties was that respondent which is otherwise into hotel business shall provide place of residence to the claimant in view of the fact that the claimant lost her place of residence on account of non payment of the dues by the respondent to its lender. Respondent has agreed in the agreement that till such time the respondent fulfills the obligation, the claimant shall occupy the premises in question. The period within which respondent was to comply and fulfill its obligations was till 05.17.2018 which has expired. Clause 5.2 further states that it is on account of fulfillment of the obligations of the respondent, only then the respondent will have the right to seek vacation of the premises within 90 days of such fulfillment. Failing which, the claimant was entitled to commutation to an extent of Rs. 10 Crore of the amount of such obligation payable by respondent to be adjusted as per Clause 5.4.

33. Since respondent has already been held lo have committed breach of agreement and resultant default, I therefore conclude that on account of their being evident default on the part of the respondent to fulfill its obligations towards the claimant, the claimant was entitled to remain in possession of the premises in question as agreed for in the agreement in question."

8.4.21. That it is evident from the detailed decision of the Ld. Arbitrator that the Occupancy Rights of the premises have been decided in favour of the Respondent No. 4 and have been given legal sanctity and as such the Respondent No. 4 has been granted a right to stay at the premises and use the premises in line with the provisions of the Memorandum regarding Occupancy Rights.

8.4.22. The Resolution Professional has further relied upon the judgment of Punjab National Bank vs M/s James Hotel CP(IB) No. 15/Chd/CHD/2017) which is again not applicable in the present case because in James Hotel the occupation by the suspended Director without there existing any occupational agreement or an arbitration agreement. In James Hotel, the plea taken by the suspended Director was that they were enjoying the accommodation and the total premises of the Corporate debtor on account of being a Director. The said contention in any case did not have any legal backing as the status of the Director gets suspended on the onset of CIRP. In the present case, the occupation of respondent is on account of an occupation agreement and having paid Rupees in crores to the Corporate Debtor and there being an agreement between the Corporate Debtor and Respondent No. 4 for providing of Occupation of 9th floor to her and her family, which has already been adjudicated by the Ld. Sole Arbitrator. The facts of the present case find no resonance with the factual matrix relied upon in James Hotel (Supra).

VI. THE ARBITRAL AWARD ON THE NATURE OF CONSIDERATION AND COMPENSATION

8.4.23. That a bare perusal of the Para 34 of the Arbitral Award would vividly exhibit that the Applicant by defaulting on its obligations towards the Respondent No. 4 landed in contravention of Clause 5.4 of the Memorandum regarding Occupancy Rights. As such the Respondent No. 4 was entitled to the commutation of the amount of Rs. 10 Crores to be considered as an advance payment towards their occupation of the premises. The Award states that the commuted amount shall be adjusted as occupancy charges to the tune of Rs 3 Lakhs per month with an annual escalation of 12 %. That for reference the Clause 5.4 of the Memorandum regarding Occupancy Rights is reproduced herein below:-

"5.4 Default by First Party of its Obligations Under this Agreement.

- If the First Party fails to fulfill the First Party's Obligation in full within the Compensation Period, the outstanding amount up to Rs. 10,00,00,000 (Rupees Ten Crores), or such lesser sum as remains due,

shall be deemed the Commuted Sum, treated as an advance by the Second Party for continued occupancy of the Premises in Question.

- The Commuted Sum shall be adjusted at Rs. 3,00,000 per month, with a 12% annual escalation starting from M05/11/2018, against occupancy charges until the Commuted Sum is exhausted or the First Party fulfills its obligations.

- The Second Party and her Direct Family Members shall be entitled to fully serviced accommodation in the Premises in Question until the Commuted Sum is exhausted or the First Party's Obligation is fulfilled."

8.4.24. That the Arbitral Award covers the pertinent issue of the Commuted Sum Arrangement vide Issue No. 3 and upholds the issue in favour of Respondent No. 4 and states that the arrangement gets activated because of the Corporate Debtor's default. The relevant portion of the Arbitral Award is reproduced herein below:-

"ISSUE NO. 3

34. The next issue deals with the entitlement of the claimant with respect to commutation of the amount to which it is entitled to in terms of the agreement in question and the effect thereof. Since evidently it is apparent that respondent had committed a default on account of failure to abide by its obligations by the due date which was 05.11.2018, Clause 5.4 talks about default by the respondent of its obligations under the agreement. It is clearly mentioned in the agreement that in case of the first party fails to fulfill its obligations in full within the compensation period, the outstanding amount up to Rs. 10 Crore or such lesser sum as may be due, shall be deemed to be commuted and be treated as advance paid by the claimant to the respondent for continued occupancy of this premises in question. Not only this, to clarify it is mentioned that the commuted sum which is to be treated as advance payment was to be adjusted at Rs. 3 lakh per month with 12% annual escalation starting from 05.11.2018 against the occupancy charges till such time the commuted sum is exhausted. It is thus clear and apparent that on the occurrence of default that is from 05.11.2018, the effect of Clause 5.4 is that claimant has paid Rs. 10 crore to the respondent as advance payment towards occupancy charges for occupying the property in question. Respondent is in the business of hotel and providing occupancy and has received the amount permitting the claimant to stay in the premises in question. The effect of the Clause providing commutation is that respondent has received the payment from claimant, pursuant to which respondent shall be liable to provide occupancy to the claimant till such amount is adjusted against occupancy charges which have been agreed in

Clause 5.4. The respondent is directed to adjust Rs. 10 crore as amount received in advance from the claimant and further adjust the same towards occupancy charges after treating occupancy charges to be Rs. 3

lakh per month with 12% annual escalation starting, from 05.11.2018 against the occupancy charges as provided in the said agreement, it is only after the said amount is exhausted, that the respondent shall be entitled to claim vacation premises from the claimant. Looked from another angle, the company availed Rs. 19.15 Crore from Bank but the said amount was recovered through claimant. Thus, the claimant would have been legally permissible to be in occupation of the premises in question against consideration having being already paid to the respondent in advance and shall be entitled to occupy till such commuted amount is adjusted towards the amount due towards occupation as per clause 5.4."

8.4.25. That the act of converting a significant part of the compensation sum, owed by the Corporate Debtor to Respondent No. 4 in lieu of her losing her Residential House on account of complete incompetence of the Corporate Debtor, into a commuted sum represents a payment made to the hotel, therefore it provides the sanction of a Consideration Amount being paid to the Corporate Debtor which makes the Memorandum regarding Occupancy Rights into a legally enforceable binding contract between the Corporate Debtor and Mrs. Raman Khangura.

8.4.26. That the commuted sum shall be considered as a payment made by the Respondent No. 4 to the Corporate Debtor as a consideration for the residential and other services provided to her by the Corporate Debtor.

8.4.27. That another baseless contention raised by the Applicant is that the Arbitral Award which was passed 6 years ago has not been enforced as of yet. It is pertinent to highlight that the enforcement of any award is to be done by the judgment debtor. There is no requirement of filing execution proceedings or enforcement under Section 36 in a case where the judgment debtor has already complied with the award. In compliance with the award, the Corporate Debtor has implemented the said Award and since it has been held to be a valid and an enforceable agreement, and it has also been held in the award that Respondent No. 4 is entitled to occupy the premises on account of consideration of ₹ 10 crores having been paid to the Corporate Debtor on account of commutation in terms of Clause 5.4 as held under Issue No.3 from paras 34 to 35, as such there was no requirement for enforcement.

VII. EFFECT OF SHAREHOLDER OR DIRECTOR STATUS ON CONTRACTUAL VALIDITY

8.4.28. That the Ld. Sole Arbitrator puts to rest all aspersions raised by the applicant relating to the Memorandum regarding Occupancy Rights. In its observations to Issue No.7 of the Arbitral Award, the Ld. Arbitrator holds that:-

"ISSUE NO. 7

38. As regards the contention of the respondent that the agreement in question is not valid and consequently it is not bound by the said

agreement, the said contention is without any merit. The decisions are to be taken by the Board of Directors of the company and not by the shareholders. It is not disputed that the Board of Directors at its meeting dated 30.10.2015 had considered and decided to execute the said agreement as is evident from the said board resolution which is placed on record. It cannot be said that the resolution is not valid because it was not ratified by the shareholders. Moreover, the shareholders even till date did not object to the said decision of the company. Further, every company is represented by the actions taken by the Directors and officers on the strength of the specific resolutions passed by the Board. A document cannot be denied on the ground of internal approvals which are not relevant since execution of the agreement is by an official of company duly authorized by the Board. I, therefore, reject the argument of the respondent that the agreement is not legally valid or enforceable and not binding on the company. Without any shadow of a doubt the company is bound to give effect to the agreement is question."

8.4.29. That neither the shareholders nor the directors of the company have ever objected to the decision of the company to enter into the Memorandum regarding Occupancy Rights with the Respondent No. 4 and cannot raise such issue before the Ld. Tribunal because neither is the issue within the Ld. Tribunal's jurisdiction and moreover is barred by limitation.

8.4.30. That the contentions raised by the Applicant with regard to Respondent No. 4 being a shareholder in the company and, for a period of time one its directors in no way dilutes the validity of legally binding documents including the Memorandum regarding Occupancy Rights (Annexure R4/1), the Addendum (Annexure R-4/2) and the Arbitral Award (Annexure R-4/3) insofar as these documents are legally sound agreements sanctioned by consideration and adjudication by a neutral third party, i.e., the Ld. Sole Arbitrator.

8.4.31. That, further the issue is covered under the principle of Res Judicata, especially when the Corporate Debtor was a party to the Arbitration Proceedings. The action was not even challenged by any of the other share holders at any point of time.

8.4.32. That, further the issue is barred by limitation as the Arbitral Award is dated 19.03.2019 and the period of challenging an Award as provided for in the Arbitration and Conciliation Act, 1996 is 3 months and as of date it is way past the period of limitation to challenge the Award.

8.4.33. That the Corporate Debtor having a contractual relationship with the Respondent No. 4 in no way "pierces the corporate veil" which is a condition precedent for any such allegation of collusion to be drawn towards the Respondent No. 4.

VIII. JURISDICTION OF THE NCLT IN INTERFERING WITH THE ARBITRAL AWARD

8.4.34. That it is submitted before this Ld. Tribunal that an Arbitral Award can only be challenged by an application of setting aside the Arbitral Award as per the provisions of Section 34, Arbitration and Conciliation Act, 1996 and the Tribunal's scope of interfering with the same is minimal as has been held by the Ld. NCLAT and the Hon'ble Supreme Court in a plethora of decisions.

8.4.35. That it has been held that Section 5 of the Arbitration and Conciliation Act, 1996, restricts the extent of judicial intervention in various matters which are governed by Part I of the Arbitration and Conciliation Act, 1996. The submission of the Respondent No. 4 is that under the IBC also there is no provision vide which the NCLT is empowered to set aside the award passed under the Arbitration and Conciliation Act, 1996 because the NCLT does not have Appellate jurisdiction under Section 36 of the Arbitration And Conciliation Act, 1996. Reliance in this regard is placed on the judgment of Hon'ble Supreme Court in the case of Embassy Property Developments (P) Ltd. v. State of Karnataka, ((2020) 13 SCC 308), wherein in para 46 It has been held as under:-

> "46. Therefore, in fine, our answer to the first question would be that NCLT did not have jurisdiction to entertain an application against the Government of Karnataka for a direction to execute supplemental lease deeds for the extension of the mining lease. Since NCLT chose to exercise a jurisdiction not vested in it in law, the High Court of Karnataka was justified in entertaining the writ petition, on the basis that NCLT was coram non judice."

8.4.36. That the Ld. NCLAT in its Judgment in the matter of K. S. Oils Ltd. Vs The State Trade Corporation of India Ltd. & Anr. (2018 SCC OnLine NCLAT 2022) has upheld the view that the Adjudicating Authority has no jurisdiction to aside an order passed by an Arbitral Tribunal. The relevant portion of the judgement is reproduced herein below:

> "6. On hearing the parties we are of the view that the Adjudicating Authority rightly held that the Adjudicating Authority has no jurisdiction to set aside the order passed by the Indian Council of Arbitration i.e. order dated 3rd August, 2017.
>
> .....
>
> 15. For the reasons recorded above while we are not inclined to interfere with the part of the impugned order whereby the Adjudicating Authority refused to set aside the order passed by the Indian Council of Arbitration, declare that the Arbitration Tribunal/Indian council of Arbitration cannot proceed with the arbitral proceeding pending between the parties. Both the parties are directed not to pursue arbitral proceeding before the Arbitration Tribunal/Indian Council of Arbitration till final order is passed by the Adjudication Authority on the resolution plan and completion of the moratorium period. However, it will open to both of them to file their

respective claim and counter claim, if any, before the Resolution Professional. The appeal stands disposed of with the aforesaid observations and directions. No Costs."

8.4.37. That it is further submitted that the Arbitral Award came into effect much before the initiation of the CIRP process and hence the Award has attained finality in so far as it has never been challenged under Section 34, Arbitration and Conciliation Act, 1996.

8.4.38. That a recent decision by this Ld. Tribunal in the matter of Vikas Mittal vs M/s Swatik Homebuild Pvt. Ltd. (IA(IBC)/709/CH/2025 in CP(IB) No. 134/Chd/Hry/2021) that the Resolution Professional cannot modify the terms and conditions of an existing contract without taking into consideration the consent of the other parties to the contract. The relevant part of the order of this Ld. Tribunal is reproduced herein below:-

"4. We note that vide order dated 24.03.2025 in Para-8 thereof we had observed that in order to running the Corporate Debtor, the RP can enter into the contract or even can modify the terms and conditions of the existing contract where the other side parties are agreeable to but we failed to understand how the RP can proceed to modify the conditions suo motu without the consent of the other side.

However, since at that stage, the CoC was yet to be consider that agenda, we had expressed the view that the CoC can consider the agenda but at that stage, we did not wish to intervene and put any restrain for the discussion, but nevertheless we had given the option that in case Applicant has some grievances about the decision taken by the CoC, then he can approach to us."

8.4.39. That the Ld. NCLT, Kolkata in its judgement in the matter of Mahavir Industrial Corporation vs Hindustan Controls and Equipment Pvt. Ltd. (CP(IB) No. 1256/KB/2019) reinstates the legal position that the Ld. Tribunal lacks jurisdiction to set aside an Arbitral Award. The relevant portion of the Judgement is reproduced herein below:

"11. In as much as, the Arbitration Award has been challenged in this application, whereas this Tribunal lacks jurisdiction to set aside an Arbitral Award, although it was passed in course of moratorium under Section 14 of IBC, we dispose of the IA with liberty to the Resolution Professional to initiate appropriate proceedings to challenge the said Award."

8.4.40. That the Arbitral Award (Annexure R-4/3) is a duly stamped document and as such legally binding upon the Corporate Debtor and the Adjudicatory Authority's scope of interfering with the same is minimal as evident by the judgements referred to earlier.

8.4.41. That the judgment relied upon by the Resolution Professional of State of Uttar Pradesh vs RK Pandey (2025 SCC OnLine SC 52), is not applicable because in that case, the appeal had arisen out of challenge to an arbitration award itself under Section 34 and thereafter an appeal was made before the Hon'ble High Court under Section 37 and then to the Hon'ble Supreme Court. Further, in the said case there was no agreement entered between the parties and therefore the arbitration award was set aside by the Hon'ble Supreme Court which is evident from Para 20 of the judgment which has reproduced herein below as:-

"20. We have narrated the facts in detail as they are peculiar, and intervention by this Court is necessary to prevent any attempt to enforce the so-called awards, which are null and void ab initio for several reasons. This Court in its decision in Bilkis Yakub Rasool v. Union of India, observes that fraud and justice never dwell together, and a litigant should not be able to benefit from a fraud practiced with an intention to secure him an illegal benefit. In the present case, the so-called arbitration agreement is nowhere available on the records of either the Municipal Corporation or the State of Uttar Pradesh. Respondent No. 1, R.K. Pandey, did not file the original agreement since he was not in possession of the same, nor is he a signatory and party to the arbitration agreement. An arbitration agreement is sine qua non for arbitration proceedings, as arbitration fundamentally relies on the principle of party autonomy; - the right of parties to choose arbitration as an alternative to court adjudication. In this sense, 'existence' of the arbitration agreement is a prerequisite for an award to be enforceable in the eyes of law. No doubt, Section 7 of the A&C Act, which defines the 'arbitration agreement', is expansive and includes an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other party, albeit the existence of the arbitration agreement is not accepted by either the Municipal Corporation or the Appellant, the State of Uttar Pradesh. The Arbitration Agreement is not referred to in the indenture of the transfer executed later on 20.06.1961. There is no evidence to show the existence of the arbitration agreement, except a piece of paper, which is not even a certified copy or an authenticated copy of the

official records. How and from where RK Pandey, Respondent No.1, got a copy of the agreement, and that too nearly 10 years after his retirement and filing of a writ petition remainsunknown."

That no argument can be raised by the Applicant in view of the aforementioned judgement as in the present case there is a pre-existing agreement which contains an Arbitration Clause which has already been adjudicated upon.

IX. JURISDICTION OF THE RESOLUTION PROFESSIONAL AND THE NCLT TO MODIFY PRE-EXISTING CONTRACTS

8.4.42. That the Applicant calling into question the Memorandum regarding Occupancy Rights at any stage during the adjudication of the current application by the Ld. Tribunal lays a shadow of aspersion and doubts on the Arbitral Award by the Ld. Sole Arbitrator, who is a retired Additional District and Sessions Judge, which not only acknowledges the existence of the Occupancy Agreement but also confirms its provisions to be held in favour of Respondent No. 4 further upholding the obligations of the Corporate Debtor towards Respondent No. 4.

8.4.43. That all such aspersions by the Applicant on the authenticity of the agreements are unsubstantiated, unwarranted and only highlight their utter disregard for their Legal and contractual obligations towards the Respondent No.4. The applicant should be directed to withdraw all such baseless and malicious allegations leveled against the Respondent No. 4.

8.4.44. That finally, it is humbly submitted before this Ld. Tribunal that neither the Resolution Professional nor any other authority under the Insolvency and Bankruptcy Code, 2016 have any authority to modify, ignore or annul the Arbitral Award which is a document to be solely governed under the Arbitration and Conciliation Act, 2016. The Insolvency and Bankruptcy Code, 2016 does not give the Resolution Professional or the Ld. Tribunal any authority to review the facts, merits or deficiencies of an Arbitral Award. The Applicant's prayer is liable to be dismissed solely on the grounds that the Ld. Tribunal is not the correct jurisdictional authority for such an application.

8.4.45. That it is humbly prayed before this Ld. Tribunal that the Resolution Professional shall be made liable for Costs to be awarded in favour of the Respondent No.4 for initiating the action in an incorrect jurisdiction.

9. We have taken note of the submissions so made by the Ld. Counsels for the respective parties. The Applicant-RP is seeking direction to R1, R3 and R4 to vacate the part-premises of the hotel occupied by them.

Admittedly, 9th floor of the hotel is being used as a residence by Respondent No.1 and 4 along with their family members. Mrs. Raman Khangura (R4) claims her Occupancy Rights over the 9th floor of the hotel [which is said to be a pent house] based on a purported memorandum regarding Occupancy Rights dated 05.11.2015 along with an Addendum dated 12.11.2015; and Arbitral Award dated 19.03.2019. It is the case of Mrs Raman Khangura (R4) that her right to remain in possession of the premises continues until her alleged dues are paid by the CD unaffected by any insolvency and/or change of management of the Corporate Debtor.

It is noted that Mrs. Raman Khangura (R4) was a Director and a Shareholder at the time of the execution of the Occupancy Agreements. She held 11.05% equity shares as on 31.03.2016, whereas Mr. Jasbir Singh Khangura (R1 and husband of R4) was then the Managing Director and had held 28.81% equity shares in the CD. Further, at the time of Arbitral Award, Mrs. Raman Khangura (R4) was holding 41.3% equity shares as on 31.03.2019 and was a Director and Signatory to the books of the Corporate Debtor. The case is presented from the side of R4 as if following the dispute between the CD and R4, the matter was referred to the arbitration by the Sole Arbitrator Mr. KC Gupta, a retired Additional and Session Judge, Ludhiana in terms of the said agreement dated 05.11.2015 and addendum dated 12.11.2015; and in the process an Arbitral Award dated 19.03.2019 was made in her favour. We fail to understand that how there could have arisen a dispute as regards to the terms and conditions whereby occupancy right is stated to have been given to R4 through the said alleged agreement/purported memorandum dated

05.11.2015 and more so, when her husband happens to be the Director of the CD. We have also taken note that as per the said Occupancy Right, the premises are being co-shared with Mr. Jagpal Singh and Mrs. Gurdial Kaur Khangura (Parents of R1), who are stated to be long-standing occupants of the said penthouse (9th floor portion). We also note that Mrs. Gurdail Khangura, the mother-in-law of Mrs. Raman Khangura, has also been a Shareholder (holding 6.97% as on 31.03.2016 and 33.7% shareholding as on 30.03.2019) and was also the Managing Director of the CD at the time of passing of the Arbitral Award. This all highlights the collusive/fabricated nature of these arrangements.

10. We are conscious of the fact that issue before us here is not as regards to whether the documents are genuine or fabricated, rather the issue is as to whether following the initiation of CIRP, the R1 and R4 and/or any other family members could be allowed to continue with their possession of the assets of the CD under the provisions of the Code.

In that context we note that even if the residential house of R4 was auctioned by Punjab and Sind Bank, as the same was mortgaged as against the loan availed by the Corporate Debtor, the only recourse left to R4 was to file her claim before the Resolution Professional (RP). It is to be noted that R1 is Suspended Member of the Board of Directors of the CD, R4 is his wife who too have remained some time prior to CIRP as Director of the CD and both are continuing as a Shareholders also. As such they are amongst the ones responsible for the failure of the Corporate Debtor. The intent as per the

provisions of the IBC is that if the Corporate Debtor has failed to meet its obligations in payment to the Creditors, then following the process as provided in the Code, management of the CD is to be handed over to a third person who could resolve the condition of insolvency of the said Corporate Debtor. Accordingly, R1 and R4 either individually or jointly cannot claim to be treated at par with third party creditors as they are the ones responsible for the failure of the CD and bringing it to the condition of insolvency. Their dues, if any, cannot get priority over other stakeholders such as Financial Creditors and other Creditors and therefore, they cannot be permitted to continue the possession over the properties of the CD on the strength of the said alleged agreements/purported Memorandum granting the occupancy right to R4. If they are allowed to continue their possession, then that would tantamount giving her the priority over other stakeholders which would go against very intent of the Code.

11. As regards the Occupancy of Second Floor Salon and 3rd Floor 13 Shops on the strength of alleged profit-sharing agreements dated 17.06.2019 and 13.03.2020, we note that no profit hitherto through that arrangement has been received by the Corporate Debtor. No amount in that regard stands credited into the Books of Account of the CD or the bank statements. In that context, we have also taken a note that the Tru Prime Private Limited are essentially engaged in supply of milk and milk products and not doing any business there at the occupied premises on their own; rather it is stated that the said premises [2nd floor saloon and 3rd floor shops] are further given to third-parties with some similar arrangements.

During the course of the arguments, the Ld. Counsel appearing for the Tru Prime Private Limited (R3) denied any relationship between its director namely Mrs. Amandeep Khangura and the Corporate Debtor. Nevertheless, we find that the five rooms on the 8th floor of the hotel building are used for the residence of Mrs. Amandeep Khangura. A plea has been taken in that regard that such an arrangement is made in lieu of the outstanding amount payable by the CD on supply of milk and milk products (ghee etc.).

In the context, the Ld. Senior Counsel for the RP has pointed out that the alleged 40 invoices raised by Tru Prime Private Limited (R3) towards the supply of ghee to the Corporate Debtor between 01.01.2024 and 30.06.2024 related to approximately 7000 litre of ghee purportedly purchased by the Corporate Debtor in the six months preceding the insolvency commencement date i.e. 03.07.2024 are grossly disproportionate to general usage of the product in the hotel which is approximately 40 to 50 litres per month. It was also submitted that prior to such purchase of ghee in the preceding six months, the regular supply as made by the Tru Prime Private Limited of milk and milk products and recorded in the books of accounts of Corporate Debtor was much less and the same was being paid in the course of regular business; and as such invoices are fabricated only to create fictitious outstanding dues so as to justify the possession onto the Corporate Debtor's premises. It was submitted that even if there remained an outstanding amount payable by the Corporate Debtor, then following the initiation of the Corporate Insolvency Resolution Process, the R3 could have filed their claim to the RP.

During the course of the argument, Ld. Senior Counsel for the RP has also drawn our attention to the serious mismatch within the Tru Prime's 'gate outward challan' and the tax invoices receipts issued by the CD in support of their contention that these invoices were fabricated and as such there was no supply of milk/milk products (ghee) to that extent during that period.

It is also submitted that though such invoices are straightaway recorded in the books of accounts, but there is no record of such receipts and consumption of the above quantum of ghee in the record of the CD. It was also pointed out that all these invoices issued on different dates are entered into books of accounts through general entries and are in seriatim which is inconsistent with normal business practice and supports their contention of fabrication.

12. It is also contended that the Tru Prime Private Limited(R3) is a related party to the Corporate Debtor as Mr. Kewal Krishan Sharma [one of the suspended director of CD] has been a common Director of both the Companies between 30.09.2012 and 27.05.2018 and also a shareholder of Tru Prime Private Limited and as well as close aid of R1-Jasbir Singh Khangura. It is also pointed that Mrs. Amandeep Khangura (Director of Tru Prime Private Limited) has been also a co-director with R1 in another Company named Caring XL Consultants Pvt. Ltd. (a Company with same registered address as of the Corporate Debtor) in which R1 was also a Shareholder. Further the Chief financial officer of the Corporate Debtor is also a Director in Caring XL Consultants Pvt. Ltd; Mr. Harbinder Singh Grewal

(Signatory of alleged profit-sharing agreement on behalf of CD) was also a Director in a Caring XL Consultancy Pvt. Ltd., while also being the Managing Director of Corporate Debtor at some time. We have noted such close connection and nexus between Amandeep Khangura vis-à-vis the Respondent No.1-Jasbir Singh Khangura, the Suspended Director of the CD. As such R3 being related party can not be allowed to continue their possession in lieu of dues, if any, on initiation of Corporate Insolvency Resolution Process of the Corporate Debtor as it would also tantamount to having given priority to such related party over the other stakeholders.

We also note that in the light of facts and finding as detailed herein above, the various case laws relied upon by the respondents are not applicable in the present case and the reliance thereof is quite misplaced.

13. Considering all these facts, we find that the Respondent Nos.1, 3 and 4 are illegally occupying the premises of the CD and are interfering in the process of finding resolution to the Corporate Debtor under the IBC. We accordingly direct R1, R3 and R4 and/or any third party who are occupying the premises on the strength of any further arrangement with these respondents to vacate the premises of the hotel, particularly the salon in second floor, 12-13 shops in third floor, the 5 rooms i.e. 1802 to 1806 on the 8th floor used for residence by Amandeep Khangura and the 9th floor portion used as such by R1 and R4 and their families as residence, within a period of two weeks from the date of pronouncement of this order.

We also direct that if the said premises are not vacated within the said period, the RP shall seek the assistance from the Commissioner of Police, Ludhiana and the Commissioner of Police Ludhiana is directed to ensure that requisite Police assistance is provided to the RP in getting the premises vacated within next two weeks. The Commissioner of Police as well as applicant Resolution Professional shall file a report thereon before this adjudicating authority forthwith.

14. In view of the above directions, **IA(IBC/2486(CH)/2024 stands allowed and disposed of accordingly.**

Sd/- Sd/-

(K.K. SINGH)
MEMBER (TECHNICAL)

(K. BISWAL)
MEMBER (JUDICIAL)

Priyanka/P.S.