

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 1236 of 2025

(Arising out of order dated 18.06.2025 passed by the National Company Law Tribunal, Kolkata Bench-II in I.A. (IBC) No. 910 of 2024 in CP (IB) No. 378/KB/2018)

In the matter of:

Mega Mall Management Services Pvt. Ltd.

32, Jagat Banerjee Ghat Road, Shibpur

Howrah- 711102

Through Chinmoy Ghosh, Director

...Appellant

Vs.

Ajay Kumar Agarwal

Plot No: IID/31/1, Street No. 1111

PS QUBE, Unit Number 1015A, 10th Floor

Kolkata- 700161

Through Authorized Representative

...Respondent

Present:

For Appellant: **Mr. Mainak Bose, Sr. Advocate, Mr. Anirban Ghosh and
Mr. Siddhant Upmanyu, Advocates.**

For Respondents: **Mr. Rishav Banerjee, Mr. Supriyo Gole, Mr. Arijit
Mazumdar, Ms. Madhuja Barman, Ms. Anoushka, Dey,
Mr. Moulinath Moitra, Advocates.**

J U D G M E N T

(06th July, 2026)

INDEVAR PANDEY, MEMBER (T)

This appeal has been filed by **Mega Mall Management Services Pvt. Ltd.** challenging the order dated 18.06.2025 passed by the National Company

Law Tribunal, Kolkata Bench (**Adjudicating Authority**) in IA (IBC) No. 910 of 2024 in CP (IB) No. 378/KB/2018, whereby an application filed by **Mr. Ajay Kumar Agarwal, Resolution Professional/(Respondent herein)** of **Avani Projects & Infrastructures Ltd. (Corporate Debtor)** was allowed and the Appellant was directed to furnish complete details of rent and parking income allegedly collected from **Avani Riverside Mall** for Financial Years 2021-22 and 2022-23.

2. The dispute arises from the Resolution Professional's contention that information relating to the revenues generated from the mall is necessary for successful completion of Corporate Insolvency Resolution Process (CIRP) of Corporate Debtor (CD), whereas **Mega Mall Management Services Pvt. Ltd./Appellant** asserts that it is an independent third-party entity having no ownership, financial, or operational nexus with the Corporate Debtor in respect of the mall after execution of the agreements dated 31.01.2018. Appellant has preferred the present appeal seeking setting aside of the impugned order on the ground that it proceeds on an erroneous interpretation of the contractual arrangements between the parties and compels disclosure by a third party without first establishing any subsisting ownership or financial interest of Corporate Debtor in the mall or its income.

Brief Facts of the Case

3. The brief facts of the case relevant to this appeal are given below:

- (i) A Financial Creditor instituted CIRP proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "**Code**") vide CP (IB) No. 378/KB/2018 against Avani Projects &

Infrastructures Ltd. (Corporate Debtor) in 2018. Ld. Adjudicating Authority vide an order passed on 13.03.2019, admitted the Sec 7 petition and initiated the CIRP proceeding against the CD.

(ii) The Resolution Professional proceeded in CIRP on the premise that Avani Riverside Mall, a shopping mall developed by the Corporate Debtor, continued to have a nexus with the assets and affairs of the Corporate Debtor. Acting on this understanding, the Resolution Professional sought cooperation from several entities connected with the operation and management of the mall, including Mega Mall Management Services Pvt. Ltd., which was functioning as a mall management and maintenance company.

(iii) The Resolution Professional/Respondent filed IA (IBC) No. 395 of 2020 under Section 19(2) of the Code on 06.03.2020 against the Appellant and six other respondents alleging non-cooperation in the conduct of the CIRP. The primary allegation was that the respondents were not extending the assistance required by the Resolution Professional for examining matters connected with Avani Riverside Mall and its assets.

(iv) The Adjudicating Authority vide an order dated 13.06.2022 disposed of IA (IBC) No. 395 of 2020 and directed all respondents, including Mega Mall Management Services Pvt. Ltd., to cooperate with the Resolution Professional in every possible manner for completion of the CIRP process. Accordingly, the Respondent addressed an e-mail dated 25.06.2022 to the Appellant seeking copies of the contractual

arrangements under which it was managing the affairs of Avani Riverside Mall.

(v) In response thereto, the Appellant on 02.07.2022 furnished copies of the agreements executed between itself and the Corporate Debtor, including the original agreement dated 01.06.2011 and the subsequent agreement dated 31.01.2018.

(vi) Shortly thereafter, Resolution Professional on 02.07.2022 sent another e-mail to the Appellant, seeking additional information, including accounts and internal records relating to Avani Riverside Mall. The Respondent continued to pursue information regarding the operations and finances of the mall on the basis that the same could have relevance to the CIRP of the Corporate Debtor.

(vii) The Appellant in its reply on 05.07.2022 asserted that there were no fixed assets of the Corporate Debtor within Avani Riverside Mall, the Corporate Debtor was merely the developer of the mall and had ceased to have any ownership interest in the mall property or its constituent units.

(viii) The Resolution Professional initiated contempt proceeding against the Appellant by filing Contempt Application Cont. A.(IBC)/11/KB/2022 on 22.08.2022 alleging non-compliance of the earlier directions issued by the Adjudicating Authority and alleging continued non-cooperation by Mega Mall Management Services Pvt. Ltd. and other parties.

(ix) During the pendency of the contempt proceedings, various directions were issued by the Adjudicating Authority requiring the Resolution Professional to ascertain whether Avani Riverside Mall or any part thereof continued to be an asset of the Corporate Debtor. Appellant as well as several shop owners and occupants of the mall produced registered conveyance documents and other records to demonstrate that ownership rights in the mall units had been transferred to individual purchasers and occupants.

(x) The contempt application was disposed of vide an order dated 04.09.2023, whereby, the Adjudicating Authority directed the Resolution Professional to physically inspect certain shops, determine the status of the occupants, examine documents submitted by twenty-five shop owners, and approach the Registrar of Assurances to independently verify ownership details of the remaining units. The object of these directions was to ascertain whether any part of the mall still constituted an asset of the Corporate Debtor.

(xi) The contractual relationship between the Corporate Debtor and Mega Mall Management Services Pvt. Ltd. traces back to an agreement executed on 01.06.2011. Under this arrangement, the Corporate Debtor appointed Mega Mall Management Services Pvt. Ltd. as the maintenance company for Avani Riverside Mall and authorized it to maintain the common areas and parking facilities of the mall. The agreement further contemplated that parking revenue would be collected by the Appellant and remitted to the Corporate Debtor on a

daily basis, while separate accounts were required to be maintained and periodically furnished. Various provisions also governed collection and utilization of common area maintenance charges and other operational revenues.

(xii) The parties subsequently executed a Supplemental Agreement on 31.01.2018, which materially altered the rights and obligations of the parties and, according to the Appellant, novated and superseded the earlier arrangement. Under the revised agreement framework, Appellant became responsible for collecting CAM charges, electricity charges, gas charges and other operational income of the mall and was required to utilize such collections for maintenance and upkeep of the mall. Any surplus remaining after meeting maintenance expenses was to belong exclusively to the Appellant, while any deficit was also to be borne entirely by the Appellant.

(xiii) On the very same date, namely 31.01.2018, another tripartite agreement was executed among the Corporate Debtor, Mega Mall Management Services Pvt. Ltd., and Aster Buildtech Private Limited. Under this arrangement, the rights and responsibilities relating to management, operation and collection of parking charges from the parking area were assigned to Aster Buildtech Private Limited.

(xiv) Subsequently, following deliberations in Committee of Creditors meeting held on 26.02.2024, the Resolution Professional sent a communication dated 29.02.2024 to the Appellant seeking details of

rent and parking charges allegedly collected from the mall for Financial Years 2021-22 and 2022-23 as well as thereafter.

(xv) The Appellant vide its reply dated 08.03.2024, rejected the request and reiterated that it was not connected with the Corporate Debtor in the manner alleged by the Resolution Professional. It further maintained that internal financial details relating to the operations of the mall could not be disclosed, merely because the Corporate Debtor had once acted as the developer of the project.

(xvi) Thereafter, the Resolution Professional filed IA (IBC) No. 910 of 2024 on 19.04.2024 under Section 60(5) of the Code seeking directions against the Appellant for disclosure of details relating to rent and parking income generated from Avani Riverside Mall. The application was filed in the pending CIRP proceedings of the Corporate Debtor and formed the basis of the present dispute.

(xvii) The Appellant in its Reply Affidavit dated 01.07.2024, not only challenged the maintainability of the application, but also asserted that it was neither collecting rent from the mall nor collecting parking charges. It specifically stated that parking charges were being collected by Aster Buildtech Private Limited pursuant to the tripartite agreement dated 31.01.2018 and emphasized that no legal relationship existed between the Appellant and the Corporate Debtor that could justify the disclosure sought by the Resolution Professional.

(xviii) During the proceedings, the Appellant relied extensively upon the original agreement dated 01.06.2011, the Supplemental Agreement

dated 31.01.2018 and the Tripartite Agreement dated 31.01.2018 to demonstrate that the contractual regime governing the mall had fundamentally changed and that any rights earlier existing in favour of the Corporate Debtor had either been modified or extinguished. It was repeatedly asserted that sufficient information had already been provided to the Resolution Professional and that the application was speculative, misconceived and intended to harass a third party unrelated to the assets of the Corporate Debtor. The Resolution Professional, however, persisted with the allegation that substantial revenue generated from the mall, particularly parking revenue, ultimately accrued to the benefit of the Corporate Debtor.

(xix) Ld. Adjudicating Authority vide the impugned order dated 18.06.2025, allowed IA (IBC) No.910 of 2024 and directed the Appellant to furnish complete details of rent and parking charges collected from Avani Riverside Mall for Financial Years 2021-22 and 2022-23 and thereafter, within thirty days. Aggrieved by the same the Appellant filed the present appeal

Submissions of Appellant

4. Ld. Counsel submits that the impugned order proceeds on an erroneous interpretation of the contractual documents governing the relationship between the parties and travels beyond the scope of the pleadings before the Adjudicating Authority. He submits that the Corporate Debtor, Avani Projects and Infrastructure Limited, was admitted into CIRP on 13.03.2019. The Corporate Debtor had developed a commercial mall known as “Avani Riverside

Mall”. During the CIRP, the Resolution Professional filed an application under Section 19(2) of the Insolvency and Bankruptcy Code on 02.03.2020 alleging non-cooperation by the Appellant, which is merely a mall management company. The said application, being I.A. No. 395 of 2020, was disposed of by Order dated 13.06.2022 directing cooperation with the Resolution Professional. Pursuant thereto, the Appellant furnished all information and particulars sought by the Resolution Professional.

5. He submits that despite such compliance, the Resolution Professional initiated contempt proceedings being CONT. (IBC) No.11/KB/2022. During those proceedings, various documents were produced by stakeholders and directions were issued requiring the Resolution Professional to ascertain whether shops and showrooms in the mall had already been sold or transferred prior to CIRP and whether the Corporate Debtor retained any ownership rights in the mall.

6. It is submitted that the contempt proceedings were ultimately disposed of by Order dated 04.09.2023 recording that twenty-five shop owners had furnished ownership documents. The Resolution Professional was directed to examine those documents and determine, whether such units formed part of the assets of the Corporate Debtor. The Resolution Professional was further directed to approach the Registrar of Assurances, Kolkata and verify the ownership rights, if any, of the Corporate Debtor over the subject property. Thus, even at that stage, the ownership status of the mall had not been conclusively established.

7. Ld. Counsel further submits that the Appellant was thereafter served with I.A. (IBC) No. 910 of 2024, wherein it was impleaded as a respondent. By the said application, the Resolution Professional sought directions upon the Appellant to furnish information allegedly sought through an email dated 04.03.2024. He submits that the sole allegation in the application was that the Resolution Professional had requested the Appellant to provide details of rent collections and parking charges allegedly collected from the mall during Financial Years 2021-22 and 2022-23. The application did not disclose any material establishing that such amounts constituted assets or receivables of the Corporate Debtor. The said application also referred to the CoC meeting held on 26.02.2024 and the Appellant's response to the email dated 04.03.2024.

8. It is the submission of Ld. Counsel that in its reply email, the Appellant specifically informed the Resolution Professional, that it was an independent third party having no role in the CIRP of the Corporate Debtor. It was pointed out that its position had already been clarified through pleadings and affidavits filed in the contempt proceedings. The Appellant further stated that the information sought related to its internal accounts and confidential commercial data, disclosure whereof was beyond the scope of CIRP proceedings concerning the Corporate Debtor.

9. Ld. Counsel further submits that the Appellant filed a detailed reply affidavit opposing I.A. No. 910 of 2024, wherein it was specifically contended that the application was liable to be dismissed, since information was being sought from a third-party entity in relation to assets, which had not been

shown to belong to the Corporate Debtor. Reference was made to the earlier orders directing the Resolution Professional to first determine whether the mall itself continued to be an asset of the Corporate Debtor. It was also pointed out that the Resolution Professional had failed to place any material on record demonstrating that the mall remained an asset of the Corporate Debtor.

10. It is his submission that the Resolution Professional thereafter filed a rejoinder seeking to introduce an entirely new case. The Appellant contended that the allegations contained in the rejoinder were beyond the scope of the original application, unrelated to the relief sought therein and incapable of being introduced without amendment of the main pleadings. He submits that the Resolution Professional relied upon two agreements executed between the Corporate Debtor and the Appellant, namely the Agreements dated 01.06.2011 and 31.01.2018, which had already been disclosed by the Appellant through its email dated 02.07.2022.

11. Ld. Counsel submits that the 2011 and 2018 Agreements clearly demonstrated that the rent and parking charges sought by the Resolution Professional were not receivables of the Corporate Debtor. It was submitted that Clause 3, Paragraphs 1 and 2 of the 2011 Agreement stood superseded and novated by the subsequent Agreement dated 31.01.2018 executed in the ordinary course of business. Consequently, the rights and obligations of the parties were governed by the 2018 Agreement. He further submitted that at the hearing, the Appellant specifically argued that no new case could be made out through a rejoinder affidavit. The allegations regarding the Appellant

being a related party or step-down subsidiary of the Corporate Debtor were introduced for the first time in the rejoinder and formed no part of the original application. No amendment had been sought to incorporate such allegations. The Appellant nevertheless furnished replies to those allegations without prejudice to its rights and contentions.

12. Ld. Counsel submits that the impugned order dated 18.06.2025 proceeds on a complete misreading of the 2011 and 2018 Agreements. At paragraph 2.2 of the impugned order, the Adjudicating Authority misconstrued Clause 2 of the 2018 Agreement. The said clause specifically provides that any surplus remaining after meeting the maintenance and upkeep expenses of the mall would belong to the Appellant, being the Second Party under the agreement. However, the Adjudicating Authority erroneously concluded that such surplus belonged to the Corporate Debtor. Similar errors appear in paragraphs 8, 10 and 13 of the impugned order.

13. He further submits that the Adjudicating Authority failed to appreciate that under the 2018 Agreement, collection of parking charges no longer formed part of the Appellant's obligations and had been assigned to another third party under a separate agreement. The finding that the Corporate Debtor was maintaining the parking area is therefore contrary to the record. Having accepted the existence and validity of both agreements, the Adjudicating Authority could not have interpreted their clauses in a manner directly contrary to their express terms. The impugned order is therefore liable to be set aside on this ground alone.

14. Ld. Counsel submits that the Resolution Professional has once again sought to rely upon allegations introduced for the first time in the rejoinder affidavit. Significantly, those allegations were not considered by the Adjudicating Authority, while passing the impugned order. In the absence of any appeal or cross-objection by the Resolution Professional challenging such non-consideration, it is not open to him to enlarge the scope of the present appeal. The controversy before this Appellate Tribunal is confined to the findings recorded by the Adjudicating Authority regarding the interpretation of the Agreements dated 01.06.2011 and 31.01.2018.

15. The Appellant places reliance upon the judgment of the Hon'ble Supreme Court in "***Banarsi & Ors. v. Ram Phal***, [(2003) 9 SCC 606]". It is submitted that in paragraph 22 of the said judgment, the Hon'ble Supreme Court held that in the absence of a cross-appeal or cross-objection, an appellant cannot be placed in a position worse than the one existing prior to filing the appeal. Applying the said principle, it is submitted that the present appeal must be decided solely on the basis of the findings contained in the impugned order and the Resolution Professional cannot be permitted to introduce new controversies or seek enlargement of the issues involved. Accordingly, he submits that the impugned Order dated 18.06.2025 deserves to be set aside and the present Appeal deserves to be allowed.

Submissions of Respondent

16. Ld. Counsel for the Resolution Professional submits that under the original Agreement dated 01st June 2011 executed between Avani Projects and Infrastructure Limited (Corporate Debtor) and the Appellant, the

Appellant was engaged to provide maintenance, housekeeping, security and other operational services in relation to the shopping Mall. Under this arrangement, the Appellant was entrusted with collection of revenue generated from the Mall on behalf of the Corporate Debtor, and was required to transfer the same to the Corporate Debtor. In consideration of such services, the Appellant was entitled to a fixed fee of Rs. 50,000/- per month. Thus, the agreement clearly contemplated that all revenues generated from the Mall belonged to the Corporate Debtor and that the Appellant merely acted as a service provider responsible for collection and remittance of such revenues.

17. Ld. Counsel further submits that the financial records establish that the Mall was a substantial revenue-generating asset of the Corporate Debtor. The financial statements show that from 2017 onwards, approximately Rs. 117 Crores was received by the Corporate Debtor from income generated by the Mall. These figures demonstrate the significant revenues generated from Mall operations, which, if continued to be remitted in accordance with the original arrangement, could have been utilized towards repayment of creditors and improvement of the Corporate Debtor's financial position.

18. He submits that the subsequent agreements executed on 31st January 2018 fundamentally altered the commercial arrangement and diluted the rights of the Corporate Debtor. The original terms were modified so that the surplus generated from the Mall, after meeting maintenance and operational expenses, no longer belonged to the Corporate Debtor, but accrued to the

Appellant. This resulted in diversion of valuable revenue streams away from the Corporate Debtor.

19. Ld. Counsel further submits that the audited financial statements for the year ending 31st March 2017 disclose income from the Mall amounting to Rs. 307.56 Lakhs. However, after execution of the agreements dated 31st January 2018, no corresponding income appears to have been credited to the Corporate Debtor. Instead, the audited records indicate that the Appellant continued collecting lease rentals, signage charges and other revenues generated from the Mall, without remitting the same to the Corporate Debtor, thereby diverting its revenue-generating rights.

20. Ld. Counsel submits that on the same date, i.e., 31st January 2018, a Tripartite Agreement was executed amongst the Appellant, Aster Buildtech Private Limited and the Corporate Debtor. The consideration for this agreement was fixed at only Rs.10,00,000/-. Considering the substantial revenues generated from the Mall and the valuable rights transferred, such consideration was wholly inadequate and commercially irrational. The financial records further show that Aster itself generated revenue of approximately Rs. 193.53 Lakhs. The consideration reflected in the Tripartite Agreement, therefore bears no reasonable nexus with the value of the rights transferred and strongly indicates lack of bona fides.

21. He further submits that the surrounding circumstances clearly establish that the true intent behind the agreements dated 31st January 2018 was to divert and siphon the funds and revenue streams of the Corporate Debtor. The agreements were so structured that substantial economic

benefits arising from the Mall were diverted to related entities, thereby prejudicing creditors.

22. Ld. Counsel submits that the fraudulent nature of the transaction becomes even more apparent in light of the winding-up proceedings against the Corporate Debtor. The Hon'ble High Court at Calcutta had admitted a winding-up petition by order dated 01st December 2017 and appointed a Provisional Liquidator on 07th September 2018. A petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 had also been filed on 14th March 2018. Despite these developments, the parties proceeded to execute arrangements affecting valuable assets and revenue streams of the Corporate Debtor.

23. Ld. Counsel invited attention to Section 441(2) of the Companies Act, 1956 provides that winding-up is deemed to commence from the date of presentation of the winding-up petition. Accordingly, although the admission order was passed on 01st December 2017, the winding-up process is deemed to have commenced, when the petition was presented in 2016. Therefore, on 31st January 2018, the Corporate Debtor was already under the shadow of winding-up proceedings. Any transfer or dealing with valuable assets during this period was highly suspect and indicative of an attempt to defraud creditors. The conduct of the Corporate Debtor, the Appellant and Aster demonstrate a concerted effort to siphon revenue-generating rights away from the Corporate Debtor and diminish the asset pool available to creditors.

24. Ld. Counsel further places reliance upon Section 531 of the Companies Act, 1956 relating to avoidance of voluntary transfers. The provision

stipulates that transfers made without valuable consideration and not in good faith, within one year prior to commencement of winding-up are void against the liquidator. The consideration of Rs. 10 Lakhs bears no reasonable relation to the valuable rights transferred under the agreements. The transaction therefore falls squarely within the mischief of Section 531 and strongly suggests a mala fide intention to defeat stakeholder interests and deprive the Corporate Debtor of valuable income.

25. Ld. Counsel submits that after commencement of CIRP, the Respondent repeatedly sought complete information and documentation concerning revenues generated from the Mall and collected by the Appellant. Despite several requests, no meaningful information was furnished, compelling the Respondent to seek directions from the Adjudicating Authority.

26. He submits that during CIRP, a detailed transaction audit was conducted. The auditors concluded that the transactions involving the Appellant and Aster were fraudulent and resulted in diversion of funds belonging to the Corporate Debtor. The audit quantified the diverted amount at approximately Rs. 117 Crores and additionally recorded diversion of Rs. 1.94 Crores. Based on the findings of the transaction audit report dated 16th December 2024, prepared by S.K. Agarwal & Co., Company Chartered Accountants LLP, and upon an independent assessment, the Respondent has filed IA No. 591 of 2025 under Sections 45, 49 and 66 of the Insolvency and Bankruptcy Code, 2016, which is presently pending adjudication before the Adjudicating Authority.

27. Ld. Counsel submits that the Appellant and the Corporate Debtor have always remained closely connected entities. The Appellant was incorporated on 14th March 2011 and its entire shareholding was held by Deveran Conglomerate Private Limited and Jairon Tie-Up Private Limited, each holding 50%. Further, both Deveran and Jairon were subsidiaries and/or step-down subsidiaries of the Corporate Debtor, the Appellant became a step-down subsidiary and consequently a related party of the Corporate Debtor.

28. He further submits that the commonality of ownership and management is evident from the corporate structure and shareholding records. The documentary record shows that Deveran and Jairon remained wholly owned subsidiaries within the group structure, and consequently the Appellant continued as a step-down subsidiary of the Corporate Debtor until at least FY 2022. This relationship persisted well beyond commencement of CIRP on 13th March 2019. He submits that although subsequent changes in shareholding are reflected in the financial statements for FY 2022-23, such restructuring cannot erase the historical related-party relationship that existed when the impugned transactions were entered into.

29. It is the submission of Ld. Counsel that the transfer of shareholding was affected without the knowledge of the Respondent, who had assumed control of the Corporate Debtor during CIRP. A party that was once a related party cannot avoid scrutiny for transactions undertaken during the period of such relationship. The Corporate Debtor, through its subsidiaries, originally held complete ownership and control over the Appellant. The subsequent transfer of shares formed part of a broader scheme to deprive the Corporate

Debtor of valuable revenue-generating rights associated with the Mall. Through this arrangement, revenues arising from the Mall were diverted away from the Corporate Debtor, causing substantial loss and prejudice to creditors.

30. Ld. Counsel further submits that such conduct attracts scrutiny under Section 66 of the Code, as a fraudulent transaction intended to defeat creditor interests. The magnitude of the assets involved is evident from the audited balance sheet for FY 2016-17, which recorded fixed tangible assets of Avani Riverside Mall, including plant and machinery, furniture, fixtures and electrical installations, at a book value of Rs. 97.39 Crores and a written down value of Rs. 48.33 Crores as on 31st March 2017. He submits that despite generating substantial revenues from the Mall, the Appellant never remitted the amounts due to the Corporate Debtor. The diversion and retention of such revenues was undertaken solely to deprive the Corporate Debtor and its creditors of funds rightfully belonging to it.

31. Ld. Counsel submits that the Corporate Debtor executed Lease Deeds with Reliance Footprint Limited and PVR Limited on 15th February 2012 and 11th November 2011 respectively. These lease deeds expressly provided that Common Area Maintenance (CAM) charges were to be collected through the Appellant and thereafter remitted to the Corporate Debtor. These provisions reaffirm the original arrangement under which revenues generated from the Mall belonged to the Corporate Debtor and were merely collected through the Appellant as a facilitating entity. In view of the lease deeds and the original Agreement dated 01st June 2011, there was no commercial or legal

justification for entering into subsequent arrangements that diluted or extinguished the Corporate Debtor's entitlement to CAM charges and other revenues arising from the Mall. The later agreements were specifically designed to alter the revenue structure to the detriment of the Corporate Debtor and its creditors and therefore warrant strict scrutiny by this Appellate Tribunal.

Analysis and Findings

32. We have gone through the records of the case including written submissions, and heard the ld. Counsels.

33. At the outset, it is important to note that the impugned order does not determine ownership of Avani Riverside Mall, does not adjudicate competing contractual rights between the parties, does not declare that any amount is payable by the Appellant to the Corporate Debtor, and does not finally decide whether the revenues generated from the mall belong to the Corporate Debtor or to the Appellant. The Adjudicating Authority has merely directed the Appellant to furnish details relating to rent and parking collections sought by the Resolution Professional. Therefore, the principal question before us is not one of ownership or entitlement, but whether such information could legitimately be sought by the Resolution Professional and whether the Appellant was justified in refusing to disclose it. The challenge raised in the present appeal requires us to examine the true nature of the direction issued by the Adjudicating Authority.

34. The factual background assumes significance. The Corporate Debtor, Avani Projects and Infrastructure Ltd., was admitted into CIRP on

13.03.2019. During the CIRP proceedings, the Resolution Professional had been compelled to initiate proceedings under Section 19(2) of the Code alleging non-cooperation from several entities, including the Appellant. Those proceedings culminated in an order dated 13.06.2022 from the Adjudicating Authority directing all Respondents to cooperate with the Resolution Professional. Thereafter, contempt proceedings were also initiated, during which the Adjudicating Authority repeatedly directed examination of ownership records and verification of documents relating to different portions of the mall. Ultimately, by order dated 04.09.2023, the Resolution Professional was directed to ascertain the ownership position by examining documents furnished by various occupants and by approaching the Registrar of Assurances. Thus, the present application did not arise in isolation. It forms part of a continuing effort undertaken during CIRP to ascertain the true nature of assets, transactions and revenue streams connected with the Corporate Debtor.

35. The Appellant has sought to resist disclosure primarily relying on the two agreements dated 31.01.2018. According to the Appellant, the original agreement dated 01.06.2011 under which the Appellant became responsible for maintenance and operational expenses of the mall and was entitled to retain any surplus remaining after such expenses, stood modified by the subsequent arrangements. It has been further argued that parking operations stood transferred to Aster Buildtech Private Limited and therefore no details concerning parking revenue can be demanded from the Appellant. Based on these agreements, the Appellant contends that neither the mall nor the revenues generated therefrom belong to the Corporate Debtor.

36. This line of argument proceeds on an assumption that the validity, effect and legal consequences of the 2018 agreements stand conclusively established. The record, however, does not support such an assumption. The materials placed before us indicate that the winding-up petition against the Corporate Debtor had already been admitted on 01.12.2017, whereas the agreements upon which the Appellant places heavy reliance were executed thereafter on 31.01.2018. Consequently, the transactions reflected in those agreements cannot automatically be treated as beyond scrutiny. Where valuable commercial rights, revenue streams and operational benefits are alleged to have been transferred away from a financially distressed company after commencement of winding-up proceedings, such transactions necessarily require careful examination from the standpoint of creditors and stakeholders. Therefore, the Appellant cannot insist that the Resolution Professional must first accept the validity of the 2018 arrangements before seeking information relating to revenues generated under those very arrangements.

37. It is seen from the records that a transaction audit has been conducted during the CIRP and that the findings thereof have led to initiation of proceedings under Sections 45, 49 and 66 of the Insolvency and Bankruptcy Code. Those proceedings are stated to concern alleged diversion of substantial value from the Corporate Debtor through transactions involving the Appellant and connected entities. We are conscious that those proceedings remain pending adjudication and therefore no final opinion can presently be expressed on the allegations raised therein. Nevertheless, the existence of such proceedings is a relevant circumstance. It demonstrates that the

financial dealings relating to the mall and the agreements relied upon by the Appellant are already under examination. In such circumstances, a request for financial information cannot be viewed as speculative or unnecessary. On the contrary, disclosure of complete records becomes essential for a meaningful examination of the transactions which are already the subject matter of scrutiny.

38. Under the scheme of the Insolvency and Bankruptcy Code, the Resolution Professional is entrusted with the duty of collecting, collating and verifying information concerning the affairs of the Corporate Debtor. The Resolution Professional is also required to preserve and maximise value for the benefit of all stakeholders. Such obligations cannot be discharged effectively unless relevant information is made available. The information sought in the present case pertains to rental income and parking collections generated from a mall admittedly developed by the Corporate Debtor and managed by the Appellant pursuant to arrangements entered into with the Corporate Debtor. The request for such information is therefore directly connected with the discharge of statutory duties and cannot be treated as a fishing or roving inquiry.

39. We also note that the Appellant's own case establishes a continuing nexus with the affairs of the mall. The Appellant is not a complete stranger having no connection whatsoever with the Corporate Debtor. The Appellant admits that it was appointed under agreements executed with the Corporate Debtor for management and maintenance functions relating to the mall. The rights now claimed by the Appellant are themselves traced to agreements

entered into with the Corporate Debtor. Once such relationship is admitted, it becomes difficult to accept the contention that information relating to revenues generated through those arrangements is wholly beyond the reach of the Resolution Professional.

40. We note that the Appellant has been part of the Corporate Debtor's group structure. The shareholding pattern demonstrates that entities holding shares in the Appellant are subsidiaries and/or step-down subsidiaries of the Corporate Debtor, thereby rendering the Appellant a related party. The Appellant has, at all material times, been intrinsically connected with the affairs and management of the Corporate Debtor and is in possession of relevant financial information. In view thereof, the Appellant is squarely covered under Section 19 of the Code, which mandates all persons associated with the management of the Corporate Debtor to extend full cooperation to the Resolution Professional.

41. At this stage, it is necessary to draw a distinction between **disclosure of information** and **determination of rights**. The Appellant appears to equate the two. However, furnishing information does not amount to an admission that the revenues belong to the Corporate Debtor. Nor does it result in a declaration that the Appellant has acted improperly. Production of records merely enables the Resolution Professional and the Adjudicating Authority to ascertain the true factual position. The question whether any revenue ultimately belongs to the Corporate Debtor, whether the agreements of 2018 are valid and enforceable, or whether any avoidance transaction has occurred, are matters that can be examined only after the relevant facts and

financial records are available on record. Therefore, disclosure is a preliminary step towards adjudication and not an adjudication in itself.

42. The history of this litigation further demonstrates that the Resolution Professional has repeatedly faced difficulty in obtaining information relevant to the CIRP. Proceedings under Section 19(2), subsequent contempt proceedings, directions for verification of ownership records and finally the present application all indicate a continuing struggle to obtain material information. Seen in this background, the impugned order appears to be a measured attempt by the Adjudicating Authority to facilitate the insolvency process rather than an unwarranted interference with the affairs of the Appellant. The direction issued is narrow in scope and confined only to furnishing information sought by the Resolution Professional.

43. The argument of the Appellant that it is a third party to the dispute and a separate legal entity also does not carry the matter much further. Separate legal personality cannot become a shield against disclosure, where the information sought bears a direct nexus with transactions and arrangements connected with the Corporate Debtor. As seen earlier Appellant has been a step-down subsidiary of the Corporate Debtor for a major portion of CIRP. The impugned order neither disregards the independent legal status of the Appellant nor imposes any liability upon it. It merely requires production of information which may assist in determining the true nature and effect of transactions undertaken in relation to the mall.

44. Most importantly, the issues relating to ownership of the mall, entitlement to revenues, validity of the 2018 agreements and alleged diversion

of value remain matters of inquiry and adjudication. The record itself shows that these questions have not attained finality. Once it is accepted that such issues remain open, it necessarily follows that information relevant to those issues cannot be withheld. Acceptance of the Appellant's contention would lead to an anomalous situation where a party could refuse disclosure of relevant records by asserting a defence which itself requires investigation. Such an approach would frustrate the very purpose of CIRP and substantially impair the ability of the Resolution Professional to perform duties entrusted under the Code.

45. The Appellant has relied upon the judgment of the Hon'ble Supreme Court in ***Banarsi & Ors. v. Ram Phal, (2003) 9 SCC 606*** to contend that the Respondent cannot raise issues beyond those specifically dealt with in the impugned order. It was held that such relief could not be granted in the absence of an appeal or cross-objection. In the present case, however, no additional relief is being sought by the Respondent, nor is there any attempt to enlarge the scope of the impugned order. The facts and circumstances referred to by the Respondent are only being relied upon to support the direction already issued by the Adjudicating Authority and to demonstrate why disclosure of information was necessary for the effective conduct of CIRP. The controversy before us is confined to examining the correctness of the direction requiring disclosure of information and not to granting any fresh relief in favour of the Respondent.

46. For all the aforesaid reasons, we are unable to find any irregularity in the impugned order. The direction issued by the Adjudicating Authority is

limited in nature, does not adjudicate substantive rights of the parties and is intended only to enable the Resolution Professional to discharge statutory obligations under the Insolvency and Bankruptcy Code. The objections raised by the Appellant are essentially founded upon disputed questions concerning ownership, contractual entitlement and validity of transactions, all of which can be examined only after complete facts and records are available.

47. We are, therefore, of the view that the Adjudicating Authority committed no error in directing the Appellant to furnish the information sought by the Resolution Professional. Consequently, the appeal is liable to be dismissed and the impugned order deserves to be affirmed.

Justice N. Seshasayee
Member (Judicial)

Arun Baroka
Member (Technical)

Indevar Pandey
Member (Technical)

Place: New Delhi

Harleen/
Pragya (LRA)