IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

IA(IBC)/287/KOB/2026
IN
IA(IBC)/115/KOB/2026
IN
IA(IBC)/426/KOB/2022
IN
TIBA/34/KOB/2019

(Under Section 60(5) of the IBC, 2016 read with Rule 11 of the NCLT Rules, 2016 and Order 21 Rule 54 & 64 of the Code of Civil Procedure, 1908)

Date of Institution: 26-05-2026

Order delivered on: 12-11-2026

In the matter of:
Axiomata Elevators Pvt Ltd

Memo of Parties:

Renahan Vamakesan,
Liquidator of Axiomata Elevators Pvt Ltd, IBBI/IPA-002/IP-N00630/2018-2019/11897 , Villa 23, Skyline Rosemount Homes, Kunjan Bava Road, Ponnurunni, Vytila P.O, Ernakulam-682019, Email: renahanv@gmail.com; Mob: 9567213967

.....Applicant

Versus

1. **Anish Lawrence**
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Email:purchase.axiomata@gmail.com
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2. **Shebin Sasthamparambil**
Sasthamparambil House, Chennur**,** Kothad P.O, Ernakulam, PIN -682027
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3. **Mahila**
W/o Late Shanmughan Shasthamparambil, Chennur, Kadamakudy Village, Kanayannoor Taluk, Kothad P.O, Ernakulam, Pin 682027
Email:purchase.axiomata@gmail.com

4. **Shejil Shanmughan S**
S/o Late Shanmughan Shasthamparambil, Chennur, Kadamakudy Village, Kanayannoor Taluk, Kothad P.O, Ernakulam, Pin 682027
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5. **Shenil Shanmughan S**
S/o Late Shanmughan Shasthamparambil, Chennur, Kadamakudy Village, Kanayannoor Taluk, Kothad P.O, Ernakulam, Pin 682027
Email: purchase.axiomata@gmail.com

.....Respondents

Coram

HON'BLE MEMBER (JUDICIAL) : SHRI VINAY GOEL

HON'BLE MEMBER (TECHNICAL): SHRI RAVICHANDRAN RAMASAMY

Appearances:

For the Applicant : Mr. Kevin Thomas, Advocate
For the Respondent No.1 to 2 : Mr. Ramola Nayanpally, Advocate
For the Respondent No.3 to 5 : Mrs. Lilly Francis, Advocate

O R D E R

1. The present application has been filed by the Liquidator of Axiomata Elevators Pvt Ltd under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter 'the Code') read with Rule 11 of the NCLT Rules 2016, and order 21 Rule 54 & 64 of the Code of Civil Procedure Code, 1908 seeking the following reliefs:-

(i) Pass an order to attach Annexure 1 schedule property and communicate the same to the Sub Registrar Office, Njarakkal;
(ii) Pass an order to bring Annexure 1 schedule property to sale to realise the dues of the Respondents under order dated 23.06.2023 in IA(IBC)/426/KOB/2022 in TIBA/34/KOB/2019 of this Hon'ble Tribunal;
(iii) Pass such other orders as this Hon'ble Tribunal may deem fit and thus render justice.

The Brief facts of the case are as follows: -

2. The Applicant is the Liquidator of M/s. Axiomata Elevators Private Limited ("Corporate Debtor"), while Respondent Nos. 1 and 2 are the suspended Directors of the Corporate Debtor. Respondent Nos. 3 to 5 are family members of Respondent No. 2, in whose favour Respondent No. 2 is alleged to have

transferred the properties which are the subject matter of the present application.

3. The Applicant had filed IA(IBC)/426/KOB/2022 alleging fraudulent transactions and diversion of the assets and funds of the Corporate Debtor by the Respondent No. 1 and 2. After hearing the parties, this Adjudicating Authority, by order dated 23.06.2023, directed the Respondents to pay Rs.1,20,81,752/- within one month, failing which the amount would carry interest at 12% per annum from the date of the order.
4. This application was initially filed against Respondent Nos. 1 and 2 alone. Subsequently, the Applicant filed an application for impleadment, which was allowed by this Adjudicating Authority vide order dated 07.09.2026, and impleaded Respondent Nos. 3 to 5 as parties to the present proceedings.
5. The Respondent Nos. 1 and 2 unsuccessfully challenged the order before the Hon'ble NCLAT in C.A.(AT)(CH)(Ins) No.377/2023, which was dismissed on 23.09.2025, and thereafter before the Hon'ble Supreme Court in C.A. No.13809/2025, which was dismissed on 05.12.2025. The order dated 23.06.2023 has consequently attained finality. Despite notice, the Respondent Nos. 1 and 2 have failed to comply with the order and the amount, together with accrued interest, remains unpaid.
6. While dismissing Contempt Petition No.2/2023, this Adjudicating Authority had observed that the order could be executed by exercising powers under the Code of Civil Procedure,1908.
7. The Applicant has subsequently learnt that Respondent No.2, who had a 1/4th undivided share in the properties devolved upon him from his father, has dealt with the said interest under Partition Deed No.1543/2025 dated 165/10/2025 of Njarackal Sub Registrar Office in favour of his family members who are

arrayed as Respondent Nos.3 to 5 in this case. The property comprises land and building situated in Kadamakkudy Village, Kanayannur Taluk, Ernakulam District, as more particularly described in the Schedule.

8. The aforesaid transaction, coupled with the Respondents' continued failure to satisfy the subsisting order, gives rise to a reasonable apprehension that the assets are being placed beyond the reach of execution and may further be alienated or encumbered, thereby frustrating recovery of the amount due to the Corporate Debtor.
9. The Applicant also relies upon the Respondents No. 1 and 2 previous conduct in relation to the Corporate Debtor, including the unauthorised operation of its bank accounts during the CIRP and withdrawal/transfer of Rs.7,07,559/-. The Stakeholders' Consultation Committee has also resolved to seek attachment and sale of the property for recovery of the amount due.
10. In the circumstances, and in exercise of the executionary powers available under the Code of Civil Procedure, the Applicant seeks attachment of the scheduled property and, upon completion of the prescribed process, its sale for realisation of the dues under the order dated 23.06.2023. The relief is sought to protect the interests of the creditors and to prevent the execution of the final order from being frustrated.
11. Counsel for Respondent No.1 submitted that, as no relief was sought against him, he did not intend to file a reply affidavit, as recorded by this Adjudicating Authority by order dated 08.07.2026.
12. Respondent No.2 stated that the present application for attachment is misconceived and not maintainable. It was submitted that, though the properties originally devolved upon him and the other legal heirs as an undivided estate, the same were subsequently partitioned under registered

Partition Deed No.1543/2025 of the Njarakkal Sub-Registry. Under the said deed, Respondent No.2 relinquished his undivided share in favour of his mother and siblings without receiving any consideration. Consequently, he asserted that he has no subsisting right, title or interest in the Schedule Property. It was further contended that the properties have since been separately allotted, mutated and possessed by the respective co-sharers and that the description of the Schedule Property furnished by the Applicant is vague and incapable of identification.

13. Respondent No.2 submitted that the partition was a bona fide family arrangement recognising pre-existing rights and did not constitute a transfer under Section 5 of the Transfer of Property Act, 1882. Reliance was placed on *Khushi Ram v. Nawal Singh* [(2021) 16 SCC 279], *Sk. Sattar Sk. Mohd. Choudhari v. Gundappa Ambadas Bukate* [(1996) 6 SCC 373 / AIR 1997 SC 998 [1]] and *Ram Charan Das v. Girja Nandini Devi* [AIR 1966 SC 323 / 1965 SCR (3) 841]. It was contended that, under Order XXI Rule 54 CPC, only the existing attachable interest of a judgment-debtor can be attached and that no such interest presently exists in favour of Respondent No.2.

14. It was further submitted that the Schedule Property is neither an asset of the Corporate Debtor nor part of the liquidation estate. Respondent No.2 submitted that the Adjudicating Authority's earlier observation that execution was the appropriate remedy, in accordance with Rules 56 and 57 of the NCLT Rules, 2016 and the applicable provisions of the CPC, did not determine that he had any attachable interest in the property or authorise adjudication of independent third-party title disputes. In this regard Respondent No. 2 has placed reliance on *Gloster Ltd. v. Gloster Cables Ltd [(2026) 264 CompCas 607].*,

Embassy Property Developments Pvt. Ltd. v. State of Karnataka & Ors [(2020) 13SCC 308],.

15. Respondent Nos. 3 to 5, while contesting their impleadment and the maintainability of the present proceedings, submitted that their impleadment by order dated 07.09.2026 in IA(IBC)/317/KOB/2026 was made *ex parte* and without affording them an opportunity of hearing. Aggrieved by the said order, they had preferred an appeal before the Hon'ble NCLAT, Chennai Bench, bearing Filing No. 9805117/02604/2026, filed on 21.09.2026. They accordingly contended that the present proceedings ought to await the outcome of the said appeal, and that their participation in the present proceedings was without prejudice to their challenge to the impleadment order.
16. Respondent Nos. 3 to 5 further contended that they are the beneficiaries under Partition Deed No.1543/2025 and claim independent title to the Schedule Property. It was submitted that the properties had neither belonged to the Corporate Debtor nor formed part of the liquidation estate. They reiterated that Respondent No.2 had relinquished his undivided share under the Partition Deed and, therefore, had no subsisting interest capable of attachment.
17. It was further submitted that Respondent Nos. 3 to 5 had instituted O.S. No.679/2026 before the Additional Munsiff's Court, Ernakulam, concerning the rights of Respondent No.2 over the said properties, in which an interim injunction had also been granted. According to the Respondents, questions relating to title, ownership and the validity and effect of the Partition Deed are thus pending before the competent Civil Court. It was contended that such disputed questions of title and independent third-party rights cannot be

adjudicated in the present execution proceedings under Section 60(5) of the IBC.

18. Reliance was also placed by Respondent Nos. 3 to 5 on *Birendra Kumar Agarwal v. Middle East Management Services LLP & Ors.* and *Area Importers and Exporters Private Limited v. M/s Gupta Builders and Promoters Private Limited*, to contend that the jurisdiction under Section 60(5) of the IBC cannot be expanded into a substantive adjudication of complex disputes relating to title, fraud or validity of documents. It was submitted that, if the Applicant disputes the validity or legal effect of the Partition Deed, it must pursue an appropriate remedy before the competent Civil Court.
19. The Respondents accordingly contended that the Applicant cannot, in execution of the order dated 23.06.2023, seek attachment and sale of property in which Respondent No.2 allegedly has no subsisting interest or convert the execution proceedings into an adjudication of title and third-party rights. On these grounds, dismissal of the application with costs was sought.

ANALYSIS AND FINDINGS:

20. We have heard the Learned Counsel appearing for the respective parties and perused the records.
21. It is gathered from the records that the Corporate Insolvency Resolution Process was initiated against the Corporate Debtor by order dated 26.11.2019 in TIBA/34/KOB/2019. Initially, Mr. Sathiq Buhari was appointed as the Resolution Professional/Liqudator. Thereafter, pursuant to the decision of the Committee of Creditors, Mr. Renahan Vamakesan was appointed as the Resolution Professional vide order dated 17.06.2022. As no resolution plan could be approved within the prescribed period, an order of liquidation was subsequently passed on 28.10.2022.

22. Thereafter, the Liquidator filed an application under Section 66(1) read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("Code"), read with Rule 11 of the National Company Law Tribunal Rules, 2016, being IA 426/KOB/2026 in TIBA/34/KOB/2019, seeking directions against the suspended Directors/management, namely Respondent Nos. 1 and 2, to contribute to the assets of the Corporate Debtor on account of the monies alleged to have been diverted from the bank account of the Corporate Debtor prior to the commencement of the CIRP.
23. The said application was contested by Respondent Nos. 1 and 2. Upon consideration of the pleadings and material available on record, this Adjudicating Authority allowed the application vide order dated 23.06.2023 and directed Respondent Nos. 1 and 2 to jointly and severally pay a sum of Rs.1,20,81,752/- to the Applicant within one month from the date of the said order. It was further directed that, in the event of failure to make payment within the stipulated period, the said amount would carry interest at the rate of 12% per annum from the date of the order until realisation.
24. Aggrieved by the said order, Respondent Nos. 1 and 2 preferred an appeal before the Hon'ble National Company Law Appellate Tribunal in CA (AT)(CH)(Ins) No.377/2023. The said appeal was dismissed by the Hon'ble NCLAT vide order dated 23.09.2025. Thereafter, Respondent Nos. 1 and 2 carried the matter further before the Hon'ble Supreme Court of India. The said appeal, being CA No.13809/2025, was dismissed by the Hon'ble Supreme Court vide order dated 15.12.2025.
25. Thus, the order dated 23.06.2023 passed by this Adjudicating Authority directing Respondent Nos. 1 and 2 to jointly and severally contribute a sum of Rs.1,20,81,752/- towards the assets of the Corporate Debtor, together with

interest at the rate of 12% per annum from the date of the order till realisation in the event of default, has attained finality.

26. The Respondent No. 1 and 2 have thus availed all efficacious remedies available to them against the order passed by this Adjudicating Authority. Thereafter, in the proceedings arising out of the application filed under Sections 66(1) and 60(5) of the Insolvency and Bankruptcy Code, 2016, the Applicant filed an Execution Petition on 03.03.2026 seeking execution of the order dated 23.06.2023 and realisation of the amount directed to be paid thereunder. In the said Execution Petition, the Applicant also furnished the description of the properties proposed to be attached and sold for recovery of the amount due and payable pursuant to the said order.

27. Respondent Nos. 1 and 2 entered appearance in the execution proceedings and filed their objections. In their objections, it was disclosed that Respondent No. 2 did not own or possess any immovable property and, in particular, he specifically denied having any right, title or ownership over the property described in the schedule to the Execution Petition as being available for attachment and sale.

28. Thereafter, the Applicant filed an application seeking attachment of the property of Respondent No. 2, being IA 287/KOB/2026. In response thereto, Respondent No. 2 disclosed the existence of a Partition Deed dated 16.10.2025 executed between himself and his family members. It is seen from the said Partition Deed that Respondent No. 2 had relinquished his right, title and interest in the properties in favour of his mother and siblings without any consideration. Respondent No. 2 took a categorical stand that the said Partition Deed constituted a bona fide family arrangement entered into amongst the

legal heirs of Mr. Shanmugan for settlement of their respective claims in the estate and for bringing finality to the affairs of the family.

29. At the same time, Respondent No. 2 contended that, in the absence of the persons in whose favour the properties had been transferred under the Partition Deed being made parties to the proceedings, no effective relief could be granted in respect of the said properties, as sought by the Liquidator.

30. In view of the aforesaid stand taken by Respondent No. 2, and in order to ensure that the persons in whose favour the properties had been transferred were before this Adjudicating Authority, the Liquidator filed an application seeking impleadment of Respondent Nos. 3 to 5 as parties to the present application. The said application, being IA(IBC) 317/KOB/2026, was allowed vide order dated 07.09.2026, thereby impleading Respondent Nos. 3 to 5 in the proceedings. Respondent Nos. 1 and 2 contested the said application for impleadment. However, having regard to the facts and circumstances of the case, this Adjudicating Authority allowed the impleadment of Respondent Nos. 3 to 5 in IA (IBC)287/KOB/2026, without calling for or inviting objections from the proposed Respondent Nos. 3 to 5 at that stage, as the impleadment was considered necessary for the effective adjudication of the relief sought by the Liquidator in respect of the properties covered by the Partition Deed.

31. At this stage, Respondent Nos. 3 to 5 have contended that they were erroneously impleaded in the present application without being afforded an opportunity to oppose the impleadment application. This Adjudicating Authority finds no merit in the said contention, as the impleadment was necessitated to meet with the objection raised by Respondent Nos. 1 and 2 that no effective order could be passed in the absence of the beneficiaries of the Partition Deed. Further, the order dated 07.09.2026 passed in IA

(IBC)317/KOB/2026 merely impleaded Respondent Nos. 3 to 5 and recognised their right to be heard before any order is passed on the Liquidator's application for attachment of the properties. Hence, no prejudice has been caused to their rights by the said order.

32. The decision of the Hon'ble Kerala High Court in *Jose v. V.P. Devassy & Another*, 2025:KER:34071, is instructive. The Hon'ble Court, in the course of execution proceedings, considered a transfer of immovable property in favour of a third party and held as under,

> *"15. It is true that normally a party to the suit could be arrayed as a judgment debtor in an execution petition. But when third party interest is found during execution proceedings as discernible from the facts of this case, or of similar nature, while proceeding with the execution of the decree, impleadment of a third party in the execution proceedings is not legally barred, since hearing him also is envisaged by such impleadment***.**

Significantly, the Court held that where a third-party interest emerges during execution, impleadment of such third party is not legally barred, since the third party is thereby afforded an opportunity of hearing.

33. Now, the prime questions before this Adjudicating Authority is the effect of Partition Deed No. 1345/2025 on the recovery of the amount directed to be paid under the order passed by this Adjudicating Authority in the application filed under Section 66(1) read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 and whether such transfer was made with an intent to defeat the rights of creditors or not. At this juncture, it is relevant to refer to Section 53 of the Transfer of Property Act, 1882, which reads as follows

Section 53. Fraudulent transfer.—

> *(1) Every transfer of immoveable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.*

Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.
Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.
A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor shall be instituted on behalf of, or for the benefit of, all the creditors.

(2) Every transfer of immoveable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.
For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made.

34. Section 53 of the Transfer of Property Act, 1882, deals with fraudulent transfers and contemplates two distinct circumstances:

(a) A transfer of immovable property made with the intent to defeat or delay the creditors of the transferor, rendering such transfer voidable at the instance of any creditor so defeated or delayed, subject to the statutory protections available to a transferee acting in good faith and for consideration

(b) A transfer of immovable property made without consideration with the intent to defraud a subsequent transferee, rendering such transfer voidable at the option of such subsequent transferee.

35. In the present case, the execution of the Partition Deed dated 16.10.2025, subsequent to the recovery order dated 23.06.2023 and without any consideration or corresponding benefit accruing to Respondent No.2, assumes considerable significance. The chronology of events surrounding the execution of the said deed, when considered along with the subsisting liability of Respondent No.2, prima facie indicates an intention to defeat or delay the Applicant's recovery. This Adjudicating Authority had passed the recovery order against Respondent Nos.1 and 2 on 23.06.2023. The appeal preferred against the said order before the Hon'ble NCLAT was dismissed on 23.09.2025. Thereafter, Respondent Nos.1 and 2 preferred an appeal before the Hon'ble Supreme Court of India, which was pending on the date of execution of the

Partition Deed. Significantly, the Partition Deed was executed on 16.10.2025, i.e., within a short period after the dismissal of the appeal by the Hon'ble NCLAT and during the pendency of the challenge before the Hon'ble Supreme Court, which was ultimately dismissed on 15.12.2025. The execution of the deed at such a stage of the proceedings, coupled with the absence of consideration and corresponding benefit to Respondent No.2, constitutes a significant circumstance supporting the inference that the transaction was intended to place his interest in the properties beyond the reach of the Applicant and thereby frustrate the recovery proceedings.

36. It is also pertinent to note that, under the said Partition Deed, Respondent No. 2 did not receive any share in the properties, cash or other valuables in lieu of his relinquished rights. No reason has been satisfactorily assigned for such unequal distribution or relinquishment of rights. Ordinarily, a family arrangement involving the division of a common estate would provide for the respective shares or claims of the parties thereto. The complete relinquishment of Respondent No.2's rights without any apparent consideration or corresponding benefit, viewed in the context of the subsisting recovery order and the subsequent execution proceedings, raises serious doubts regarding the bona fides of the transaction. The cumulative effect of these circumstances supports the inference that the Partition Deed was executed with the intention of defeating or delaying the recovery of the amount due to the Applicant.

37. In this regard, reliance is placed on the judgment of the Hon'ble High Court of Kerala in ***Jose v. V.P. Devassy and Another***,(Supra) in which the Hon'ble court held as under:

> *15.The sum and substance of 2025:KER:34071 CRP NO.446 OF 2010 the discussion would lead to the conclusion that the 1 st respondent put the decree in execution for realisation of the amount due for the work he had done in the property covered by Exts.B1 and B2.*

After execution of an agreement on 22.12.2000 for constructing a house within a period of one year, the 1st respondent executed two gift deeds on the next month (within 23-24 days) while the construction was going on. It is nothing but a fraudulent attempt to defeat the claim of the decree holder as envisaged in Section 53 of the TP Act. That apart, independently the property is liable to be proceeded for realization of the decree debt in terms of Section 128 of the TP Act to realize the debt of the donor from the gifted property as per Exts.B1 and B2. Therefore, it could not be held that the execution court went wrong in holding that the property is liable to be proceeded for decree debt due to the 1st respondent. In view of the matter, this 2025:KER:34071 CRP NO.446 OF 2010 revision petition fails and is liable to be dismissed.

38. Similarly in case of ***Sunita Ishwar Samota v. Sanman Trade Impex Pvt. Ltd*****,** (2026:BHC-OS:2870) decided on 30 January 2026 in Commercial Execution Application No. 30 of 2023 the Hon'ble High Court of Bombay held that where a judgment-debtor executes a Gift Deed in favour of close family members after the decree and during the pendency of execution proceedings, and the circumstances indicate an intention to defeat or delay the decree-holder, the property cannot be released from attachment merely on the basis of such transfer. In the absence of material establishing good faith, the Court rejected the objection seeking exclusion of the property from attachment under Order XXI Rule 58 CPC. The relevant portion of the above said judgment is produced below.

34. It is an admitted position that the Defendant No.3 has executed the Gift Deed after passing of the decree and during the pendency of the execution proceedings. Unless the Defendant No.3 establishes that the transfer was in good faith and not to defeat the execution, in my view the attachment of the said flat cannot be excluded or raised. No material has been placed before this Court that the Gift Deed is not to 38-IA-7784-2025.doc defeat the execution of the decree. In fact, the material is contrary to such a finding. It is clear in the facts of this case that the Gift Deed has been entered into being aware of and during the pendency of the execution proceedings that have been filed by the Execution Applicant against the three Judgment Debtors for which no further evidence would be required. In view thereof, there is nothing

further required to be established by permitting evidence to be led. The timing and nature of the transaction as borne out from the record indicate that same has been effected with a view to defeat and delay the claim of the creditors. When it is patently demonstrated that in the Gift Deed relied upon by the Applicants that the transfer is made between the family members is only to defeat and delay the claim of the Judgment creditor, no further enquiry is necessary.

39. The Hon'ble High Court of Bombay considered the judgment of the Hon'ble Supreme Court in ***Maya Devi v. Lalta Prasad*** (AIR 2014 SUPREME COURT 1356, 2014 AIR SCW 1412, AIR 2014 SC (CIVIL) 978,) while deciding the above matter, distinguishing it on facts relating to the original ownership of the property and the execution of a registered power of attorney. It was contended that, under Order XXI Rule 58 Code of Civil Procedure , 1908 read with Section 53 of the Transfer of Property Act, 1882, the Hon'ble Court could examine the fraudulent nature of the Gift Deed, treat the transfer as voidable at the option of the judgment-creditor, sustain the attachment and direct the sale of the property in execution. The relevant portion of the judgment is re-produced under .

17. Mr. Kantawala has submitted that as regards the decision of the Hon'ble Supreme Court in the case of Maya Devi v. Lalta Prasad (supra) is concerned, the facts are again distinguishable in as much as the original owner of the Suit property had executed a registered power of attorney in favour of his wife and the other version of facts was that the 38-IA-7784-2025.doc original owner never had ownership of the Suit property at all and his wife was the original owner vide registered general power of attorney sale. That, in such a situation, objection was raised under Order XXI Rule 58 of CPC against the attachment order in execution proceedings. Mr. Kantawala has submitted that in fact in order to avoid the possibility of any miscarriage of justice this Court should exercise its powers under Order XXI Rule 58 of the CPC and decide on the fraudulent nature of the Gift deed and set it aside in view of Section 53 of the Transfer of Property Act, 1882, and hold that the said transfer is without consideration with

intent to defraud the creditors including the Judgment Creditor and voidable at the option of the Judgment Creditor and sustain the attachment and direct sale of the said flat pursuant to the proclamation of sale.

40. Applying the principles laid down therein, this Adjudicating Authority is of the considered view that the impugned Partition Deed is liable to be examined under Section 53(1) of the Transfer of Property Act, 1882, and cannot, merely by virtue of its execution, defeat or prejudice the rights of the Applicant as a decree-holder. Accordingly, the rights and interest, if any, of Respondent No. 2 in the properties covered by the Partition Deed are liable to be proceeded against in accordance with law, subject to determination of the legal effect of the impugned transfer.

41. This Adjudicating Authority has also considered the objection raised by the Respondents regarding its jurisdiction to entertain the relief sought by the Liquidator. Having regard to the nature of the proceedings and the subsisting recovery order passed by this Adjudicating Authority, we are of the view that the powers conferred under the Insolvency and Bankruptcy Code, 2016, read with the applicable provisions of the National Company Law Tribunal Rules, 2016, including the inherent powers under Rule 11, may be exercised to secure the effective implementation of its orders, subject to the limits of its statutory jurisdiction. The execution of the Partition Deed after dismissal of the appeal by the Hon'ble NCLAT, while the recovery order remained unsatisfied, and the circumstances surrounding the relinquishment of Respondent No. 2's rights indicate a prima facie attempt to place the properties beyond the reach of the Applicant and frustrate the recovery proceedings. In these circumstances, the objection as to jurisdiction, insofar as it seeks to preclude this Adjudicating

Authority from considering appropriate relief in aid of enforcement of its order, is devoid of merit.

42. In ***V.P.S. Viswanathan v. Sri Raja Yarns Traders (*2010 (1) MLJ 556 *decided on 26 October 2009***), Civil Revision Petition arising from an Execution Petition the Hon'ble High Court of Madras held that a decree-holder need not necessarily institute a separate suit to establish that a transfer by the judgment-debtor is fraudulent under Section 53 of the Transfer of Property Act, 1882. The filing of an execution petition seeking attachment and sale of the property was held sufficient to signify the creditor's exercise of the statutory option under Section 53 Transfer of Property Act. Since neither the judgment-debtor nor the transferee established that the transaction was entered into in good faith and for valuable consideration, the Hon'ble Court held that the property could be proceeded against in execution notwithstanding the impugned transfer. The relevant extract of the judgment is produced below.

> *10. This Court has been consistently holding that there is no need for the creditor to file a separate suit to decide that the transfer by the judgment-debtor is fraudulent transaction but filing Execution Petition, taking steps for attachment and sale of the property, would indicate that he exercised his option as required under Section 53 of the Transfer of Property Act.*
>
> *xxxxxxxxxx*
>
> *16. From the above-said decisions, it emerges that in order to avoid the sale as contemplated under Section 53 of the Transfer of Property Act, it is enough for the decree holder to file the execution petition to bring the property to sell and he is not required to file any suit to declare the transaction as fraudulent one. Since the respondent has levied execution proceedings for attachment and sale of the property, he has satisfied the statutory requirements as adumbrated in Section 53 of the Transfer of Property Act. In addition to this, neither the judgment-debtor nor the transferee has shown good faith in the transaction and that it was supported by valuable consideration, which would also attract the provisions of this Section.*

43. The principles emerging from the above decision indicate that a creditor need not, in every case, institute a separate suit merely for the purpose of challenging a transfer alleged to have been effected with intent to defeat or delay creditors under Section 53 of the Transfer of Property Act, 1882. Where the issue arises in execution proceedings, the executing forum may examine the nature and circumstances of the impugned transfer and determine whether the property can be proceeded against notwithstanding such transfer. Thus, in the present case, this Adjudicating Authority, while exercising its statutory powers for enforcement of its subsisting order, is competent to examine whether the impugned Partition Deed was executed in circumstances attracting the mischief of Section 53 of the Transfer of Property Act, subject always to the limits of its jurisdiction and the principles of natural justice.

44. Thus, having regard to the facts and circumstances of the case, this Adjudicating Authority is of the considered view that the execution of the Partition Deed falls within the mischief of Section 53 of the Transfer of Property Act, 1882. The deed was executed by Respondent No.2 in favour of his close family members, without any consideration, at a time when an order had already been passed by this Adjudicating Authority directing realisation of a sum of Rs.1,20,18,752/-, and while the said liability remained unsatisfied and the proceedings arising therefrom were pending. The timing of the transaction, the absence of consideration, the close relationship between the parties, and the subsisting and known liability of Respondent No.2,when considered cumulatively, establish that the transaction was intended to defeat or delay the realisation of the amount due to the Applicant. The Partition Deed, therefore, cannot be permitted to defeat the Applicant's subsisting right of execution.

45. Consequently, the contention of Respondent No.2 that he has no property, asset or attachable interest in the properties forming part of the Attachment Schedule cannot be accepted. The 1/4th undivided share in the properties devolved upon Respondent No.2 upon the demise of his father, Late Shanmughan, and such share could not, by a subsequent transaction falling within the mischief of Section 53 of the Transfer of Property Act, be placed beyond the reach of the Applicant so as to defeat its pre-existing right of execution. Accordingly, the 1/4th undivided share of Respondent No.2 in the properties forming part of the Attachment Schedule is liable to be proceeded against by way of attachment for realisation of the amount of Rs.1,20,18,752/- pursuant to the order dated 23.06.2023.

46. As regards the contention of Respondent Nos.3 to 5, the Partition Deed, having been found to have been executed in circumstances attracting Section 53 of the Transfer of Property Act, cannot be relied upon by the said Respondents to defeat the Applicant's pre-existing right of execution against the interest of Respondent No.2. Respondent Nos.3 to 5, being the mother and siblings of Respondent No.2 and having knowledge of the subsisting proceedings and liability, cannot, in the circumstances of the present case, claim to have acquired the property in good faith so as to defeat the Applicant's right of execution. Their contention that no attachable interest remains in the Attachment Schedule Property, therefore, cannot be sustained. The rights, if any, created under the said Partition Deed are subject to the Applicant's pre-existing right of execution and cannot operate to the prejudice of such right.

47. Even if any order of protection has been granted by the learned Civil Court in favour of Respondent Nos. 3 to 5 in respect of their alleged rights over the property, the same would not, by itself, preclude the Applicant-Creditor from

enforcing its rights against the share and interest of Respondent No. 2 in the said property. It is material to note that Respondent Nos. 3 to 5, being the close family members of Respondent No. 2 and the beneficiaries of the subsequent partition deed, allegedly obtained the said order without disclosing the subsisting order passed by this Adjudicating Authority against Respondent No. 2 and the material circumstances surrounding the transfer of the property. Had these facts been brought to the notice of the learned Civil Court, the court would have been relevant to its consideration of the relief sought. Such deliberate suppression, would amount to an abuse of the process of the Court and would materially affect the weight to be accorded to the protection so obtained.

48. The law is well settled that a judgment, decree or order obtained by playing fraud upon the Court is a nullity and non est in the eyes of law and may be challenged even in collateral proceedings. In *S.P. Chengalvaraya Naidu v. Jagannath*, (1994) 1 SCC 1, the Hon'ble Supreme Court held that an order obtained by fraud must be treated as a nullity by every Court, whether superior or inferior, and may be challenged even in collateral proceedings.

> *"**Fraud** avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing **fraud** on the court is a nullity and non est in the eyes of law. Such a judgment/decree by the first court or by the highest court has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.*

49. The said principle was reiterated in *A.V. Papayya Sastry v. Government of A.P.*, (2007) 4 SCC 221, in which it is held as under,

> *A litigant, who approaches the **court**, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would he guilty of playing **fraud** on the **court** as well as on the opposite party".*

> *The **Court** concluded: "The principle of 'finality of litigation' cannot be pressed to the extent of such an absurdity that it becomes an engine of **fraud** in the hands of dishonest litigants".*

50. As decided in case of *Satluj Jal Vidyut Nigam Ltd. v. Raj Kumar Rajinder Singh (D) through LRs*, (2019) 14 SCC 449, the Hon'ble Supreme Court of India, applied the above principle and relevant portion of the judgment is given below,

> *22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and nonest in the eye of law. Such a judgment, decree or order by the first Court or by the final Court has to be treated as nullity by every Court. superior inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings.*

51. Accordingly, the subsequent order of protection cannot, merely by its existence, be treated as an absolute bar to enforcement against the right, title and interest, if any, of Respondent No. 2 in the property. The precise effect of that order must be considered in the light of the alleged suppression, the nature of the protection granted, and the respective interests of the parties, without prejudging the independent rights of Respondent Nos. 3 to 5 or purporting to set aside the Civil Court's order in the absence of appropriate jurisdiction.

52. Accordingly, this Adjudicating Authority finds it just and appropriate to allow Prayer Nos. (i) and (ii) of the Application. Accordingly, the Annexure-I Schedule Property, to the extent of the 1/4th undivided share of Respondent No. 2 therein, is hereby ordered to be attached. The order of attachment shall be communicated to the Sub-Registrar Office, Njarakkal, for making necessary entries in the records. The said 1/4th undivided share shall also be brought to sale for realisation of the dues payable pursuant to the order dated 23.06.2023

passed by this Adjudicating Authority in IA(IBC)/426/KOB/2022 in TIBA/34/KOB/2019.

53. The Applicant is directed to communicate a copy of this order to the Sub-Registrar, Njarakkal, for making necessary entries in the relevant records in respect of the said attachment.

54. The Liquidator is further directed to take all necessary steps, in accordance with law, for bringing the attached interest to sale and for realisation of the amount due to the Applicant.

55. In view of this **IA (IBC)/287/KOB/2026 IN IA(IBC) /115/KOB/2026 IN IA (IBC)/426/KOB/2022 IN TIBA/34/KOB/2019** stands **allowed and disposed of**.

56. The Registry is further directed to send e-mail copies of this order to the parties and their learned counsel for information and to take necessary steps.

57. A Certified Copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

58. File be consigned to records.

Sd /-	**Sd /-**
RAVICHANDRAN RAMASAMY	**VINAY GOEL**
(MEMBER TECHNICAL)	**(MEMBER JUDICIAL)**

Signed on this the 12 th day of November , 2026.

As*