
(2026) 06 NCLAT CK 0784

In the National Company Law Appellate Tribunal

Case No : Comp. App. (AT) (Ins) No. 1606 of 2025

Akj Metals Private Limited

APPELLANT

Vs

1.Mr. Brijesh Singh Bhadauriya, Resolution Professional Of Rci
Industries And Technologies Limited

RESPONDENT

Date of Decision : 30-06-2026

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 9, 18, 18(1)(f), 23, 25, 43, 45, 49, 53, 61, 66, 66(1), 66(2)
IBC (Corporate Insolvency Resolution Process for Corporate Persons) Regulations, 2016 — Regulation 35A(1)
Transfer of Property Act, 1882 — Section 53, 53A, 53-A
Specific Relief Act, 1963
CPC, 1908 — Order 23 Rule 3

Citation : (2026) 06 NCLAT CK 0784

Hon'ble Judges : Justice Ashok Bhushan, Chairperson; Barun Mitra, Member (Technical)

Bench : Division Bench

Advocate : For Appellant : Mr. Satvik Verma, Sr. Adv. with Ms. Swastika Kumari, Mr. Shantanu Parmar, Mr. Balram, Adv. For Respondents : Mr. Abhishek Garg, Mr. Naman Mehta, Adv. for R 2 to 5 Mr. Siddarth Malhotra, Mr. Prerak Khurana, Adv. for R7 Ms. Nishi Chaudhary, for FC Mr. Yashartha Gupta, Adv. for FCS

Final Decision : Allowed

Judgement

(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

Present is a set of two appeals filed by the same Appellant under Section 61 of the Insolvency and Bankruptcy Code, 2016 ('**IBC**' in short). The first appeal vide Company Appeal (AT) (Ins) No. 1606 of 2025 arises out of the Impugned Order dated 09.10.2025 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi) in IA-3793/2023 & I.A.(IBC)(PLAN)-51-2024 whereby it has allowed two applications filed by the Resolution Professional ('**RP**' in short) for

approval of plan of the Corporate Debtor under CIRP and handing over of the Nalagarh property to the RP. The second appeal vide Company Appeal (AT) (Ins) No. 1607 of 2025 arises out of another impugned order dated 09.10.2025 whereby the same Adjudicating Authority in IA-3156/2023 & I.A.(IBC) (PLAN)-51-2024 has allowed both the applications filed by the RP for approval of plan of the same Corporate Debtor and handing over of the Baddi property to the RP. Aggrieved by both these impugned orders of 09.10.2025, these two appeals have been preferred by the Appellant.

2. Coming to the factual matrix of the present case, Section 9 proceedings were initiated against RCI Industries and Technologies Limited ('**RCI**' in short) on 15.01.2019. RCI was subsequently admitted into Corporate Insolvency Resolution Process ('**CIRP**' in short) on 25.11.2022. Prior to admission of the Corporate Debtor into CIRP, AKJ Metals Pvt Ltd ('**AKJ Metals**' in short), the present Appellant was incorporated on 16.12.2019, which had entered into transactions with the Corporate Debtor-RCI for purchase of two immovable properties, namely, the Nalagarh Property and the Baddi Property. The Nalagarh Property was purchased pursuant to an Agreement to Sell dated 24.01.2020 executed with Corporate Debtor-RCI for which permission was purportedly given by the State Government of Himachal Pradesh on 07.06.2021. Pursuant to this permission, a Deed of Endorsement had also been executed in favour of the Corporate Debtor on 17.06.2021 and after payment of the entire sale consideration of Rs. 2.30 Cr., delivery of physical possession to the Appellant took place though no Sale deed was executed. The Baddi Property was purchased by the Appellant pursuant to a Sale Agreement dated 31.12.2020 executed with the Corporate Debtor-RCI for a consideration amount of Rs. 3.53 Cr. which was made good by way of adjustment against payments which had been made by the Corporate Debtor to UG Agro Capital and some amount remitted through banking channels. As the Corporate Debtor had purportedly failed to complete the ministerial/statutory formalities necessary for transfer of the said two properties in favour of the Appellant, the latter had instituted a Civil Suit vide SCJ No. 756/2021 in respect of the Nalagarh Property and SCJ No. 755/2021 in respect of the Baddi Property before the Sr. Civil Judge, New Delhi. During the pendency of the said suits, Settlement Agreement dated 13.12.2021 was executed between the parties and thereafter vide Consent Decrees dated 24.12.2021, the Civil Judge appointed a Court Receiver to undertake the ministerial formalities necessary for transfer of the properties in favour of the Appellant. Subsequently, on CIRP having been initiated against the Corporate Debtor, RP was appointed. Thereafter RP-Respondent No. 1 filed I.A. Nos. 3156 and 3793 of 2023 before the Adjudicating Authority seeking possession of the Baddi and Nalagarh Property respectively under Sections 18, 23 and 25 of the IBC on the ground that the said properties formed part of the assets of the Corporate Debtor. In the interim orders passed on these two applications, status quo was directed to be maintained by the Adjudicating Authority with regard to these properties. It is also relevant to notice that during CIRP, the Resolution

Plan submitted by JTL Industries Limited-Successful Resolution Applicant ('**SRA**' in short) was placed before the Committee of Creditors which was approved on 17.08.2024 with 98.05% voting share. Thereafter RP-Respondent No. 1 filed I.A. No. 51 of 2025 on 06.09.2024 seeking approval of Adjudicating Authority of the resolution plan. Apprehending that the Nalagarh and Baddi Property were being treated as assets of the Corporate Debtor under the Resolution Plan, the Appellant filed I.A. No. 758 of 2025 objecting to the Resolution Plan. The SRA categorically submitted before the Adjudicating Authority that it was not seeking possession of either the Nalagarh or the Baddi Property which stood further affirmed by an affidavit dated 17.04.2025 whereby the SRA expressly relinquished and waived all rights, title and interest in the said properties in view of which the Appellant did not press I.A. No. 758 of 2025 and the same was disposed of accordingly. It is also relevant to notice that the Nalagarh and Baddi property had been leased out by the Appellant to Rikayaa Enterprises Limited and Rikayaa Greentech Private Limited through a registered Leave and License Agreement dated 19.04.2022 and 11.02.2022 respectively. The R.P. had also filed I.A. No. 5153 of 2023 on 22.08.2023 after having formed an opinion in pursuance of Regulation 35A(1) of the IBC (Corporate Insolvency Resolution Process for Corporate Persons) Regulations, 2016 that the former directors of the Corporate Debtor had entered into certain collusive transactions with the present Appellant to sell the Baddi and Nalagarh properties with an intent to defraud the creditors of the Corporate Debtor and that these transactions deserved to be declared as fraudulent transactions under Section 66 of the IBC. On 09.10.2025, the Adjudicating Authority disposed of I.A. No 51 of 2025 by approving the Resolution Plan specifically recording that the Nalagarh and the Baddi Property will not be claimed by the SRA under the Resolution Plan and that the RP/ Monitoring Committee/ Financial Creditor will pursue the claim in respect of the said properties. On the very same date, the Adjudicating Authority also allowed I.A. No. 3156 of 2023 and I.A. No. 3793 of 2023 filed by the RP and directed the present Appellant to forthwith hand-over possession of the Baddi and Nalagarh Property to the RP. Aggrieved by the two impugned orders dated 09.10.2025, the present appeals have been preferred before this Tribunal.

3. Making submissions on behalf of the Appellant, Shri Satwik Verma, Ld. Sr. Counsel submitted that the impugned order dated 09.10.2025 passed by the Adjudicating Authority in I.A. No. 3156 of 2023 and I.A. No. 3793 of 2023 directing the handing over of possession of the Baddi property and Nalagarh property to the RP is wholly unsustainable both in law and on facts as it was passed by the Adjudicating Authority mechanically without appreciating the totality of material facts, documents and developments placed on record.

4. It was submitted that the Nalagarh property was purchased by the Appellant pursuant to an Agreement to Sell dated 24.01.2020 with the Corporate Debtor for a total consideration of Rs. 2.29 Cr which stood paid and possession of this property had been handed over much prior to commencement of CIRP. The Baddi Property was also purchased by the Appellant pursuant to an Agreement to Sell

dated 31.12.2020 with Corporate Debtor for a total consideration of Rs. 3.50 Cr. which also stood paid and physical possession of both properties lay with the Appellant before the commencement of CIRP. However, owing to non-completion of certain ministerial and statutory formalities by the Corporate Debtor, the Appellant was constrained to institute Civil Suit Nos. 755/2021 and 756/2021 before the Senior Civil Judge, New Delhi which culminated in a Settlement Agreement dated 13.12.2021 and Consent Decree dated 24.12.2021 whereby a Court Receiver was appointed to complete the transfer formalities in respect of the two properties. Even the High Court of Himachal Pradesh in its judgment dated 10.03.2023 had also directed HPSIDC to transfer the Baddi Property in favour of the Appellant without insisting upon disputed charges thereby clearly affirming the Appellant's lawful rights over the said property. Submission was pressed that as both properties had ceased to be assets of the Corporate Debtor and the Appellant having continuously performed its obligations under the respective Agreements to Sell, they were entitled to protection under Section 53A of the Transfer of Property Act, 1882. Merely on account of non-execution of registered conveyance deeds, its possessory rights could not be disturbed in summary proceedings under the IBC. In any case, it was contended that the Adjudicating Authority could not have nullified the Consent Decree or sat in appeal over the decree passed by the Civil Court or disregard the orders of the High Court of Himachal Pradesh in case of the Baddi property. Reliance was placed on the judgments of the Hon'ble Supreme Court in **Embassy Property Developments Pvt. Ltd. Vs. State of Karnataka (2020) 13 SCC 308** and this Tribunal in **Saregama India Limited v. Home Movie Makers Private Limited in CA(AT)(Ins) No. 359 of 2021** to contend that the Adjudicating Authority exercising summary jurisdiction under the IBC cannot adjudicate complex questions of title, ownership, validity of agreements or sit in appeal over judicial orders passed by competent civil courts.

5. It was further submitted that RP had already instituted I.A. No. 5153 of 2023 under Section 66 of the IBC seeking contribution and monetary reliefs arising from the impugned sale transactions of the two properties. It was therefore contended that RP could not simultaneously seek both contribution under Section 66 and possession of the properties. Reliance was placed on the judgment of the Hon'ble Supreme Court in **Piramal Capital and Housing Finance Ltd. v. 63 Moons Technologies Ltd. & Ors. (2024) 8 SCC 657** wherein it was held that relief under Section 66 is in the nature of monetary contribution and not recovery of physical possession of assets. It was further submitted that the impugned order is self-contradictory since on the same date that the Adjudicating Authority had approved the Resolution Plan and discharged the RP from his duties bringing the CIRP to an end, the Adjudicating Authority had simultaneously directed the RP to take possession of both the properties. Such a direction is contrary to Sections 18 of IBC as the powers of the RP are exercisable only during the subsistence of CIRP and on approval of the Resolution Plan, the RP becomes functus officio and ceases to have any authority, locus or jurisdiction to take

possession of any property. Accordingly, it was submitted that the impugned order suffers from patent illegality, non-consideration of material evidence, jurisdictional error, material irregularity and perversity and is therefore liable to be quashed and set aside.

6. Echoing similar stand as taken by the Appellant, the suspended Directors of the Corporate Debtor have made averments supporting the Appellant that both these properties had already been sold to the Appellant by the Corporate Debtor following which possession had been delivered to the Appellant before commencement of CIRP. Submitting that these properties were not assets of the Corporate Debtor, it was also added that the impugned order suffered from a contradiction by simultaneously approving the Resolution Plan and discharging the RP while also directing possession to be handed over to the discharged RP. The Respondents–Rikayaa Enterprises Limited and Rikayaa Greentech Private Limited have also submitted that they had entered into a registered Leave and License Agreement with the Appellant on 19.04.2022 respectively in respect of the Nalagarh Property and on 11.02.2022 in respect of the Baddi Property for a period of 15 years. It was submitted that both these lessee-entities had entered into the respective lease arrangements prior to commencement of CIRP after having been informed that the Appellant was in lawful possession of the properties pursuant to transactions executed with the Corporate Debtor. It was also submitted that both impugned orders were legally unsustainable as the Adjudicating Authority had exceeded its jurisdiction by adjudicating issues relating to title, ownership and even the validity of registered lease and licence agreements. Accordingly, both these Respondents supported the appeal and prayed that the impugned orders be set aside; the Baddi and Nalagarh properties be declared as not forming part of the assets of the Corporate Debtor and their leasehold and possessory rights be protected.

7. Refuting the contentions made by the Appellant, Shri Abhishek Anand, Learned Counsel making submissions on behalf of the RP submitted that after the Corporate Debtor was admitted into CIRP, the RP had followed up with the suspended directors to submit the details about the assets in the name of their Corporate Debtor, which particulars were never provided. It was vehemently contended that both the Baddi and Nalagarh properties were assets of the Corporate Debtor. The Baddi property had been purchased by the Corporate Debtor from its erstwhile owner after payment of consideration amount of Rs. 4.70 crore which was validated by a sales certificate dated 16.11.2018 and a conveyance deed dated 11.02.2019 and the transfer had been permitted by Himachal Pradesh State Industrial Development Corporation (HPSIDC) without whose approval no industrial property could be transferred to any third party. Similarly, the Nalagarh property had also been purchased by the Corporate Debtor from Punjab National Bank for a consideration amount of Rs 2.29 crore, which was followed by the execution of a sale certificate by the PNB on 30.12.2016. Furthermore, the permission for the transfer of the Nalagarh property in the name of the Corporate Debtor had been granted by the State

Government of Himachal Pradesh on 07.06.2021, which was followed by a Deed of Endorsement, which had been executed on 17.06.2021. Thus, the Nalagarh property also stood registered as an asset of the Corporate Debtor. It was further contended that basis documents obtained from the State Government of Himachal Pradesh on 03.04.2023, it is clear that the Nalagarh Property was still in the name of the Corporate Debtor. Thus, when the Nalagarh Property, according to the records of the Government authorities, still belonged to the Corporate Debtor, the documents purportedly executed on behalf of the Corporate Debtor by the suspended Directors are null and void who could not have transferred the title of the property in favor of any third party. It was submitted that under Sections 18 and 25 of the IBC, the RP can take custody of assets over which the Corporate Debtor has ownership rights and hence the Adjudicating Authority had rightly admitted I.A. Nos. 3156 and 3793 of 2023 seeking possession of the Baddi and Nalagarh Property. It was further submitted that when the RP discovered suspicious and undervalued transaction executed by the suspended management of the Corporate Debtor in collusion with the Appellant in respect of the two properties, I.A Nos. 5153 of 2023 under Section 66 of the IBC were filed by him.

8. Making submissions on behalf of the Financial Creditors, Ms Nishi Chaudhary, Ld. Counsel submitted that the Corporate Debtor-RCI had executed an Agreement to Sell with the Appellant in respect of Baddi plot for consideration amount of Rs. 3.53 Cr. though this property had been originally purchased by Corporate Debtor for Rs. 4.70 Cr. thereby showing that the sale was at a loss. Even the consideration amount for Baddi property was not remitted through banking channels but made by way of payments adjustment which was an unusual commercial practice. Further the Baddi property had been leased by the Appellant to an entity which was promoted by son of the former director of the Corporate Debtor which also clearly shows that this property had been siphoned off for the benefit of family members of the erstwhile management. The RP had therefore rightly filed I.A No. 3156 of 2023 seeking possession of Baddi property pursuant to which status quo was directed to be maintained by the Adjudicating Authority vide order dated 08.06.2023. As regards Nalagarh property, it was submitted that the Corporate Debtor had entered into an Agreement to Sell with the erstwhile Managing Director of the Corporate Debtor for a consideration amount of Rs. 2.30 Cr. whereas the property had been originally purchased for Rs. 2.29 Cr. Similarly, the RP had filed I.A No. 3793 of 2023 also seeking possession of Nalagarh property on which the Adjudicating Authority also directed that status quo be maintained vide order dated 21.07.2023. It was strenuously contended that as both properties had been purportedly sold to the Appellant at undervalued price, this clearly showed that the transactions were sham.

9. Submission was also made that the alleged transactions of the sale and purchase of the two properties between the Corporate Debtor and the Appellant and the Consent Decree in the Civil Suit between them were fraudulently

orchestrated to defeat the claims of the financial creditors. It was submitted that the Consent Decree dated 24.12.2021 had been obtained in collusion and in connivance with the suspended management of the Corporate Debtor with the intent to alienate the valuable assets of the Corporate Debtor to the prejudice of the financial creditors. Attention was adverted to Sections 25, 43, 45, 49 and 66 of the IBC which clearly obligates the RP to investigate into the affairs of the Corporate Debtor and identify transactions undertaken with the intent to commit fraud on the creditors or to siphon off the assets of the Corporate Debtor. Hence, the RP had rightly filed I.A No. 5153 of 2023 seeking cancellation of the Sale Agreement in respect of both the Baddi and Nalagarh properties under Section 66 of IBC. It is the case of the Financial Creditors that any transfer of property made with the intent to defeat or delay repayment to the creditors was voidable in terms of Section 53 of Transfer of Property Act, 1882. The suspended management had only tried to create a facade of legality by initiating the Civil Suit proceedings before the Civil Judge and obtaining a Consent Decree to shield the fraudulent transfer from judicial scrutiny. It was contended that in terms of the statutory provisions of the IBC, the powers of Adjudicating Authority are sufficiently wide to cover examination of transactions which are fraudulent, preferential, undervalued or avoidable transactions. In the present facts of the case, therefore, the RP had rightly invoked jurisdiction of the Adjudicating Authority. Mere obtaining of Consent Decree does not denude or deprive the Adjudicating Authority of its powers to adjudicate on such matters. It was also contended that the subsequent leasing of the property to an entity which was related to the suspended management of the Corporate Debtor clearly showed that the same group of entities and their family members wanted to continue having control over the properties which had been purchased by way of sham transactions and onward lease made with a view to prejudice the legitimate rights of the Financial Creditors. Strong apprehension was expressed that unless the Appellant was dispossessed from the wrongful possession of the property there was serious possibility that the said property would be transferred and alienated to third parties which would prevent recovery of the said property and distribution of the proceeds to the creditors.

10. We have heard Ld. Counsel for all the parties and perused the records carefully. The short point for our consideration is whether with the passing of Consent Decree in the Civil Suit filed for specific performance by a Civil Court of competent jurisdiction for transfer of Nalagarh and Baddi properties, the possessory rights of the Appellant could have been divested by the impugned orders.

11. It is the case of the Appellant that both the Nalagarh property and Baddi Property was purchased by the Appellant pursuant to Agreements to Sell for which the due consideration amount stood paid. Physical possession of property stood handed over to the Appellant prior to commencement of CIRP. Allowing of I.A No. 3156 and I.A No. 3793 of 2023 filed by the RP under Section 18(1)(f) of the IBC by the Adjudicating Authority was erroneous since the scope of this

statutory provision is limited to assets which are owned and managed by the Corporate Debtor which is not the case in the present factual matrix. Further the sale and transfer of possession had already been considered by a Civil Court of competent jurisdiction which had passed a Consent Decree and recognized the possessory rights of the Appellant which could not be negated by the Adjudicating Authority on its own. Contention was also made that both properties were not part of the resolution plan and even the SRA had stated on affidavit that it had relinquished its claims and rights over the two properties. The Appellant was entitled to protection under Section 53A of the Transfer of Property Act, 1882 and its possessory rights could not be disturbed in summary proceedings under the IBC merely on account of non-execution of registered conveyance deeds. As regards I.A No. 5153 of 2023 filed under Section 66 of the IBC which is still pending before the Adjudicating Authority, it was canvassed that the RP, at best, could only have sought direction upon the Appellant to make contribution towards the assets of the erstwhile Corporate Debtor but could not have prayed for dispossession of the Appellant. Reliance was placed on the judgment of Hon'ble Supreme Court in **Piramal Capital and Housing Finance Ltd. Vs 63 Moon Technologies Ltd. & Ors., (2025) 10 SCC 452** in which it was held that in Section 66 application, the Adjudicating Authority can only direct the Director of the Corporate Debtor to make monetary contribution to the assets of the Corporate Debtor as it may deem fit but does not empower the Adjudicating Authority to divest the possession of property from physical possession of the owner. Despite full knowledge of these facts leading to transfer of both the properties to the Appellant, the RP filed I.A. No. 3156 and 3793 of 2023 seeking possession of the Baddi and Nalagarh Properties on the erroneous premise that the properties belonged to the Corporate Debtor at a time when the properties already stood transferred in favour of the Appellant even prior to filing of CIRP petition. It was further contended that the RP concealed material facts relating to the Settlement Agreement, Consent Decree, appointment of the Court Receiver and orders passed by competent judicial forums from the Adjudicating Authority. The Adjudicating Authority had committed an error in ordering the handing over of these two properties to the RP being third-party assets which was beyond the scope of Sections 18 and 25 of IBC.

12. Per contra, it is the case of the Respondent that the alleged transactions of the sale and purchase of the two properties between the Corporate Debtor and the Appellant and the Consent Decree in the Civil Suit between them were fraudulent and was intended to defeat the claims of the financial creditors. It was submitted that the Consent Decree dated 24.12.2021 had been obtained by the Appellant in collusion and in connivance with the suspended management of the Corporate Debtor with the intent to alienate the valuable assets of the Corporate Debtor to the prejudice of the financial creditors. The suspended management had only tried to create a facade of legality by initiating the Civil Suit proceedings before the Civil Judge and obtaining a Consent Decree to shield the fraudulent transfer from judicial scrutiny. Even the contention of the Appellant of

consideration amount having been paid was untrue since in the case of Baddi property, the consideration was not remitted through banking channels but had been made by way of payments adjustment to one U.G. Agro Capital which transaction was commercially questionable. Thus, as the two properties were not part of the asset of the Corporate Debtor and the transfer of property was made with the intent to defeat the interests of the creditors, the RP had correctly filed I.A No. 3156 of 2023 seeking possession of Baddi property and I.A No. 3793 of 2023 seeking possession of Nalagarh property. Submission was pressed that both properties had been purchased by the Corporate Debtor at a much higher price than the price at which they sold to the Appellant which clearly demonstrated that this was a case of under-valued transaction. It was further emphatically asserted that when the RP discovered suspicious and undervalued transaction executed by the suspended management of the Corporate Debtor in collusion with the Appellant-AKJ Metals that I.A No. 5153 of 2023 under Section 66 of the IBC was filed by the RP. It was contended that in terms of the statutory provisions of the IBC, the powers of Adjudicating Authority are sufficiently wide to cover examination of transactions which are fraudulent, preferential, undervalued or avoidable transactions and the RP had rightly invoked jurisdiction of the Adjudicating Authority.

13. For a proper appreciation of the issue at hand, we may look at the prayers and reliefs which have been sought by the RP in I.A. Nos. 3156 and 3793 of 2023 which are as extracted hereunder:

IA 3156 of 2023

"1. Pass an ad interim ex-parte order restraining the Respondents from further selling, encumbering, creating third party interest in the Baddi Property.

2. Direct the Respondents 1 and 2 to handover the possession of the Industrial Plot No. 108 admeasuring 9542.50 Sq. Mtr., Industrial Area, Baddi, Solan, Himachal Pradesh ("Baddi Property") to the Resolution Professional of the Corporate Debtor.

3. Direct the Respondents 3 to 6 to facilitate the handover of the Industrial Plot No. 108 admeasuring 9542.50 Sq. Mtr., Industrial Area, Baddi, Solan, Himachal Pradesh ("Baddi Property") to the Resolution Professional of the Corporate Debtor.

4. Direct that the Applicant is entitled to receive benefits of the lease from the Respondent 1 and the same is payable from February 11, 2021 till the date of handing over the Property to the Applicant."

IA 3793 of 2023

"1. Pass an ad interim ex-parte order restraining the Respondents from further selling, encumbering, creating third party interest in the Nalagarh Property.

2. Direct the Respondents 1 to handover the possession of the Industrial Plot admeasuring 12 Kanal 1 7 Marla in the area of village Thantewal, H.B. No. 125, Tehsil-Nalagarh, District- Solan, Himachal Pradesh to the Resolution Professional of the Corporate Debtor.

3. Direct the Respondents 2 to 5 to facilitate the handover of the Industrial Plot admeasuring 12 Kanai 17 Marla in the area of village Thantewal, H.B. No. 125, Tehsil-Nalagarh, District- Solan, Himachal Pradesh to the Resolution Professional of the

Corporate Debtor.

4. Pass any other order as this Hon'ble Adjudicating Authority may deem just, fit and proper to meet the ends of justice and in the interest of the Corporate Debtor."

(Emphasis supplied)

It is pertinent to add here that when I.A. Nos. 3156 and 3793 of 2023 were heard by Adjudicating Authority, the latter had directed on 08.06.2023 and 21.07.2023 that status quo with regard to the property be maintained.

14. Having captured the rival contentions made by both the parties, and noticed the prayers contained in I.A. Nos. 3156 and 3793 of 2023, we would now like to recapitulate the judicial precedents to which our attention has been adverted to by the Appellant in support of their possessory rights. Reliance has been placed by the Appellant on the judgments of Hon'ble Supreme Court in **Giriyappa & Anr. Vs. Kamalamma & Ors., (2024) SCC OnLine SC 3849** and in the matter of **Ghanshyam Vs Yogendra Rathi, (2023) 7 SCC 361** to contend that once a party has fulfilled some of the conditions which are required to be fulfilled under Section 53A of the Transfer of Property Act, that in itself is sufficient to protect the transferees' possession of the suit property. The relevant paragraph of the **Giriyappa judgment** which has been relied upon is as reproduced below:

"11. From the aforesaid, it is evident that the protection of a prospective purchaser/ transferee of his possession of the property involved, is available subject to the following prerequisites:

(a) There is a contract in writing by the transferor for transfer for consideration of any immovable property signed by him or on his behalf, from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty;

(b) The transferee has, in part-performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part-performance of the contract;

(c) The transferee has done some act in furtherance of the contract and has performed or is willing to perform his part of the contract."

15. The judgment of Hon'ble Apex Court in **Ghanshyam judgment** is also being reproduced for easy reference:

"16. Legally an agreement to sell may not be regarded as a transaction of sale or a document transferring the proprietary rights in an immovable property but the prospective purchaser having performed his part of the contract and lawfully in possession acquires possessory title which is liable to be protected in view of Section 53-A of the Transfer of Property Act, 1882. The said possessory rights of the prospective purchaser cannot be invaded by the transferor or any person claiming under him."

16. It was further canvassed that this Tribunal in **Sicom Ltd. & Anr. Vs. Kitply Industries Ltd & Ors. in CA(AT)(Ins) No. 849 of 2021** had observed that the Hon'ble Supreme Court in **Shrimant Shamrao Suryavanshi v. Pralhad Bhairoba Suryavanshi (2002) 3 SCC 676** had culled out the essential conditions which are required to be fulfilled if a transferee wants to defend or

protect his possession under Section 53-A of the Transfer of Property Act which were that there must be a contract to transfer for consideration of any immovable property; that the contract must be in writing, signed by the transferor, or by someone on his behalf; that the writing must be in such words from which the terms necessary to construe the transfer can be ascertained; that the transferee must in part performance of the contract take possession of the property; that the transferee must have done some act in furtherance of the contract; and that the transferee must have performed or be willing to perform his part of the contract.

17. It was contended by the Appellant that the above conditions stood fulfilled as there was an Agreement to Sell; the entire sale consideration had been paid; they had taken full and undisputed possession of the subject properties in 2020 and they had filed a suit for specific performance under the Specific Relief Act, 1963 against the Corporate Debtor, which culminated into passing of Consent Decree and appointment of a Court Receiver for fulfilling the ministerial formalities. In such a case, the equitable doctrine of part performance provided under Section 53-A had come into play even though a registered deed conveying the title was not executed by the proposed transferor.

18. When we see the material placed on record, we find that it is an uncontroverted fact that Agreements to Sell for both properties were there. The sale consideration in respect of both properties was paid prior to commencement of CIRP of the Corporate Debtor and was not disputed between the Corporate Debtor and the Appellant. More importantly, we find that the Appellant had also taken necessary steps in order to secure the title of their property by filing suit for specific performance against the Corporate Debtor. This Civil Suit had resulted in a Consent Decree which had been passed by the Sr. Civil Judge under Order 23 Rule 3 of CPC, 1908. The Civil Court of competent jurisdiction had passed a decree recognizing the rights of the Appellant. It is also clear that both the Agreement to Sell and Consent Decree passed by the Civil Court was available with the RP during the CIRP of the Corporate Debtor. In this background, we find force in the argument of the Appellant that the ratio of the judgment of this Tribunal in ***Gir Vanvaso Resort Vs Pancard Clubs Ltd.*** in ***CA(AT)(Ins) No. 1482 of 2025*** is not applicable since in ***Gir Vanvaso Resort judgment***, the subject MOU by which property was claimed was not in the nature of an Agreement to Sell and moreover the subject MOU had surfaced after filing of the possession application by RP before the Adjudicating Authority.

19. This brings us to the contention of the Financial Creditor that Civil Suit for specific performance was an eyewash since the decree was not based on trial but was a decree premised on settlement by mediation. We find this to be a specious argument since a decree in a Civil Suit whether based on trial or based on mediation carries the same import and has the same ramifications. We are also guided by the judgment of Hon'ble Supreme Court in ***Manjunath Tirakappa Malagi & another Vs. Gurusiddappa Malagi (2025) SCC OnLine SC 835***

which held that once the Court passes a compromise decree after such a satisfaction, the decree cannot be challenged in an appeal as no appeal lies against a compromise decree. The only remedy against a compromise decree is to file a recall application. When the present Civil Suit decree was never challenged nor was recalled, the decree has clearly acquired finality and has binding force.

20. The issue before us is that when the possessory rights over the Nalagarh and Baddi properties stood tested and confirmed by the Civil Court, could these rights have been adjudicated by the Adjudicating Authority. To our minds, the Adjudicating Authority's jurisdiction is limited to resolution of insolvency related matters and not to modify or overrule judicial decision made by a competent Civil Court. The Adjudicating Authority cannot invalidate or override the judicial orders passed by the competent Civil Court. Furthermore, in **Gujarat Urja Vikas Nigam Ltd. Vs. Mr. Amit Gupta & Ors., (2024) 7 SCC 209** it has been categorically held by the Hon'ble Supreme Court that the IBC is not intended to create an omnibus forum for all disputes involving the Corporate Debtor and that the Adjudicating Authority is only empowered to adjudicate disputes that arise solely from or having a bearing on the insolvency of the Corporate Debtor and cannot transgress into domains reserved for other competent courts, tribunal or authorities. Once the rights have already been crystallized through judicial pronouncements, the provisions of IBC cannot be leveraged to nullify a decree passed by a competent Civil Court. The Consent Decree cannot be declared a nullity by the Adjudicating Authority on its own for the Adjudicating Authority cannot sit in an appeal over a decree of Civil Court. Even if a Court Receiver had been appointed that does not dilute the decree in any manner since execution of decree is only a ministerial act which does not impact the core essence of a decree. The Adjudicating Authority does not have any power to question the Consent Decree passed by the Civil Court. The Adjudicating Authority does not have the statutory authority to sit in appeal over a judgment and decree passed by a Civil Court or entertain or decide interim applications arising out of such civil appeals or judgments. When the Adjudicating Authority is not vested with jurisdiction to review or overturn the decision of Civil Courts, the RP/Financial Creditors ought to have sought appropriate remedy through the Civil Court in relation to any dispute regarding ownership and possession the properties rather than trying to invoke the jurisdiction of the Adjudicating Authority within the framework of insolvency proceedings.

21. Thus, to answer the question framed by us at Para 10 above, we are of the considered view that when a Civil Court of competent jurisdiction had already passed a decree recognizing the possessory rights of the Appellant, the RP cannot be seen to invoke Section 18 of the IBC to bypass a Civil Court decree and take charge of the said properties. Even though a Court Receiver had been appointed for completion of ministerial formalities as the physical possession of the property was still with the Appellant, the possessory rights of the Appellant could not be disturbed in summary proceedings under the IBC merely on account

of non-execution of registered conveyance deeds.

22. At this stage, we now take notice of the fact that during the pendency of I.A. Nos. 3156 and 3793 of 2023, the RP had filed yet another I.A vide No. 5153 of 2023 under Section 66 of the IBC seeking cancellation of the Sale Agreement in respect of both the Baddi and Nalagarh properties. The prayers of the RP in I.A No. 5153 of 2023 is as extracted below:

(A). Declare the agreements to sell dated December 31, 2020 and dated January 24, 2020 of the Baddi and Nalagarh property respectively to Respondent No. 5 as fraudulent, void and non est in law and be set aside and/or;

(B). Direct the Respondent No. 1-4 to make such contributions to the assets of the Corporate Debtor as it may deem fit and/or;

(C). Direct the Respondent No. 1- 8 to facilitate the handover of the Baddi Property and Nalagarh Property to the Resolution Professional of the Corporate Debtor.

(D). Pass any other order/ orders as this Hon'ble Tribunal deem think fit and proper in the facts and circumstances of the present case.

(Emphasis placed) At this stage, it would suffice for us to notice that in I.A. No. 5153 of 2023, the RP had not only sought cancellation of the sale agreement of the two properties as fraudulent but also made the prayer that the Corporate Debtor and suspended Directors of the Corporate Debtor be directed to make contributions to the assets of the Corporate Debtor in view of the fraudulent transaction undertaken by them and also to hand-over the two properties to the RP.

23. It is the case of the Appellant that I.A. No. 5153 of 2023 filed under Section 66 of the IBC seeking both contribution under Section 66 and possession of the properties could not have been simultaneously sought. In support of their contention, reliance was placed on the judgement of the Hon'ble Supreme Court in **Piramal Capital judgment supra** by drawing our attention to the following paragraphs:

"55. So far as Section 66 is concerned, the same falls under Chapter VI and it pertains to the "Fraudulent trading or Wrongful trading." Sub-section 1 of Section 66 provides that if during the CIRP or a Liquidation process, it is found that any business of the CD has been carried on with intent to defraud creditors of the CD or for any fraudulent purpose, the Adjudicating Authority may on the application of the Resolution Professional, pass an order that any persons who were knowingly parties to the carrying on of the business in such manner, shall be liable to make such contributions to the assets of the CD, as it may deem fit. From the bare reading of Section 66(1), it is very much discernible that the said provision pertains to the

"Fraudulent trading or Wrongful trading" in respect of the business of the CD.

.....

60. However, in cases of "Fraudulent or Wrongful trading" in respect of the business of

the CD as contemplated in Section 66, the properties and the persons involved may or may not be ascertainable and therefore the Adjudicating Authority is not empowered to pass orders to avoid or set aside such transactions, but is empowered to pass orders to the effect that any persons, who were knowingly parties to the carrying on of business in such manner, shall be liable to make such contributions to the assets of the CD, as it may deem fit. The Adjudicating Authority in such applications may also direct that the Director of the CD shall be liable to make such contribution to the assets of the CD as it may deem fit, as contemplated in Section 66(2). In case of Fraudulent trading or Wrongful trading, it would be a matter of inquiry to be made by the Adjudicating Authority as to whether the business of CD was carried on with intent to defraud creditors of the CD or was carried on for any fraudulent purpose.”

(Emphasis supplied)

It was therefore contended by the Appellant that Section 66 of IBC is confined to directing monetary contribution to the assets of the Corporate Debtor but does not empower the Adjudicating Authority to cancel the Agreement to Sell or the Consent Decree or direct dispossession of the properties of the Appellant.

24. Submission was also pressed that the SRA had admittedly filed an affidavit before the Adjudicating Authority categorically waiving and relinquishing all rights, title and interest in both the Baddi Property and Nalagarh Property and had specifically stated that neither of the two properties would be claimed by them under the Resolution Plan. Once the SRA had expressly disclaimed any interest in the properties, the very basis of survival of I.A. Nos. 3156 and 3793 of 2023 had ceased rendering the two applications infructuous. However, the Adjudicating Authority while completely ignoring the effect and legal consequences of the affidavit of the SRA and without recording any finding thereon had mechanically proceeded to allow both the applications filed by the RP seeking possession of the Baddi and Nalagarh Properties while also approving the Resolution Plan on 09.10.2025.

25. While we agree that the SRA by way of affidavit had waived its rights over the two properties, nevertheless this cannot be a ground for the Appellant to rightfully contend that the properties were not part of the resolution plan. When no material has been placed on record to show that the two properties were not reflected in the Information Memorandum, the Appellant at this stage cannot raise the contention that two properties were not part of the CIRP or could not be made part of the resolution plan. The very fact that the SRA had submitted the affidavit relinquishing its claims over the two properties clearly shows that the SRA was conscious that the two properties were part of the Information Memorandum as well as formed part of the CIRP proceedings.

26. It is relevant at this juncture to take notice of para 11.2 of the order passed by the Adjudicating Authority in I.A No. 51 of 2024 while approving the plan which is as reproduced below:

“11.2. We reiterate and direct that the following two properties, (i) the Industrial Land and Building situated at Plot No. 108, HPSIDC, Baddi, Himachal Pradesh-173005,

admeasuring 9543 square meters; and (ii) the Industrial Plot located at Village Thantewal, H.B. No. 125, Tehsil Nalagarh, District Solan, Himachal Pradesh, admeasuring 12 Kanal 17 Marla, will not be claimed by the Successful Resolution Applicant under the Resolution Plan, and the Resolution Professional/Monitoring Committee/Financial Creditors will pursue the claims in respect of the said properties. Any amount or benefit received will be avail by the Financial Creditors in accordance with the waterfall mechanism prescribed under Section 53 of the IBC, 2016.”

27. The Adjudicating Authority in the above order has clearly directed that the RP/Monitoring Committee/Financial Creditor can pursue the claim in respect of two properties and that any amount or benefit so received would be availed by the Financial Creditor in accordance with waterfall mechanism prescribed under Section 53 of the IBC. Hence, the impugned order is unambiguously clear that the Financial Creditor can always reap benefit of Section 66 order with respect to the two properties.

28. It is an admitted fact that I.A No. 5153 of 2023 has been filed by the RP under Section 66 before the Adjudicating Authority which is currently pending. We find that neither the Appellant nor the Financial Creditor have any objection that the Section 66 application be pursued in accordance with law. Since the matter is pending before the Adjudicating Authority, we do not want to make any observation on the propriety and legality of any of the prayers for which relief has been sought therein for it is our expectation that the Adjudicating Authority would return its considered findings thereon.

29. This brings us to the contention raised by the Financial Creditor that the subsequent leasing of the property by the Appellant to an entity which was related to the family members of the suspended management of the Corporate Debtor shows that the Appellant was strategising to transfer and alienate the two properties with ulterior motives to siphon off the assets which would prevent recovery of the said property and distribution of the proceeds to the creditors thus prejudicing the legitimate rights of the Financial Creditors and hence urged that the Appellants should be made to hand-over the property.

30. When we look at the impugned order which we have already extracted above, we find that the Adjudicating Authority while approving the resolution plan had clearly stated in the impugned order that benefit from the two properties, if any, would go to the financial creditors. When the impugned order is so very clear that the benefit from the two properties would go to the financial creditors, the apprehensions expressed by the Financial Creditors are unfounded and premature. The direction of the Adjudicating Authority that the benefit from the two properties depending on the outcome of the Section 66 application will go to the financial creditors has not been contested by the Appellant during the present proceedings and in all fairness the Appellant has admitted that Section 66 proceedings must be continued and that they would abide by the final decision and outcome thereof. Thus, the rights of the Financial Creditors are duly protected. Section 66 of the IBC will be decided independently by the

Adjudicating Authority in accordance with law. As the Section 66 application is pending before the Adjudicating Authority, it is only fair that status quo in respect of the property is to be maintained.

31. In result, we allow both the Appeals and set aside the impugned order admitting I.A. Nos. 3156 and 3793 of 2023. Both the Appeals are disposed of with the following observations:

(a) The directions of the Adjudicating Authority directing the Appellant to hand-over the possession of the Baddi and Nalagarh properties to the Resolution Professional of the Corporate Debtor is set aside.

(b) The Adjudicating Authority is directed to consider I.A. No. 5153 of 2023 filed under Section 66 of IBC application as soon as possible and until then, status quo with respect to the possession of both Baddi and Nalagarh properties will have to be maintained by the Appellant.

(c) The Appellant is directed to ensure that until disposal of I.A. No. 5153 of 2023, there shall be no transfer or alienation of the said properties nor can encumbrances of any kind be created by them on the said properties.

(d) No order as to costs.