# IN THE NATIONAL COMPANY LAW TRIBUNAL KOCHI BENCH

**IA(IBC)/217/KOB/2025**
**IN**
**CP(IBC)/22/KOB/2024**

*(under Section 60 (5) of the Insolvency and Bankruptcy Code 2016, r/w Rule 11 & 32 of the NCLT rules 2016*)

***Date of Institution: 23.04.2025***

***Order Delivered on: 25.05.2026***

***In the matter of:***

*M/s. Attukal Devi Institute of Medical Sciences Limited*

***Memo of Parties*:**

**Attukal Bhagavathy Temple Trust**
P.B. No. 5805, Mancaud P.O., Thiruvananthapuram - 695 009.
Represented by its Secretary, Shri. Sarat Kumar K.

**Attukal Bhagavathy (Idol)**
Represented by the Devotee Trustee and Secretary, Attukal Bagavathy Temple Trust, P.B. No. 5805, Mancaud Thiruvananthapuram - 695 009 P.O

...**Applicants**

**Vs.**

**Attukal Devi Institute of Medical Sciences Limited**
Represented by its Interim Resolution Professional. Having its registered office at 'Pranavam', T.C. 6/773, Aakkulam Road, Medical College P.O, Cheruvakkal Village, Thiruvananthapuram - 695 011.

**Rajmohan R.**
Interim Resolution Professional and Insolvency Professional residing at Rajbhavan, HS 514/12/1 and 175A, Krishnapuram, 6th street, Ollukkara P.O., Krishnapuram Temple, Thrissur, Kerala - 680 655.

...**Respondents**

**Coram:**

**HON'BLE MEMBER (JUDICIAL) : SHRI. VINAY GOEL**

**Appearance:**

For the Applicants : Mr. Aswin Gopakumar, Advocate

For the Respondents : Mr. A C Venugopal, Advocate

Mr. Rajmohan R, RP

**O R D E R**

1. This Application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 and 32 of the NCLT Rules, 2016, seeking the following reliefs: -

    a) *Declare that the property belonging to the Applicants having an extent of 112.5 cents equivalent to 45.1 Ares of property in Survey No. 1704, 1704/1, 1705, 1705/1, 1705/3, 1705/4, 1705/5 of Mancaud Village along with a three storied building having a total area of 32185 Sq. Ft. and its improvements are not and cannot be part of the CIRP Process initiated against the 1st Respondent vide order dated 27.09.2024 in CP(IBC)/22/KOB/2024.*

    b) *Direct the Interim Resolution Professional to handover vacant possession of property belonging to the Applicants having an extent of 112.5 cents equivalent to 45.1 Ares of property in Survey No. 1704, 1704/1, 1705, 1705/1, 1705/3, 1705/4, 1705/5 of Mancaud Village along with a three storied building having a total area of 32185 Sq. Ft. and its improvements*

*c) Pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the light of justice, equity and good conscience.*

**Brief facts of the case are as follows: -**

2. The 1st Applicant is a religious, charitable and educational trust constituted for the maintenance and administration of Attukal Bhagavathy Temple and its properties, while the 2nd Applicant is the Idol, Attukal Bhagavathy, represented through the Secretary of the Trust. The 1st Respondent Company, Attukal Devi Institute of Medical Sciences Limited (Corporate Debtor), was incorporated under the aegis of the Applicant Trust for running "Attukal Devi Hospital", a multi-speciality hospital intended for the welfare of the general public. The 2nd Respondent was appointed as the Interim Resolution Professional of the 1st Respondent Company pursuant to the initiation of the Corporate Insolvency Resolution Process vide order dated 27.09.2024 in CP(IBC)/22/KOB/2024.
3. It is submitted that the Applicant Trust had, by virtue of a registered Rental Agreement dated 10.10.2008, leased out to the 1st Respondent an extent of 112.5 cents of land comprised in Survey Nos. 1704, 1704/1, 1705, 1705/1, 1705/3, 1705/4, and 1705/5 of Mancaud Village, together with a three-storied building having a total area of 32,185 sq. ft., for the purpose of conducting the hospital. The lease was for a period of fifteen years ending in September 2023, with renewal only upon mutual agreement between the parties. According to the Applicants, the 1st Respondent committed persistent defaults in payment of rent from the inception of the tenancy, which constrained the Applicants to initiate multiple proceedings before the Rent Control Court, Thiruvananthapuram, seeking recovery of arrears and eviction.

4. The Applicants submitted that several proceedings, including RCP No. 35 of 2011 and RCP No. 15 of 2016, were instituted under the Kerala Buildings (Lease and Rent Control) Act, 1965, against the 1st Respondent on account of substantial arrears of rent. Orders were passed by the Rent Control Court directing payment of arrears, and eviction orders were also passed against the 1st Respondent, which were challenged before the Appellate Authority and the Hon'ble High Court of Kerala. It is stated that despite partial payments made pursuant to court directions, the 1st Respondent continued to remain in default, and huge arrears allegedly accumulated towards rent payable to the Applicants.
5. The Applicants further stated that the lease arrangement expired by efflux of time in September 2023 and was never renewed thereafter. It is their case that resolutions were passed by the Applicant Trust, deciding not to extend the tenancy in favour of the 1st Respondent and to resume management of the hospital premises for charitable medical activities. The Applicants also alleged that the 1st Respondent carried out unauthorised constructions and alterations in the Schedule Property without requisite approvals from competent authorities. Consequently, further eviction proceedings in RCP No. 42 of 2024 were initiated before the Rent Control Court, which are presently pending consideration.
6. It is further submitted that after commencement of Corporate Insolvency Resolution Process against the 1st Respondent on 27.09.2024, the Applicants lodged their claim before the 2nd Respondent in Form-F towards arrears of rent, which has been admitted as an operational debt. According to the Applicants, since the Rental Agreement had already expired prior to commencement of the Corporate Insolvency Resolution Process, the Schedule Property constitutes a third-party asset belonging exclusively to

the Applicants and cannot form part of the assets of the Corporate Debtor under Section 18 of the Insolvency and Bankruptcy Code, 2016. The Applicants therefore submitted that the Interim Resolution Professional has no authority to continue in possession of the Schedule Property or include the same within the Corporate Insolvency Resolution Process.

7. The Applicants further stated that the 2nd Respondent, upon taking charge as Interim Resolution Professional, assumed possession and control over the Schedule Property and continued to treat the same as part of the assets of the Corporate Debtor during the meetings of the Committee of Creditors. Aggrieved thereby, the present Application has been filed seeking a declaration that the Schedule Property does not form part of the Corporate Insolvency Resolution Process estate of the 1st Respondent Company and for consequential directions to hand over vacant possession of the property to the Applicants.
8. The 2nd Respondent/Resolution Professional submitted that, pursuant to the commencement of the Corporate Insolvency Resolution Process, a public announcement inviting claims was issued on 29.09.2024, and the 2nd Respondent took possession and control of the assets and affairs of the Corporate Debtor on 30.09.2024 in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016.
9. It is submitted that the 1st Respondent Company is running a 54-bed hospital in the Schedule Property leased from the Applicant Trust. According to the Respondents, though the lease period has expired, the Corporate Debtor continues in possession as a statutory tenant protected under the Kerala Buildings (Lease and Rent Control) Act, 1965 and can be evicted only through proceedings under the said Act. It is further submitted that RCP No.15/2016 filed by the Applicants for arrears of rent and RCP No.76/2016 filed by the

Corporate Debtor for fixation of fair rent are pending before the Rent Control Court, Thiruvananthapuram.

10. The Respondents further submitted that pursuant to proceedings in RCP No.15/2016, orders directing payment of admitted arrears were passed by the Rent Control Court, which were challenged before the Appellate Authority and subsequently before the Hon'ble High Court of Kerala in RCR No.177/2020. It is submitted that the Hon'ble High Court, vide judgment dated 11.01.2021, directed the Corporate Debtor to remit monthly rent at the rate of Rs. 1,44,833/- till disposal of the Rent Control Petition and that the Corporate Debtor continues to remit the said amount even during the CIRP period. The Respondents further submitted that though eviction orders were passed in RCP No.15/2016, the same have been stayed by the Rent Control Appellate Authority in RCA No.26/2022, subject to conditions which, according to the Respondents, have been complied with. It is also submitted that another eviction proceeding, namely RCP No.42/2024, instituted by the Applicants on the grounds of bona fide requirement and arrears of rent, is presently pending before the Rent Control Court.

11. It is further submitted that the Applicants had also instituted O.S. No.248/2014 and O.S. No.198/2020 before the competent Civil Courts for recovery of arrears of rent. According to the Respondents, after commencement of CIRP and declaration of moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016, the Applicants proceeded with execution proceedings in E.P. No.262/2020 arising out of O.S. No.248/2014 and obtained attachment orders against the bank accounts of the Corporate Debtor maintained with Dhanalakshmi Bank, resulting in freezing of the accounts of the Corporate Debtor during the moratorium period.

12. The Respondents submitted that the attachment orders obtained during the moratorium period violate Section 14 of the Insolvency and Bankruptcy Code, 2016. It is submitted that the 2nd Respondent immediately approached the Principal Sub Court, Thiruvananthapuram, by filing E.A. No.259/2025 seeking recall of the attachment order. It is further submitted that the said recall application was dismissed by the Principal Sub Court on 04.06.2025, following which the 2nd Respondent approached the Hon'ble High Court of Kerala by filing OP(C) No.1500/2025, challenging the attachment order, which is presently pending consideration. The Respondents further submitted that proceedings under Section 74(2) of the Insolvency and Bankruptcy Code, 2016, have also been initiated before this Adjudicating Authority, alleging violation of the moratorium provisions by the Applicants.
13. The Respondents denied the allegations of the Applicants that the Schedule Property constitutes a third-party asset outside the purview of CIRP. According to the Respondents, notwithstanding expiry of the lease agreement, the Corporate Debtor continues as a statutory tenant protected under the Kerala Buildings (Lease and Rent Control) Act, 1965 and remains in lawful possession of the premises. It is submitted that the Corporate Debtor continues to pay rent as directed by the Hon'ble High Court and that the Resolution Professional is entitled to continue possession and management of the hospital premises for maintaining the Corporate Debtor as a going concern during CIRP.
14. The Respondents therefore contend that the Application has been filed only to pressurise the Corporate Debtor and obstruct the CIRP proceedings. It is submitted that the Resolution Professional is conducting the CIRP strictly in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016

and the Regulations framed thereunder and that the present Application, being devoid of merits, is liable to be dismissed.

**Written submissions**

15. The Applicants submitted that the lease period expired during the year 2023 and was never renewed thereafter. The Applicants, therefore, stated that the continued occupation of the property by the Corporate Debtor and the Resolution Professional is unauthorised and contrary to law.

16. The Applicants further alleged that the Corporate Insolvency Resolution Process proceedings themselves are liable to be terminated as the statutory timeline prescribed under Section 12 of the Insolvency and Bankruptcy Code, 2016, has already expired. It is submitted that the Corporate Insolvency Resolution Process commenced pursuant to an order dated 27.09.2024 and that continuation of the proceedings beyond the outer limit contemplated under Section 12(3) defeats the very object of the Insolvency and Bankruptcy Code, 2016, which mandates a time-bound insolvency resolution process. In support of the said contention, reliance is placed on the judgment of the Hon'ble Supreme Court in C***ommittee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*** **(2020) 8 SCC 531,** wherein the Hon'ble Supreme Court emphasised that the time limit is not mere directory guidance but is a strict statutory mandate intended to give teeth to the objective of time-bound resolution under the Code.

17. The Applicants further alleged that the Corporate Insolvency Resolution Process has been initiated in a collusive and fraudulent manner by persons connected with the erstwhile management of the Corporate Debtor and the Financial Creditor. According to the Applicants, the insolvency proceedings have been initiated not for the genuine resolution of insolvency, but with the ulterior motive of retaining possession of the Applicants' property and

avoiding liabilities. The Applicants submitted that such initiation of the Corporate Insolvency Resolution Process amounts to abuse of the provisions of the Insolvency and Bankruptcy Code, 2016 and attracts Section 65 of the Code. Reliance is placed on the judgments of the Hon'ble Supreme Court in ***Swiss Ribbons Pvt. Ltd. v. Union of India*** **(2019) 4 SCC 17** and ***Pioneer Urban Land and Infrastructure Ltd. v. Union of India*** **(2019) 8 SCC 416,** wherein it was held that the provisions of the Insolvency and Bankruptcy Code, 2016, cannot be misused for fraudulent or malicious purposes and that the Code is intended for resolution of genuine insolvency.

18. The Applicants also stated that there exists no realistic possibility of revival of the Corporate Debtor as the financial position of the Company is completely unviable. It is submitted that the Corporate Debtor has suffered continuous financial losses, possesses no substantial assets of its own and is functioning entirely from the Schedule Property belonging to the Applicants. According to the Applicants, the only assets available are old medical equipment with negligible realisable value; therefore, the continuation of the Corporate Insolvency Resolution Process serves no meaningful purpose other than to cause further erosion of value. The Applicants, therefore, submitted that liquidation alone remains the legally sustainable course available under the Insolvency and Bankruptcy Code, 2016.

19. The Applicants specifically alleged that the Schedule Property cannot form part of the Corporate Insolvency Resolution Process estate as the same is admittedly owned by the Applicants and constitutes a third-party asset excluded from the scope of Section 18 of the Insolvency and Bankruptcy Code, 2016. It is submitted that Explanation (a) to Section 18 of the Code expressly excludes assets owned by third parties but held under contractual arrangements from the control of the Resolution Professional. The

Applicants contend that the Corporate Debtor, after expiry of the lease, cannot claim any ownership or proprietary right over the property and at best can only claim limited statutory protection under the Kerala Buildings (Lease and Rent Control) Act, 1965. In support of the said contention, reliance is placed on the judgments in ***Anand Nivas Pvt. Ltd. v. Anandji Kalyanji's Pedhi* (1964) 4 SCC 892**, wherein it was held that a statutory tenant has no estate or proprietary interest in the premises, as well as ***Indian Renewable Energy Development Agency Ltd. v. Ramswarup Industries Ltd.* [CA(AT)(Ins.) No. 472/2019]** and ***Jiten S. Gada v. Manoj Kumar Agarwal* [CA(AT)(Ins.) No. 256/2020]** wherein it was held that third-party assets cannot be treated as assets of the Corporate Debtor merely because the same are in its possession during Corporate Insolvency Resolution Process.

20. The Respondents stated that Section 14(1)(d) of the Insolvency and Bankruptcy Code, 2016 expressly prohibits recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor during the moratorium period. According to the Respondents, allowing the present Application would amount to a direct violation of the moratorium declared by this Adjudicating Authority and would defeat the very object of the Corporate Insolvency Resolution Process. It is submitted that the Application has been filed only with the intention of derailing the Corporate Insolvency Resolution Process proceedings and forcing the Corporate Debtor into liquidation.

21. The Respondents further submitted that though the contractual lease period has expired, the Corporate Debtor continues in lawful possession as a statutory tenant protected under the Kerala Buildings (Lease and Rent Control) Act, 1965 and therefore cannot be evicted except in accordance with

the provisions of the said Act. Reliance is placed on Section 11(1) of the Kerala Buildings (Lease and Rent Control) Act, 1965, which provides that a tenant cannot be evicted except in accordance with the provisions of the Act, notwithstanding anything contrary contained in any other law or contract.

22. The Respondents submitted that several Rent Control Proceedings between the parties are pending before the competent Rent Control Courts. It is submitted that proceedings under Section 11(2)(b) of the Kerala Buildings (Lease and Rent Control) Act, 1965, for arrears of rent are pending and that RCP No.42/2024 has also been instituted by the Applicants seeking eviction of the Corporate Debtor on the grounds of bona fide requirement and arrears of rent. The Respondents further submitted that the Hon'ble High Court of Kerala in RCR No.177/2020 directed the Corporate Debtor to continue payment of rent at the rate of Rs. 1,44,834/- per month and that the said amount continues to be deposited before the Rent Control Court even during the Corporate Insolvency Resolution Process period.

23. The Respondents further contend that the audited financial statements of the Corporate Debtor as on the CIRP commencement date clearly establish that the Corporate Debtor was in possession of the Schedule Property and was regularly paying rent in terms of the directions issued by the Hon'ble High Court of Kerala. It is submitted that the Resolution Professional has not treated the Schedule Property belonging to the Applicants as an asset of the Corporate Debtor, and the same has been specifically disclosed in the Information Memorandum prepared during CIRP.

24. The Respondents further submitted that the Committee of Creditors, in its 16th meeting held on 15.09.2025, exercising its commercial wisdom, approved a Resolution Plan submitted in respect of the Corporate Debtor, and consequently, the Resolution Professional has already filed

IA(IBC)(PLAN)/6/KOB/2025 before this Adjudicating Authority seeking approval of the Resolution Plan. According to the Respondents, the Successful Resolution Applicant has agreed to continue the pending Rent Control Proceedings in accordance with the law, and therefore, the rights of the Applicants are sufficiently protected.

## Findings:

25. This Adjudicating Authority has heard the learned counsels appearing for the parties and perused the documents on record, including the written submissions placed on record. There is no dispute that the Applicants are the absolute owners of the Schedule Property comprising 112.5 cents of land together with the hospital building situated thereon. It is also not in dispute that the Corporate Debtor came into occupation of the premises pursuant to the Rental Agreement dated 10.10.2008 executed between the Applicant Trust and the Corporate Debtor for running "Attukal Devi Hospital", and that the lease period expired in September 2023 without any formal renewal thereafter.

26. It is further evident from the materials placed on record that several proceedings under the Kerala Buildings (Lease and Rent Control) Act, 1965 relating to arrears of rent, fixation of fair rent and eviction are pending between the parties before the competent Rent Control Courts and appellate forums. The records also reveal that orders directing payment of rent and eviction were passed at various stages and that the same are presently subject to challenge before the competent forums. Therefore, the issue regarding continuation of possession and eviction of the Corporate Debtor is already *sub judice* before the authorities constituted under the Kerala Buildings (Lease and Rent Control) Act, 1965.

27. This Adjudicating Authority vide order dated 27.09.2024 in CP(IBC)/22/KOB/2024 admitted the petition filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 and initiated Corporate Insolvency Resolution Process against the Corporate Debtor, pursuant to which moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 came into force.

28. The Applicants have stated that the Corporate Insolvency Resolution Process itself is liable to fail since the statutory timeline contemplated under Section 12 of the Insolvency and Bankruptcy Code, 2016, has expired, and that continuation of the Corporate Insolvency Resolution Process would amount to abuse of process by relied on the judgment of the Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*(supra) to alleged that the timeline under the Code is mandatory and intended to ensure time-bound resolution.

29. In Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta & Ors. (supra), the Hon'ble Supreme Court observed as follows:

> *"79. In Atma Ram Mittal v. Ishwar Singh Punia (1988) 4 SCC 284, this Court applied the maxim to time taken in legal proceedings under the Haryana Urban (Control of Rent and Eviction) Act, 1973, holding:*
> *"8. It is well-settled that no man should suffer because of the fault of the court or delay in the procedure. Broom has stated the maxim "actus curiae neminem gravabit" — an act of court shall prejudice no man. Therefore, having regard to the time normally consumed for adjudication, the ten years' exemption or holiday from the application of the Rent Act would become illusory, if the suit has to be filed within that time and be disposed of finally. It is common knowledge that unless a suit is instituted soon after the date of letting it would never be disposed of within ten years and even then within that time it may not be disposed of. That will make the ten years holiday from the Rent Act illusory and provide no incentive to the landlords to build new houses to solve problem of shortages of houses. The purpose of legislation would thus be defeated. Purposive interpretation in a social amelioration legislation is an imperative irrespective of anything else."*
> *Likewise, in Sarah Mathew v. Institute of Cardio Vascular Diseases, (2014) 2 SCC 62, this Court held that for the purpose of computing limitation under Section 468 of the Code of Criminal Procedure, 1973 the relevant date is the*

*date of filing of the complaint and not the date on which the Magistrate takes cognizance, applying the aforesaid maxim as follows:*

*"39. As we have already noted in reaching this conclusion, light can be drawn from legal maxims. Legal maxims are referred to in Bharat Kale [Bharat Damodar Kale v. State of A.P., (2003) 8 SCC 559 : 2004 SCC (Cri) 39] , Japani Sahoo [Japani Sahoo v. Chandra Sekhar Mohanty, (2007) 7 SCC 394 : (2007) 3 SCC (Cri) 388] and Vanka Radhamanohari [Vanka Radhamanohari v. Vanka Venkata Reddy, (1993) 3 SCC 4 : 1993 SCC (Cri) 571]. The object of the criminal law is to punish perpetrators of crime. This is in tune with the well-known legal maxim nullum tempus aut locus occurrit regi, which means that a crime never dies. At the same time, it is also the policy of law to assist the vigilant and not the sleepy. This is expressed in the Latin maxim vigilantibus et non dormientibus, jura subveniunt. Chapter XXXVI CrPC which provides limitation period for certain types of offences for which lesser sentence is provided draws support from this maxim. But, even certain offences such as Section 384 or 465 IPC, which have lesser punishment may have serious social consequences. The provision is, therefore, made for condonation of delay. Treating date of filing of complaint or date of initiation of proceedings as the relevant date for computing limitation under Section 468 of the Code is supported by the legal maxim actus curiae neminem gravabit which means that the act of court shall prejudice no man. It bears repetition to state that the court's inaction in taking cognizance i.e. court's inaction in applying mind to the suspected offence should not be allowed to cause prejudice to a diligent complainant. Chapter XXXVI thus presents the interplay of these three legal maxims. The provisions of this Chapter, however, are not interpreted solely on the basis of these maxims. They only serve as guiding principles."*

*Both these judgments have been followed in Neeraj Kumar Sainy v. State of Uttar Pradesh (2017) 14 SCC 136 at paragraphs 29 and 32. Given the fact that the time taken in legal proceedings cannot possibly harm a litigant if the Tribunal itself cannot take up the litigant's case within the requisite period for no fault of the litigant, a provision which mandatorily requires the CIRP to end by a certain date – without any exception thereto – may well be an excessive interference with a litigant's fundamental right to non-arbitrary treatment under Article 14 and an excessive, arbitrary and therefore unreasonable restriction on a litigant's fundamental right to carry on business under Article 19(1)(g) of the Constitution of India. This being the case, we would ordinarily have struck down the provision in its entirety. However, that would then throw the baby out with the bath water, inasmuch as the time taken in legal proceedings is certainly an important factor which causes delay, and which has made previous statutory experiments fail as we have seen from Madras Petrochem (supra). Thus, while leaving the provision otherwise intact, we strike down the word "mandatorily" as being manifestly arbitrary under Article 14 of the Constitution of India and as being an excessive and unreasonable restriction on the litigant's right to carry on business under Article 19(1)(g) of the Constitution. The effect of this declaration is that ordinarily the time taken in relation to the corporate*

> *resolution process of the corporate debtor must be completed within the outer limit of 330 days from the insolvency commencement date, including extensions and the time taken in legal proceedings. However, on the facts of a given case, if it can be shown to the Adjudicating Authority and/or Appellate Tribunal under the Code that only a short period is left for completion of the insolvency resolution process beyond 330 days, and that it would be in the interest of all stakeholders that the corporate debtor be put back on its feet instead of being sent into liquidation and that the time taken in legal proceedings is largely due to factors owing to which the fault cannot be ascribed to the litigants before the Adjudicating Authority and/or Appellate Tribunal, the delay or a large part thereof being attributable to the tardy process of the Adjudicating Authority and/or the Appellate Tribunal itself, it may be open in such cases for the Adjudicating Authority and/or Appellate Tribunal to extend time beyond 330 days. Likewise, even under the newly added proviso to Section 12, if by reason of all the aforesaid factors the grace period of 90 days from the date of commencement of the Amending Act of 2019 is exceeded, there again a discretion can be exercised by the Adjudicating Authority and/or Appellate Tribunal to further extend time keeping the aforesaid parameters in mind. It is only in such exceptional cases that time can be extended, the general rule being that 330 days is the outer limit within which resolution of the stressed assets of the corporate debtor must take place beyond which the corporate debtor is to be driven into liquidation."*

30. A reading of the aforesaid judgment makes it clear that extension of the period prescribed under Section 12 of the Insolvency and Bankruptcy Code, 2016 can be granted in exceptional circumstances, particularly where only a short period is left for completion of the insolvency resolution process beyond 330 days, where continuation of the process would be in the interest of all stakeholders to put the Corporate Debtor back on its feet instead of driving it into liquidation, and where the delay is attributable to pendency of legal proceedings and factors for which no fault can be ascribed to the litigants before the Adjudicating Authority or Appellate Tribunal. In the present case, it is evident from the materials on record that various litigations between the parties are pending before different forums, the Corporate Debtor continues to operate the hospital, and a Resolution Plan has already been approved by the Committee of Creditors with the object of

revival of the Corporate Debtor rather than liquidation. Therefore, in the facts and circumstances of the present case, the outer limit of 330 days under Section 12 of the Insolvency and Bankruptcy Code, 2016, cannot be construed in a rigid or mechanical manner so as to hold that the Corporate Insolvency Resolution Process has automatically failed.

31. The Applicants have alleged that the lease expired prior to commencement of the Corporate Insolvency Resolution Process and therefore the Schedule Property, being a third-party property belonging exclusively to the Applicants, cannot form part of the assets of the Corporate Debtor under Section 18 of the Insolvency and Bankruptcy Code, 2016. Reliance has been placed on the judgments in *Anand Nivas Pvt. Ltd. v. Anandji Kalyanji's Pedhi (supra), Indian Renewable Energy Development Agency Ltd. v. Ramswarup Industries Ltd. (supra)* and *Jiten S. Gada v. Manoj Kumar Agarwal (supra)*. The Respondents, on the other hand, contend that notwithstanding expiry of the contractual lease, the Corporate Debtor continues as a statutory tenant protected under the Kerala Buildings (Lease and Rent Control) Act, 1965 and cannot be dispossessed except in accordance with the provisions of the said Act, and relied on Section 14(1)(d) of the Insolvency and Bankruptcy Code, 2016, which is as follows:

> *Section 14: Moratorium.*
> *14. (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:—*
> ***(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.***

32. This Adjudicating Authority is of the considered view that the ownership of the Schedule Property admittedly vests with the Applicants, and the same has never been treated as an owned asset of the Corporate Debtor by the Resolution Professional. Therefore, insofar as the first relief sought by the

Applicants, namely, a declaration that the Schedule Property cannot form part of the Corporate Insolvency Resolution Process assets of the Corporate Debtor, is concerned, there can be no dispute regarding the ownership rights of the Applicants over the property.

33. However, insofar as the second relief seeking vacant possession of the Schedule Property is concerned, it is evident from the records that the Corporate Debtor is presently operating a hospital from the premises, and CIRP is continuing. Section 14(1)(d) of the Insolvency and Bankruptcy Code, 2016, specifically prohibits the recovery of possession of premises occupied by the Corporate Debtor during the moratorium period. Further, proceedings relating to eviction and statutory tenancy are admittedly pending before the competent Rent Control Courts.

34. The Corporate Debtor is presently enjoying interim protection in the pending appeal, subject to compliance with the conditions imposed by the competent court regarding the deposit of monthly rent. The said conditions had been duly complied with by the Corporate Debtor prior to commencement of the Corporate Insolvency Resolution Process and are presently being complied with by the Resolution Professional as well.

35. Apart from such judicial protection, the Corporate Debtor is operating a running 50-bed hospital catering to patients and sustaining the livelihood of several employees and staff members. Any direction at this advance stage (after approval of plan by Committee of Creditors and during pending approval of this Adjudicating Authority) for exclusion of the property from the Corporate Insolvency Resolution Process or disturbance of possession would not only cause irreparable loss and injury to the Corporate Debtor, patients and employees, but would also seriously prejudice the objective of value maximisation and preservation of the Corporate Debtor as a going

concern, which forms the very foundation of the Insolvency and Bankruptcy Code, 2016.

36. Therefore, at this stage, no direction can be issued to hand over vacant possession of the Schedule Property during the subsistence of the moratorium and the Corporate Insolvency Resolution Process period.

37. This Adjudicating Authority also takes note of the judgment of the Hon'ble Supreme Court in ***Sincere Securities Pvt. Ltd. and Ors. v. Chandrakant Khemka and Ors.*** **(2025) ibclaw.in 296 SC**, wherein it was held as follow:

> *"The commercial wisdom of the CoC must, accordingly, be given primacy during the CIRP. When UCO Bank, constituting the CoC, decided that retention of the possession of the subject property was not in the interest of the CIRP, that decision must be given the respect that is lawfully due to it.*
> *9. Lastly, we may note that Section 14(1)(d) of the IBC states that once the adjudicating authority, by order, declares a moratorium, it would prohibit, amongst other acts, the recovery of any property by an owner or lessor where such property is occupied by or is in the possession of the corporate debtor. In the case on hand, the chronology of events manifests that, at its very first meeting held on 20.02.2023, the CoC discussed the issue of retention of the ground floor of White House. It asked the Resolution Professional to visit the said premises and decide as to whether holding on to the same was required, spending a huge amount towards rentals. Thereafter, at its third meeting held on 06.04.2023, the CoC took note of the Resolution Professional's report that it was not feasible to hold on to the subject property, as only 8 to 9 staff members were there and the revenue generated would not be sufficient to pay the lease/license rentals. The CoC recorded that the matter was duly discussed and the Resolution Professional was asked to hand over possession as early as possible, as there was no requirement to hold on to the said premises spending such a huge amount towards rentals.*
> *10. It was only thereafter that the appellants filed Interlocutory Applications before the NCLT praying for a direction to deliver possession of the subject property to them along with other reliefs. It is, therefore, manifest that this was not a simple case of the owner of the property seeking recovery of possession thereof from the corporate debtor, which would be barred by the express language of Section 14(1)(d) of the IBC. On the other hand, as already noted hereinbefore, it was the CoC and the Resolution Professional who were and still are desirous of returning the possession of the property in question to the appellants, keeping in mind the adverse financial implications of retaining the same."*

38. In the above judgment, the question as to whether possession of leased premises should be retained or relinquished during the Corporate Insolvency Resolution Process is ultimately a matter falling within the commercial wisdom of the Committee of Creditors. In the present case, the materials on record reveal that the Committee of Creditors has already approved a Resolution Plan, and the Corporate Debtor continues to run the hospital from the Schedule Property. This Adjudicating Authority further observes that any rent or occupation charges payable during the Corporate Insolvency Resolution Process period would constitute Corporate Insolvency Resolution Process costs and are required to be dealt with in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016. The continuation of the occupation of the premises, therefore, directly affects the financial position of the Corporate Debtor and the recoveries available to stakeholders. Consequently, the Committee of Creditors and the Successful Resolution Applicant are required to take an informed commercial decision regarding the continued occupation of the Schedule Property.

39. Insofar as the allegation relating to collusive initiation of Corporate Insolvency Resolution Process under Section 65 of the Insolvency and Bankruptcy Code, 2016 and attachment of bank accounts during the moratorium period are concerned, this Adjudicating Authority is of the view that the same arise in separate proceedings and cannot be conclusively adjudicated in the present Application, which is confined to the reliefs sought regarding the Schedule Property. It is seen from the records that proceedings concerning the alleged violation of the moratorium are already pending before the competent forums.

40. In view of the foregoing discussion, this Adjudicating Authority is of the considered opinion that, at this stage, when the Corporate Debtor is

continuing to operate the hospital from the Schedule Property and the Corporate Insolvency Resolution Process is still ongoing, no direction can be issued for handing over vacant possession of the Schedule Property to the Applicants. The possession and occupation of the Schedule Property by the Corporate Debtor during the subsistence of the moratorium shall continue in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016.

41. It is further clarified that the observations made in the present Application are confined solely to the adjudication of the reliefs sought herein regarding the Schedule Property and continuation of possession during the Corporate Insolvency Resolution Process period. The findings and observations contained in this order shall not have any bearing on other applications pending before this Adjudicating Authority.
42. Accordingly, **IA(IBC)/217/KOB/2025 IN CP(IBC)/22/KOB/2024** stands **disposed of.**
43. The Registry is directed to send e-mail copies of this order to the parties and their learned counsels for information and to take necessary steps.
44. Further, a certified copy of this order may be issued, if applied, upon compliance with the requisite formalities.
45. File be consigned to records.

**Sd/-**
**VINAY GOEL**
**(MEMBER JUDICIAL)**

Signed on this the 25th day of May,2026.

*A**