IN THE NATIONAL COMPANY LAW TRIBUNAL

KOCHI BENCH

IA (IBC)/24/KOB/2025
IN

CP(IBC)/38/KOB/2023

(Under Section 66(1) and (2) and 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 35(a) of the IBBI (Insolvency Resolution of Corporate Persons) Regulations, 2016 and Rule 11 of the National Company Law Tribunal Rules, 2016)

Date of Institution: 04.01.2025

Order delivered on: 15.10.2026

In the matter of M/s Jomer Properties and Investments Private Limited

MEMO OF PARTIES:

Mr. Kizhakkekara Kuriakose Jose
Resolution Professional of
M/s Jomer Properties and Investments Pvt Ltd**,**
KK Jose & Associates, Yenvee Complex, Temple Road, Aluva, Kerala-683101.

…. Applicant

-Vs-

Mr. Renju Jose,
Jomer Arcade, 2nd Floor, South Junction, Chittoor Road, Ernakulam 682016

...Respondent No.1

Mr. Rohit Jose,
Jomer Arcade, 2nd Floor, South Junction, Chittoor Road, Ernakulam -682016.

...Respondent No. 2

Mr.Sonny Abraham,

Alexy gardens, sivajipuram, thuravoor, Angamaly, ernakulam, 683572.

...Respondent No. 3

Mr.MM JOSE,

Jomer Arcade, 2nd Floor, South Junction, Chittoor Road, Ernakulam -682016

...Respondent No. 4

Ms. MERIN JOSE,

Jomer Arcade

2nd Floor, South Junction Chittoor Road, Ernakulam-682016

...Respondent No. 5

M/s. Inviot Systems India Private Limited,

registered office No. 40/3246-c, 9th floor, S.L. Plaza, Palarivattom P.O., Pin-682025, Palarivattom Desom, Edappally South Village, Kanayannur Taluk, Ernakulam District

...Respondent No. 6

Mr. Abdul Jaleel,

Residing at Puthupaddy P.O., 686673, Muvattupuzha Taluk, Ernakulam District.

...Respondent No. 7

Coram:

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

HON'BLE MEMBER (TECHNICAL) : SHRI. RAVICHANDRAN RAMASAMY

Appearances:

For the Applicant : Mr. Sankar P Panicker
For the Respondent No. 1to5 : Ex-parte
For the Respondent No.6 : Ms. Sruthy Devan
For the Respondent No.7 : Ex-parte

O R D E R

Per Coram

1. The present Application has been filed by the Resolution Professional of M/s Jomer Properties and Investments Pvt Ltd under Section 66(1) and (2) and 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 35(a) of the IBBI (Insolvency Resolution of corporate persons) Regulations 2016 and Rule 11 of the National Company Law Tribunal Rules 2016 seeking the following prayers: -

    1. *Declare the transaction relating to the sale of land of the company to the R1 and R2 at a lesser price than the fair value with the intention of paying lesser amount as sale value to the company and by intentionally paying stamp duty and registration amount for the fair value as transaction intending to defrauding the creditors and consequently direct the Respondent 1 and 2 to deposit Rs.62,50,425/- each into the*

bank account of the CD maintained by the RP being the difference amount between the fair value and the value in sale deed registered by the Sub Registrar office to the tune of Rs. 1,25,00,850/-.

2. *Declare the sale transaction of Unit no 7 on the fourth floor bearing Corporation Door No. C.C 33/2317 C 14(New 48/1744 C 14) in Jomer Symphony to the tune of RS. 49,68,750/ being the collateral security for a loan obtained from SBI without their No objection certificate as a transaction intended to defraud the creditors and consequently declare the said transaction as a Void transaction executed by R1 to R5, and consequently direct the Respondents 6 to register back the Unit No. 7 on the fourth floor bearing Corporation Door No. C.C 33/2317 C 14(New 48/1744 C 14) in Jomer Symphony in the name of the Company and direct R6 to seek appropriate legal remedy against R1 to R5 in the interest of justice*
3. *Declare the sale of Commercial Unit No. 5 on the eight-floor bearing Corporation Door No. C.C 48/1744 C55 in Jomer Symphony being the collateral security for loan obtained from SBI without their No objection certificate as transaction intended to defraud the creditors and consequently declare the said transaction as Void transaction executed by R1 to R5, and consequently direct the Respondents 7 to register back Commercial Unit No. 5 on the eight-floor bearing Corporation Door No. C.C 48/1744 C55 in Jomer Symphony in the name of the Company and direct R7 to seek appropriate legal remedy against R1 to R5 in the interest of justice.*
4. *Any other order which this Hon'ble Tribunal deem fit and proper and in the circumstances of the case in the interest of justice.*

2. Respondent Nos.1 to 5 are the erstwhile Directors/Managing Directors of the Corporate Debtor during the relevant period, with Respondent Nos.1 and 2 being the purchasers of the land involved in the first transaction. Respondent Nos.6 and 7 are third-party purchasers of the units involved in the other transactions, namely, Unit No.7 on the fourth floor and Commercial Unit No.5 on the eighth floor of "Jomer Symphony", respectively.

The Brief facts of the case are as follows: -

3. The CIRP of the Corporate Debtor, M/s Jomer Properties and Investments Pvt. Ltd., was initiated by order dated 16.02.2024 in CP (IBC)/38/KOB/2024. The Applicant, Kizhakkekara Kuriakose Jose, was appointed as Resolution Professional by order dated 16.04.2024 in IA(IBC)/149/KOB/2024, pursuant to his appointment by the CoC in its first meeting held on 14.03.2024.
4. The Applicant stated that Respondents Nos.1 to 5 were Directors/Managing Directors of the Corporate Debtor during the relevant period, namely, Respondent No.1 Renju Jose as Managing Director from 01.04.2021, Respondent No.2 Rohit Jose as Additional Director from 01.04.2021, Respondent No.3 Sonny Abraham as Additional Director from 01.08.2023, Respondent No.4 M.M. Jose as Managing Director since inception and Respondent No.5 Merin Jose as Director since inception. Respondents Nos.4 and 5 had also signed the financial statements dated 21.07.2023 in their respective capacities. Respondents Nos.4 and 5, being the parents of Respondents Nos.1 and 2, were stated to be related parties under Section 5(24) of the IBC, 2016.
5. The Applicant stated that due to non-cooperation of the suspended management in furnishing the books and records, he could not complete the examination of PUFE transactions within the prescribed period. He therefore filed IA(IBC) 194/2024 under Section 19(2) of the Code, pursuant to which this Adjudicating Authority issued directions for furnishing the required information. Though some information was subsequently furnished, the same was not complete. The Applicant also stated that the CoC, in its 2nd meeting held on 18.04.2024, appointed CA Ambika Varma A.C. of R. Rajan Associates to conduct a forensic audit into transactions under Sections 43, 45, 49, 50 and 66 of the Code. The Final

Forensic Audit Report dated 18.09.2024 was considered by the CoC in its 6th meeting held on 10.10.2024, wherein filing of appropriate proceedings was approved.

6. The Applicant stated that during FY 2022-23, the Corporate Debtor sold land at Panangadu, covered by the specified Sale Deed Nos. 900/2023, 901/2023, 902/2023, 2565/2022, 2566/2022, 2670/2022 and 2671/2022, having a book value of Rs.1,33,70,250/-, to Respondents Nos.1 and 2 for Rs.1,43,30,330/-. Though the transaction reflected a profit of Rs.9,60,080/-, the Revenue Department fair value was Rs.2,68,31,200/-. The Applicant stated that an agreement to sell had been entered into on 17.06.2017 at the agreed consideration, with the understanding that the fair value would be refixed before execution of the sale deed. However, after more than five years, the sale was completed at the same consideration without revisiting the fair value, resulting in a difference of Rs.1,25,00,850/-. The Applicant, therefore, treated the transaction as fraudulent under Section 66(2) of the Code, though the forensic auditor had initially classified it under Section 45.

7. The Applicant further stated that, as per SBI's e-auction notice dated 17.04.2023, Unit No.7 on the fourth floor and Unit No.5 on the eighth floor in "Jomer Symphony" were pledged as collateral security for the Corporate Debtor's loans. Nevertheless, the units were sold to Respondent No.6, Inviot Systems Pvt. Ltd., and Respondent No.7, Abdul Jaleel, under sale deeds dated 02.09.2021 and 28.09.2019 for Rs.49,68,750/- and Rs.49,00,000/- respectively. SBI, by email dated 11.03.2024, confirmed that it had neither released the units nor issued any NOC for their release. On the basis of the books and records, SBI's communication and the Forensic Audit Report, the Applicant formed an

opinion that the sale of the pledged units without SBI's consent/NOC was undertaken with intent to defraud the secured creditor and attracted Section 66(1) of the Code.

8. The Applicant stated that, owing to non-handing over of the complete books of accounts by the suspended Directors, he could not ascertain whether the sale consideration was paid to SBI, how the proceeds were utilised, or whether the same were properly accounted for in the books of the Corporate Debtor. Accordingly, relying upon his determination supported by the Forensic Audit Report, the Applicant quantified the amount involved in the alleged fraudulent transaction at Rs.98,68,750/-, being the total sale consideration of the two units, and sought recovery of the said amount from the suspended Directors and restoration of the said assets in the name of the Corporate Debtor by Respondents Nos.6 and 7.

Reply filed by the Respondent No.6

9. The Respondent No. 6 stated that it is a bona fide purchaser of Unit No. 7 on the fourth floor, bearing Corporation Door No. C.C. 33/2317 C14 (New No. 48/1744C14), under Sale Deed No. 2381/2021 dated 02.09.2021 registered before the SRO, Maradu.

10. It is stated that no documentary evidence had been produced by the Applicant/RP to establish that the subject property was mortgaged or charged in favour of SBI. It stated that the property was purchased after conducting due diligence and in compliance with the applicable legal requirements and that it was thereafter put in lawful possession and continued to be in peaceful enjoyment of the property. It also denied the allegation that SBI had neither released the property nor issued an NOC and submitted that the allegations regarding the sale being unauthorised or intended to defraud the creditors were false and denied.

11. The Respondent No. 6 further stated that it had purchased the subject property for Rs.49,68,750/-, which was substantially higher than the fair value of Rs.29,93,695/- stated to have been fixed by the Government authorities under Section 28A of the Kerala Stamp Act, 1959. It contended that the Applicant had failed to produce any sanction letter, charge creation document, CHG-1, CERSAI record or the alleged email dated 11.03.2024 to establish the existence of any charge in favour of SBI and also denied the reliance placed on the truncated forensic audit report.

12. The Respondent No. 6 stated that the provisions of Sections 2(g) and 17 of the Indian Contract Act, 1872 were inapplicable to the transaction as SBI was not a party to the sale deed. It denied that the transaction fell within the ambit of Section 66(1) or (2) of the IBC and submitted that there was no determination by the Applicant under Regulation 35A of the CIRP Regulations. Relying upon Guluckrich Capital Pvt. Ltd. v. The State of West Bengal & Ors., it contended that relief under Section 66 could not be sought against a third party purchaser and prayed for dismissal of the Application against Respondent No. 6 with exemplary costs.

Rejoinder filed by the Applicant

13. The Applicant filed the rejoinder and stated that the claim of Respondent No.6 that he is a bona fide purchaser of Unit No.7 on the fourth floor bearing Corporation Door No. C.C.33/23T7 C14 (New No.48/1744C14) ("Subject Property") is incorrect. It is stated that the Subject Property was part of the collateral security hypothecated by the Corporate Debtor with SBI. The Applicant relied upon the email dated 11.03.2024 from SBI confirming that the property had neither been released nor was any NOC issued, as well as the e-auction notice dated 17.04.2023 showing the

Subject Property as collateral security for the loans of the Corporate Debtor. The Applicant contended that these documents contradict the claim of R6 that he was a bona fide purchaser

14. The Applicant stated that the objection regarding non-production of documentary evidence was incorrect, as the Application was based on the books and records of the Corporate Debtor, SBI's communication, the e-auction notice and the Forensic Audit Report prepared by a qualified Chartered Accountant. The Applicant denied that the allegations were based on mere assumptions and submitted that the relevant documents had been placed on record. The allegation that the Forensic Audit Report was truncated was also denied. The Applicant further stated that the absence of a CERSAI entry would not, by itself, establish the non-existence of the charge claimed by SBI.'

15. The Applicant contended that the sale of the Subject Property without SBI's consent/NOC, despite the alleged subsisting charge, prejudiced the rights of SBI and the other creditors and warranted examination under Section 66(1) of the Code. It is stated that purchase of the property at a value higher than the market value did not, by itself, establish bona fide conduct and that Respondent No.6 was required to exercise due diligence regarding existing charges or encumbrances. The Applicant further submitted that the objections based on privity of contract, Sections 2(g) and 17 of the Indian Contract Act, and the absence of SBI as a party were misconceived, as the impugned transaction directly affected the rights of SBI as a secured creditor. It was also submitted that the Applicant's determination under Regulation 35A was based on the books and records, SBI correspondence and the Forensic Audit Report.

16. The Applicant denied that the sale proceeds were improperly accounted for and reiterated that the circumstances of the transaction and the material on record indicated fraudulent intent. It is stated that registration of Sale Deed No.2381/2021 dated 02.09.2021 did not conclude the issue when the property was allegedly subject to SBI's charge and no NOC had been issued. The Applicant distinguished Guluckrich Capital Pvt. Ltd. v. State of West Bengal & Ors., (2023) ibclaw.in 84 (SC), and relied upon the order dated 25.04.2024 passed by this Adjudicating Authority in M/s. Savute Textiles Private Limited. The Applicant accordingly reiterated that the objections of Respondent No.6 were untenable and that the impugned transaction was liable to be examined under Section 66(1) of the Code.

17. The record shows that Respondent Nos. 1 to 5 were granted repeated opportunities to file their reply affidavit. On 30.05.2025, a last opportunity was granted for filing the reply. Thereafter, on 30.06.2025, it was submitted on their behalf that the reply had been filed and was lying in defect. On 31.07.2025, further time was sought for filing the reply, and on 12.08.2025, adjournment was sought on the ground of hospitalisation. However, on 29.08.2025, none appeared on behalf of Respondent Nos. 1 to 5 and, in view of their continued failure to file the reply despite repeated opportunities, they were proceeded ex parte vide order dated 29.08.2025. Thereafter, Respondent Nos. 1 to 5 remained absent on several dates. They subsequently appeared on 21.04.2026 and 23.04.2026 in the connected IA(IBC)/07/KOB/2025, and on 23.04.2026, submitted that an application had been filed in this application and was under scrutiny. On 07.07.2026, their presence was marked for a limited purpose, and they were recorded as being bound by the ex parte order. The record further shows that no application was filed by Respondent Nos. 1 to 5 seeking to set aside the ex parte order.

18. As regards Respondent No. 7, on 07.04.2025, there was no appearance and, in the absence of clear proof of service, fresh steps were directed to be taken for service of

notice along with a copy of the Application. On 24.04.2025, Respondent No. 7 entered appearance through virtual mode and was directed to file its reply affidavit within seven days. On 30.05.2025, it was submitted that the reply affidavit would be filed within ten days, failing which the right to file the reply would stand forfeited. Respondent No. 7 thereafter appeared on 17.06.2025 and 30.06.2025; however, no reply affidavit was filed. On 31.07.2025, none appeared on behalf of Respondent No. 7 and, accordingly, Respondent No. 7 was proceeded ex parte. Thereafter, Respondent No. 7 remained absent, and no application was filed seeking to set aside the ex parte order.

Analysis and Findings

19. This Application is filed under Section 66 (1) and (2), read with Section 60(5) (c) of the IBC, 2016, and read with Regulation 35(a) of the IBBI (Insolvency Resolution of corporate persons) Regulations 2016 and Rule 11 of the National Company Law Tribunal Rules 2016, by the Resolution Professional against the suspended Board of the Corporate Debtor and two third-party purchasers of the properties. The prayer No. (1) has been sought against Respondent Nos. 1 and 2, the two suspended directors of the company, for purchasing property at a lesser price than the fair value of the property, causing loss to the Corporate Debtor. Whereas prayers (2) and (3) have been sought against Respondent Nos. 6 and 7, respectively, along with Respondent Nos. 1 to 5, for the properties sold to Respondent Nos. 6 and 7 to defraud the creditors.

20. Having heard the Applicant and contesting party, ie the Respondent No. 6, this Adjudicating Authority finds that there is no denial of the execution of sale deeds for which such relief has been claimed. Still, at the initial stage, while filing this Interlocutory Application, the Applicant opted not to file any such sale deeds on record. Along with the Interlocutory Application, the Applicant placed the following documents:

i. Report of the Forensic Audit issued by the CA Ambika Varma, A C of R Rajan Associates, Chartered Accountants and Associates.

ii. Minutes of the 6th Committee of Creditors recommending the Application to be filed before this Adjudicating Authority.

21. Thereafter, in the connected matter, IA(IBC)/7/KOB/2025, vide Order dated 13.03.2026, this Adjudicating Authority directed the Applicant/Resolution Professional to place on record the relevant documents on the basis of which the Forensic Auditor and the Resolution Professional had formed their opinion regarding the liability of the Respondents. Pursuant thereto, the Applicant placed on record certain documents dated 22.03.2026, 09.04.2026 and 21.07.2026. An opportunity was also afforded to the Respondents to respond to the documents so placed on record. The Applicant has produced the following documents :

Date of Memo	22.03.2026	09.04.2026	21.07.2026
Documents	• Sale Deed Nos. 2107/2019 and 2381/2021 relating to the sale of the units in "Jomer Symphony". • Sale Deed Nos. 900/2023,	• Demand Notice under Section 13(2) of the SARFAESI Act, 2002, dated 14.03.2017. • Possession Notice dated	• Bank statements of the Corporate Debtor maintained with Axis Bank and Federal

	901/2023, 902/2023, 2565/2022, 2566/2022, 2670/2022 and 2671/2022 relating to the sale of land at Panangadu. • Sale Notice dated 29.04.2023. • Email communications between the Applicant and SBI.	16.11.2017 issued by SBI. • Notice dated 17.04.2023 issued by SBI under the Security Interest (Enforcement) Rules, 2002. • E-Auction Sale Notice issued by SBI under the SARFAESI Act, 2002. • Terms and Conditions for the e-auction sale issued by SBI. • Newspaper publications relating to the e-auction.	Bank for the relevant period. • Statement of Accounts of the Associate Company, ITMA Hotels India Private Limited. • SBI Loan Account bearing No. 67318251517.

22. The Applicant has sought the reliefs in the present Application by invoking Sections 66(1) and 66(2) of the IBC, 2016, which are reproduced below:

"Section 66: [1][Fraudulent or wrongful trading.]

> *66. (1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may on the application of the resolution professional 2[or the liquidator,) 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 corporate debtor as it may deem fit.*
> *(2) On an application made by a resolution professional during the corporate insolvency resolution process 2[or by a liquidator], the Adjudicating Authority may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit, if-*
> *(a) before the insolvency commencement date, such director or partner knew or ought to have known that there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor; and*
> *(b) such director or partner did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor."*

23. Though both the provisions of Section 66(1) and 66(2) operate differently and have their different effects, colour, and flavour, Section 66 (1) imposes liability upon any person who was knowingly a party to the carrying on of business of the Corporate Debtor with an intent to defraud its creditors and for any fraudulent purpose. Whereas, 66(2) fastens liability upon a director or a partner who, before the insolvency commencement date, knew or ought to have known that there was no reasonable prospect of avoiding CIRP and nevertheless failed to exercise due diligence to minimise the potential losses to the creditors. The two provisions operate differently and are not interchangeable. The Hon'ble NCLAT, in ***Renuka Devi Rangaswamy IRP v. Mr. Madhusudan Khemka, (2023) ibclaw.in 384 NCLAT, and Worldwide Online Services Pvt. Ltd. v. Nandkishor Vishnupant Deshpande (RP) and Ors., (2026) ibclaw.in 129 NCLAT***, well recorded such distinction in the said orders.

24. The essential requirements under Section 66(1) are (a) carrying on business for a fraudulent purpose with an intent to defraud the creditors and (b) the concerned persons being knowingly a party to such a conduct. The Hon'ble NCLAT in ***Regen Powertech Pvt. Ltd. (Rep. RP Ebenezar Inbaraj) v. Wind Construction Ltd.,*** ***(2022) ibclaw.in 793 NCLAT***, categorically held that fraudulent intent must be established by cogent and tangible material and that every commercial failure or loss cannot be characterised as fraudulent trading. Similarly, in ***Renuka Devi Rangaswamy IRP v. Mr. Madhusudan Khemka, (2023) ibclaw.in 384 NCLAT,*** the Hon'ble NCLAT observed that dishonesty is an essential ingredient of fraudulent trading and cannot merely be presumed. Mere transfer of assets between group companies, commercial losses, non-recovery of dues or failure to take legal action would not, by themselves, establish fraudulent trading unless accompanied by material demonstrating fraudulent purpose and knowing participation."

25. Further, in ***Gopal Kalra v. Akhilesh Kumar Gupta, (2025) ibclaw.in 471 NCLAT***, the Hon'ble NCLAT held that the Court may examine the pattern and substance of transactions and surrounding circumstances to determine whether there was an intent to defraud and whether the concerned person was a knowing participant. Where fictitious parties, manipulated entries, absence of underlying transactions, and actual movement of funds collectively establish a fraudulent scheme, circumstantial evidence can support a finding under Section 66(1) of IBC, 2016.

26. So, the principles of law and interpretation of Section 66 as given by the Hon'ble Higher Court are clear enough that if there was an intention of the suspended management and some other persons to defraud the

creditors, they can be held liable under Section 66(1) of the IBC, 2016. Whereas, the suspended management can be held liable under Section 66(2) if, by their act and conduct, they cause loss to the creditors, knowing that such loss could have been avoided. So, the scope of Section 66 of the IBC, 2016 is ample and, further, in cases of fraud and fraudulent intentions, many times, we would not be able to gather direct evidence. So, the Hon'ble Higher Courts have been pleased to adopt an interpretation that even the surrounding circumstances would be sufficient to arrive at a right conclusion. But simultaneously, it has been held that every wrong decision or imperfect decision should not be categorised as a fraudulent transaction.

27. So, being conscious of such a state of affairs, this Adjudicating Authority would go into the merits of allegations made in the present IA. As far as the look-back period is concerned for Section 66 of the IBC, 2016, there is no look-back period, and we would like to take up the individual transactions. (1) The sale deeds executed in favour of Respondent Nos. 6 and 7, i.e., M/s. Inviot Systems India Private Limited and Mr. Abdul Jaleel, pertain to reliefs 2 and 3. It is the case of the Applicant that both the properties are mortgaged with the State Bank of India and Respondent Nos. 1 to 5 fraudulently sold such properties through individual sale deeds to Respondent Nos. 6 and 7. The details of the executed sale deeds are as under:

Sl.No.	**Name of the Seller**	**Name of the Purchaser**	**Date of execution of Sale Deed**	**Sale deed no.**	**Date of Sale Deed**	**Sale consideration**	**Sub-Registrar Office**
1.	M/s Jomer Properties and	M/s. Inviot Systems India	02.09.2021	2381/2021	14.12.2021	Rs.49,68,750/-	Maradu

	Investments Pvt Ltd	Private Limited					
2.	M/s Jomer Properties and Investments Pvt Ltd	Mr. Abdul Jaleel	28.09.2019	2107/2019	28.09.2019	Rs.49,00,000/-	Maradu

28. The Applicant has contended that upon default and declaration of the account as NPA, the Bank initiated the process under the SARFAESI Act,2002 by issuing notice under Section 13(2), and thereafter, the Bank took steps under Section 13(4) of the SARFAESI Act, 2002, to take possession. But Respondent Nos. 1 to 5 sold the properties to Respondent Nos. 6 and 7 to defraud the creditors. The Respondent Nos. 1 to 5 and 7 have failed to file any formal defence before this Adjudicating Authority to counter the allegations made in the IA, whereas only Respondent No. 6 has put in appearance and filed his reply.

29. The Respondent No.6 has come forward with the defence that Respondent No.6 is a bona fide purchaser having no notice of any charge over the property of State Bank of India and has paid double the amount of fair value to purchase such property, and even otherwise, the Bank has failed to prove any mortgage, and no order under Section 66 of IBC, 2016 can be passed against the third party. Having considered the material on record, Respondent No.6 has relied upon the Hon'ble Supreme Court in ***Gluckrich Capital Pvt. Ltd. v. State of West Bengal & Ors.,*** ***(2023) ibclaw.in 84 SC***.

30. We have heard the rival contentions, and we are of the opinion that, in ***Gluckrich Capital Pvt. Ltd. v. State of West Bengal & Ors.,*** ***(2023) ibclaw.in 84 SC***, the Hon'ble Supreme Court has held that Section 66 cannot be utilised against an independent third party merely for recovery

of dues. But, in our humble opinion, the said principle does not confer any immunity upon persons or entities which are shown, on the basis of evidence on record, either to be related parties or to have knowingly participated in the affairs and transaction of the Corporate Debtor, and further, Section 66(1) of IBC provides that if the business of the Corporate Debtor has been carried on with an intent to defraud creditors of the Corporate Debtor or for any fraudulent purpose, the Adjudicating Authority may pass an Order that any person who were knowingly parties to the carrying on of the business in such a manner shall be made liable to make such contributions to the assets of the Corporate Debtor. Therefore, we are of the view that if such persons are/were third parties and they are/were a constituent of such fraud, they can be held liable to make contribution to the assets of the Corporate Debtor, and the Adjudicating Authority can exercise its powers to pass such orders to bind the said third parties.

31. The Applicant has placed on record the following documents to establish the initiation of proceedings under the SARFAESI Act, 2002:

- Demand Notice under Section 13(2) of the SARFAESI Act, 2002, dated 14.03.2017.
- Possession Notice dated 16.11.2017 issued by SBI.
- Notice dated 17.04.2023 issued by SBI under the Security Interest (Enforcement) Rules, 2002.
- E-Auction Sale Notice issued by SBI under the SARFAESI Act, 2002.
- Terms and Conditions for the e-auction sale issued by SBI
- Newspaper publications relating to the e-auction.

32. There is no denial on the part of Respondent Nos. 1 to 5 regarding the creation of security interest over the property or the receipt of the demand notice issued under Section 13(2) of the SARFAESI Act. At this juncture, it would be appropriate to reproduce the relevant Section 13 of the SARFAESI Act, 2002.

> *Section 13: Enforcement of security interest.*
> *13. (1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act.*
>
> *(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).*
>
> *1[Provided that—*
>
> *(i) the requirement of classification of secured debt as non-performing asset under this sub-section shall not apply to a borrower who has raised funds through issue of debt securities; and*
>
> *(ii) in the event of default, the debenture trustee shall be entitled to enforce security interest in the same manner as provided under this section with such modifications as may be necessary and in accordance with the terms and conditions of security documents executed in favour of the debenture trustee.]*
>
> *(3) The notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower.*
> *……*

> ***(13) No borrower shall, after receipt of notice referred to in sub-section (2), transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor.***

33. So, the issuance of demand notice dated 14.03.2017 under Section 13(2) of the SARFAESI Act,2002 itself restricts the mortgagor from dealing with the secured asset irrespective of terms of mortgage. After receipt of the Section 13(2) notice, the mortgagor could not transfer any right to a third person without prior written consent from the secured creditor. There is no factual denial about issuance and receipt of demand notice under Section 13(2) of the SARFAESI Act,2002 and steps taken for possession under Section 13(4) of the SARFAESI Act,2002 on 16.11.2017.
34. The Respondent Nos. 1 to 5, after issuance of Demand Notice under Section 13(2) of the SARFAESI Act, 2002, were refrained from alienating or disposing of any assets in which security interest was created. Further, upon taking steps for the possession of the property, the Bank issued a public notice through publication of the possession notice in two newspapers. So, the said notice, in fact, was a notice to the public at large. As such, the Respondent No. 6 and 7 cannot be allowed to take the defence that they were not aware of the mortgagee rights of the Bank.
35. Further, the Applicant has placed on record the email dated 11.03.2024 received from SBI along with the Rejoinder as Annexure REJ-1, wherein the Bank has categorically confirmed that it had neither released nor issued any NOC for release of Unit No. 7 (Door No. 48/1744/C14) on the fourth floor and Unit No. 5 (Door No. 48/1744/C55) on the eighth floor of Jomer Symphony Building. The Bank has also specifically referred to the said units as “mortgaged property”. Thus, the said communication

establishes that the aforesaid properties continued to be subject to the mortgage/security interest of SBI and had not been released by the Bank at the relevant time. The said email received from the bank is reproduced under:

Annexure REJ -1

Mahalakshmi

From: Jomer CIRP <jomercirp@abaaffiliates.com>
Sent: 06 September 2024 12:36
To: Ambika Varma; Mahalakshmi Natarajan
Subject: Fwd: Jomer Properties and Investments under CIRP

---------- Forwarded message ---------
From: **SBI STRESSED ASSET MANAGEMENT BR COIMBATORE(16454)** <sbi.16454@sbi.co.in>
Date: Mon, Mar 11, 2024 at 3:46 PM
Subject: Re: Jomer Properties and Investments under CIRP
To: Jomer CIRP <jomercirp@abaaffiliates.com>

Dear Sir,

M/s. Jomer Properties and Investments Pvt. Ltd. (Corporate Debtor)

With reference to your email dated 09.03.2023 enclosing copy of your letter requesting transfer of custody and control of the assets of the Corporate Debtor, we have to advise you as below:

a) The Bank has neither released nor provided any NOC for release of Unit No.7 (Door No.48/1744/C14) in the fourth floor and Unit No.5 (Door No.48/1744/C55) in the eighth floor of the Jomer Symphony Building.
b) The occupants of the aforesaid units are not a party known to the Bank and the occupancy is considered as illegal.

2. In view of the above, we request you to ascertain the details of the illegal occupants and any documentary proof showing their right over the mortgaged property, if any or the reasons for their occupancy. After obtaining such details, we shall approach the Hon'ble NCLT Kochi for appropriate orders, as the Corporate Debtor is under CIRP and the Bank / Financial Creditor is under moratorium.

Regards,
Asst. General Manager & CLO II
SBI SAMB Coimbatore
Mob: 9496362888

True Copy

36. Further, we have gone through the sale deeds. Though there is a reference that sale consideration has been paid through banker's cheques, there are no details about any banker's cheques or demand drafts, or in whose favour such payments were made by the sellers. Even along with the written statement, Respondent No. 6 has failed to place on record details of such payment or any records to prove that, from its account, the money was transferred to the accounts of the Corporate Debtor on account of the sale consideration. Whereas, Respondent No. 7 has failed to appear and file any written reply. As per the report of the Forensic Auditor, also, in the

Books of Accounts of the Corporate Debtor, no money has come in on account of sale deeds executed in favour of Respondent No.6 and Respondent No.7.

37. Under the given circumstances, once the sale consideration is not reflected in the accounts of the Corporate Debtor and the Forensic Auditor has failed to verify such alleged sale consideration in the accounts of the Corporate Debtor, only one inference can be drawn that the sale deeds so executed were without consideration, as far as the Corporate Debtor is concerned. Any amount paid to any third party by the purchaser of the property for a sale deed executed on behalf of the Corporate Debtor would not be considered as sale consideration. So, the alleged sale deeds as executed in favour of Respondent Nos.6 and 7 are hit by the mortgagee rights of the secured creditor, and further, there is no evidence on record that sale consideration was ever validly paid to the seller, the Corporate Debtor. Under the given circumstances, Respondent No. 6 and 7 cannot be allowed to take the defence of innocence and ignorance. They were party to the transaction by which the assets of the Corporate Debtor were depleted to undermine the rights of the State Bank of India, the secured creditor, and other creditors. Certainly, it would come within the ambit of Section 66(1) of the IBC, 2016, and the Respondent Nos. 6 and 7 are liable to face consequences thereby.

38. The other transactions for which the Applicant has filed this Interlocutory Application relate to the sale deeds executed by the Respondent Nos. 1 to 5 in favour of Respondent Nos. 1 and 2. It is the case of the Applicant that the fair value of the property was Rs. 2,68,31,200/-whereas the sale deed was executed at a lesser price.

39. At this juncture, this Adjudicating Authority deems it appropriate to reproduce the relevant portion of the Forensic Audit Report pertaining to the aforesaid transactions, which reads as under:

G. *Findings in detail* -**UNDERVALUED TRANSACTION UNDER SECTION 45 OF THE IBC**

1. Sale of Land at Panangadu, to Directors

a. During FY 2022-23, the Company sold parcel of land, located at Panangadu, having a book value of INR 1,33,70,250. The said property was acquired by the Directors of the Company, namely, Mr. Renju Jose and Mr. Renjith Jose, by paying a consideration of INR 1,43,30,330 and the Company has resultantly booked a profit from the sale of land of INR 9,60,080.

b. The sale has been executed by way of different sale deeds (attached herewith as ***Annexure-6***), details given below.

Sl. No	Date of sale	Document Number	Block Number	Re-survey Number	Type of Land	Buyer	Area (in Are)	Amount of consideration	Fair value as per Sale Deed	Stamp duty paid
1	30-Mar-23	900/2023	16	106/6-2	Wet Land	Renju Jose	6.76	15,86,600	29,74,400	2,37,952
2	30-Mar-23	901/2023	16	102/15-2, 102/13-2 & 102/11-2	Dry Land		12.46	29,28,100	54,82,400	4,38,592
3	30-Mar-23	902/2023	16	102/12-2 & 102/12-3	Dry Land		4.49	10,55,200	19,75,600	1,58,048
4	22-11-2022	2565/2022	16	102/2 & 102/20	Dry Land		8.39	19,71,650	36,91,600	2,95,328
5	22-11-2022	2566/2022	16	102/5-3	Dry Land	Rohit Jose	11.49	27,00,150	50,55,600	4,04,448
6	03-12-2022	2670/2022	16	102/5	Dry Land		11.57	27,18,950	50,90,800	4,07,264
7	03-12-2022	2671/2022	16	102/5-2	Dry Land		5.82	13,67,700	25,60,800	2,04,864
TOTAL							**60.98**	**1,43,30,350**	**2,68,31,200**	

c. The Company, vide mail dated 05 September 2024 has stated the following:

"The company had entered into agreement with Mr. Renju Jose to sell the immovable property (marshy land) located at Panangad on 17/06/2017(either to him or to his nominees) for a total consideration of Rs. 1,43,30,330/- and received advance for the same. As the fair value of the subject properties were much higher than the market value on that date, the parties agreed to make application to concerned authorities to refix the fair value for the said properties and would execute the sale deed thereafter. However, even after 5 years, the issue was not resolved and the parties agreed to execute the sale deed at the agreed price with payment of stamp duty and registration charges as per the statutory norms applicable in this regard. Accordingly, the Parties executed the Sale deed during the FY : 2022-23 instead of executing it during the FY : 2017-18."

d. We have also verified the fair value of land available in the portal of the government of Kerala, (igr.kerala.gov.in), wherein only the values for the wet land is available. The said values are also in line with fair value as provided in the sale deed.

e. As per Section 45 of the IBC, transactions would be considered as undervalued if the corporate debtor makes a gift to any person, or when there is a transfer of one or more assets by the corporate debtor at a consideration significantly lower than what the corporate debtor paid for the asset, given that the transaction is not entered into in the ordinary course of business. The section also provides for a look-back period for such undervalued transactions, which is one year preceding the Insolvency Commencement Date ("**ICD**"), for the transactions made with any other person, and two years preceding the ICD for the transactions made with a related party.

f. A summary of the transactions appearing in the ledger of the concerned Directors, during the period under consideration, is tabulated below:

Advance for Land/Building-Rohit Jose

Sl.No	Date	Amount	Narration
1	16-02-2022	14,01,520.00	Opening Balance
2	18-07-2022	46,00,000.00	Amount transferred as purchase advance
3	30-03-2023	-40,86,650.00	Being land sold and profit booked
TOTAL		**19,14,870.00**	

Advance for Land/Building-Renju Jose

Sl. No	Date	Amount	Narration
1	16-02-2022	2,30,00,125.00	Opening Balance
2	05-05-2022	30,000.00	Advance amount received
3	20-06-2022	22,000.00	Advance amount received
4	03-07-2022	-3,00,000.00	Advance amount refunded
5	06-07-2022	-8,00,000.00	Advance amount refunded
6	08-07-2022	-4,00,000.00	Advance amount refunded
7	04-08-2022	-3,00,000.00	Advance amount refunded
8	26-08-2022	4,60,464.00	Advance
9	22-09-2022	7,00,000.00	Advance
10	23-09-2022	-5,00,000.00	Cheque Paid
11	04-10-2022	3,00,000.00	Advance
12	10-10-2022	1,00,000.00	Advance taken from Renju Jose
13	13-12-2022	1,20,000.00	Advance transfer for expense clearing
14	16-12-2022	-40,000.00	Advance refunded
15	17-12-2022	-45,000.00	Advance refunded
16	28-03-2023	3,00,000.00	Advance
17	30-03-2023	-1,02,43,680.00	Being land sold and profit booked
18	08-05-2023	1,25,000.00	Advance transfer for clearing salary amount
19	10-05-2023	1,50,000.00	Advance taken from Renju Jose
20	16-05-2023	-2,75,000.00	Advance Redunded
21	12-06-2023	1,50,000.00	Advance Transferred from Renju Jose for making payment related to legal advocate
22	20-06-2023	-1,50,000.00	Advance Paid by Renju Jose refunded
23	08-08-2023	50,000.00	Advance
24	29-12-2023	1,00,000.00	Advance
TOTAL		**1,25,53,909.00**	

g. Based on the facts of the case and the provision of law, we conclude as follows:

- The transaction has taken place within the look-back period as given in the IBC since the transaction was entered into with the Related Parties of the Company
- The fair value of the land of the Company, based on the value declared in the sale deed was INR 2,68,31,200. However, the same was sold only for a value of INR 1,43,30,330. Though the sale consideration is more than the book value of the property, it falls short of its fair market value by a huge margin
- The Company vide mail dated 05 September 2024, stated that it had applied to the Specified officer for re-fixing the fair value of the land. However, the Company was unable to provide us with any supporting to substantiate its claim

- As is evident from the table above, the land has been sold at a value less than its fair value on a date which is within the above look-back period. At this juncture, we would like to point out to the Emphasis of Matter Paragraph in the Independent Auditor's Report wherein it is mentioned that the fair value of the land transferred is INR 2,68,31,200.
- As per the sale deeds entered into with Mr. Rohith Jose, the consideration payable for purchase of land was INR 67,86,800. However, the total receipt from the said Director, as per the books of accounts is only INR 60,01,520.
- The Company has not provided any documentary evidence in support of refund of advance paid to Mr. Renju Jose from time to time. Moreover, we are given to understand from the Independent Auditor's Report, issued for the Financial Year 31 March 2021, 31 March 2022 and 31 March 2023 that consideration for the above transaction includes amounts originally remitted by M/s J M Trading and M/s Nedia Enterprises Inc during the FY 2015-16 and FY 2016-17. We have not been provided with any documentation to verify the same
- In light of the above, the above transaction is classifiable as an undervalued transaction under section 45 of the IBC.

40. There is no evidence on record to establish the fair value prevailing at the relevant time, as the Applicant has not placed on record the Collector's rate applicable to the subject property at the time of the transaction. However, the value adopted for the purpose of payment of stamp duty is reflected in the sale deeds themselves, which indicates that the

Respondents had themselves proceeded on a higher value for the purpose of registration and payment of stamp duty. There is no material on record to suggest that the Respondent No.1 to 5 ever made any effort to get fixed the fair value. Despite being agreed in the alleged agreement dated 17.06.2017, it was the duty of the Respondent No.1 to 5 to get the fair value reassessed before sale and failure on their part will invite the stipulation made in Section 66(2) of the IBC, 2016 about due diligence in minimising the potential loss to the creditors of the corporate debtor. The difference between such value and the consideration stated in the sale deeds therefore requires due consideration while examining the nature of the transaction.

41. It is further noted that Respondent Nos. 1 and 2, in whose favour the properties were transferred, were directors of the Corporate Debtor and, therefore, related parties. It is further relevant to note that Respondent Nos. 1 and 2 are the sons of the Respondent No.4, Mr. M.M. Jose, who, as the authorised person of the Corporate Debtor, executed the sale deeds in their favour. However, no material has been placed on record to show any business exigency or valid reason for selling the properties to them at such a lower consideration. There is also no material to show that the decision was taken after due diligence or on any bona fide commercial consideration. Further, the Forensic Auditor has not found any resolution of the Corporate Debtor authorising the transfer of the properties in favour of the related parties at such a consideration. These circumstances cast doubt on the bona fide nature of the transactions.

42. Thus, the sales made in the years 2022 and 2023 cannot be treated as sales made in the ordinary course of business; rather, the sales were made to defraud the creditors and undermine their right in apprehending

actions after financial distress. Though the transactions were categorised as undervalued transactions by the Forensic Auditor, we concur with the stand taken by the Applicant to put these transactions as fraudulent transactions under Section 66 of the Code, keeping in view the entire facts and circumstances and the underlying objectives of the suspended directors to defraud the creditors.

43. Having considered the transactions discussed hereinabove, this Adjudicating Authority is of the view that appropriate relief is necessary to protect the interests of the Corporate Debtor and its creditors. The Applicant has sought, inter alia, to set aside the sale deeds relating to the two units in Jomer Symphony and to restore the properties to the name of the Corporate Debtor. However, having regard to the legal position governing the exercise of powers under Section 66 of the Insolvency and Bankruptcy Code, 2016, we feel it appropriate to say that orders to make contribution to the assets of the Corporate Debtor would suffice instead of the relief of setting aside the registered sale deeds in the present proceedings. There exist different views taken by different coordinate benches of NCLT about the fate of sale deeds executed in favour of third parties by the suspended management of CD to detriment the rights of the creditor. In the present case, it is pleaded that sale deeds were executed in favour of Respondent No.s 6 and 7 at a value above the fair value/ collector's rate. So, if we mould the relief in monetary consideration to make good the loss caused to the Corporate Debtor, it would meet the ends of justice. In these circumstances, we consider it appropriate to mould the relief sought by the Applicant, having regard to the findings recorded hereinabove and the interests of the Corporate Debtor and its creditors.

44. In this regard, we place reliance on the order of the Hon'ble NCLAT in *Bhagyodayam Company v. Shri. George Gomez, (2025) ibclaw.in 222 NCLAT,* wherein the Hon'ble NCLAT observed as follows:

> *34. As a matter of fact, Courts created under the Statute, have an inherent power vested in them to modulate the relief so as to meet the ends of justice and a rigid straight jacketed formula is not to be adopted and applied in a manner to deceive the very purpose of an earlier adjudication of the controversy between the parties, owing to the hyper technical view that since prayer was for formulation of decree, which falls outside the ambit of powers vested with the Tribunal, the applications are liable to be dismissed.*

45. In the present case, the findings recorded hereinabove show that the two units in Jomer Symphony were sold while under mortgage to the State Bank of India, without the Bank's release or no-objection certificate, and that there is no evidence of the sale consideration having been received by the Corporate Debtor. In view of these findings and the principle laid down by the Hon'ble NCLAT, we proceed to consider the appropriate alternative relief in respect of the said transactions.

46. Each case has its own merits and is required to be adjudicated under the given facts and circumstances. So, this order cannot be construed as a precedent. Certainly, refund of the amount and interest factor would adequately address the grievances of the Applicant as well as the creditor.

47. Accordingly, we pass the following order:

    a. Respondent Nos. 1 and 2 are directed to pay the difference between the fair value and the registered sale consideration of the properties transferred in their favour, amounting to Rs.62,50,425/- each, together with interest at the rate of 12% per annum with monthly rest or SBI Prime Lending Rate plus 2% per annum with monthly rest, whichever is higher, from the respective dates of

payment of the original sale consideration until realisation, into the bank account of the Corporate Debtor maintained by the Resolution Professional within 30 days from the date of this order.

b. Respondent No. 6, M/s. Inviot Systems India Private Limited, is directed to deposit Rs.49,68,750/-, being the sale consideration recorded in Sale Deed No. 2381/2021 dated 02.09.2021 in respect of Unit No. 7 on the fourth floor, bearing Corporation Door No. C.C. 33/2317 C14 (New No. 48/1744 C14), in the Jomer Symphony, together with interest at the rate of 12% per annum with monthly rest or SBI Prime Lending Rate plus 2% per annum with monthly rest, whichever is higher, from the date of execution of the sale deed until realisation, into the bank account of the Corporate Debtor maintained by the Resolution Professional within 30 days from the date of this order.

c. Respondent No. 7, Mr. Abdul Jaleel, is directed to deposit Rs.49,00,000/-, being the sale consideration recorded in Sale Deed No. 2107/2019 dated 28.09.2019 in respect of Commercial Unit No. 5 on the eighth floor, bearing Corporation Door No. C.C. 48/1744 C55, in the Jomer Symphony, together with interest at the rate of 12% per annum with monthly rest or SBI Prime Lending Rate plus 2% per annum with monthly rest, whichever is higher, from the date of execution of the sale deed until realisation, into the bank account of the Corporate Debtor maintained by the Resolution Professional within 30 days from the date of this order.

d. Respondent Nos. 1 to 7 are hereby restrained from creating any third-party interest in any manner on the respective properties

involved in this IA until the amounts directed to be deposited are paid into the account of the Corporate Debtor

e. As security for the payments directed under clauses (a), (b) and (c) above, the following properties shall remain under attachment until the respective amounts payable, together with interest, are deposited in full into the bank account of the Corporate Debtor maintained by the Resolution Professional:

   i. The land at Panangadu transferred in favour of Respondent Nos. 1 and 2 under Sale Deed Nos. 900/2023, 901/2023, 902/2023, 2565/2022, 2566/2022, 2670/2022 and 2671/2022;

   ii. Commercial Unit No. 7 on the fourth floor of "Jomer Symphony", bearing Corporation Door No. C.C. 33/2317 C14 (New No. 48/1744 C14), covered by Sale Deed No. 2381/2021 dated 02.09.2021, in favour of Respondent No. 6; and

   iii. Commercial Unit No. 5 on the eighth floor of "Jomer Symphony", bearing Corporation Door No. C.C. 48/1744 C55, covered by Sale Deed No. 2107/2019 dated 28.09.2019, in favour of Respondent No. 7.

f. Upon payment of the respective amounts directed under clauses (a), (b) and (c) above, together with applicable interest, the concerned Respondents may file separate applications before this Adjudicating Authority, along with proof of compliance with the aforesaid directions, seeking lifting of the attachment over their respective properties.

g. The Applicant is directed to communicate this order to the concerned Sub-Registrar and Municipal Authorities for their information and necessary action in accordance with law.

48. In the light of the foregoing discussion, the present Application, **IA(IBC)/24/KOB/2025**, is **allowed** and disposed of accordingly.
49. The Registry is directed to send e-mail copies of this order forthwith to all the parties and their Learned Counsels for information and for taking necessary steps.
50. Let the certified copy of this order be issued upon compliance with the requisite formalities.
51. File be consigned to records.

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

Signed on this the 15th day of October, 2026.

At*JLsteno