

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I**

**I.A. NO. 5337 OF 2025 IN
C.P. NO. (IB) 1180 (MB)/2022**

*Under section 60(5) of the Insolvency
and Bankruptcy Code, 2016*

In the matter of

**OMKARA ASSET
RECONSTRUCTION PRIVATE
LIMITED**

...Financial Creditor

Versus

**GIGEO CONSTRUCTION
COMPANY PRIVATE LIMITED**

...Corporate Debtor

And

In the matter of

**SUBHASH GANPATRAO BUTY
(HUF THROUGH ITS KARTA,
SUBHASH GANPATRAO BUTY)**

...Applicant

Versus

**MR. PANKAJ BHATTAD
(RESOLUTION PROFESSIONAL
OF GIGEO CONSTRUCTION CO.
PVT. LTD.)**

...Respondent

Order Pronounced as on 21.04.2026**Coram:****Sh. Prabhat Kumar**

Hon'ble Member (Technical)

Sh. Sushil Mahadeorao Kochey

Hon'ble Member (Judicial)

Appearances:

For the Applicant

: Ms. Prachi Wazalwar

For the Respondent Resolution Professional

: Mr. Utsav Mukherjee

ORDER**Brief facts of the case**

1. This Interlocutory Application, being I.A. No. 5337 of 2025, has been filed on 16.11.2025 by Mr. Subhash Ganpatrao Buty, Karta of a Hindu Undivided Family (hereinafter referred to as the "Applicant"), in the Corporate Insolvency Resolution Process ("CIRP") of Gigeo Construction Company Private Limited (hereinafter referred to as the "Corporate Debtor"). The present Application has been filed seeking, following reliefs/directions against Mr. Pankaj Bhattad, the Resolution Professional of the Corporate Debtor (hereinafter referred to as the "Resolution Professional" or "Respondent").

- a. *To allow the present Interlocutory Application;*
- b. *Pending the hearing and adjudication of the present Interlocutory Application, not to decide or pass an order in Interlocutory Application (IBC) (Plan) No. 108 (MB) 2025;*
- c. *Declare that the Applicant's rights under the Development Agreement dated 25.02.2008 and Deed of Modification / Amendment dt. 01.10.2016 and related agreements including Memorandum of Understanding dt. 05.06.1998 are legally binding and recognized, and that the clause 7.9 of the Resolution Plan, as*

noted at paragraph 13 hereinabove, extinguishing such rights, is impermissible and liable to be struck down;

- d. Hold that the Applicant's rights under the Development Agreement dated 25.02.2008 and Deed of Modification / Amendment dt. 01.10.2016 and related agreements are protected legal rights which cannot be extinguished or modified unilaterally without due process under applicable law;*
 - e. Declare the impugned clause of the Resolution Plan purporting to extinguish the Applicant's rights as ultra vires and in violation of Section 30(2)(e) of the Insolvency and Bankruptcy Code, 2016;*
 - f. Reject and set aside any approval or sanction of the Resolution Plan containing such clauses that abrogate or curtail landowner's rights without adherence to the lawful procedure;*
 - g. Direct the Resolution Applicant to amend the Resolution Plan so as to fully protect all third-party rights, including those of the Applicant, failing which the Resolution Plan be rejected;*
 - h. Reject and dismiss any application or prayer seeking to extinguish, alter or modify the Applicant's rights under any pre-existing agreements without following the due process of law;*
 - i. To pass orders rejecting IA (IBC) (Plan) No. 108 (MB) 2025 filed by the Respondent for approval of the Resolution Plan;*
 - j. To pass orders rejecting IA (IBC) (Plan) No. 108 (MB) 2025 filed by the Respondent for approval of the Resolution Plan as non-compliant and in violation of Section 30 of the Insolvency and Bankruptcy Code, 2016;*
 - k. Such further and other reliefs as the nature and circumstances of the case may require as this Hon'ble Bench may consider fit.*
2. The CIRP of the Corporate Debtor was initiated pursuant to the order dated 04.06.2024 passed by this Tribunal in C.P. (IB) No. 1180 (MB)/2022, on an application preferred under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code") by Omkara Asset

Reconstruction Private Limited, a Financial Creditor. Pursuant to the admission of the Corporate Debtor into CIRP, this Tribunal appointed Mr. Ritesh R. Mahajan (Registration No. IBBI/IPA-002/IP-N00048/2017-18/10132) as the Interim Resolution Professional (hereinafter referred to as the “IRP”). Thereafter, in the 1st meeting of the Committee of Creditors (“CoC”), the CoC resolved to replace the IRP. In terms of the said resolution, this Tribunal, vide order dated 02.08.2024, confirmed the appointment of Mr. Pankaj Bhattad as the Resolution Professional of the Corporate Debtor.

3. The Respondent Resolution Professional has filed an Interlocutory Application, being I.A. (IBC) (Plan) No. 108/MB/2025, seeking approval of the Resolution Plan before this Tribunal. The said Application is presently pending adjudication.
4. In the interregnum, the Applicant has approached this Tribunal by way of the present Application under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016, opposing the approval of the Resolution Plan. It is, inter alia, contended that the Resolution Plan impermissibly seeks to extinguish pre-existing and admitted third-party proprietary and/or contractual rights arising under the Development Arrangement, and is therefore ex facie contrary to Section 30(2)(e) of the Code and liable to be rejected.
5. The Applicant is Pursuant to the order dated 25.06.2025 passed in IA (IBC) No. 4495 (MB) 2024, the Applicant was admitted as an Unsecured Financial Creditor in the Committee of Creditors to the limited extent of Rs.50,00,000/- and presently holds a voting share of 0.19%.
6. The Applicant, an HUF, is the owner of the piece and parcel of land bearing City Survey No. 3112 and 3111 (Part), Sheet No. 84, Khasara No. 317, Mouza Sitabuldi, admeasuring about 6911.68 sq. mtrs. (74397.32 sq. ft.), situated at Munje Square, Sitabuldi, Nagpur, Tahsil and District Nagpur.

7. On 5.6.1998, the Applicant entered into a Memorandum of Understanding (“MOU”) with the Corporate Debtor for developing aforesaid parcel of land. By way of the said agreement, the parties agreed that the Corporate Debtor shall develop the project land and construct a multi-storeyed building thereon. Thereafter, on 25.2.2008, the Applicant and the Corporate Debtor entered into an Agreement of Development (“DA”) for developing the parcel of land at Nagpur, Maharashtra. The said DA was modified on 1.10.2016 by a Deed of Modification and Correction (“Modification Deed”) whereby the parties specified the distribution of the units in the completed project.
8. It is undisputed fact that the Corporate Debtor derived development rights over prime immovable property situated at Sitabuldi, Nagpur, and has, in part performance thereof, developed a commercial project known as “Fortune Mall”, and the Corporate Debtor is contractually obligated to deliver 45% of the habitable built-up area along with 50% of the common areas/parking spaces to the Applicant, in addition to fulfilling other obligations, including adherence to timelines and payment of compensation for delay, wherever applicable.
9. The Resolution Plan approved by CoC and pending for approval of this Tribunal contains a clause 7.9, by which the applicant is aggrieved. The said clause reads as under :

7.9 Joint Development Agreement (“JDA”) entered into by Corporate Debtor dated 1st October 2016 for sharing of area 45:55 between Subhash Ganpatrao Buty H.U.F and Gigeo Construction Company Private Limited, It is hereby agreed that any liabilities or obligations that may arise under the JDA after the approval of this Resolution Plan shall be extinguished upon the Implementation of the Plan, subject to the provisions of the Insolvency and Bankruptcy code, 2016. The Resolution Plan proposes to settle all present and past liabilities, including any liabilities arising from the JDA, and once the resolution

process is completed and the plan is approved by the Committee of Creditors (CoC).

10. It is contended by the Applicant that the DA and Modification Deed, executed between the Applicant and the Corporate Debtor, constitute a comprehensive, indivisible, and self-contained contract governing the inter se rights and obligations of the parties. It is case of the Applicant that the Successful Resolution Applicant (“SRA”), under the Resolution Plan, has sought to selectively appropriate such rights of the Corporate Debtor under the said Agreements as are beneficial to it, while disregarding and omitting the corresponding obligations arising therefrom, and such selective appropriation of rights, without assumption of corresponding obligations, is ex facie arbitrary, impermissible in law, and unsustainable, particularly when the said Agreements are indivisible in nature and incapable of being severed or dissected in the manner sought by the SRA. Accordingly, it is contended that any provision of the Resolution Plan which seeks to extinguish, alter, modify, abrogate, or curtail the Applicant’s rights, including third-party rights, is ultra vires the provisions of the Insolvency and Bankruptcy Code, 2016, and in contravention of Section 30(2)(e) thereof, rendering the Resolution Plan non-compliant and liable to be rejected.
11. It is contended by the Applicant that neither the Code nor Regulation 37 of the CIRP Regulations contemplates or authorises the extinguishment of independent third-party proprietary or contractual rights, and that the scope of a Resolution Plan is confined to dealing with the assets and liabilities of the Corporate Debtor alone. Hence, it is submitted that the impugned Resolution Plan, in seeking to extinguish the said Agreements and the rights of the Applicant thereunder, is contrary to settled legal principles and is, therefore, legally untenable.

12. The Respondent Resolution Professional has filed the reply, to which the applicant filed a rejoinder and thereafter, the resolution professional also filed a sur-rejoinder. The Successful Resolution Applicant i.e. M/s MKS Constro-Venture Pvt. Ltd. also filed an affidavit clarifying the provisions. The Ld. Counsel for the Parties were heard by this Tribunal.
13. Upon consideration of the submissions advanced by the learned counsel for the parties and upon perusal of the material available on record, it prima facie appears that the grievances raised by the Applicant pertain to the extinguishment of obligations of the Corporate Debtor in terms of DA and Modification Deed in so far as it relates to the applicant, as contemplated in the resolution plan pending for approval before us, however, there is no quarrel in relation to entitlement to the agreed ratio in the property, which is duly acknowledged in the plan and saved as well. It is the apprehension of the Applicant that approval of the Resolution Plan in its present form may result in certain obligations of Corporate Debtor falling upon them, which otherwise are to be discharged by the Corporate Debtor in terms of DA and Modification Deed.
14. The Resolution Professional in his reply has stated that the contractual obligations of the Corporate Debtor envisaged in clause 1 of DA relating to sanction plan has already been complied with as per admission of the applicant itself. Further, entitlement of FSI over and above 2.5 vests in the applicant, which is evident from the disclosure made in the Information Memorandum, thus complying with clause 2 of DA. The share of Corporate Debtor and the applicant has not been tinkered with, instead the proposed resolution plan explicitly clarifies in relation thereto thus there is no contravention of clause 3 of DA as well. In relation to clause 8 relating to occupancy certificate, SRA has sought additional time to procure the Occupancy Certificate (“OC”) for both the Fortune Mall and Pulse Care from appropriate governmental authorities as is evident from clause 12.4(iv) of the proposed resolution plan, thus complying with clause 8 of DA as well.

15. This Tribunal, vide order dated 10.03.2026, sought clarification from the Successful Resolution Applicant with regard to the obligations of the Corporate Debtor under the Joint Development Agreement, insofar as the same have a bearing on the rights of the Applicant under the Resolution Plan. Pursuant thereto, the Successful Resolution Applicant filed an affidavit dated 14.03.2026. In the said affidavit, the Respondent has unequivocally stated that the contractual liabilities arising under the said Agreements have either been duly performed by the Corporate Debtor or have been adequately provided for in the Resolution Plan, and that none of the obligations of the Corporate Debtor towards the Applicant stand terminated.
16. The relevant extract of the affidavit dated 14.03.2026, as filed by the Respondent, is reproduced hereinbelow:

“3. It is submitted that the Deponent is fully committed to fulfil all obligations of the Corporate Debtor towards the Applicant as enshrined in the Agreement of Development dated 25.02.2008 (‘DA/JDA’) entered into between the Applicant and the Corporate Debtor, along with the Deed(s) of Modification/Correction dated 25th March, 2008 and 1st October, 2016.

4. It is submitted that the Deponent has ascertained that the Applicant has specifically contended that the following obligations of the Corporate Debtor towards the Applicant shall stand terminated in terms of the Resolution Plan submitted by the Successful Resolution Applicant:

(a) the obligation to complete all pending construction (Clauses 1 and 3 of the JDA);

(b) the obligation to obtain Fire NOC for the building;

(c) the obligation not to undertake any construction beyond the permissible FSI of 2.5, which is stated to vest exclusively with the Applicant (Clause 2 of the JDA).”

17. It is further observed that, in the said affidavit, the Successful Resolution Applicant has elaborately dealt with the provisions of the Resolution Plan in respect of the aforesaid obligations in Para 5 and has categorically asserted that none of the obligations of the Corporate Debtor towards the Applicant, namely (i) obligations in respect of construction, Occupation certificate and Fire NOC, and (ii) vesting of FSI over and above 2.5 in the applicant.
18. Accordingly, in view of the clarifications furnished by the Successful Resolution Applicant in the affidavit dated 14.03.2026, this Tribunal deems it appropriate to direct that the Respondent, including the Successful Resolution Applicant, shall remain bound by and strictly adhere to the commitments and representations made in the Resolution Plan, as well as the statements and undertakings contained in the aforesaid affidavit. It is further directed that all obligations of the Corporate Debtor towards the Applicant, as arising under the Development Agreement dated 25.02.2008, the Deed of Modification/Amendment dated 01.10.2016, and related agreements, shall be duly honoured and implemented in accordance with law and the terms of the approved Resolution Plan. Needless to say, the applicant can not raise any grievance in relation to any relief/concession sought by the application in relation to FIRE Noc, as prayer for such relief and concession is within discretion of this tribunal and is to be considered in accordance with the law applicable thereto. Nonetheless, prayer for such specific relief itself indicates that the Successful Resolution Applicant is committed to bind itself for procurement of fire NOC.
19. In so far as any financial implications arising from non-compliance(s) on the part of the corporate debtor are concerned, such implications are to be dealt with in accordance with section 30(2) of the IBC, which makes the

provisions of the approved resolution plan binding on all the parties. Further, objection in relation to omission in relation to obtention of occupation certificate for the Fortune Mall Structure upto the 2nd Floor thereof is concerned, it is noted that the obligation to obtain occupation certificate for 3rd and 4th floor of the Fortune Mall covers the obligation to obtain the occupation for whole of the building. As regards time limit for obtaining the occupation certificate is concerned, the IBC itself provides for 12 months to have the requisite approvals and consents in place, hence we do not feel that there is need for specific enumeration thereof.

20. In view of the foregoing discussion and the material placed on record, we are of the considered view that the grievances raised by the Applicant, particularly in relation to the obligations of the Corporate Debtor under the subject agreements, stand adequately addressed in the Resolution Plan and do not, prima facie, cause any prejudice to the rights or interests of the Applicant. Accordingly, we hold that the present Application, filed by Mr. Subhash Ganpatrao Buty in the CIRP of Gigeo Construction Company Private Limited against Mr. Pankaj Bhattad, deserves to be dismissed in terms of the provisions of the Insolvency and Bankruptcy Code, 2016. In view thereof, we do not find any merit in the prayer seeking rejection or reconsideration of the Resolution Plan. Consequently, I.A. No. 5337 of 2025 in C.P. (IB) No. 1180/2022 stands dismissed.

Sd/-

Prabhat Kumar
Member (Technical)

Vijay Andhale

Sd/-

Sushil Mahadeorao Kochey
Member (Judicial)