

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU

(Exercising powers of Adjudicating Authority under
The Insolvency & Bankruptcy Code, 2016)
[Through Physical Hearing / VC Mode (Hybrid)]

IA No.270 of 2021 in
CP (IB) No.167/BB/2018

U/s 60(5)(c) of Insolvency & Bankruptcy Code, 2016
R/w I&B (Application to Adjudicating Authority) Rules, 2016
& applicable Rules of NCLT Rules, 2016

IN THE MATTER OF:

Mr. C.S. Harikumar

S/o. Late C. Sarangapani
R/a No.91/4, Devaki Nivas,
Anandavan Estate,
Nagasandra Post, Tumkur Road,
Bangalore – 560 073.

- Applicant

Versus

M/s. Sovereign Developers and Infrastructure Ltd.

Represented by its Resolution Professional

Mr. Balakrishnan V.
S/o. Late S. Venkatachalam,
R/a GF 2, Ittina Parma-1 Apartments,
Ramamurthy Nagar,
Bengaluru – 560 064.

- Respondent

Order pronounced on: 24th April, 2024

CORAM:

1. Hon'ble Shri K. Biswal, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Applicant : Shri S. Subrahmanya, Adv.
For the Respondent : Shri A. Murali with Shri Atul Madhavan, Advs.
The RP : Shri Balakrishnan Venkatachalam
For the SRA : Shri Varun S., Adv.

ORDER

Per: K. Biswal, Member (Judicial)

1. This Application has been filed by Mr. C.S. Harikumar under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the

‘Code / IBC, 2016’) and other applicable provisions of the Code read with the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and applicable Rules of the National Company Law Tribunal Rules, 2016 against the Respondent i.e., M/s. Sovereign Developers and Infrastructure Ltd. seeking the following reliefs:

- (a) declare that the Process Memorandum requesting the submission of resolution is incomplete as it does not consider the interest of the applicant being the landowner of the project M/s. Sovereign Sonaa;*
- (b) direct the Resolution Professional to consult and take the applicant into confidence before finalizing any decision with regard to Project M/s. Sovereign Sonaa;*
- (c) pending approval of the acceptance of Process Memorandum and appointment of Resolution Applicants, direct the Resolution Professional to jointly inspect the Schedule Property to evaluate the present status of the Project M/s. Sovereign Sonaa and ascertain the actual investments made by the Corporate Debtor on the Project ‘Sovereign Sonaa’ by engaging the services of qualified Engineers/evaluators and submit a report on the same within the time frame fixed by this Hon’ble Tribunal;*
- (d) direct the Resolution Professional to Issue a Fresh Process Memorandum in consultation with the applicant by taking all factors into consideration which inter alia include, the actual investments made by the Corporate Debtor on the project Sovereign Sonaa, actual investments require to be made on the project for its completion; addressing inter se claims of the Corporate Debtor and the applicant; fresh proposals of the applicant for subjecting the Schedule Property for development; loss and hardship caused to the applicant being the landowner of Project Sovereign Sonaa; current market value of the Schedule Property and probable appreciation till the project completion; ways of mobilization of funds and the guarantees to be ensured for project completion within the time Schedule mutually agreed upon; the financial ability, credibility, marketing presence of prospective resolution applicants and the mechanism that would be adopted by them for completion of the project in agreed manner; checks and balances that the parties may agree on time bound intervals;*

if development of the project M/s. Sovereign Sonaa is entrusted to any of the resolution applicants, the measures to be adopted to safeguard the interest of the applicant and to ensure no further delay in the project etc.,

Or in the alternative,

Order for restoration of the possession of the Schedule Property to the applicant subject to the resolution of inter se claims of the Corporate Debtor and the applicant to be decided by an arbitration within the time frame fixed by this Hon'ble Tribunal;

(e) Pass any such other order, issue any such other direction that this Hon'ble Tribunal deems it fit, in the interest of justice and equity.

2. Brief facts of the case are as follows:

(a) The Applicant claims that he is the absolute owner of all converted lands spanning Survey Nos. 92/1, 92/2, 93/2, 93/3, and 94/1 in Bagalagunte Village, Yeshwanthapur Hobli, Bangalore North Taluk, Bangalore District, totalling 9 acres and 2 guntas, presently having Khata No.1 (within Municipal Ward No.14) (hereinafter referred to as the '*Schedule Property*'), more fully described in the Schedule Property given in this Application. The acquisition occurred through a registered Sale Deed dated 17.09.1976, documented as No. 614, Book-1, Volume-3013, and recorded in the office of the Sub-Registrar Bangalore North Taluk. Following the purchase, the Applicant has possessed and enjoyed the property peacefully, updating Khata and revenue records in his name. Additionally, the Land has been converted for non-agricultural residential purposes by the Deputy Commissioner, Bangalore District. The registered sale deed dt.17.09.1976, order of conversion and order of renewal of conversion dated 31.10.2011 are annexed as Documents 1 to 3 respectively.

(b) Subsequently, the Applicant entered into a Joint Development Agreement (JDA) with the Corporate Debtor, formalized on 28.03.2011, and registered as Document No. PNY-1-07499-2010-11 at the Sub-Registrar's Office in Peenya. This Agreement entails the development of the Schedule Property. Concurrently, a registered General Power of Attorney (GPA) was executed on the same date, granting the Corporate Debtor authority to undertake

various actions on the Schedule Property. The JDA & GPA are annexed as Documents 4 and 5 respectively.

- (c) It is submitted that as per the JDA, the Corporate Debtor has to complete the total project in all respect within 36 months from the date of issuance of the sanctioned plan and construction license. The Corporate Debtor had taken the responsibility and expenses of preparing necessary plans and drawings at the cost and expenses of the Corporate Debtor and obtaining of necessary plan sanctions from the authority concerned was the responsibility of the Corporate Debtor. The Applicant, relying on Corporate Debtor's credibility, agreed to a sharing ratio of 72% for the Corporate Debtor and 28% for the benefit of the Applicant. Plans were sanctioned by concerned authority on 13.07.2012, permitting construction of residential Blocks 'A' and 'B' with Ground Floor and 24 Upper Floors. A Supplemental Deed of Partition cum Sharing was also executed on 07.09.2013 and is registered as Document No. RJN-1-03235-2013-14 in the Sub-Registrar's Office, Rajajinagar is attached as Annexure Document-7.
- (e) The Applicant submitted that despite more than four years and five months passing since the JDA's execution and more than three years from the date of Plan sanctioning and issuance of construction license, there was no much progress in the Project. The Corporate Debtor had not even made any efforts to obtain the necessary Commencement Certificate from Bruhat Bangalore Mahanagara Palike (BBMP), halting the construction progress. The Corporation Authorities stopped the work in January, 2014 due to incomplete information from the Corporate Debtor. Despite repeated requests, the Corporate Debtor made no effort to resume work, abandoning the Project entirely. Further the Corporate Debtor had given vague promises of project resumption and timely completion.
- (f) It is further stated that Applicant had fulfilled all contractual obligations by providing necessary documents, but the Corporate Debtor failed to develop the Schedule Property for undisclosed reasons. The Corporate Debtor's financial crisis and legal disputes over other projects, like the cancellation of JDA in Chikkabettahalli Village and litigation regarding the '*Sovereign Unnathi*' Project, indicate their inability to fulfill commitments. Furthermore, the Corporate Debtor's minimal investment in Applicant's

Project suggests that they lack the requisite resources to complete it as agreed. Considering the given circumstances, the Applicant deemed that it is practically impossible for the Corporate Debtor to fulfill their obligations outlined in the JDA.

- (g) Being dissatisfied with the Corporate Debtor's inaction and suspecting an attempt to obstruct their valuable lands, the Applicant requested the Corporate Debtor for necessary development information and proof of the Corporate Debtor's ability to complete the project in a letter dated 08.09.2014, which is placed on record as Document-9 to the Application. The Applicant has demanded specific details from the Corporate Debtor within seven days, including proof of development progress and financial plans due to the substantial investment involved. However, the Corporate Debtor failed to respond positively.
- (h) Consequently, with no viable recourse, the Applicant issued a notice on 09.10.2014, which is placed on record as Document-10, terminating the JDA and GPA both dated 28.03.2011, effective immediately upon the issuance. The cancellation also extended to the Supplemental Deed of Partition cum Sharing, given its connection to the terminated JDA dated 28.03.2011.
- (j) The Applicant asserts that he has forfeited the refundable security deposit of Rs. 2,00,00,000/- paid by the Corporate Debtor due to their failure to fulfill contractual obligations and initiate the Project as agreed upon. Additionally, the non-refundable security deposit of Rs. 4,00,00,000/-, paid by the Corporate Debtor as assurance for timely project completion, was appropriated by the Applicant for his benefit, as stated in the notice.
- (k) In the notice, issued due to the project's halt since January, 2014 and idle equipment left by the Corporate Debtor, the Applicant demanded removal of said equipment within 15 days. They reserved the right to claim any losses or damages resulting from the breach of contract leading to the Agreement's cancellation. Furthermore, the Applicant informed that any acts or agreements made by the Corporate Debtor henceforth would not bind them, and they notified the general public of the said cancellation

through publication in 'Indian Express' and 'Kannada Prabha' Daily, copies of which are placed on record.

- (m) Following the issuance of the notice, the Applicant learnt that Karnataka Bank Ltd. had taken action against the Corporate Debtor for failing to repay loans related to *Sovereign Unnathi* project, by initiating proceedings before the Debt Recovery Tribunal. Additionally, the Applicant came to know that the Creditors of the Corporate Debtor had also filed a Company Petition for winding up u/s 433 of the Companies Act, 1956, before the Hon'ble High Court of Karnataka.
- (n) Despite the Applicant's demands, the Corporate Debtor replied with an untenable response dated 25.10.2014. With no satisfactory resolution, the Applicant sought recourse by establishing an Arbitration Tribunal through a petition filed before the Hon'ble High Court of Karnataka in CMP No. 8/2015. In the ensuing arbitration proceedings under Arbitration Case AC No. 110/2015, the Applicant had quantified the losses suffered by him at Rs. 43,00,00,000/- (Rupees Forty-three Crores Only).
- (o) It is stated that the Applicant had obtained an ad-interim order from the jurisdictional Civil Judge at Bangalore in AA No. 472/2014, restraining the Corporate Debtor from transferring or encumbering the Schedule Property. Subsequently, the Corporate Debtor filed an application in AC No. 110/2015 before the sole arbitrator, invoking Order VII Rule 11 (A) (D) of the Code of Civil Procedure, 1908 and Section 16 (2) of the Arbitration and Conciliation Act, 1996. The Arbitrator granted the Corporate Debtor's application on 17.05.2016. Displeased with this decision, the Applicant filed an Arbitration Suit in A.S. 92/2016, which is currently pending.
- (q) The Applicant further states that in the ongoing proceedings, this Hon'ble Tribunal imposed a moratorium. The Applicant duly notified his claim to the Resolution Professional (RP) appointed by this Tribunal. The Applicant contends that the Corporate Debtor has abandoned the Project and lacks commercial solvency, resulting in years of wasted development on the Schedule Property. Consequently, seeking recourse, the Applicant had previously filed an application bearing IA No. 25/2020 before this Tribunal, requesting direction for the Interim Resolution Professional to exclude the

Schedule Property from Corporate Debtor's assets, enabling the Applicant to develop it according to his preference.

- (s) Despite the dismissal of IA No.25/2020, the Resolution Professional has failed to devise a viable mechanism to complete the Project. The Schedule Property, valued at over Rs. 150 Crores, requires a substantial investment ranging from Rs. 300 to Rs. 400 Crores. Moreover, it is also stated that the RP neglected the Applicant's potential suffering from further project delays and failed to assess the Corporate Debtor's investments (i.e., *quantum meruit*) or obtain the commencement certificate. Despite lacking consent from this Tribunal, the RP initiated interactions with potential Resolution Applicants and uploaded status updates on 11.05.2021, excluding the Applicant from these discussions and disregarding his interest in evolving a Resolution Plan. The Applicant, having cancelled the JDA and related agreements, refused to adhere to the original 72:28 development ratio, considering the significant development and increased market value of the Schedule Property. It is stated that the Applicant is ready to independently develop the Property, subject to the Tribunal's terms, including resolution of disputes such as the Corporate Debtor's *quantum meruit* claim and the Applicant's claim for damages, pending arbitration. The Applicant asserts readiness to present an alternative proposal for the Schedule Property development.
- (t) The Applicant challenges the Process Memorandum on various grounds. Firstly, he contends that it lacks comprehensive data on investments made by the Corporate Debtor in Project 'Sovereign Sonaa', fails to address the Applicant's claims, and overlooks the magnitude of the Project. Secondly, the Committee of Creditors does not represent the Applicant's interests, despite their substantial land contribution. Thirdly, the Applicant's exclusion from decision-making regarding project duration and development nature is unjust. Fourthly, issuing the Process Memorandum without considering the Applicant's claim and suffering violates his right. Fifthly, the Memorandum neglects the Applicant's claim and the RP's biased focus on Project 'Sovereign Unnathi' exacerbates the Applicant's losses. Sixthly, it fails to inform prospective Resolution Applicants of pending claims or disclose crucial Project details. Seventhly, the

Memorandum's criteria lack transparency and assessment of Applicants' capabilities. Lastly, the Memorandum's issuance lacks reasonableness and fairness.

(w) In light of the circumstances described, the Applicant, as the landowner of the Schedule Property, has filed the instant application, seeking this Tribunal's intervention to set aside the Process Memorandum, etc.

3. The Respondent Company being represented by its Resolution Professional has filed his objections *vide* Diary No.3515 dated 10.12.2021 by *inter alia* contending as under:

(a) It is submitted that this Tribunal *vide* Order dated 13.09.2019 passed in IA No. 446/2019 has appointed Mr. Balakrishnan as the Resolution Professional (RP) of the Corporate Debtor, representing Respondent.

(b) Mr. C.S. Harikumar, the Applicant, owns 9 acres and 2 guntas of land referred to as the "Schedule Property" in Bagalagunte Village, Bengaluru. He entered a JDA on 28.03.2011 with the Corporate Debtor to develop the Schedule Property and executed a GPA on the same day, empowering the Corporate Debtor to act on his behalf.

(c) Under the JDA, the Applicant and Corporate Debtor agreed that the Corporate Debtor shall develop the Schedule Property, with the developed area to be shared at a 72:28 ratio in favor of Corporate Debtor. It is submitted that as per the terms of the JDA, the time period for completion of the Project was three years from the date of issuance of construction licenses by the concerned authorities and in addition, nine months of grace period was granted to the Corporate Debtor. The Plan sanction in respect of the Schedule Property was granted on 13.07.2012 and as such, the time period for completion of the Project was to come to an end only on 12.04.2016. However, the Applicant unilaterally attempted to terminate the JDA and the GPA through a notice dated 09.10.2014. Additionally, public notices were published, declaring the termination of the JDA and advising against negotiations with the Corporate Debtor regarding the Schedule Property. It is contended that these actions contradicted the Applicant's Agreement not to interfere with or delay the project's

construction. As a result, the Corporate Debtor was hindered from meeting the Project's agreed timelines.

- (d) The Applicant filed CMP No. 8/2015 before the Hon'ble High Court of Karnataka to constitute an Arbitral Tribunal, and the Ld. Sole Arbitrator appointed to hear the Parties has disposed of A.C. No. 110/2015 but the claim was dismissed on 17.05.2016. The Arbitrator ruled that the claim was premature and outside the scope of the JDA. Subsequently, Phoenix ARC Private Limited, a Financial Creditor, initiated Corporate Insolvency Resolution Proceedings (CIRP) against the Corporate Debtor u/s 7 of the IBC, 2016. The CIRP commenced on 16.07.2019, with the Respondent appointed as the RP of the Corporate Debtor *vide* Order dt.13.09.2019. Following the initiation of CIRP, construction activities on the project ceased.
- (f) The Applicant *vide* I.A. No. 25 of 2020 sought the Tribunal to exclude the Schedule Property from Corporate Debtor's assets, allowing the Applicant to develop it independently. The RP submitted a report on 28.07.2020 opposing the relief, citing reasons against granting the Applicant's request. The Tribunal, in its Order dated 22.12.2020, dismissed I.A. No. 25 of 2020 by noting that the Applicant's unilateral termination of the JDA and GPA hindered the project's completion, absolving the Corporate Debtor of responsibility for delays & that unilateral termination was impermissible, and also the Arbitral Tribunal had previously rejected the Applicant's claim. Additionally, the moratorium during the CIRP period prohibited the alienation of Corporate Debtor's assets. Accordingly, the Tribunal, declined the Applicant's request to exclude the Schedule Property from Corporate Debtor's assets and directed the RP to pursue project completion efforts.
- (g) As per JDA, the Corporate Debtor disbursed Rs. 2 Crore as refundable security deposit and Rs. 4 Crore as non-refundable security deposit to the Applicant. Initially, the Corporate Debtor paid a sum of Rs. 2.5 Crore via five Demand Drafts to the Applicant. The Applicant claims the Corporate Debtor forfeited these amounts, which were allegedly appropriated for personal gain. It is averred that the JDA, still in effect, lacks provisions for refundable deposit forfeiture. Thus, the Applicant purportedly misappropriated Rs. 6 Crore in total.

- (h) It is averred that the Applicant's unilateral termination of the JDA was deemed unacceptable by both the Arbitrator and this Tribunal. This action, occurring before the project completion deadline, was found detrimental to the interests of the Corporate Debtor's stakeholders. The RP, entrusted with facilitating the Corporate Debtor's revival, received a Resolution Plan from M/s. V. R. Facilities Management Services (Bangalore) Pvt. Ltd.-led consortium on 25.08.2021. This Plan includes provisions for the Sonaa project, and the Committee of Creditors (CoC) has approved it, exercising their commercial judgment. The RP has subsequently filed for the Plan's sanction before this Tribunal. The Applicant's request for a joint inspection of Sonaa project is deemed a deliberate attempt to disrupt the CIRP and this request is deemed baseless considering the approved resolution plan by the CoC.
4. The Applicant has filed Written Arguments *vide* Diary No.899 dt.09.02.2024, wherein, while reiterating the facts as stated supra, has further stated as under:
- (a) The Applicant filed the instant IA on 31.08.2021 challenging the Process Memorandum issued by the RP during March, 2021. During this period, RP has received various proposals, including one from M/s. V.R. Facilities Management Services (Bangalore) Pvt. Ltd. on 20.08.2021. Subsequently, after the Applicant filed this application, the CoC approved the proposal of the Resolution Applicant. This approval is pending consideration by this Hon'ble Tribunal in IA No. 570/2022.
- (b) The Applicant argues that neither the RP nor the Corporate Debtor can transfer the Developer's rights under the JDA without developing the land as agreed. The Resolution Applicant proposed to dispose of the Corporate Debtor's rights under the JDA for Rs. 24,50,00,000/-, despite the project being abandoned. According to established legal principles, obligations cannot be assigned without consent when benefits are contingent upon fulfilling burdens or liabilities. As the Applicant, the landowner, is not part of the CoC, neither the RP nor the Resolution Applicant sought his consent before proposing the disposal of rights under the JDA. Therefore, neither

party has the right to dispose of these rights given the abandoned nature of the project.

- (d) It is submitted that the RP must establish losses before recovering them, as per the Contract Act, 1872. In this case, as the Corporate Debtor and RP abandoned the project, they cannot claim reciprocal promises, including the right to assign rights, which invalidates the claim for Rs.24,50,00,000/-. This claim lacks legal basis; the RP / Resolution Applicant have contended that the Corporate Debtor couldn't perform the contract due to the Applicant's premature termination, claiming damages. Regardless, Section 73 of the Contract Act, 1872, mandates applying principles for ascertaining damages.
- (e) Section 73 of the Contract Act, 1872 necessitates establishing reasons for loss before recovery, which neither the RP nor the Resolution Applicant have done for the claimed amount of Rs. 24,50,00,000/-. Therefore, without supporting documentation, their claim lacks legal entitlement. As regards jurisdiction, neither Section 14(1)(d) of the Code nor the Principles of Res Judicata impedes this Tribunal from considering the Applicant's challenge against the Process Memorandum. It is stated that u/s 60(5) of the IBC, 2016, this Tribunal can address any matter related to insolvency proceedings. The above IA is filed challenging the Process Memorandum, as admittedly the Resolution Plan is confined only to Project Sovereign Unnathi, and not Project Sonaa, and that the CoC mainly comprises buyers from Project Unnathi.
- (g) Therefore, the main issue before this Tribunal is whether the Corporate Debtor suffered compensable damages or if the Resolution Applicant can realize Rs. 24,50,00,000/- by disposal / waiver of the Corporate Debtor's rights in the JDA. These issues weren't addressed in AC No. 110/2015, so the doctrine of Res Judicata doesn't apply as per Section 11 of the Code of Civil Procedure, 1908. Similarly, the order in IA No. 25/2020, concerning the exclusion of Project Sonaa from the Corporate Debtor's assets, doesn't hinder the current application's consideration. IA No. 25/2020 dealt with a different matter, focusing on directions to exclude the property from the Corporate Debtor's assets, distinct from the issues raised here.

- (i) The Applicant stated that in the Resolution Plan at Para 3.3 a. ii., the RP deemed the project abandoned, proposing to recover Rs. 24,50,00,000/- by disposing/waiving the Corporate Debtor's rights in the JDA. This sum was included as a Source of Funds in Clause 2.9 b) Sl.No.4 of the Resolution Plan, with approval from the CoC. However, given the changed circumstances from IA No. 25/2020, the current prayer cannot be considered Res Judicata.
- (k) The arbitration proceedings in AC No. 110/2015 didn't address issues related to project abandonment and resulting damages to the Corporate Debtor. Therefore, this Tribunal has jurisdiction to consider the matter. As stated above, the Resolution Plan and CoC primarily focused on Project Sovereign Unnathi, neglecting Project Sovereign Sonaa, which was abandoned in the Resolution Plan. The Resolution Applicant's concerns are predominantly tied to Project Sovereign Unnathi, with no plans regarding Project Sovereign Sonaa. It is stated that any disputes regarding Corporate Debtor entitlements due to breach and damages should be resolved by the RP separately, and since the Resolution Applicant hasn't addressed recoveries from Project Sovereign Sonaa, they cannot claim hardship in this matter.
- (l) In support of his submissions, the Applicant has relied on the following decisions:
- (i.) *Khardah Company Ltd. vs. Raymon and Co. Pvt. Ltd. reported in (1962) SCC Online SC 28;*
 - (ii.) *Indu Kakkar vs. Haryana State Industrial Development Corporation Ltd. & Anr., reported in (1992) 2 SCC 37.*
 - (iii.) *Ashok Kumar Jayanthilal Sheth through POA Gopalbhai Madhusudan Patel and Others, reported in (2020) 20 SCC 648.*

5. Ld. Counsel for the SRA after advancing his arguments during the hearing on 10.01.2024 has sought permission to file the brief written submissions. Pursuant to the same, Successful Resolution Applicant ('SRA') i.e., consortium of M/s. V. R. Facilities Management Services (Bangalore) Pvt. Ltd. and Mr.K.C. Vijaykumar filed its written arguments *vide* Diary No.890 dated 08.02.2024 by, *inter alia*, stating as under:

- (a) The SRA, although not named as a Respondent, opposed this IA as their approved Resolution Plan is challenged. It is argued that the relief sought violates Section 14(1)(d) of the Code, which bars recovery of property by an owner, where the property is occupied by / in possession of the Corporate Debtor. The property herein is in the possession of the Corporate Debtor. Further, "Property", as defined in Section 3(27) of the Code, has been held to include "development rights" by the Hon'ble Supreme Court in *Victory Iron Works Ltd. v. Jitendra Lohia & Anr.* [(2023) 7 SCC 227] (Para 38).
- (b) This application is barred by Res Judicata, as the Applicant's previous I.A. No. 25/2020 seeking the same relief was rejected by this Tribunal on 22.12.2020. It is stated that the principle of *res judicata* applies to IBC proceedings as per *Vikas Dahiya v. Arrow Engineering Ltd. & Anr.*, reported in (2022) SCC OnLine NCLAT 4052. Thus, the modification in prayer does not evade this bar, as the substance remains unchanged and the findings of the previous order squarely apply to this application.
- (c) The alternative relief sought, acknowledged as the only prayer remaining for consideration as mentioned in the Order dated 10.01.2024, exceeds the scope of proceedings under the IBC, 2016. Restoration of property requires a trial for determining alleged rights and is thus unsuitable for summary proceedings. Additionally, as stated in the prayer, the relief is subject to Arbitral Tribunal decision, making it inappropriate for this Tribunal and seeking such a relief here constitutes an abuse of jurisdiction.
- (d) The Applicant's arbitration claim and its Section 34 challenge (A.S. No.92/2016) were both rejected by the Arbitral Tribunal. The subsequent appeal to the Hon'ble Karnataka High Court was dismissed for non-prosecution. Even in the claim dated 30.07.2019 filed by the Applicant with the RP, the Applicant merely raised a monetary claim of Rs.46 crore in insolvency proceedings, however, the Applicant now seeks property possession, evident post-arbitration failures. This suggests an attempt to gain denied relief elsewhere.
- (e) The Resolution Plan, approved by the CoC, addresses the treatment of the Corporate Debtor's rights to Project Sovereign Sonaa. The Applicant's alternative relief directly conflicts with the approved Resolution Plan,

essentially rewriting it. Courts have consistently respected the CoC's commercial judgment, refraining from modifying the approved plans. As established in *Mathuraprasad C Pandey & Anr. v. Partiv Parikh & Anr.*, reported in (2022) SCC OnLine NCLAT 1608, the Adjudicating Authority lacks authority to alter resolution plans. Thus, Applicant cannot demand possession restoration or any relief conflicting with the Resolution Plan.

- (f) The Applicant's misinterpretation of Clauses 2.6(b) and 3.3(a)(ii) of the Resolution Plan leads to a false claim of being obligated to pay Rs.24.5 crore to the Corporate Debtor upon Tribunal approval. In reality, the Plan merely outlines intentions to obtain this amount through the disposal of the Corporate Debtor's rights under a JDA. Clause 2.6(b) states that the JDA "should fetch" Rs.24.5 crore, with the Resolution Applicant proposing collection within a period of 9 months, while 3.3(a)(ii) indicates the Applicant's intention to "realize" this amount through disposal/waiver of the Corporate Debtor's rights in the JDA. This misinterpretation appears aimed at obstructing the approval of the Resolution Plan.
- (g) It is therefore averred that granting the alternative prayer would cause extreme hardship to the Corporate Debtor and the SRA, who have invested significantly in Project Sovereign Sonaa, and allowing the Applicant to take possession, even subject to proceedings' outcome, would lead to heavy losses, especially considering the refusal to return the security deposit, indicating mala fides. The Applicant having lost in previous proceedings, should not press for reliefs not entitled under the law. Moreover, relying on a prematurely terminated JDA demonstrates lack of clean hands.

6. Heard the Ld. Counsels appearing for the Applicant, Respondent, SRA and the learned Resolution Professional and perused the pleadings of the Parties and gone through the entire material on record.

7. It is admitted fact that the Joint Development Agreement dated 28.03.2011 *i.e.* Document-4, has been entered into by Mr. C.S. Harikumar ('Owner / First Party') and M/s. Sovereign Developers & Infrastructure Limited ('Developer / Second Party') whereunder the Second Party *inter alia* agreed to develop the Schedule Property in relation to lands in Sy. Nos. 92/1, 92/2, 93/2, 93/3 and 94/1 bearing Khata No.1, Bagalgunte Division, Municipal Ward No.14,

Bangalore to the extent of 9 acres and 2 guntas, for which the First Party has given his consent, and the same is duly registered. Further, copies of the Power of Attorney dated 28.03.2011 and Supplemental Deed of Partition cum Sharing dated 07.09.2013 have been placed on record as Document-5 and Document-7 respectively.

8. In order to determine the validity of the contention of Applicant that they had cancelled the JDA and GPA by issuing legal notice dated 09.10.2014, it is apt to refer the relevant Clauses of the JDA, which reads as under:

*“1.2) The SECOND PARTY shall upon signing of this Agreement be entitled to enter upon Schedule Property and commence, pre-development works in the Schedule Property as well. **The FIRST PARTY hereby irrevocably authorizes and empowers the SECOND PARTY to develop the Schedule Property** in such number of block/s by constructing residential and or commercial multistoried buildings thereon and if the SECOND PARTY so desire may also put up such multistoried building/s for residential and or commercial purposes, if so authorized by the authorities concerned and he shall not revoke the right so conferred on the SECOND PARTY in much as the above Agreement executed by him being one coupled with interest and executed for consideration and payment of refundable deposit and further the SECOND PARTY will be developing and transferring the super built up areas to various persons as per this Agreement.*

*1.4) **The FIRST PARTY hereby agrees not to interfere or interrupt in the course of construction** of the residential and/or commercial multistoried building complex and/or commit any act of commission or omission having the effect of delaying or stopping the work that has to be done under this Agreement. However, he shall be entitled to inspect the progress of the work being done on the Schedule Property.*

7. COMMENCEMENTS AND COMPLETION OF CONSTRUCTION:

*7.1) Within Ninety days from the date of securing permission from appropriate authority/ies (including Income Tax Department if becoming necessary for any reason) and Licences and Plans for construction, the SECOND PARTY shall commence construction of the buildings in the Schedule Property. **The SECOND PARTY shall under normal conditions and in the absence of any restrictions and interferences, shall complete the construction in all respects of the total Project within 36 (Thirty Six) months from the date of issuance of sanctioned plan and construction license for the construction which does not include the time consumed in obtaining of the occupancy certificate/completion certificate from the authorities concerned and electrical, water and sanitary connections from the respective departments.** However, the SECOND PARTY shall not incur any liability for any delay in delivery of possession of the “OWNER’S CONSTRUCTED AREA” by reason of non-availability of Government controlled materials, and/or by reason of Government restrictions and/or civil commotion, transporters strike, Act of God or due to any injunction or prohibitory order (not attributable to any action of the SECOND PARTY) or conditions Force-Majeure or for reasons beyond control of SECOND PARTY. In any of the aforesaid events, the SECOND PARTY shall be entitled to corresponding extension of time for delivery of the said ‘OWNER’S CONSTRUCTED AREA’. The time taken for obtaining occupancy*

*certificate, power/water/sanitary connections by the SECOND PARTY shall be excluded at the time of computing the period stipulated for construction. In the event of delay in securing occupancy certificate or power/sanitary/water connections, the SECOND PARTY shall arrange to have temporary electrical, water and sanitary connections until permanent connections are obtained. **In the event of any delay in completing the construction as stated above for reasons other than what is stated above the SECOND PARTY shall be entitled to have nine months' grace period to complete the construction of the Total Project.***

19. BREACH AND CONSEQUENCES:

In the event of breach of the terms of this agreement by either party, the aggrieved party shall be entitled to enforce specific performance and also be entitled to recover all losses and expenses incurred as a consequence of such breach from the party committing the breach as stated in this Agreement. In the event of breach by FIRST PARTY, as the case may be, in addition to the cost of construction expenses to be arrived at on date of breach by Statutory approved Valuer, he shall pay the SECOND PARTY the stamp duty and related expenses paid on this Agreement and other documents executed pursuant to this Agreement.

9. On perusal of the aforesaid Clauses of the JDA dated 28.03.2011, it is seen that the Agreement grants the SECOND PARTY i.e., the Respondent herein, rights to develop the Schedule Property for residential and commercial purposes, and allowing the construction of multistoried buildings. The FIRST PARTY i.e., the Applicant herein, is prohibited from interfering with the construction process but retains the right to inspect the progress. Further, the construction must commence within 90 days of obtaining necessary permissions and licenses, with completion targeted within 36 months, subject to extensions for uncontrollable events. Additionally, the delays attributable to government restrictions/Force Majeure events entitled the Respondent to time extensions. In the event of breach by either party, the aggrieved party can seek for specific performance and recover losses, including construction costs, stamp duty, and related expenses. If the breach is by the Applicant, they must reimburse construction expenses and associated costs, determined by a statutory approved valuer as on the breach date. Therefore, it is observed from the above that in case of breach, the aggrieved party i.e., Applicant herein, can at best seek specific performance and recover losses and related expenses in terms of Clause 19 of the JDA, but it does not entitle him to terminate the registered JDA and GPA unilaterally by issuance of notice. As stated by the Respondent, the Plan sanction in respect of the Schedule Property was granted on 13.07.2012, setting the completion deadline at 12.04.2016 including the nine months grace period. However, the Applicant

herein has unilaterally attempted to terminate the JDA and the GPA through a notice dated 09.10.2014 along with paper publication on 11.10.2014, which is well before the deadline, thereby interfered with the obligation of Respondent, and thus the Applicant himself breached the terms of the aforesaid Clauses of the JDA.

- 10.** Be that it may be, the Successful Resolution Applicant (SRA) has rightly argued that the relief sought by the Applicant violates the decision rendered by the Hon'ble Supreme Court in the matter of ***Victory Iron Works Ltd. v. Jitendra Lohia & Anr., reported in (2023) 7 SCC 227.*** Further, it has been observed that the Resolution Plan which has been approved by the Committee of Creditors of the Corporate Debtor addresses the treatment of the Corporate Debtor's right with respect to Project 'Sovereign Sonaa'. Since the Resolution Plan has already been approved by the CoC, this Adjudicating Authority lacks the authority to alter the Resolution Plan as held by the Hon'ble NCLAT in the matter of ***Mathuraprasad C. Pandey & Anr. v. Parikh & Anr., reported in (2022) SCC OnLine NCLAT 1608.*** The Hon'ble NCLAT held that under Section 31 of the I&B Code, 2016 the mandate of the legislature for the Adjudicating Authority is either to approve or reject the Plan. However, there is no provision for making any alteration or modification in the Resolution Plan by the Adjudicating Authority.
- 11.** The Applicant relied on the Judgments filed by him, as stated supra, has no relevance in the present case.
- 12.** In view of the discussions made above and Laws laid down by the Hon'ble Supreme Court and the Hon'ble NCLAT, we are of the considered view that the Application being devoid of merits, stands rejected.
- 13.** Accordingly, **IA No.270 of 2021 is hereby dismissed.**

Sd/-
MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)

jsr

Sd/-
K. BISWAL
MEMBER (JUDICIAL)