



**IN THE NATIONAL COMPANY LAW TRIBUNAL, CHENNAI,  
DIVISION BENCH – II,  
IA (IBC)/1782(CHE)/2023**

**In  
IBA/706/2020**

*(Filed under Section 60(5) of the Insolvency & Bankruptcy Code, 2016)*

*In the matter of Mann Sarovar Properties Development Private Limited*

**Sri Brindhavan Brick Works,  
A Registered Partnership Firm,  
Rep by its Partners,  
No.311, Selvi Jayakumar Street,  
Golden George Nagar,  
Nerkundram, Chennai, Tamil Nadu – 600 107**

*... Applicant*

*Versus*

**Mr. Ashish Vyas,  
Resolution Professional of  
Mann Sarovar Properties Development Private Limited,  
Reg. No. IBBI/IPA-001/IP-P-01520/2018-2019/12267,  
B-1A, Viceroy Court CHS, Thakur Village, Kandivali (East),  
Mumbai Suburban, Maharashtra – 400 101**

*... Respondent/RP*

*Order pronounced on 5<sup>th</sup> February 2025*

**CORAM**

**JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)  
RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)**

*Present*

*For Applicant : M/s. Ramalingam & Associates*

*For Respondent : Lakshana Viravalli, Advocate*

**ORDER**

**(Heard Through Hybrid Mode)**

1. The present Application is filed by the Applicant under Section 60(5) of IBC, 2016 seeking relief as follows;

(i) *To direct the Respondent as the Resolution Professional of the Corporate Debtor to recall the Form G published on 09.09.2023 in the Chennai Edition of the English newspaper, 'Financial Express' as well as the Tamil Nadu edition of the Tamil newspaper, 'The Hindu' in so far as the serial number 3*



*referring the project site at Manapakkam and hold that the Corporate Debtor has no right over the said property of the Applicant whatsoever; and*

- (ii) *To direct the Respondent / Resolution Professional to produce the details and all documents, including the original title deeds pertaining to the properties covered under "3. Manapakkam Village, Sriperumbudur Taluka, Kancheepuram District, Tamil Nadu" mentioned in the Form G before this Hon'ble Tribunal"*

## 2. APPLICANT SUBMISSIONS

- 2.1 It is stated that the Applicant is a partnership firm originally constituted by a Deed of Partnership dated 01.01.1972. Further a reconstitution happened vide a deed of reconstitution dated 24.03.2022.
- 2.2 It is stated that the Applicant is involved in the business of manufacturing and sale of bricks, tiles of various varieties and sizes, pottery wares and articles, etc. and such other allied and incidental business thereto.
- 2.3 It is stated that the Applicant is the absolute owner of a vacant land situated at Manapakkam Village, Alandur Taluk, Chennai District, admeasuring 11 Acres as detailed hereunder:

S.No	Survey No	Extent Acre.cents
1	313	0.36
2	315	0.44
3	316	0.58
4	317/1	0.35
5	317/2	0.27
6	356/1	0.23
7	356/2	0.39
8	356/3	0.47
9	357/1	0.35
10	357/2	0.33
11	357/3	0.22
12	368	0.88
13	369	1.35
14	370	0.51
15	371	1.89
16	372/1	0.77
17	391	1.14
18	392	0.47
	<b>Total</b>	<b>11.00</b>

- 2.4 It is stated that the Applicant desired to develop a multi storied apartment building over the aforesaid property. In such a situation, Maan Sarovar Properties Development Private Limited (referred as 'Corporate Debtor')



hereinafter), represented by its Director, Naveen Jain, approached the Applicant and offered to carry out the development of the aforesaid land by constructing a residential building complex.

- 2.5 It is stated that, after rounds of negotiations, the terms and conditions of the development project were reduced in written Agreement referred as Joint development (referred as 'JDA' hereinafter) on 14.11.2003.
- 2.6 It is stated that, as per the agreement, the vacant land comprised in Survey Numbers 313, 315, 316, 317, 356, 357, 368, 369, 370, 371, 372, 391 & 392, 408 (part), totally admeasuring 11 Acres (referred as 'Disputed Land' hereinafter), situated at Manapakkam Village belonging to the Applicant was proposed to be developed by the CD on a joint venture model.
- 2.7 It is stated that it was mutually agreed that the Corporate Debtor shall at the own cost, effort and expense, construct the residential building complex on the disputed land and shall obtain a permissible and marketable Floor Space Index (FSI) under the prevailing rules of Corporation of Chennai / CMDA.
- 2.8 It is stated that out of the said total construction, the Corporate Debtor was to construct, allocate and deliver 24% of the super built-up area, which is more fully described in schedule 'B' of the JDA to the Applicant. The balance 76% of the super built-up area in the proposed building complex was earmarked for the exclusive use of the Corporate Debtor or their nominee/s, which is more fully described in schedule 'C' of the JDA.
- 2.9 It is stated that the undivided share of land in the proportion of 24:76 was to be retained by the Applicant and to the Corporate Debtor based on the super built-up area that was to be allocated correspondingly to their respective shares.
- 2.10 It is stated that the Corporate Debtor agreed to complete the entire project within 6 years from the date that the Corporation of Chennai/CMDA sanctions their approval with respect to the proposed contemplated development plans.



- 2.11 It is stated by the applicant that, as per the JDA, it was agreed to execute a General Power of Attorney in favour of the Corporate Debtor, and accordingly hand over the original title deeds pertaining to the subject property. It was further agreed in the JDA that a security deposit was to be deposited by the Corporate Debtor as an interest free Security Deposit with the Applicant and that the same would be refunded to the Corporate Debtor at the time of handing over of the completed Schedule 'B' Flats as marked in the JDA in the manner specified therein.
- 2.12 It is stated that, the Corporate Debtor was to hold the documents, in trust on behalf of the Applicant during the said period of development. It was also mutually agreed by the Applicant and the Corporate Debtor that in case of any dispute the matter will be settled by arbitration through an arbitrator as agreed upon.
- 2.13 It is stated that as agreed, the Applicant had handed over the original title deeds pertaining to the disputed land to the Corporate Debtor on 03.11.2003 and had executed a General Power of Attorney (PoA) dated 14.11.2003 in favour of the Corporate Debtor to take necessary steps to develop and sell 76% of undivided share and complete the sale transaction on behalf of the Applicant. The said PoA was registered as Doc. No. 1818 of 2003 on the file of SRO Saidapet. The details of title deeds handed over to the Corporate Debtor are set out hereunder:
- (i) Sale Deed dated 21.01.1972 in Doc. No. 99/1972, SRO Saidapet.
  - (ii) Sale Deed dated 11.02.1972 in Doc. No. 291/1972, SRO Saidapet.
  - (iii) Sale Deed dated 11.02.1972 in Doc. No. 292/1972, SRO Saidapet.
  - (iv) Sale Deed dated 11.02.1972 in Doc. No. 293/1972, SRO Saidapet.
  - (v) Sale Deed dated 06.03.1972 in Doc. No. 538/1972, SRO Saidapet.
  - (vi) Sale Deed dated 05.05.1972 in Doc. No. 1263/1972, SRO Saidapet.
  - (vii) Sale Deed dated 27.07.1972 in Doc. No. 2068/1972, SRO Saidapet.
  - (viii) Sale Deed dated 17.02.1973 in Doc. No. 378/1973, SRO Saidapet.
  - (ix) Sale Deed dated 05.12.1973 in Doc. No. 3563/1973, SRO Saidapet.



- 2.14 It is stated that even though the original title deeds were handed over and power of attorney was executed in favour of the Corporate Debtor way back in 2003, the Corporate Debtor had failed to take any steps towards performing its obligations for the development as stipulated under the JDA.
- 2.15 It is stated that due to failure on behalf of the Corporate Debtor in fulfilling the contractual obligations, the Applicant repeatedly requested the Corporate Debtor to return all the original documents along with the signed blank papers. However, the Directors of the Corporate Debtor never responded and continuously evaded the same with lame excuses.
- 2.16 It is stated that finally, the Applicant was constrained to terminate the JDA dated 14.11.2003 by a legal notice dated 20.05.2019. Further, it is stated that the Applicant also cancelled the General Power of Attorney dated 14.11.2003, by a Deed of Cancellation of Power of Attorney dated 27.05.2019 registered in Doc. No. 5942 of 2019 on the file of Joint I SRO Chennai, South.
- 2.17 It is stated that by the legal notice dated 20.05.2019 sent to the Corporate Debtor and its erstwhile Directors, it was informed about the termination of JDA and cancellation of General Powers of Attorney and again reiterated their request for the returning of all original documents, cheques and all other documents executed by the partners of the Applicant. The Applicant had also undertaken to return the said security deposit amount received from the Corporate Debtor on the handing over of the documents. The said legal notice was duly served on the Corporate Debtor and its Directors.
- 2.18 It is stated that, the Corporate Debtor chose not to act on the matter for nearly two and half years, and finally issued a reply notice dated 31.12.2021, seeking the Applicant's notice dated 20.05.2019 to be recalled. A rejoinder notice was issued by this Applicant dated 02.02.2022 in which



this Applicant has invoked the arbitration clause in the JDA to adjudicate upon the disputes.

- 2.19 It is stated that JDA entered into with the Corporate Debtor stands terminated and the Powers of Attorney stand cancelled with effect from the year 2019. The Applicant stated that, being the absolute owner of the disputed land property is presently in possession and enjoyment of the same and the Corporate Debtor has no right over the disputed land.
- 2.20 It is stated that the Applicant invoked the arbitration clause under the JDA pursuant to which Hon'ble Mr. Justice N.Kirubakaran (Retd) of the High Court of Madras had been nominated as the Arbitrator and seeking for consent, to resolve the disputes and adjudicate the claims between the Applicant and the Corporate Debtor and the same was intimated to the Corporate Debtor by notice a dated 23.03.2022. However, no response has been received till date.
- 2.21 It is stated that despite cancellation of the power of attorney and initiation of arbitration proceedings, the Corporate Debtor has failed to handover the original title deeds pertaining to the disputed land, blank cheques and other blank signed documents.
- 2.22 It is stated that, Corporate Insolvency Resolution Process (referred as 'CIRP' hereinafter) was initiated against the Corporate Debtor in IBA/706/2020 in an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 by Reliance Net Limited, a secured financial creditor of the Corporate Debtor. This Tribunal vide order dated 01.07.2022 appointed a Resolution Professional who took over the management of the Corporate Debtor.
- 2.23 It is stated that due to the operation of a moratorium under section 14 of the IBC, this Applicant had no further recourse to seek for return of the original title deeds, blank cheques and other blank signed documents of the Applicant in the custody of the Corporate Debtor.



- 2.24 It is stated that the Ex-Director of the Corporate Debtor had in fact, even after the commencement of CIRP has been trying to approach the Applicant seeking to arrive at some settlement and wanting the Applicant to return the security deposit paid or permit him to develop the property by giving some false assurances about the Corporate Debtor.
- 2.25 It is stated that, the Applicant had filed M.A. No. 2 of 2023 in IBA/706/2020 before this Tribunal seeking for the return of original Title Deeds of the disputed land and any other documents of the Applicant in the custody of the Corporate Debtor from the Resolution Professional, making out a case that the JDA stands terminated and the Corporate Debtor has no right whatsoever.
- 2.26 It is stated that the Resolution Professional had filed a counter on behalf of the Corporate Debtor raising various contentions. This Tribunal had by order dated 17.08.2023 disposed of M.A. No. 2 of 2023 in IBA/706/2020 by recording the averments of the Resolution Professional made in his counter affidavit, wherein he had stated that the he was not in possession of the Applicant's documents and only the Suspended Management has to confirm if the said documents were in their possession. Therefore, by placing reliance on the RP's categorical stand that he does not have the documents sought by the Applicant, the Tribunal held that the question of directing the Resolution Professional to hand over the documents to the Applicant as prayed does not arise and disposed of the application with liberty to the Applicant to proceed with the matter in any other manner in accordance with law.
- 2.27 It is stated that the Applicant came to know that the Respondent / Resolution Professional has published a fresh Form G on 09.09.2023 in the Chennai Edition of the English newspaper, 'Financial Express' as well as the Tamil Nadu edition of the Tamil newspaper, 'The Hindu', inviting for the Expression of Interest for the Corporate Debtor on a project wise basis. In the said Form G, under the heading of "Details of places where majority



of fixed assets are located", reference has been made as follows "3.Manapakkam Village, Sriperumbudur Taluka, Kancheepuram District, Tamil Nadu", effectively referring to the disputed properties.

- 2.28 It is stated that in the earlier Form G which had been issued on 04.05.2023 reference is made only as "Construction Site: Semmancheri Village, Tambaram Taluka, Kancheepuram District, Tamil Nadu" and no reference was made to any other project site.
- 2.29 It is stated that the Applicant apprehends that the disputed land mentioned in the latest Form G published on 09.09.2023 are in fact the properties belonging to the Applicant. These are the very same properties for which the Applicant had filed M.A. No. 2 of 2023 in IBA/706/2020 seeking for the handover of the original title documents of and the custody of which the Resolution Professional had categorically denied as recorded by this Tribunal.
- 2.30 It is stated that the last date for issue of expression of interest as per the latest Form G is on 24.09.2023 and the provisional list of prospective resolution applicants is scheduled to be issued on 25.09.2023.
- 2.31 It is stated that, if the Respondent / Resolution Professional is allowed to proceed with the latest Form G and receive expressions of interest with respect to the disputed land which is situated in Manapakkam Village, the Applicant will be put to a grave prejudice and irreparable injuries as the same is not the property owned by the Corporate Debtor and the contract for Joint Development Agreement (JDA) has been terminated.
- 2.32 It is stated that the said the disputed land is to be excluded and a reference to the same will create unnecessary hardship and prejudice to the Applicant and under such circumstances, the present Application is filed by the Applicant before this Tribunal.

### **3. RESPONDENT SUBMISSIONS**

- 3.1 It is agreed that the parties herein entered into a Joint Development Agreement dated 14.11.2003 wherein the Applicant is the owner of the



disputed land situated at Manapakkam Village, Tamil Nadu, and the Respondent is the Developer. The disputed land was formerly a brick kiln.

- 3.2 It is stated that as per the terms of the agreement the profits from the development of the land was to be shared in the ratio of 24% and 76%. It is stated that once an agreement of such nature is concluded, the character of the land shifts from freehold land to UDS. Thus, the Corporate Debtor/ Developer herein hold 76% UDS rights as agreed in the JDA.
- 3.3 It is submitted that pursuant to this agreement, the Developer incurred an expense of Rs.2,20,99,703.91/- in securing necessary preliminary approvals and other steps necessary to convert the land fit for construction as this land had been used as a brick kiln.
- 3.4 It is stated that the Applicants have made no effort to return or in any manner address the investment already received into the land and the value addition accrued.
- 3.5 It is stated that consequent to commencement of the JDA and incurring of the expenses, the Developer was forced to pause the work on the project as it was communicated to the Developer that the disputed land could become part of State acquisition for the project of airport expansion.
- 3.6 It is stated that the lead Financial Creditor, Reliance Net Limited has already approached the Hon'ble Bombay High Court vide Notice of Motion (Lodging) No. 84/2016 in Suit (Lodging 20) of 2016, whereby prayer was made to disclose all the assets available to the Corporate Debtor and declare an attachment on the same.
- 3.7 It is stated that the Honourable High Court of Bombay, granted ad-interim relief in the following manner:
  - (i) *Defendant 1 – 6 are directed to file an Affidavit on or before 4th March, 2016 disclosing all their immovable and movable properties, bank accounts, shares, joint ventures, receivables, standing in their single name/s or jointly with any person/s.*



(ii) *Pending the hearing and final disposal of the Notice of Motion, the Defendant Nos. 1- 6, their servants, agents or any person claiming by/through or under them are restrained by an order and injunction from in any manner selling, transferring, alienation, creating any security upon, encumbering, creating third party right, title or interest or in any manner dealing with the properties at Exhibits J and J-1 so disclosed by the Defendant 1- 6 in their Affidavits as directed above.*

3.8 It is submitted that the rights in question were specified in the assets upon which the Hon'ble Bombay High Court has granted an absolute stay on alienation.

3.9 The Respondent stated that it is clear that the 76% rights of the JDA, as held by the Corporate Debtor are directly covered by the decision of the Bombay High Court. As per the decision of the Hon'ble Bombay High Court, the Joint Development Agreement vested upon the Corporate Debtor, UDS rights of development and consequent profits up to the tune of 76% would stand entirely frozen and any act committed thereafter by the respondent in the disputed land property would amount to contempt of Court.

3.10 It is submitted that the Applicants herein, made no effort to challenge the order of Stay as granted by the Bombay High Court. Having not done so, prior to their notice of termination, they stand in willful contempt of court. The termination of JDA vide notice dated 20.5.2019 was done by the Applicant after having full knowledge of the operation of the stay granted by the Hon'ble High Court of Bombay.

3.11 It is submitted that the Applicants, having now found themselves in a position where they cannot agitate the order of the Bombay High Court, they seek validation of their act of contempt by approaching this Tribunal with a prayer to recognize the termination and remove the asset in question from the estate of the Corporate Debtor.

3.12 It is stated that this Tribunal cannot grant reliefs which stand in blatant contempt of Court. It is further submitted that this Tribunal cannot



adjudicate upon contractual disputes and must rather adjudicate only upon whether contracts concluded vest upon a Corporate Debtor, rights that constitute an 'asset'.

- 3.13 It is submitted that the conclusion of a Joint Development Agreement vests upon the Developer a set of tangible rights that are entitled to be included in the assets of the Corporate Debtor as mentioned in Balance Sheets of the Corporate Debtor.
- 3.14 Respondent relies on the decision of *Hon'ble Supreme Court, in Victory Iron Works Limited v Jitendra Lohia & Anr reported in (2023) 7 SCC 227 in Para 26 – 39.*
- 3.15 It is submitted that this Application is nothing but an attempt to drive the Corporate Debtor to liquidation.
- 3.16 It is stated that the Corporate Debtor has demonstrated its commitment to this project by investing an amount of Rs.2.21 crores as project expenses in the JDA as far back as 2005-2006. The JDA also specifically notes the receipt of initial deposit money by the applicant.
- 3.17 It is stated that, having been in receipt and beneficiary of these amounts, it is not open to the Applicants herein to take a stand unjustly and unilaterally seeking to usurp the CIRP process.
- 3.18 It is submitted that a working calculation of the amount of expenditure incurred, along with interest would come to an approximate value of Rs.31.96 crores.
- 3.19 It is stated that the Applicant herein is attempting to unilaterally alienate the rights after standing unjustly enriched and under such circumstances, the Respondent sought for dismissal of the present Application.

#### **4. RESPONSE TO THE RESPONDENT SUBMISSIONS**

- 4.1 It is stated that, on the date of commencement of the CIRP, the disputed land was not possessed or enjoyed by the CD and RP cannot claim any right of possession.



- 4.2 It is stated that the JDA is not for any profit sharing and only provides for development and handing over of the flats in the ratio agreed.
- 4.3 It is stated that, applicant herein is not the party to proceedings which happened before the Hon'ble High Court of Bombay in Notice of Motion (Lodging) No. 84/2016 in Suit (Lodging 20) of 2016 and knowledge of the Order regarding was obtained only through the submissions of the RP made in earlier litigation M.A. No. 2 of 2023 before this Tribunal.
- 4.4 It is stated that, order of injunction passed by the Hon'ble High Court of Bombay was only against the CD and its Ex- directors who were the Defendants in the said proceedings.
- 4.5 It is stated that, the narration of the expenses without any supporting bills, invoices, receipts are all cooked up and reliance on the same by the RP is unfortunate.
- 4.6 It is stated that no accounts have been provided till date and CD is for the first time making the claim of Rs.2.21 Crores on improving the disputed land despite explicit obligation on the CD to render true and faithful account of all monies collected and spend in regard to the project. It is not appropriate and RP is now estopped from making all such claims after lapse of more than 18 years that to on self-serving ledger entries.
- 4.7 It is submitted that, it is not for the Adjudicating Authority to decide upon the validity of the termination between the parties and the applicant relies on the decision of the *Hon'ble NCLAT in Kolkata Municipal Corporation v. Bengal Shelter Housing Development Ltd. (2023) SCC Online NCLAT 239.*

## 5. FINDINGS OF THIS TRIBUNAL

- 5.1 Heard the Ld. Counsels for the both parties and perused the documents carefully on record.
- 5.2 The issue which is required to be decided in the present application is whether the unilateral cancellation of JDA and connected PoA in respect of the disputed land by applicant is lawful or not, whether Corporate



Debtor has any right over the disputed land which it is claims under JDA and whether it is required to be kept outside the CIRP of the Corporate Debtor or not.

- 5.3 The Applicant and the Corporate Debtor entered into a JDA Agreement on 14.11.2003. As per the terms of the JDA Agreement the Corporate Debtor is required to construct, allocate and deliver 24% of the super built-up area, to the Applicant and retain the balance 76% of the super built-up area in the proposed building complex earmarked for the exclusive use of the Corporate Debtor.
- 5.4 It is observed that since the Corporate Debtor had failed to take any steps towards performing its obligations for development as stipulated under the JDA, the Applicant terminated the JDA dated 14.11.2003 by a legal notice dated 20.05.2019. Further, the General Power of Attorney dated 14.11.2003 executed in favour of CD in pursuance of the JDA has also been cancelled by way of Deed of Cancellation of Power of Attorney dated 27.05.2019 registered as Doc. No. 5942 of 2019 on the file of Joint I SRO Chennai, South.
- 5.5 From the notice of the CD dated 31.12.2021, it is noted that the disputed land property was originally a Brick Kiln and the same was lying at a level of 10 to 12 feet below the road level. The Corporate Debtor had made substantial investments to develop the site so as to raise the ground level. Similarly, the site originally had an access only through a passage which was 15 to 18 feet wide from the main road which necessitated the Corporate Debtor to purchase a vantage landed property admeasuring approximately 49 cents facing the main road at a higher price to create a better access to the disputed land where the development project was proposed. Further seen that, CD had spent considerably for the site development, had erected the compound wall at the back of the property, had also applied for the height clearance NOC from the Airport



Authorities for a portion of the disputed land and spend substantially for site filling and cleaning of the property.

- 5.6 It is also seen from the reply notice dated 31.12.2021, that in the year 2005, the Government had announced the acquisition of large tracts of lands including the disputed land property in Manapakkam Village for the purpose of Airport expansion. The said acquisition proceedings were finally dropped by the Government by 2015 and therefore the Corporate Debtor was unable to do anything with regard to the project development for more than 10 years.
- 5.7 Further in the same notice, the CD claimed that it has invested more than Rs.3 Crores towards the pre-development expenses for the project that to in year of 2003 – 2004 itself.
- 5.8 It is observed that, the RP of the CD for the first time in this application filed the Ledger account of the CD in respect of the Project proposed in the disputed land. The Ledger account feels to be unclear and is extracted as below,

**Maan Sarovar Properties Development Pvt Ltd - (From 1-Apr-2020)**  
No.33/2, Gangai Street  
Kalakshethra Colony  
Besant Nagar Extension  
Chennai

**Manapakkam Project**  
Group Summary  
1-Apr-10 to 20-Oct-21

Particulars	Opening Balance	Transactions		Closing Balance
		Debit	Credit	
<b>Manapakkam-Approval Charges</b>	<b>47,501.00 Dr</b>			<b>47,501.00 Dr</b>
Manapakkam - CMDA Security Fees	47,501.00 Dr			47,501.00 Dr
<b>Manapakkam-Contract</b>	<b>1,02,309.00 Dr</b>			<b>1,02,309.00 Dr</b>
Manapakkam-Contractors	1,02,309.00 Dr			1,02,309.00 Dr
<b>Manapakkam-Deposit</b>	<b>25,77,811.00 Dr</b>			<b>25,77,811.00 Dr</b>
Sri Brindhavan Brick Works	25,77,811.00 Dr			25,77,811.00 Dr
<b>Manapakkam-Professional &amp; Brokers</b>	<b>5,31,403.00 Dr</b>			<b>5,31,403.00 Dr</b>
Manapakkam-Consultancy	5,15,700.00 Dr			5,15,700.00 Dr
Manapakkam-Legal Fee	15,703.00 Dr			15,703.00 Dr
Manapakkam - Brokerage	1,05,375.00 Dr			1,05,375.00 Dr
Manapakkam-Convenyance	10,000.00 Dr			10,000.00 Dr
Manapakkam Deposit	18,69,000.00 Dr			18,69,000.00 Dr
Manapakkam-General Expenses	43,510.00 Dr			43,510.00 Dr
Manapakkam - General Works	8,61,132.00 Dr	5,500.00		8,66,632.00 Dr
Manapakkam - Land Tax	10,500.00 Dr			10,500.00 Dr
Manapakkam - Legal Expenses		1,10,000.00		1,10,000.00 Dr
Manapakkam - PATTA Charges	2,000.00 Dr			2,000.00 Dr
Manapakkam Project (Op.BI)	90,74,189.91 Dr			90,74,189.91 Dr
Manapakkam - Registration Exps.	50,200.00 Dr			50,200.00 Dr
Manapakkam-Salary	94,936.00 Dr			94,936.00 Dr
Manapakkam - Sewege Treatment Plant	50,000.00 Dr			50,000.00 Dr
Srinivasan (Brindhavan Agencies)	77,611.50 Dr			77,611.50 Dr
Trfd to Manapakkam	64,76,725.50 Dr			64,76,725.50 Dr
<b>Grand Total</b>	<b>2,19,84,203.91 Dr</b>	<b>1,15,500.00</b>		<b>2,20,99,703.91 Dr</b>

- 5.9 The Ledger account shows the period of account from 01.04.2010 to 20.10.2021, whereas in the title it is shown as from 01.04.2020. Further,



there is no reference to date in which said entries/ transactions are carried out. The submissions of the Respondent dates back to 2003 – 2004 which makes the ledger statement doubtful as there were no invoice, bills, receipts to substantiate the amounts. The working calculation of the interest component as submitted by the Respondent to a tune of Rs.32 Crores cannot be considered on the lines of doubtful ledger account.

- 5.10 Despite above deviation, we observe that the assessment of the CD, based on the data from the parallel project which is based on the Semmencherri Village of Tambaram Taluk, in Tamil Nadu that happened on same timeline. The CD herein has entered into a similar JDA with another set of Landlords on 26.12.2003 and has completed 90% of the building in the said project. This assessment enables us to consider the investments and expenditure carried out by the CD in reasonable manner.
- 5.11 It is seen that, no documents has been placed on record by the Respondent to substantiate the submissions regarding the time delay occurred due to Government proposal for land acquisition of disputed land for the Airport expansion project. It is also noted that, applicant did not made any explicit submissions regarding the denial of Land acquisition proposal for Airport expansion concerned to the disputed land.
- 5.12 From the notice of the Applicant dated 23.03.2022, it is acknowledged that the Corporate Debtor has paid an interest free security deposit sum of Rs.25 Lakhs at the time of signing the JDA i.e. on 14.11.2003.
- 5.13 Further it is seen that, after a lapse of around 15 years, on 20.05.2019, the Applicant has unilaterally cancelled the JDA. Even in the list of date and events filed by the Applicant, it has not been stated as to what the Applicant was doing from the year 2003 till 2019 after entering into JDA with the Corporate Debtor while alleging non-performance of agreement. No documents or communication were exchanged between the parties during the said period of 15 years.



5.14 It is observed that, vide M.A. No. 2 of 2023 applicant had approached this tribunal for direction against the Respondent RP of the CD to hand over the title deeds of the disputed land along with seeking necessary orders with reference to interest free security deposit received from the CD. The Respondent RP in his counter raised his claim regarding the disputed land and submitted his contentions against the unilateral cancellation of PoA and JDA. Further during the said proceedings the Injunction order passed by the Hon'ble High Court of Bombay was brought to light by the Respondent RP. This tribunal vide order dated 17.08.2023 disposed of the said application without going into the issue of Termination of the PoA and JDA. Therefore it is apparent that the applicant had not repaid the interest free security deposit amount to the Corporate Debtor.

5.15 From the Clause 4 of the JDA dated 14.11.2003, it is observed as follows,

*“(4) TIME FOR COMPLETION:*

*The DEVELOPER herein agrees that the proposed transaction with respect to the completion of the entire project shall be completed within 6 years from the date of the Corporation of Chennai/ CMDA or any such delegated authority as the case may be sanctioning their approval with respect to the proposed contemplated development, subject to the LAND OWNER having delivered vacant peaceful possession of the Schedule A property at the time of signing this Agreement for Joint Development.*

*In case there is a delay in construction beyond six years and after a grace period of six months from the date of first plan sanctioned from CMDA, the DEVELOPER shall pay a sum of Rs.10,000/- (Rupees Ten thousand only) per month after expiry of 66 months until completion of the project.*

*TIME SHALL BE AN ESSENCE OF THIS CONTRACT. However in case of natural calamities like heavy rain, floods, famine, earthquake, war, riot, fire, etc., and the non-availability of building materials like cement, steel, sand, bricks etc., in sufficient quantities or undue delay on the part of the CMWSSB and Electricity Board to give service connections despite the best efforts of the DEVELOPER suitable extension of time will be permitted”*



The CD has been given 6 years to complete the entire project from the date of obtaining/ sanction of approval for the proposed project from the CMDA or Chennai Corporation or any appropriate authority. Further condition of payment of Rs.10,000/- per month is imposed after the expiry of 6 month grace period subsequent to the original term of 6 years from the first sanction of the Plan by CMDA until actual completion of the project. There was a saving clause for time period with respect to unforeseen circumstance. In this case, from the submissions it is unclear whether the CD has obtained necessary plan approvals for the proposed project relating to the disputed land or not. Further there is no document on record to arrive at a conclusion regarding the status of approval of the project. Accordingly, the clause does not provide for termination of contract instead provide for damages due to delay in completing the project that to only in the case of necessary Plan approval being obtained.

5.16 Similarly, Clause 6 (24) reads as follows,

*“ In the event of any dispute with the parties the matter will be settled with mutual negotiations failing which it will be settled by an arbitrator or may be mutually agreed upon if there is no agreement on arbitrator, the LAND OWNER & DEVELOPER will each appoint one arbitrator and the decision of the arbitrator shall be final. In the event of any difference between the two arbitrators, the decision of the referee as may be agreed by the arbitrators will be treated as binding on the parties on points of referred difference. In all other respect, provisions of Arbitration Act & the Provisions of Indian Contract Act will apply“*

The Applicants vide their notice 23.03.2022 has invoked the arbitration clause to settle and resolve their disputes and sought consent for appointment of Sole arbitrator from the Respondents. It is seen that invocation of arbitration clause for dispute settlement was done after the cancellation of PoA and JDA. Apart from the said notice, no records were placed to show any adjudication happened in respect of JDA.

5.17 It is clear that, the JDA did not provide for unilateral termination of agreement for both parties. The Applicant/ Landlord did not initiate any civil proceedings against the CD in respect of issues and claims concerned



with JDA. Therefore, it is apparent that the disputes between the parties in regard to JDA have not been adjudicated prior to cancellation of PoA and JDA and thus Unilateral Cancellation of JDA has been established.

- 5.18 It is to be noted that in the present case, the Applicant has unilaterally cancelled the JDA on 27.05.2019 after issuing notice on 20.05.2019 i.e. within a span of 7 days from the date of notice, without giving statutory time to the Corporate Debtor. In a similar case, while dealing with the issue of unilateral cancellation of JDA rights of the same Corporate Debtor herein, this Tribunal in IA (IBC) 729 & 900 (CHE)/ 2023 vide its order dated 12.12.2023 has held that a Joint Development Agreement cannot be cancelled unilaterally and the proper course would be to approach the Civil Court after issuance of notice to the other party.
- 5.19 Further, in relation to the JDA rights of the Corporate Debtor, the *Hon'ble Supreme Court in the case of Victory Iron Works Limited V. Jitendra Lohia and Anr (2023) 7 SCC 227* has held that the development rights and interest created in favour of the Corporate Debtor by a series of documents partakes character and shade of ownership rights. Since the expression "asset" in common parlance denotes "property of any kind", the bundle of rights that the Corporate Debtor had over the property in the present case, would constitute "asset" within the meaning of Section 18(1)(f) and Section 25(2)(a) and therefore these rights and interest in the immovable property were liable to be included by the RP in the Information Memorandum.
- 5.20 Further, we are not commenting anything on the interim injunction passed by the Hon'ble High Court of Bombay since the order of injunction is against the Corporate Debtor and its Ex-Directors, restraining them from selling, transferring, alienating, creating any security, encumbering etc. The Applicant herein is not a party to the said suit and de hors the alleged cancellation of JDA, the said interim injunction order of the Hon'ble High Court of Bombay would not amount to contempt.



- 5.21 Based on the totality of the circumstances, and also in view of the discussions made supra, we are of the considered opinion that the Unilateral Cancellation of JDA and PoA dated 20.05.2019 and 27.05.2019 respectively are incorrect in law, thereby confirming the CD's rights over the disputed land under JDA and PoA dated 14.11.2003.
- 5.22 Accordingly, the prayer of the applicant to recall the Form G published and to hold that the Corporate Debtor has no right over the said property of the Applicant whatsoever is devoid of merits and is liable to be dismissed. In line, the consequential prayer also fails.
6. With the above said observations, this Application stands **dismissed**. No costs.

**RAVICHANDRAN RAMASAMY**  
MEMBER (TECHNICAL)

**JYOTI KUMAR TRIPATHI**  
MEMBER (JUDICIAL)