

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT-III

I. A. No. 3781 of 2023 and I. A. No. 4521 of 2023

IN

C. P. No. 27/IB/C-III/2019

Under Section 60(5) of The Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016.

I.A. No. 3781 of 2023

Mr. Abhay Narayan Manudhane)
Resolution Professional of Housing)
Development and Infrastructure Ltd.)

1204, Maker Chamber V, Jamnalal Bajaj)
Road, Nariman Point, Mumbai - 400021)

... Applicant

Vs

My Palace Mutually Aided Cooperative)
Society)
4-1-1001, Atria Mall and Hotel, Abids,)
Hyderabad, Telangana - 500001)

... Respondent 1

Anish Construction Co.)
Flat No. 101, Pritinanditha Presidency)
Apartments, Plot No. 10-2-289/86,)
Shanti Nagar, Masab Tank,)
Hyderabad, Telangana - 500028)

... Respondent 2

Exella Properties, Partnership Firm)
Flat No. 206, Souchamarvel Opposite)
Okridge International, Khajaguda,)
Hyderabad, Telangana - 500104)

... Respondent 3

Unity Small Finance Bank Limited)
Registered office at 40, Basant Lok, Vasant)
Vihar, New Delhi - 110057)
Branch Office at 1st Floor, Vinay Bhavya)
Complex CST Road, Kalina, Santacruz)
(East), Mumbai - 400098)

... Respondent 4

I.A. No. 4521 of 2023

Unity Small Finance Bank Limited)

Registered office at 40, Basant Lok, Vasant)
Vihar, New Delhi – 110057)
Branch Office at 1st Floor, Vinay Bhavya)
Complex CST Road, Kalina, Santacruz)
(East), Mumbai – 400098)

... Applicant

Vs

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Society)
4-1-1001, Atria Mall and Hotel, Abids,)
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Flat No. 206, Souchamarvel Opposite)
Okridge International, Khajaguda,)
Hyderabad, Telangana - 500104)

... Respondent 3

Mr. Abhay Narayan Manudhane & Ors.)

Resolution Professional of Housing)
Development and Infrastructure Ltd .)
1204, Maker Chamber V, Jamnalal Bajaj)
Road, Nariman Point, Mumbai - 400021)

... Respondent 4

Tahsildar, Balanagar Mandal)

Kukatpalli, Medchal-Malkajgiri District,)
Telangana – 500078)

... Respondent 5

District Magistrate)

Integrated District Office Complexes,)
Anthaipally Village, Shameerpet Mandal,)
Medchal-Malkajgiri District,)
Telangana-500078)

... Respondent 6

IN THE MATTER OF

Bank of India

... Financial Creditor

Vs

Housing Development and Infrastructure Limited

... Corporate Debtor

Order pronounced on: 06.08.2024

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati, Member (Technical)

Appearances:

For the Resolution Professional : Adv. Chaitanya Chavan a/w. Adv.
(Applicant in IA/3781 & R-4 in Sagar Parab, Adv. Darshan Suvarna,
IA/4521) Adv. C. G. Shanker i/b. Vigil Juris

For Unity Small Finance Bank Ltd : Adv. Shyam Kapadia a/w. Adv. Naveli
(Applicant in IA/4521 & R-4 in Reshamwala i/b. Dhir & Dhir
IA/3781) Associates

For Respondents 1 and 2 : Mr. Chetan Kapadia, Sr. Counsel a/w.
(IA/3781 & IA/4521) Adv. Rohan Agarwal & Adv. Sabeena
Mahadik

For Respondent 3 : Mr. Ranjeev Carvalho a/w Adv. Sunil
(IA/3781 & IA/4521) Humbre a/w. Adv. Pankaj Uttaradhi

Per: Sh. Charanjeet Singh Gulati, Member (Technical)

1. The Interlocutory Applications (IA) bearing no. 3781/2023 and 4521/2023 have been filed by Mr. Abhay Narayan Manudhane, the Resolution Professional (**RP**) of the Housing Development & Infrastructure Limited (Corporate Debtor) and Unity Small Finance Bank

Limited (**Unity Bank**), respectively, seeking similar reliefs as stated hereinbelow:

1.1. **I. A. 3781/2023:**

- a) *To declare that the Corporate Debtor HDIL has the right to receive 55% of the total sale receivables from the development carried out at the said Property being all that piece and parcel of land admeasuring about 100 acres in Survey No. 57, Village Shamsguda, now known as Balanagar Mandai, Ranga Reddy District, Telengana;*
- b) *to order and declare that the rights granted to Respondent Nos. 3 by virtue of the (i) Development Agreement cum General Power of Attorney dated 18 May 2023; and (ii) Development Agreement cum General Power of Attorney dated 18 May 2023 are subject to /subservient to the rights of the Corporate Debtor over the said Property;*
- c) *To order and direct the Respondent Nos. 1 to 3 that 55% of any revenue generated from the development carried out over the said Property shall be applied towards the estate of HDIL, first in satisfaction of its security virtue of the Agreement of Assignment of Receivables and thereafter towards due repayment of its debts;*
- d) *Pending the hearing and disposal of this Application, Respondent Nos. 1 to 3, their respective servants, agents or any other persons claiming through, by or under them, be restrained by an order and injunction of this Tribunal from taking any steps in furtherance of the (i) Development Agreement cum General Power of Attorney dated 18 May 2023, (ii) Development Agreement cum General Power of Attorney dated 18 May 2023;*
- e) *Pending the hearing and disposal of this Application, Respondent Nos. 1 to 3, their respective servants, agents or any other persons claiming through, by or under them, be restrained by an order and injunction of this Hon'ble Tribunal from in any manner dealing with, disposing off or creating any third-party rights or encumbrances or parting with possession of or from alienating the said Property or any part thereof as well as any flats I units being constructed thereon;*
- f) *Pending the hearing and disposal of this Application, this Hon'ble Tribunal be pleased to be order and direct the Respondents to maintain status quo qua the said Property;*
- g) *Ad-interim reliefs in terms of prayer clause (d) to (f) above;*
- h) *Costs for this Application be provided for.*

1.2. **I. A. 4521/2023:**

- a) *Allow the instant Application filed by the Applicant;*
- b) *Declare the Joint Development Agreement dated 18.05.2023 and 18.05.2023 as null and void;*

- c) *Restrain Respondent No. 1 and 2 to not create any third party right on the land admeasuring about 73 acres situated at survey No. 57, Village Shamsguda, now known as Balanagr Mandak, Ranga Reddy District, Telangana as the same contains the indivisible asset of the Corporate Debtor during the pendency of the instant insolvency proceedings in the case of the Corporate Debtor herein;*
- d) *Stay the effect/implementation of Development Agreement cum General Power of Attorney, dated 18.05.2023, executed between Respondent No. 1 and Respondent No. 3, and Development Agreement cum General Power of Attorney, dated 18.05.2023, executed between Respondent No. 2 and Respondent No. 3 during the pendency of the instant Application;*
- e) *Direct Ld. Resolution Professional to file Lis Pendens/ Application/ u/s 52 of the Transfer of Property Act before the competent authority;*
- f) *Direct Ld. Tahsildar, Balanagar Mandal, Kukatpalli, Medchal-Malkajgiri District to cancel the DGPA no- 1/2023 & 2/2023 dated 18.05.2023;*
- g) *Direct the District Magistrate to grant instruction to District Revenue Officer to restrict future sell-purchase and not to change nature of the land; and*
- h) *Grant an ex-parte ad interim order in terms of prayer (d) above.*

2. Since the captioned applications contain similar set of facts and issues, this Tribunal has heard both the applications together and is of the view that it is fit to dispose of these applications vide this common order.

3. **Submissions of Applicants, in brief:**

- 3.1 The Resolution Professional in IA/3781/2023 submits that M/s My Palace Mutually Aided Cooperative Society (**Respondent 1**) and M/s Anish Construction Co. (**Respondent 2**) are the owners of the piece and parcel of land admeasuring about 100 acres in Survey No. 57, Village Shamsguda (now known as Balanagar Mandal), Ranga Reddy District, Telangana (hereinafter referred to as the '**said property**').
- 3.2 Vide Sale Agreement dated 19.12.2006 and Joint Venture Agreement (JVA) dated 19.12.2006, the Respondent No. 1 & 2 had sold an area of 26 acres from and out of the said property for Rs. 39 crores. Thereafter, a

deed of sub-division dated 16.02.2012 was executed by which the Respondents 1&2 and the Corporate Debtor sub-divided the said property as per their respective shares under the Sale Agreement and JVA dated 19.12.2006.

- 3.3 However, the above arrangement was cancelled by a Joint Venture Agreement (JVA) dated 26.09.2015 whereunder the parties agreed to jointly develop a piece and parcel of land admeasuring around 73 acres out of the said property. It was also agreed that the Corporate Debtor shall be entitled to 55% of the total sale receivables (**HDIL/Corporate Debtor's Right**) from the development carried out in relation to the 73 acres of the said property.
- 3.4 On 01.09.2018, M/s Excel Arcade Private Limited (EAPL), a sister concern of the Corporate Debtor, approached the Punjab and Maharashtra Cooperative Bank (PMC Bank) and requested for a Mortgage Term Loan of Rs. 100 crore which was sanctioned by the PMC Bank. The Corporate Debtor stood as a Guarantor and assigned its right in the said property under the JVA dated 26.09.2015 in favour of the PMC Bank.
- 3.5 On 20.08.2019, the Corporate Debtor was admitted into Corporate Insolvency Resolution Process (CIRP) vide this Tribunal's order dated 20.08.2019 passed in CP(IB)/27/2019.
- 3.6 In the meanwhile, the Punjab and Maharashtra Cooperative Bank (Amalgamation with the Unity Small Finance Bank Limited) Scheme, 2022 was approved by the Central Government whereby the assets and liabilities of the PMC were transferred to the Unity Small Finance Bank Limited (**Unity Bank/Respondent 4**), with effect from 25.01.2022. Consequently, the security interest over the Corporate Debtor's right in the said property which was assigned to PMC Bank got transferred to the Unity Bank/Respondent 4 and the Unity Bank chose not to relinquish the same.

3.7 During the moratorium period, the Respondents 1&2 executed the following two agreements with M/s Excella Properties (**Respondent 3**) in relation to the said property:

- i. Development Agreement cum General Power of Attorney dated 18.05.2023 (between Respondents 1&3); and
- ii. Development Agreement cum General Power of Attorney dated 18.05.2023 (between Respondents 2&3)

3.8 It is submitted that it is the duty of the RP to preserve and protect the rights and properties which also includes the security interest of the Corporate Debtor and hence, IA/3781 has been filed seeking to prevent the Respondents from carrying out any act in furtherance of the Development Agreements dated 18.05.2023.

3.9 The Unity Bank in IA/4521 has majorly reiterated the facts and submissions made by the RP in IA/3781 in which application the Unity Bank was also impleaded as Respondent 4 and have sought for declaring the agreements dated 18.05.2023 as null and void.

3.10 The Applicants have relied upon the following judgments to corroborate their case:

- i) *P. Mohanraj & Ors. vs Shah Brothers* [(2021) 6 SCC 258]
- ii) *Victory Iron Works vs. Jitendra Lohia* [(2023) 7 SCC 227]
- iii) *Rajendra Bhutta vs MHADA* [(2020) 13 SCC 208]
- iv) *Gujarat Urja Vikas Nigam Ltd vs Amit Gupta* [(2021) 7 SCC 209]
- v) *Tata Consultancy Services Ltd vs. S. K. Wheels Pvt Ltd* [(2022) 2 SCC 583]
- vi) *Karnataka PTCL vs. JSW* [(2023) 5 SCC 541]
- vii) *Kollipara Srirramulu vs. T. Aswatha Narayana* [AIR 1968 SC 1028]

4. **Submissions of the Respondents**

The Respondents 1, 2 & 3 are same in both the IAs and their submissions have common/ similar contentions. Therefore, the submissions of the Respondents No. 1, 2 & 3 are clubbed together and summarized hereinbelow:

- 4.1 It is submitted that the instant applications are not tenable under section 60(5) of the I&B Code as they seek enforcement and specific performance of a purported joint venture agreement and deed of assignment of receivables allegedly executed between the Corporate Debtor, Respondents 1&2 and the PMC Bank. Such relief is beyond the scope of section 60(5) of the I&B Code.
- 4.2 Respondent 3 states that it was not aware of any agreement executed by Respondents 1&2 with any other parties in respect to the property in question. Recital E (iii) of the two development agreements dated 18.05.2023 records that the Respondents 1&2 have not entered into any arrangement for developing the property with the Corporate Debtor and/or any other persons.
- 4.3 Respondents 1&2 submit that the claim of the Corporate Debtor is that it is entitled to 55% of receivables arising out of any development of the said property. However, the Corporate Debtor's entitlement was contingent and conditional upon performance of a set of obligations more particularly stated in the said JVA. However, the Corporate Debtor has failed to comply with the obligations under the JVA. This and the act of the Corporate Debtor of executing the Deed of Assignment resulted in the repudiation/termination of the JVA.
- 4.4 Moreover, it is submitted that the Joint Venture Agreement as well as the Deed of Assignment are unregistered and nominally stamped for Rs. 100, therefore, they are unenforceable. Further, the deed of assignment is also undated and unsigned. It is submitted that in any suit for specific

performance of an agreement, the plaintiff must establish that the said agreement is enforceable which is not the case in the present matter. Furthermore, even the Directorate of Enforcement in its provisional attachment order No. 10/2024 dated 14.03.2024 has also observed as:

“6.10 ... These MoUs between M/s HDIL & My Palace Mutually Aided Co-Operative Housing Society, M/s. Anish Construction Company & M/s. Kreative hosts Atria Pvt. Ltd. were found to be unregistered and had no legal sanctity.”

- 4.5 The Respondents deny receipt of Rs.34,00,00,000/- from the Corporate Debtor in pursuance of the JVA. Despite several opportunities granted, the Applicant has failed to produce any proof evidencing payment of these monies by the Corporate Debtor to these Respondents. Without prejudice to the aforesaid, it is open for the RP to make appropriate prayers in an appropriate proceeding before a civil court in respect of the alleged amount paid under an agreement which has subsequently been repudiated by parties. No monetary claims have been sought in the present IA pertaining to the said sum of Rs.34,00,00,000/-.
- 4.6 Without prejudice to the above, it is submitted that the JV Agreement creates no right and/or title and/or interest in the said Land in favour of HDIL. The JV Agreement is simply a Joint Venture between these Respondent Nos. 1 and 2, and the Corporate Debtor where the subject matter was not an interest in land, but, construction and development activity to be carried out on the said Land, which admittedly is owned, possessed and occupied by these Respondent Nos. 1 and 2.
- 4.7 The Respondents have relied on the following judgements:
- i) *Gujarat Urja Vikas Nigam Ltd vs Amit Gupta [(2021) 7 SCC 209]*
 - ii) *Tata Consultancy Services Ltd vs. S. K. Wheels Pvt Ltd [(2022) 2 CC 583]*
 - iii) *Ramachandra D. Choudhary v. Bansal Trading Co [(2022) SCC OnLine NCLAT 360]*
 - iv) *Vitol SA vs Norelf Ltd [(1996) 3 WLR 105]*

v) State of Kerala v. Cochin Chemical Refineries Ltd. [AIR 1968 SC 1361]

4.8 The Respondent No. 4 in IA 3781/2023 & IA 4521/2023 are Applicants in IA 4521/2023 & IA/3781 respectively, and therefore, no separate submissions have been made. Respondents No. 5 & 6 in IA 4521/2023 are proforma parties and no reply has been filed on their behalf.

ANALYSIS & FINDINGS

5. Heard Ld. Counsel for the parties and perused the records.
6. Through the applications, the Applicants have objected to the validity of the developmental agreements dated 18.05.2023, executed by the Respondent 1&2 in favour of Respondent 3, on the ground that there is already an extant joint venture agreement (JVA) executed on 26.09.2015 by and between the Respondents 1 & 2 and the Corporate Debtor under which the Corporate Debtor has been entrusted with development rights with respect to 73 acres of the said property which is handed over to Respondent 3 through the impugned developmental agreements.
7. As an offset against the above submission of the Applicants, the Respondents have argued that the said joint venture agreement (JVA) holds no validity since the same is unregistered. The Respondents further submitted that the Corporate Debtor, in complete ignorance of the terms & conditions of the JVA, had assigned its rights thereunder to the Punjab and Maharashtra Cooperative (PMC) Bank which later on got transferred to Unity Small Finance Bank Limited (Unity Bank) after the sanction of the Punjab and Maharashtra Cooperative Bank (Amalgamation with the Unity Small Finance Bank Limited) Scheme, 2022. Thus, it is submitted that by agreeing to assign its right to PMC Bank, the Corporate Debtor has repudiated the said JVA by conduct and the Respondents have accepted the same.

8. We have considered the rival submissions of the Ld. Counsels for the parties at length and the matter was heard for a considerable period of time.
9. On perusal of the two applications as well as the oral and written submissions of the parties, it is observed that the execution of the two developmental agreements dated 18.05.2023 by Respondents 1& 2 in favour of Respondent 3 has become the apple of discord between the Corporate Debtor and the Respondents 1, 2 & 3, as also between Unity Bank and Respondents 1, 2 & 3.
10. At this juncture, it is pertinent to look at the events that took place subsequent to the filing of the present applications. Pursuant to the disputed developmental agreements dated 18.05.2023, an Agreement for Sale without Possession dated 09.10.2023 was executed by the Respondents No. 1&2 in favour of M/s Sri Ghana Developers. However, on being cognizant of the same, this Tribunal vide order dated 08.11.2023 directed that *no third-party rights be created qua the property under agreement dated 26.09.2015*. Consequently, the Respondents 1 & 2 and M/s Sri Ghana Developers have cancelled the said agreement dated 09.10.2023 by executing a Deed of Cancellation dated 20.02.2024.
11. Furthermore, it is also seen that during the pendency of these applications, the two development agreements dated 18.05.2023, which agreements are the pith of the present case, have been terminated by the Respondents 1, 2 & 3 vide Deeds of Cancellation dated 07.04.2024. Additional Affidavit dated 08.04.2024 were filed by the Respondents whereto the said deeds of cancellation was annexed.
12. Considering such developments in the case, we reckon that by virtue of the cancellation of the two developmental agreements dated 18.05.2023, the third party right over the said property is rescinded and the original

parties i.e. the Corporate Debtor, Unity Bank and Respondents 1&2 are restored back to their original position as under the Joint Venture Agreement dated 26.09.2015 and the subsequent Assignment Agreement dated 16.08.2018.

13. In view thereof, IA/4521/2023 filed by Unity Bank seeking nullification of the said two development agreements dated 18.05.2023 along with other consequential reliefs is rendered **infructuous** as all the prayers sought therein are related only to the two development agreements dated 18.05.2023. The IA/3781/2023 filed by RP seeking miscellaneous reliefs with respect to the said property is also held **infructuous** to the extent of the reliefs sought in prayers 'b' and 'd' to 'g' which are also in relation to the development agreements dated 18.05.2023.
14. We note that the RP, in prayer 'a' and 'c' of IA/3781/2023 has sought determination of the rights of the Corporate Debtor under the Joint Venture Agreement dated 26.09.2015. To decide on the point, it requires examination and interpretation of the JVA & the assignment deed and the issue that follows is *whether this Tribunal has the jurisdiction to determine the validity of the said agreements and thereby declare extent of the rights of the Corporate Debtor and Unity Bank?*
15. We are conscious that this Tribunal's power while deciding upon contractual disputes has been well-established in a plethora of cases decided by the Hon'ble Supreme Court and Hon'ble NCLAT that such disputes can only be adjudicated by the Tribunal if it is directly related to the insolvency of the Corporate Debtor. Reference shall be made to the decision of the Hon'ble Supreme Court in **Gujarat Urja Vikas Nigam Ltd vs Amit Gupta [(2021) 7 SCC 209]** which case has been heavily relied upon by both the parties as per their relevancy.
16. In the present case, two agreements were executed by the Respondents 1, 2 & 3 on 18.05.2023 purported to be prejudicial to the Corporate

Debtor's right. Since the same was done after the commencement of CIRP, this Tribunal was empowered to adjudicate upon the same. However, because of the cancellation of the said two agreements, the status of the parties with respect to the said property got restored back to the period of JVA i.e. 26.09.2015 & Assignment Agreement dated 16.08.2018.

17. We would like to refer to some of the relevant clauses of the said JVA which are reproduced below:

*“3. The Owners hereby irrevocably agree and confirm to jointly carry out the construction and development of the said Property along with the Developers in the ratio as mentioned hereinbelow for a lumpsum consideration of **Rs. 34,00,00,000/- (Rupees Thirty-Four Crores only)** paid already by the Developers to the Owners on and from 2006 till date, prior to the execution of these (the payment and receipt of the full consideration, the Owners doth hereby admit and acknowledge and for the same and every part thereof, doth hereby acquit, release and discharge the Developers for ever).*

4. It is agreed and understood that since the Developers have paid the full consideration to the Owners and no further consideration is due and payable to Owners towards the joint venture, the Owners will not be entitled to terminate on any account whatsoever this Agreement.

5. Neither Parties shall have the right to sell, assign, transfer their share in the joint venture and/or in the said property in whole or in part for a period of 5 years from the date of this Agreement. Upon completion of the said 5 year term, in the event either Party wishes to liquidate its share, the same shall be First offered to the other Party of the joint venture as per the prevailing market price. However, in the event the Parties cannot mutually agree to the terms for such sale, assignment, transfer, then the other party shall have the right to offer

its share or any portion thereof to any third party upon seeking written consent of the other joint venture party.”

18. As regards the Assignment Deed, Ld. Counsel for the RP submitted that the assignment deed contemplates only the assignment of receivables and does not include assignment of rights, title and/ or interest in the property. Further, it is also submitted that the said assignment deed is signed by all the parties including Respondents 1 & 2 which indicates that the Respondents 1 & 2 have admitted the rights, interest and entitlement of the Corporate Debtor in the said property. It is further submitted by the RP that the purpose of execution of this Agreement was not to give a go-by to the JVA dated 26.09.2015 but was only to represent to Unity Bank that if the Corporate Debtor's share is sold then the purchase consideration that may finally fall to the share of the Corporate Debtor would be assigned in favour of the Unity Bank. The RP has relied on **Karnataka PTCL vs. JSW [(2023) 5 SCC 541]** to contend that there was no contract if the sale was conditional upon regular agreement being executed.

19. Relevant clauses of the said assignment agreement are reproduced below:

*“AJ. **AND WHEREAS** the assignors has stood as Guarantor (Surety) for the credit facility will be availed by M/s Excel Arcade Pvt. Ltd. from the Assignee and also created certain securities (more particularly detailed in the **SECOND SCHEDULE** hereunder written) in favour of the Assignee. The Assignors and the Confirming Party are negotiating the sale of the Said 73 Acre, out of the un-encroached portion out of the Said Property, which portion is agreed to be jointly developed by the Parties, under the aforesaid Joint Venture Agreement dated 26.09.2015. The Assignor is expecting to complete the negotiations and execute the necessary document of Sale to the Negotiating Purchaser/s, in the short term, thereby the Assignor becomes entitled to the purchase consideration for the share of the*

*Assignor on the sale of the said un-encroached portion of 73 acre of the said property, hereinafter called the “**Said Un-Encroached Portion**” more particularly described in the **THIRD SCHEDULE** hereunder written.*

*AK. **AND WHEREAS** the Assignors has offered to, in lieu of providing Credit Facility to M/s Excel Arcade Pvt Ltd, assign in favour of the Assignee, the share of Assignors out of the said purchase consideration that may finally fall to the share of Assignors, minimum amount comes to Rs. 175,00,00,000/- (Rupees One Hundred and Seventy Five Crore only), after providing there-from, the amount required to pay income tax @30%.”*

20. We note that the Respondents 1 & 2 were included as ‘Confirming Parties’ in the said assignment agreement and it is explicitly stated that *“the Confirming party hereby confirms and agrees to such Assignment and agrees to co-operate with the Assignee for implementation of this Agreement.”* Notably, the assignment deed was signed by the Corporate Debtor and Respondents 1& 2 but not signed by the Unity Bank i.e. the Assignee. Further, the Respondents have also averred that the said assignment deed is undated, unregistered and nominally stamped.
21. Thus, upon such circumstances, determining the conclusivity of the assignment deed and thereby adjudicating its effect on the JVA dated 26.09.2015 would require a detailed analysis and trial.
22. However, apart from the contentions raised herein, we see that there is no evidence showing *per se* termination of the JVA or any correspondence thereof. Therefore, we deem it fit to say that the rights and interest of the Corporate Debtor under the said agreements subsist in its real essence.

23. As held in **Victory Iron Works vs. Jitendra Lohia [(2023) 7 SCC 227]**, the development rights and interest that the Corporate Debtor has over the property in question would constitute “asset” under I&B Code. We note that in the Information Memorandum, the development rights of the Corporate Debtor forms part of Vertical/Project X of the Corporate Debtor. The relevant clause is reproduced below:

“X. Residual Assets: Company as a whole excluding the above projects

v. Development Rights – *Comprises of development rights in respect of redevelopment of properties of MHADA societies in SVP Nagar and various other independent properties like Bandra, Dadar, Worli and rights in the form of share in Joint Venture.”*

24. The Respondents have heavily contended that the said JVA has no legality since it is an unregistered and insufficiently stamped agreement. Reference was made to the observations of the Enforcement Directorate in its provisional attachment order No. 10/2024 dated 14.03.2024:

“6.10 ... These MoUs between M/s HDIL & My Palace Mutually Aided Co-Operative Housing Society, M/s. Anish Construction Company & M/s. Kreative hosts Atria Pvt. Ltd. were found to be unregistered and had no legal sanctity.”

25. It is pertinent to mention here that such contention was never raised before and the Respondents have also not objected, any time before the filing of the instant applications, to the inclusion of the rights of the Corporate Debtor under JVA in the Information Memorandum.

26. However, we refrain from adjudication of the same since these issues surrounding the JVA are not due to or related to the insolvency of the Corporate Debtor. We also note that prayer ‘a’ and ‘c’ of the RP in IA/3781/2023 are declaratory in nature. We are of the view that the issues raised by the Respondents as well as the illustrative references given in Paras 17, 19, 20 and 24 are such which requires elaborate

evidence and detailed examination and interpretation of the said agreements and to determine the extent of the rights of the parties under the said agreements. Moreover, the said JVA was executed before the initiation of CIRP of the Corporate Debtor and dispute relating thereto has also not triggered due to or during the insolvency of the Corporate Debtor considering the deeds of cancellation dated 07.04.2024.

27. We refer to Hon'ble NCLAT's decision in **SICOM Ltd & Anr. Vs. Kitply Industries Limited & Ors. [Company Appeal (AT) (Ins) No. 849 of 2021**, decided on 10.04.2023 wherein it was held as follows:

“On the point of jurisdiction of NCLT or NCLAT in respect of interpretation of agreement/contract which had already occurred prior to initiation of CIRP it has been held that neither NCLT nor NCLAT is having jurisdiction to adjudicate.

Xxx

*In view of law settled by Hon'ble Supreme Court as incorporated hereinabove we are of the opinion that by order impugned the Learned NCLT has exceeded its jurisdiction in directing the appellant to transfer the property in question in favour of Corporate Debtor. **The dispute whether agreement to sale which was entered in between the parties in the year 1998 was breached by the appellant or the respondent breached the agreement, may not be examined in a proceeding under the IBC.***

Such disputes are required to be examined by the court of competent jurisdiction. In view of admitted position that title of the property in respect of Igatpuri Unit still lies with the appellant, the Learned NCLT has committed error in allowing the application filed on behalf of the Respondent in directing for transferring the land in question and as such there is no option but to set aside the impugned order.”

(Emphasis Provided)

28. Thus, based on the facts and circumstances in the present case, we are of considered view that the JVA agreement and the subsequent

assignment deed vest certain rights and interest on the Corporate Debtor and Unity Bank in the said property, however, as regards further investigation in the matter, we hold that such issues are dehors the insolvency of the Corporate Debtor that need detailed trial and examination of evidence which cannot be decided in summary procedure of this Tribunal but should be adjudicated by the appropriate and competent court.

29. However, we also clarify here that this Tribunal's decision to refrain from scrutinizing the intricate issues surrounding the JVA as well as the assignment deed shall not fetter the lawful right/interest of the Corporate Debtor over the property in question. At the same time, the Corporate Debtor cannot also be benefitted with a better right than what it is entitled to under the said agreements, the precise determination of which requires a more detailed analysis. We refer to the decision in **Maharashtra Industrial Development Corporation vs. Santanu T. Ray [Company Appeal (AT) (Ins) No. 1004 of 2021]**, wherein Hon'ble NCLAT held that "*what rights and liability Corporate Debtor had to the plot, in question, the same at best can be transferred to the Resolution Applicant in event any Resolution Plan is approved. The Resolution Applicant cannot acquire better right nor can wash out its liability under the lease deed merely on the ground that Resolution Plan has been approved.*"
30. Accordingly, prayers 'a' and 'c' of IA 3781/2023 seeking declaration of Corporate Debtor's entitlement under the JVA agreement are **disposed** of in view of observations made hereinabove.
31. In the result, IA 4521/2023 and prayers 'b' and 'd' to 'g' in IA 3781/2023 seeking nullification of development agreements dated 18.05.2023 and consequential reliefs are **dismissed as infructuous**, and prayers 'a' and 'c' in IA 3781/2023 seeking declaration of Corporate Debtor's right with respect to the said property are **disposed of**.

Per: Lakshmi Gurung, Member (Judicial)

32. Let us understand the background under which the present application has been filed by the Resolution Professional. It is undisputed and admitted position that following two agreements have been entered into by the parties:-

32.1 Joint Venture Agreement dated 26.09.2015 (JV Agreement) between Respondent 1 and Respondent 2 on one side who are the **Owners** of the plot of land and Corporate Debtor, **Developer** on the other side. Some important terms and conditions of the said JV Agreement are as follows:

- a. The plot of land is situated at **Shamsiguda Village, Hyderabad, Telangana** and carved out from larger property of 92.5 acres of land for which final decree passed by Hon'ble High Court of Telangana and Andhra Pradesh and registered as No. 1451/2014 on 26.05.2014. We will refer it as **property in question**.
- b. The said property in question is un-encroached vacant land admeasuring around **73 acres**. The owners agreed to jointly carry out development of the property in question for a lumpsum consideration of **Rs. 34 crores**.
- c. It is mentioned in the agreement that the Developers have paid the full consideration to the Owners and no further consideration is due and payable to the Owners and therefore, **the Owners will not be entitled to terminate on any account whatsoever this Agreement**.
- d. It is mentioned in the JV Agreement that the parties agree to jointly develop the property in question in following ratio:

Name	Ratio
M/s. Anish Construction Co. & My Palace Mutually Aided Co-operative Housing Society	45%
Housing Development & Infrastructure Limited	55%

- e. The Owners were under the obligation to obtain various permissions and licenses from the Competent Authorities for the development.

32.2 Agreement of Assignment of Receivables dated 16.08.2018 between:

- i. Corporate Debtor referred to as “**Assignor/Guarantor**” of the First Part;
- ii. Respondent 1 and Respondent 2 collectively referred to as “**Confirming Party**” of the Second Part;
- iii. M/s. Excel Arcade Private Limited referred to as “**Borrower**” of the Third Part;
- iv. Punjab and Maharashtra Co-operative Bank Limited, referred to as the “**Assignee**” of the Fourth Part.

The relevant clauses ‘AJ’ and ‘AK’ have already been reproduced in Para 19 of this Order. The Confirming Party has put its signatures and confirmed the said assignment in following terms:

*“The Confirming Party hereby **confirms and agrees to such Assignment** as per the terms of this Agreement and **agrees to co-operate with the Assignee** for implementation of this Agreement.”*

33. In the meantime, the Corporate Debtor was admitted to CIRP on 20.08.2019. The Resolution Professional included the ‘property in question’ as part of the assets of the Corporate Debtor and included in

the pool of assets of the Corporate Debtor for the purpose of CIRP and no objection was ever taken by the Respondents.

34. During the subsistence of the moratorium, the Respondents 1 & 2 entered into two new development agreements both dated 18.05.2023 in favour of Respondent No. 3.
35. The representations and warranties given by the Owners are as follows:
- i) The Owner is the absolute Owner and possessor of the Schedule Property and has clear, valid, legal and subsisting marketable title to the Schedule Property and has been in peaceful possession and continuous enjoyment of the Schedule Property and no other person has any interest, title, right or share therein.
 - ii) There are no litigations or disputes pending or threatened in respect of the Schedule property.
 - iii) The Owner has not entered any agreements for sale or alienation in any manner whatsoever or any other arrangements for development or otherwise of the Schedule property with any other person/s.
 - iv) The Schedule property is not subject to any attachment by the process of the courts or is in the possession or custody of any Receiver, Judicial or Revenue Court or any officer thereof.
 - v) There are no claims, mortgages, charges, liens or encumbrances on the Schedule property.
36. We note that despite the property in question being subject to moratorium of the Corporate Debtor, the above representations are made by the Owners without disclosing the earlier Joint Venture Agreement dated 26.09.2015 and Assignment Agreement dated 16.08.2018 which definitely do not display *bona fide* of Respondents No. 1 and 2. By public

announcements made by the Resolution Professional, the Respondents are under constructive notice about insolvency resolution process of the Corporate Debtor and the applicable moratorium. However, the Respondent No.1 and 2 have not informed/disclosed to the Corporate Debtor about the subsequent development agreements executed by them in favour of Respondent No. 3.

37. Advocate Chaitanya Chavan for Resolution Professional has argued that in complete derogation of the rights of the Corporate Debtor over the 'property in question' and the security interest in favour of Unity Small Finance Bank Limited, a scheduled commercial bank, (Respondent No. 4), the Respondents No. 1 and 2 have executed the two development agreements dated 18.05.2023. Under the above background, the present application has been filed by the Resolution Professional seeking protection of the rights, title and interests to the 'property in question' of the Corporate Debtor arising out of JV Agreement dated 26.09.2015 and Assignment Agreement dated 16.08.2018.
38. During the course of the hearing on 08.11.2023, it was brought to the notice of this Court that another Agreement dated 09.10.2023 for sale of land out of the 'property in question' was executed by the Respondents in favour of Shri Ghana Developers. Therefore, following direction was issued:

"We hereby direct that no third-party rights be created qua the property under the agreement dated 26.09.2015 till next date of hearing."

39. However, both the agreements dated 18.05.2023 and the agreement dated 09.10.2023 have been cancelled by the Respondents and following Deeds of Cancellation have been placed on record by way of an Affidavit:

Instrument	Dated	Between
Deed of Cancellation	20.02.2024	Respondent 2, Respondent 3 and Shri Ghana Developers
Deed of Cancellation	07.04.2024	Respondent 1 and Respondent 3
Deed of Cancellation	07.04.2024	Respondent 2 and Respondent 3

40. Advocate Chaitanya Chavan for Resolution Professional has primarily submitted, that the rights, title and interests of the Corporate Debtor arising out of the JV Agreement dated 26.09.2015 and Assignment Agreement which is included in the pool of assets of Corporate Debtor be protected.
41. While Mr. Chetan Kapadia, Senior Advocate representing Respondent 1 and Respondent 2 has vehemently argued that the Corporate Debtor failed to develop the land as per the JV Agreement and by execution of Assignment Agreement dated 16.08.2018, the Corporate Debtor and Respondent 1 and 2 have repudiated the JV Agreement dated 26.09.2015 and therefore, the Corporate Debtor does not have any subsisting rights under JV Agreement dated 26.09.2015.
42. He further argued that the Assignment Agreement is merely assignment of receivables. Since there is no sale made so far, hence, there is no question of any receivables. Thus, according to Mr. Kapadia, no rights, title and interest of the Corporate Debtor subsist in the JV Agreement dated 26.09.2015 or the Assignment Agreement dated 16.08.2018.
43. However, we are unable to agree with the submission of Mr. Kapadia. The terms and conditions of the JV Agreement enumerated above clearly vests rights, title and interest in favour of the Corporate Debtor. Similarly, the Assignment Agreement dated 16.08.2018 has been signed by Respondents 1 and 2 as 'Confirming Party' and they cannot take a u-turn at this stage. There is nothing on record to show that any notice of

repudiation or termination of JV Agreement dated 26.09.2015 was given by the Respondent No. 1 and 2 prior to initiation of corporate insolvency of the Corporate Debtor. In our view, Respondents could not have terminated the JV agreement dated 26.09.2015 executed with the Corporate Debtor during subsistence of the moratorium.

44. Reliance is placed on **Victory Iron Works vs. Jitendra Lohia [(2023) 7 SCC 227]** wherein the Hon'ble Supreme Court held as follows:

“38. From the sequence of events narrated above and the terms and conditions contained in the agreements entered into by the parties, it is more clear than a crystal that a bundle of rights and interests were created in favour of the corporate debtor, over the immoveable property in question. The creation of these bundle of rights and interests was actually for a valid consideration. But for the payment of such consideration, Energy Properties would not even have become the owner of the property in dispute. Therefore, the development rights created in favour of the corporate debtor constitute “property” within the meaning of the expression under Section 3(27) IBC. At the cost of repetition, it must be recapitulated that the definition of the expression “property” under Section 3(27) includes “every description of interest, including present or future or vested or contingent interest arising out of or incidental to property.” Since the expression “asset” in common parlance denotes “property of any kind”, the bundle of rights that the corporate debtor has over the property in question would constitute “asset” within the meaning of section 18(1)(f) and Section 25(2)(a) of IBC.”

45. In view of the Deed of cancellation executed by Respondents 1 & 2, we are not called upon to decide further as to what are the rights, title and interests of the parties under various agreements. Suffice to say that the rights, title and interests of the Corporate Debtor arising out of the JV Agreement dated 26.09.2015 and Assignment Agreement 16.08.2018 continue to subsist in favour of the Corporate Debtor.

46. Accordingly, the interim protection granted vide order dated 08.11.2023 is made absolute till approval of the Resolution Plan by this Tribunal.
47. With these observations, the present applications are **disposed of**. No orders as to cost.

Sd/-

Charanjeet Singh Gulati
Member (Technical)

Sd/-

Lakshmi Gurung
Member (Judicial)

Uma, LRA