NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 825 of 2024

[Arising out of Order dated 07.03.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench in IA No.3689 of 2022 in CP No.315 of 2019]

IN THE MATTER OF:

Dharmesh Jain ....Appellant

Vs.

Jayesh Sanghrajka & Ors. ...Respondents

For Appellant:	**Mr. Abhijeet Sinha, Sr. Advocate with Mr. Anuj P. Agarwala, Mr. Aayush Agarwala, Ms. Mallika Luthra, Advocates.**
For Respondents:	**Mr. Ramji Srinivasan, Sr. Advocate with Mr. Shyam Kapadia, Ms. Shikha Ginodia, Mr. Mohit Bangwan, Advocates for RP** **Mr. Arvind Nayyar, Sr. Advocate with Mr. Tishampati Sen, Ms. Riddhi Sancheti, Mr. Anurag Anand, Mr. Mukul Kulhari, Mr. Akshay Joshi, Advocates for R2** **Mr. Arun Kathpalia, Sr. Advocate with Mr. Denzil Arambhan, Mr. Pranaya Goyal, Ms. Ria Nandini, Ms. Apoorva Kaushik, Mr. Himanshu Shembekar, Mr. Omm Mitra, Mr. Yash Sethna, Advocates for CoC.**

Company Appeal (AT) (Insolvency) No. 1821 of 2024
& I.A. No. 6666 of 2024

[Arising out of Order dated 09.08.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-III in IA/2455 of 2022 in C.P.(IB)/315(MB)-C-III-2019]

IN THE MATTER OF:

Dharmesh Jain ....Appellant

Vs.

Jayesh Sanghrajka & Ors. **...Respondents**

For Appellant:	**Mr. Abhijeet Sinha, Sr. Advocate with Mr. Anuj P. Agarwala, Mr. Aayush Agarwala, Ms. Mallika Luthra, Advocates.**
For Respondents:	**Mr. Ramji Srinivasan, Sr. Advocate with Mr. Shyam Kapadia, Ms. Shikha Ginodia, Mr. Mohit Bangwan, Advocates for RP** **Mr. Arvind Nayyar, Sr. Advocate with Mr. Tishampati Sen, Ms. Riddhi Sancheti, Mr. Anurag Anand, Mr. Mukul Kulhari, Mr. Akshay Joshi, Advocates for R2** **Mr. Arun Kathpalia, Sr. Advocate with Mr. Denzil Arambhan, Mr. Pranaya Goyal, Ms. Ria Nandini, Ms. Apoorva Kaushik, Mr. Himanshu Shembekar, Mr. Omm Mitra, Mr. Yash Sethna, Advocates for CoC.**

J U D G M E N T
(29th October, 2024)

Ashok Bhushan, J.

These two Appeals have been filed by the same Appellant challenging two orders passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench in the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor- 'Nirmal Lifestyle Realty Private Limited'. Company Appeal (AT) (Insolvency) No.825 of 2024 has been filed challenging the order dated 07.03.2024 passed in IA No.3689 of 2022 filed by the Appellant/ Applicant by which the IA No.3689 of 2022 has been rejected. Company Appeal (AT) (Insolvency) No. 1821 of 2024 has been filed by the Appellant challenging the order dated 09.08.2024 by which order

Adjudicating Authority has allowed IA No.2455 of 2022 filed by the Resolution Professional for approval of the Resolution Plan.

2. Brief facts of the case necessary to be noticed for deciding these Appeals are:-

2.1. The Corporate Debtor- 'Nirmal Lifestyle Realty Private Limited' entered into MoU with Ralliwolf Limited on 01.10.2004 in terms whereof Ralliwolf agreed to sell land admeasuring 20262 sq. mtrs. situated at LBS Marg, Mulund (West), Village Nahur, Taluka and Registration Sub-District Kurla, District Mumbai along with all the structures thereon to the corporate debtor for consideration of Rs.7 Crores on as is where is basis. The amount of Rs.7 Crore was paid by the corporate debtor to Ralliwolf. A registered Development Agreement dated 04.08.2005 was entered between the Ralliwolf Ltd. and the Corporate Debtor stating that under MOU dated 01.10.2004 owner had agreed to sell the property to the developers on as is where is basis. Pending sale of the said property, developers have requested the owner to permit the developers to develop the said property by constructing new buildings and structures thereon. The development agreement provided that in consideration of MOU and in further consideration of an amount of Rs.7 Crores paid by the developers to the owner, the owner gives license authorises and permits the developers to enter upon all that piece and parcel of the land for the purpose of commencing and carrying out the work of development and construction, pending the transfer of the said property by the owner to the developers or their nominees. The Development Agreement contained the terms and conditions for rights and obligations of the

developers. Several clauses of the Development Agreement shall be noticed hereinafter. Clause 6 (ii) of the Development Agreement also contemplated execution and handing over to the developers a Power of Attorney in favour of the nominee/s of the developers with a view to enable the developers to expeditiously make and submit the applications, plan etc. In pursuance of clause 6(ii) of the Development Agreement, a General Power of Attorney dated 06.08.2005 was executed in favour of Mr. Dharmesh Jain and his wife Mrs. Anju Jain by Ralliwolf Limited to enable the Corporate Debtor to undertake the development activities with respect to the property. Corporate Debtor had taken certain deposits and loans and on account of default committed by the corporate debtor proceedings under Section 7 against the corporate debtor commenced vide order dated 06.12.2021 of the Adjudicating Authority, Respondent No.1- Mr. Jayesh Sanghrajka was appointed as Resolution Professional in the CIRP of the corporate debtor. Respondent No.2- Oberoi Constructions Limited submitted a Resolution Plan on 15.07.2022. After negotiations and deliberations between the CoC and the SRA, a revised Resolution Plan was submitted where SRA sought that the Power of Attorney executed in favour of the Appellant and his wife shall stand cancelled. On 01.09.2022, the Committee of Creditors (CoC) approved the Resolution Plan submitted by the SRA. Waiver sought by the SRA in clause 7.33 of the Resolution Plan was accepted by the Adjudicating Authority. After approval of the Resolution Plan, the Resolution Professional filed an IA No.2455 of 2022 on 01.09.2022 before the Adjudicating Authority for approval of the Resolution Plan. The Appellant who had been suspended Director and shareholder of the corporate debtor filed an IA No.3689 of 2022 seeking

rejection of the waiver sought by the SRA in clause 7.33 of the Resolution Plan. The Resolution Professional filed a reply to the IA No.3689 of 2022. SRA also filed a reply to the IA No.3689 of 2022 and additional affidavit was also filed by the Appellant in IA No.3689 of 2022 contending that the Resolution Plan cannot be implemented since the same is conditional and the Adjudicating Authority is not entitled to entertain the question of legality and validity of the Power of Attorney. Adjudicating Authority by the impugned order dated 07.03.2024 has rejected IA No.3689 of 2022 with cost of Rs.1 Lakh. Aggrieved by the order dated 07.03.2024, Company Appeal (AT) (Insolvency) No.825 of 2024 has been filed by the Appellant. CoC was also subsequently impleaded as one of the Respondents in Company Appeal (AT) (Insolvency) No.825 of 2024.

2.2. On 09.08.2024, the Adjudicating Authority allowed IA No.2455 of 2022 and approved the Resolution Plan. Aggrieved by the order dated 09.08.2024, Company Appeal (AT) (Insolvency) No.1821 of 2024 has been filed by the Appellant. Both the Appeals were heard on 27.09.2024 on which date judgment was reserved in the Appeals.

3. We have heard Shri Abhijeet Sinha, Learned Senior Counsel for the Appellant in the Appeals, Shri Ramji Srinivasan, Learned Senior Counsel for the Resolution Professional, Shri Arvind Nayyar, Learned Senior Counsel for the SRA and Shri Arun Kathpalia, Learned Senior Counsel for the CoC.

4. Counsel for the Appellant in Company Appeal (AT) (Insolvency) No.825 of 2024 submits that the General Power of Attorney dated 06.08.2005 was

executed by Ralliwolf Ltd. in favour of Mr. Dharmesh Jain and Mrs. Anju Jain which PoA cannot be cancelled by means of Resolution Plan i.e. clause 7.33 of the Resolution Plan. Cancellation of registered instrument was beyond the competence and jurisdiction of the Adjudicating Authority. Development Agreement could not have had the effect of divesting Ralliwolf of all title, rights and interest in the subject property. Ralliwolf has not absolutely conveyed the property in question in favour of the corporate debtor neither cancelled the PoA. Ralliwolf nor the Appellant have given their consent for cancellation of the PoA. It is only the person who has given the PoA is entitled to cancel the PoA. The power to cancel the registered document only lay with the Civil Court and the Adjudicating Authority cannot exercise its jurisdiction to cancel a registered document. Counsel for the Appellant challenging the approval of the Resolution Plan submits that the Adjudicating Authority committed error in approving the Resolution Plan which was conditional in nature. The Resolution Plan which is entirely depending on the approval and sanction of third parties is a conditional/ contingent plan and could not have been approved. The Adjudicating Authority cannot assume the role of Civil Court and cancel a duly registered instrument conferring valuable rights in favour of the Appellant. A summary proceeding under the IBC does not contemplate cancellation and nullification of duly registered instrument. Clause 8.4 of the Resolution Plan contemplate that the plan be implemented if only permission is obtained from the Competent Authority/ State Government that subject property is not in the Eco-sensitive zone of the Sanjay Gandhi National Park.

5. The submission which has been advanced by Counsel appearing for the Respondents being common, they are referred to as submissions on behalf of the Respondents. Counsel for the Respondents submits that the PoA which was executed in favour of the Appellant and his wife were PoA as nominees of the corporate debtor only for the purpose of facilitating the corporate debtor in carrying out the development, making application for approvals and sanction of the plan. Appellant being suspended director of the corporate debtor as nominee of the corporate debtor was given PoA by Ralliwolf. The object was to facilitate to carry on developments by the developers, no rights by the PoA were given in favour of the Appellant in the subject land. After initiation of the CIRP, the Corporate Debtor is being represented by the IRP/RP and Corporate Debtor having been taken over by the SRA under the Resolution Plan, the PoA which was executed in favour of the Appellant has served its purpose and cannot be continued any further. Appellant who is suspended director of the corporate debtor has filed the application only to create hurdle in the completion of the CIRP of the corporate debtor which has been made with dishonest intention. The very basis of PoA was only to facilitate the developer i.e. the corporate debtor and the Appellant relying on the PoA now intends to create hurdles and the Adjudicating Authority thus has rightly held that the IA filed by the Appellant is a vexatious and dishonest attempt. It is further submitted by the Counsel for the Respondents that the Adjudicating Authority does not lack jurisdiction in approving clause 7.33 of the Resolution Plan which is for implementation of the Resolution Plan. It is submitted that the consent of the Appellant is not required for cancellation of the PoA. It is contended that

the Adjudicating Authority has jurisdiction to permit the cancellation of registered instrument in the insolvency of the corporate debtor. Adjudicating Authority has ample jurisdiction to pass appropriate order to make the PoA ineffective and in-operative. It is submitted that the Appellant who was suspended director of the corporate debtor has no locus to challenge the Resolution Plan. Appeal challenging the Resolution Plan is nothing but a feeble attempt to delay the revival of the corporate debtor. The submission of the Appellant that Resolution Plan is conditional and contingent is incorrect. The Resolution Plan is neither conditional nor contingent. The condition of the Resolution Plan in clause 8.4 stood satisfied as on 23.09.2022 and the same was informed by the SRA to the Resolution Professional. Clause 8.4 was modified by the SRA by e-mail dated 01.09.2022. It is further contended that the Hon'ble Supreme Court passed an order on 23.09.2022 in the case of ***"T.N. Godavarman Thirumulpad vs. Union of India & Ors."*** clarifying that 1 km wide Eco-sensitive zone in each protected forest that would not be applicable to Sanjay Gandhi National Park, thus, the condition under clause 8.4 (ii) of the plan stood satisfied.

6. Counsel for the parties in support of their submissions has relied on various precedents which shall be referred to while considering the submissions in detail.

7. In Company Appeal (AT) (Insolvency) No.825 of 2024, the order passed by the Adjudicating Authority dated 07.03.2024 in IA No.3689 of 2022 has been challenged. IA No.3689 of 2022 was filed by the Appellant, the suspended director of the corporate debtor where Appellant prayed for

following reliefs which has been extracted by the Adjudicating Authority in paragraph 1 of the judgment. Paragraph 1 of the judgment is as follows:-

> *"a. Reject the waiver sought by the Respondent No.2 in Clause 7.33 of the Resolution Plan for cancellation of the General Power of Attorney dated 06.08.2005 bearing Registration No. BDR/14/4844/2005 ("POA") granted by Ralliwolf Ltd. In favour of the Applicant;*
>
> *b. Without Prejudice and in the alternative to prayer Clause (i) hereinabove, this Tribunal be pleased to direct the Respondent No. 2 to remove and/or delete Clause 7.33 from the Resolution Plan;*
>
> *c. Protect and safeguard the rights/powers and authorities granted in favour of the Applicant as provided for under the Power of Attorney dated 06.08.2005;*
>
> *d. Costs of the present Interlocutory Application;*
>
> *e. Any other order as this Tribunal may deem fit in the facts and circumstances of the present case."*

8. We have noticed that the Development Agreement dated 04.08.2005 executed between Ralliwolf and the Corporate Debtor clearly contemplate that in consideration of an amount of Rs.7,00,00,000/-, owner authorises the developer to carry out the work of the development and construction. Clause 1 of the Development Agreement is as follows:-

> *"1. In consideration of the above MOU and in further consideration of an amount aggregating to*

Rs.7,00,00,000/- (Rupees Seven Crores Only) paid by the Developers to the receipt whereof the Owner doth hereby acknowledge and forever acquit, release and die charge the Developers of and from the same and every part thereof, the Owner hereby gives license, authorises and permits the Developers to enter upon all that piece and parcel of land bearing CTS No. 547 & 547 1 to 6 admeasuring approx 20262 sq.mtrs. or thereabouts together with the buildings and structures constructed thereon and along with plants, machineries, fittings, fixtures attached to the Land and the buildings situate at LBS Marg, Mulund (W), Village Nahur, Taluka and Registration Sub-District Kurla and District Mumbai, Mumbai-400 080 together with the two buildings constructed thereon (shown delineated on the plan annexed hereto and more particularly described in the Schedule hereunder written and hereinafter referred to as "the said property") for the purpose of commencing and carrying out the work of development and construction, pending the transfer of the said property by the Owner to the Developers or their nominee or nominees as hereinafter provided and in accordance with the Development Control Regulations for the time being in force and to sell /transfer/dispose off or let out the premises in the structure/s to be constructed on the said property and to collect compensation or deposits or consideration or such amount etc. as the Developers deem fit."

9. Clauses 3 and 4 of the Development Agreement contain other relevant conditions for the development which are as follows:-

"3. Relying on the declarations and representations made by the owner hereinabove, the Developers have agreed to acquire from the Owner the development rights in respect of the said Property, on the terms and conditions herein appearing.

4. From the date hereof, the Developers shall be entitled to carry out development work on the said Property to the maximum extent permissible and by utilization of TDR generated from the said property or procured from third parties as per the plans sanctioned / may be sanctioned / as may be amended - by the MCGM and in accordance with the D. C. Regulations in force from time to time and in compliance with the terms and conditions imposed by the Regulatory Authorities and thereafter, to obtain Occupation Certificate and Completion Certificate and shall be entitled to avail of all benefits that may arise from time to time from the said Property, including all benefits arising out of such Scheme of Government, local body or public authorities / authority which may now be in force or may hereafter be formulated by the Government, local body or public authority."

10. Clause 6 of the Development Agreement enumerated rights and obligations of the owner. Clause 6(ii) which is relevant is as follows:-

"(ii) To execute and hand over to the Developers forthwith a Power of Attorney in favour of the nominee/s of the Developers with a view to enable the Developers to expeditiously make and submit the applications, plans, etc., and to otherwise obtain all building permissions and all powers incidental

thereto. The Developers shall keep the Owner fully and effectively indemnified against all claims, demands, actions and/or proceedings that may be taken by any person or authority in connection with and/or relating to or touching anything done in pursuance of such Power of Attorney which shall be at the risk, expenses and costs of the Developers alone."

11. Clause 8 empowers the declaration of the owner and rights of the developers. Clause 8 is as follows:-

"8. The Owner hereby declares and confirms that the Developers are entitled to allow use of, let out, sell on an outright basis deal with or dispose off the flats/premises, offices, shops, open spaces, terraces, garages, stilt etc. in the said buildings structures to be constructed on the said Property to any person or persons as the Developers may desire or deem fit and to receive consideration on their own account and appropriate the same without being liable to account for the same to the Owner in any manner whatsoever. The Developers shall for the said purpose, be entitled to enter into agreements with the prospective occupants of the premises / flats as a principal in its own capacity. It is specifically agreed that no obligations of any nature whatsoever of the Developers shall be incurred by the Owner qua the prospective purchaser, tenants, lessees, licensees, etc. of the Developers and it shall be the obligation of the Developers alone to comply with and carry out the agreement or letters of allotment, writings and

> *documents with the respective purchasers. It is also agreed that the. Developers shall be entitled to receive and retain with itself all the moneys from the persons to whom the said premises / flats etc, are sold or allotted as the case may be in the buildings / structures to be constructed by the Developers on the said Property and to appropriate the same in such manner as the Developers may deem fit. All the moneys which shall be received by the Developers from such persons shall belong to the Developers and will be received by them on their own account. The Owner shall also not be liable or responsible to any such persons so far as the said moneys are concerned either for the refund thereof or for any misapplication or non-application thereon part thereof."*

12. It is in pursuance of clause 6(ii) that General Power of Attorney was executed by Ralliwolf in favour of Dharmesh Jain and Anju Jain. General PoA dated 06.08.2005 refers to MoU dated 01.10.2024 and 04.08.2005. Clause (iv) of PoA refers to the purpose and object for execution of the PoA in favour of Mr. Dharmesh Jain and Mrs. Anju Jain. Clause (iv) is as follows:-

> *"(iv) To enable the Developers to develop the said Property, we are executing the present Power of Attorney in favour of Mr. Dharmesh Jain and Mrs. Anju Jain to act for and on our behalf and in our names to do all acts, deeds, matters and things solely and absolutely at the costs, charges, expenses and consequences of the Attorney relating to the said Property in the manner hereinafter appearing."*

13. From clause 6(ii) of the registered Development Agreement, it is clear that the Ralliwolf undertook to execute PoA in favour of the nominee/s of the developers and further with a view to enable the developers to expeditiously make and submit the applications, plan etc. and to otherwise obtain all building permissions and all powers incidental thereto. Further clause (iv) of the General PoA, as noted above, clearly indicate that the PoA was issued ***to enable the developers to develop the said property***. Thus, PoA in favour of the Appellant as a nominee of the corporate debtor was to enable the developers to develop the said property. No rights were given to the PoA holder in the subject land.

14. The CIRP having commenced by the order of the Adjudicating Authority, the Corporate Debtor is now represented by the Resolution Professional. The Resolution Plan to take over the Corporate Debtor by the SRA was submitted. Clause 7.33 of the Resolution Plan which clause was challenged by the Appellant in its IA has been extracted in paragraph 2.5 of the order of the Adjudicating Authority which is as follows:-

> ***"7.33:*** *The General Power of Attorney dated 6th August 2005 registered with the office of the Sub-Registrar of Assurances under Serial No. 4844 of 2005 was executed by Ralliwolf in favour of (i) Mr. Dharmesh Jain, and (ii) Mrs. Anju Jain (since deceased), shall stand cancelled without any further act or deed and without the necessity of executing any separate deeds, documents and writing for effectuating the same, by order of the NCLT sanctioning this Resolution Plan."*

15. The Adjudicating Authority after noticing the submissions of both the parties in detail while considering the IA No.3689 of 2022 and after noticing the various clauses of the Development Agreement and PoA has returned its findings in paragraphs 5.7, 5.8 and 5.9, which reads as follows:-

> *"5.7 The principal namely "RALLIWOLF LIMITED" had already received seven crores towards sale consideration for the property and also acknowledged the same in the development agreement and, therefore, nothing needs to be done by the applicant in this regard. In so far as, obtaining permissions from the authorities for construction, supervision and sale under the Power of Attorney are concerned, the applicant has legally disentitled to act on behalf of the Corporate Debtor having lost his control in the Corporate Debtor company on account of admitting the Corporate Debtor into CIRP. Even otherwise all the above referred powers were conferred up on the Corporate Debtor also in the development agreement and, therefore, the Corporate Debtor can legally deal with the property and go ahead with the construction activity. As per Clause 6 (ii) of the development agreement the principal namely "RALLIWOLF LIMITED" shall execute and handover to the developers, viz. Corporate Debtor forthwith a Power of Attorney in favour of the nominees of the developers with a view to enable the developers to expeditiously make and submit the applications plans etc. and to otherwise obtain all building permissions and all powers instantly thereto. Therefore, it is very clear from the above recital that the Power of Attorney in the name of the applicant and his wife was executed only*

in the capacity of nominees of the Corporate Debtor for taking up the construction activity immediately.

5.8 The plain reading of the development agreement also makes it very clear that "RALLIWOLF LIMITED" had absolutely conveyed the property in the name of Corporate Debtor with all absolute rights including the right of alienation, mortgage, sale, etc. and "RALLIWOLF LIMITED" has no right, title, possession or interest over the property. It is not the case of the applicant that he has performed any of the acts like obtaining plans or part construction etc. which have to be carried out by the Successful Resolution Applicant afresh independently after stepping into the shoes of the Corporate Debtor as they might have become time barred due to long passage of time even if they are obtained. Even though this Tribunal cannot directly cancel a registered Power of Attorney like a Civil Court as contended by the applicant, it is not legally disentitled to issue appropriate directions to the concerned authorities for effective implementation of the Resolution Plan by using its powers under the Code.

5.9 When the principal "RALLIWOLF LIMITED" had lost and relinquished all their rights in the property, there is no point in saying that Mr. Dharmesh Jain is still having some rights under the Power of Attorney. As stated supra the Applicant has not specifically stated anywhere in the application as to what are the acts he has performed under the Power of Attorney to show that he has at least acted under the Power of Attorney except mere assertion that he has some rights under

the Power of Attorney. Therefore, this Bench has no hesitation in holding that the said Power of Attorney does not enure to the benefit of Mr. Dharmesh Jain at this stage except for mere assertion that he has a registered Power of Attorney as the said Power of Attorney remained a dead document left with an empty formality of cancellation. Therefore, this Bench can issue appropriate direction to the Sub-Registrar and concerned statutory authorities at the time of passing final orders approving the Resolution Plan keeping the above observations in mind. Hence, the Resolution Plan cannot be rejected on the sole ground of existence of Power of Attorney in the name of applicant if it is in compliance with other provisions of the Code. Similarly, this Bench has no power to direct the Successful Resolution Applicant or CoC to delete any clauses in the Resolution Plan as sought by the applicant. Accepting or rejecting the concessions and waivers by the Successful Resolution Applicant is purely a judicial discretion of this Tribunal depending upon the necessity which has to be taken care while passing the order approving the Resolution Plan. Hence, this Bench has no hesitation in once again reiterating that the Applicant is disentitled to act under the Power of Attorney and in fact he never acted or done anything in furtherance of the above Power of Attorney. Thus, this Bench is of the considered opinion that the above application is filed by the Applicant taking the mere advantage of its non-cancellation of the registration."

16. The Adjudicating Authority after returning the aforesaid findings has also held that the application is nothing but a vexatious and dishonest attempt made by the Appellant. In paragraph 6 of the judgment, following has been observed:-

> *"6. For the forgoing reasons, this Bench is of the considered opinion that the above application is nothing but a vexatious and dishonest attempt made by the Applicant who is none other than the Member of a Suspended Board of the Corporate Debtor having 95% stake in the Corporate Debtor and encouraging this kind of application would certainly amount to extending helping hand to the people like the Applicant which may ultimately prevent revival of viable companies and defeat the very object of the Code. Therefore, this Bench feels this is a fit case to impose costs on the applicant."*

17. We having noticed the relevant clauses of the Development Agreement and the Power of Attorney executed in favour of the Appellant, it is amply clear that the Appellant in the PoA was nothing but nominee of the corporate debtor and Appellant being suspended director of the corporate debtor was treated as nominee of the corporate debtor for the purpose of facilitating the developers. The developers being corporate debtor, PoA was not executed in an individual capacity of the appellant nor gave any right to the subject land. When the Resolution Plan submitted by the SRA is approved and the corporate debtor is being taken over by the SRA, the development of property and all other steps as per the Resolution Plan has to be taken by the SRA. The PoA dated 06.08.2005 which was executed in favour of the Appellant

served its purpose and cannot be relied for any right which can be claimed by the Appellant in the process. Appellant who was contemplated to extend its co-operation as nominee of the corporate debtor in developing the property is now taken a stand to create obstacles in revival of the corporate debtor to carry out function by the SRA who now takes over the corporate debtor after approval of the Resolution Plan.

18. The submission which has been much pressed by the Counsel for the Appellant is that the Adjudicating Authority has no jurisdiction to uphold the Clause 7.33 of the plan which declares cancellation of the PoA. It is submitted that there is no jurisdiction of the Adjudicating Authority to cancel the PoA. Counsel for the Respondents refuting the submission has relied on the judgment of the Hon'ble Supreme Court in ***"Gujarat Urja Vikas Nigam Ltd. vs. Amit Gupta- (2021) 7 SCC 209"*** to answer the above question. In Judgment of *"Gujarat Urja Vikas Nigam Ltd."*, the jurisdiction of the Adjudicating Authority while deciding an application under Section 60(5) of the IBC came for consideration in the above case. Reference is made to paragraphs 79 to 82 of the judgment which is as follows:-

> *"**79.** Section 238 of IBC stipulates that IBC would override other laws, including an instrument having effect by virtue of any such law. NCLT in its decision dated 29-8-2019 [Astonified Solar (Gujarat) (P) Ltd. Resolution Professional v. Gujarat Urja Vikas Nigam Ltd., 2019 SCC OnLine NCLT 7878] gave detailed findings on the issue of whether PPA is an instrument within the meaning of Section 238 of IBC.*

80. *Section 238 of IBC provides:*

> *"**238. Provisions of this Code to override other laws**.—The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."*

81. *The findings of NCLT are extracted below : (Astonfield Solar case [Astonified Solar (Gujarat) (P) Ltd. Resolution Professional v. Gujarat Urja Vikas Nigam Ltd., 2019 SCC OnLine NCLT 7878] , SCC OnLine NCLT paras 19-27)*

"19. That from the plain reading of Section 238, it is evident that the aforesaid section is applicable to an "instrument" too. However, we find that the term "instrument" has not been defined anywhere under IBC 2016.

20. To know, whether the power purchase agreement (PPA) is an "instrument" or not, we referred to the provisions of Section 3(37) of the Code, which is reproduced as below:

*'**3. (37)** words and expressions used but not defined in this Code but defined in the Indian Contract Act, 1872, the Indian Partnership Act, 1932, the Securities Contract (Regulation) Act, 1956, the Securities Exchange Board of India Act, 1992, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Limited Liability Partnership Act, 2008 and the Companies Act, 2013, shall have the meanings respectively assigned to them in those Acts.'*

21. However, in the definition clauses of all these enactments and of the General Clause Act, 1897, we failed to find a definition of the term "instrument".

22. For interpretation of the term "instrument", we, therefore, thought it proper to check how the legislature has defined the term "instrument" in other enactments.

23. Finding that PPA has been executed on a stamp paper, we referred to Section 2(14) of the Stamp Act, 1899, which reads as follows:

*'**2. (14)** "**instrument**".—"instrument" includes every document by which any right or liability is, or*

purports to be, created, transferred, limited, extended, extinguished or recorded;'.

24. That near similar definition of the term "instrument" is provided under Section 2(b) of the Notaries Act, 1952:

*'**2. (b)** "**instrument**" includes every document by which any right or liability is, or purports to be, created, transferred, modified, limited, extended, suspended, extinguished or recorded;'*

25. Further, the Bombay Stamp Act, 1958 defines the term "instrument" in Section 2(l) as follows:

*'**2. (l) "instrument"** includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded, but does not include a bill of exchange, cheque, promissory note, bill of lading, letter of credit, policy of insurance, transfer of share, debenture, proxy and receipt;'*

26. That Merriam-Webster Dictionary defines the word "instrument", inter alia, as:

'a formal legal document (such as a deed, bond or agreement)'

27. Since, the rights and liabilities of parties have been created in the power purchase agreement and such an agreement is enforceable by law and the word "instrument", inter alia, includes an "agreement", we are of the view, that the power purchase agreement i.e. PPA is an "instrument" for the purpose of Section 238 of IBC 2016."

***82.** It has been urged on behalf of the appellant that Section 238 does not apply to a bilateral commercial contract between a corporate debtor and a third party and only applies to statutory contracts or instruments entered into by operation of law. The basis of this submission is that the word "instrument" should be given a meaning ejusdem generis to the provision "contained in any other law". We do not find force in this argument. Section 238 does not state that the "instrument" must be entered into by operation of law; rather it states that the instrument has effect by virtue of any such law. In other words, the instrument*

need not be a creation of a statute; it becomes enforceable by virtue of a law. Therefore, we are inclined to agree with the view taken by NCLT. Section 238 is prefaced by a non obstante clause. NCLT's jurisdiction could be invoked in the present case because the termination of PPA was sought solely on the ground that the corporate debtor had become subject to an insolvency resolution process under IBC."

19. The Hon'ble Supreme Court has further considered the jurisdiction of the NCLAT under Section 60(5)(c) from paragraphs 84 to 91. Hon'ble Supreme Court in the above judgment has held that the residuary jurisdiction conferred by statute may extend to matters which are not specifically enumerated under a legislation. In paragraphs 87, 88, 90 and 91, following has been held:-

*"**87.** Hence, the residuary jurisdiction conferred by statute may extend to matters which are not specifically enumerated under a legislation. While a residuary jurisdiction of a court confers it wide powers, its jurisdiction cannot be in contravention of the provisions of the statute concerned. In A. Devendran v. State of T.N. [A. Devendran v. State of T.N., (1997) 11 SCC 720 : 1998 SCC (Cri) 220] , a two-Judge Bench of this Court, while determining the limitations of the residuary jurisdiction under Section 465 of the Code of Criminal Procedure, 1973 ("CrPC"), held that a residuary jurisdiction cannot be invoked when there is a patent defect of jurisdiction or an order is passed in contravention of any mandatory provision of the CrPC. Speaking through G.B.*

Pattanaik, J., this Court observed that a competent court is vested with the power to exercise residuary jurisdiction under Section 465 CrPC in the following terms : (SCC pp. 740-41, para 15)

"15. We may notice also the arguments advanced by Mr Mohan, learned counsel appearing for the State, that the conviction and sentence against the appellants should not be interfered with in view of the provisions of Section 465 of the Code, inasmuch as there has been no failure of justice. We are unable to accept this contention. Section 465 of the Code is the residuary section intended to cure any error, omission or irregularity committed by a court of competent jurisdiction in course of trial through accident or inadvertence, or even an illegality consisting in the infraction of any provisions of law. The sole object of the section is to secure justice by preventing the invalidation of a trial already held, on the ground of technical breaches of any provisions in the Code causing no prejudice to the accused. But by no stretch of imagination the aforesaid provisions can be attracted to a situation where a court having no jurisdiction under the Code does something or passes an order in contravention of the mandatory provisions of the Code. In view of our interpretation already made, that after a criminal proceeding is committed to a Court of Session it is only the Court of Session which has the jurisdiction to tender pardon to an accused and the Chief Judicial Magistrate does not possess any such jurisdiction, it would be impossible to hold that such tender of pardon by the Chief Judicial Magistrate can be accepted and the evidence of the approver thereafter can be considered by attracting

the provisions of Section 465 of the Code. The aforesaid provision cannot be applied to a patent defect of jurisdiction. Then again it is not a case of reversing the sentence or order passed by a court of competent jurisdiction but is a case where only a particular item of evidence has been taken out of consideration as that evidence of the so-called approver has been held by us to be not a legal evidence since pardon had been tendered by a court of incompetent jurisdiction. In our opinion, to such a situation the provisions of Section 465 cannot be attracted at all. It is true, that procedures are intended to subserve the ends of justice and undue emphasis on mere technicalities which are not vital or important may frustrate the ends of justice. The courts, therefore, are required to consider the gravity of irregularity and whether the same has caused a failure of justice. To tender pardon by a Chief Judicial Magistrate cannot be held to be a mere case of irregularity nor can it be said that there has been no failure of justice. It is a case of total lack of jurisdiction, and consequently the follow-up action on account of such an order of a Magistrate without jurisdiction cannot be taken into consideration at all. In this view of the matter the contention of Mr Mohan, learned counsel appearing for the State, in this regard has to be rejected."

(emphasis supplied)

88. *In Johri Lal Soni v. Bhanwari Bai [Johri Lal Soni v. Bhanwari Bai, (1977) 4 SCC 59] ("Johri Lal Soni"), a two-Judge Bench of this Court had to determine whether an insolvency court can scrutinise*

the validity of a transfer made seven years before the transferor was adjudged as insolvent, when Section 53 of the PIA classified only those transfers as voidable against the receiver, where the transferor was adjudged insolvent on a petition presented within two years after the date of transfer. This Court, in view of the wide discretion granted in terms of Section 4, held that the insolvency court will have the jurisdiction to determine the validity of void transfers undertaken at any point of time. While Section 53 was applicable only to voidable transactions, this Court was of the view that Section 4 provides a discretion to an insolvency court to decide all questions which arise in a case of insolvency and an interpretation which allowed the court to examine void transfers undertaken at any point of time would be in consonance with the object of the provision. The Court held : (SCC pp. 61-62, para 4)

"4. We now proceed to interpret the provisions of Section 4 itself, the relevant part of which may be extracted thus:

*'**4. Power of Court to decide all questions arising in insolvency**.—(1) Subject to the provisions of this Act, the Court shall have full power to decide all questions whether of title or priority, or of any nature whatsoever, and whether involving matters of law or of fact, which may arise in any case of insolvency coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.'*

It would be seen that the section has been couched in the widest possible terms and confers complete and full powers on the Insolvency Court to decide all questions of title or priority, or of any nature whatsoever, which may arise in any case of insolvency. The only restriction which is contained in Section 4 is that these powers are subject to the other provisions of the Act. In other words, the position is that where any other section of the Act contains a provision which either runs counter to Section 4 or expressly excludes the application of Section 4, to that extent Section 4 would become inapplicable. Counsel for the respondent strongly relied on the provisions of Section 53 which runs thus:

*'**53. Avoidance of voluntary transfer**.—Any transfer of property not being a transfer made before and in consideration of marriage or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration shall, if the transferor is adjudged insolvent on a petition presented within two years after the date of the transfer, be voidable as against the receiver and may be annulled by the Court.' "*

(emphasis supplied)

It is relevant to note that unlike Section 4 of the PIA, Section 60(5)(c) of IBC is not subject to other provisions of the statute. Hence, Section 60(5)(c) of IBC has been worded more expansively than Section 4 of the PIA.

***89.** In respect of the interplay between Sections 53 and 4 of the PIA, in Johri Lal Soni [Johri Lal Soni v. Bhanwari Bai, (1977) 4 SCC 59] , this Court further held : (SCC p. 62, para 4)*

"4. … It was submitted that the effect of Section 53 of the Act clearly is that it bars the jurisdiction of the Insolvency Court to determine the validity of any transfer made beyond two years of the transferor being adjudged insolvent. It is no doubt true that the words 'within two years after the date of the transfer being voidable as against the receiver' does fix a time-limit within which the transfer could be annulled by the Court. But a plain construction of Section 53 would manifestly indicate that the words 'within two years after the date, be voidable as against the receiver and shall be annulled by the Court' clearly connote that only those transfers are excepted from the jurisdiction of the Court which are voidable. The section has, therefore, made a clear distinction between void and voidable transfers—a distinction which is well-known to law. A void transfer is no transfer at all and is completely destitute of any legal effect : it is a nullity and does not pass any title at all. For instance, where a transfer is nominal, sham or fictitious, the title remains with the transferor and so does the possession and nothing passes to the transferee. It is manifest, therefore, that such a transfer is no transfer in the eye of the law. Such transfers, therefore, clearly fall beyond the purview of Section 53 of the Act which refers only to transfers which are voidable. It is well settled that a voidable transfer is otherwise a valid transaction and continues to be good until it is avoided by the party aggrieved. For instance, transfers executed by the transferor to delay or defraud his creditors may be avoided under Section 53 of the Transfer of Property Act. Similarly transfers made under coercion, fraud or undue influence may be

avoided by the party defrauded. It is only such transfers which, if they take place beyond two years of the date of transfer, cannot be enquired into by the Court by virtue of Section 53 of the Act. This appears to us to be the plain and simple interpretation of the combined reading of Sections 4 and 53 of the Act. Indeed, if a different interpretation is given, it will render the entire object of the Section [4] nugatory, because the Court would be powerless to set at naught transfers which are patently void, merely because they had been made at a particular point of time."

(emphasis supplied)

90. *The decision in Johri Lal Soni [Johri Lal Soni v. Bhanwari Bai, (1977) 4 SCC 59] gave an expansive interpretation to the powers of an insolvency court under Section 4 of the PIA, which is similar to Section 60(5)(c) of IBC. This Court held that an insolvency court was empowered to consider the validity of void transfers under Section 4 of the PIA, which did not explicitly fall under Section 53 of the PIA. However, this Court's decision was premised on the finding that Section 53 of the PIA only dealt with voidable transfers. This Court noted that the jurisdiction of an insolvency court will be restricted in matters where a voidable transfer has taken place beyond the time-limit stipulated under Section 53 within which the transfer could be annulled by the court. Hence, in the name of exercising a residuary jurisdiction, a court cannot cloak itself with jurisdiction which is contrary to the provisions of a statute. However, at the same time, as held by this Court*

in Johri Lal Soni [Johri Lal Soni v. Bhanwari Bai, (1977) 4 SCC 59] , an interpretation which renders the objective of a residuary jurisdiction nugatory cannot be upheld by this Court. A fine line has to be drawn between ensuring that a residuary jurisdiction is not rendered otiose due to an excessively restrictive interpretation, as well as, guarding against usurpation of power by a court or a tribunal not vested in it.

91. *The residuary jurisdiction of NCLT under Section 60(5)(c) of IBC provides it a wide discretion to adjudicate questions of law or fact arising from or in relation to the insolvency resolution proceedings. If the jurisdiction of NCLT were to be confined to actions prohibited by Section 14 of IBC, there would have been no requirement for the legislature to enact Section 60(5)(c) of IBC. Section 60(5)(c) would be rendered otiose if Section 14 is held to be exhaustive of the grounds of judicial intervention contemplated under IBC in matters of preserving the value of the corporate debtor and its status as a "going concern". We hasten to add that our finding on the validity of the exercise of residuary power by NCLT is premised on the facts of this case. We are not laying down a general principle on the contours of the exercise of residuary power by NCLT. However, it is pertinent to mention that NCLT cannot exercise its jurisdiction over matters dehors the insolvency proceedings since such matters would fall outside the realm of IBC. Any other interpretation of Section 60(5)(c) would be in contradiction of the holding of this Court in Satish Kumar Gupta [Essar Steel (India) Ltd. (CoC) v. Satish*

Kumar Gupta, (2020) 8 SCC 531 : (2021) 2 SCC (Civ) 443] ."

20. When PoA which was given for a particular purpose to the Appellant as nominee of the corporate debtor and Resolution Plan is approved by the CoC of the corporate debtor, the approval of the Resolution Plan is in commercial wisdom of the CoC and in event, the Resolution Plan declare the PoA which was given in favour of the Appellant as nominee of the corporate debtor as cancelled, the said clause of the Resolution Plan cannot be allowed to be challenged by the Appellant nor Appellant was given any rights in the subject property so as to assert any right. The endeavour of the Appellant is nothing but creating obstacles in revival of the corporate debtor in which he was suspended director. We also affirm the findings and imposition of cost of Rs.1 lakh that application was filed by the Appellant is nothing but a vexatious and dishonest attempt.

21. Counsel for the Appellant has also relied on the judgment of the Hon'ble Supreme Court in ***"Suraj Lamp and Industries Pvt. Ltd. vs. State of Haryana and Anr.- (2012) 1 SCC 656"*** for the proposition that mere execution of the Development Agreement could not have the effect of divesting Ralliwolf of all title, rights and interest in the subject property. There can be no dispute to the proposition laid down by the Hon'ble Supreme Court in the above case. Corporate Debtor had development rights to develop the property on consideration of Rs.7 Crores. It is no more *res-integra* that the development rights can be claimed by the corporate debtor. The basis of the application filed by the Appellant was PoA dated 06.08.2005

and whether on the basis of the said PoA, clause of the Resolution Plan can be impugned by the Appellant was the question to be answered. As held by us, the PoA was executed in favour of the Appellant who was a nominee of the corporate debtor, only to facilitate the developers in carrying out the development and no rights were given to the Appellant in their individual capacity on the property. None of the rights of the Appellant, thus, can be said to be affected by approval of the Resolution Plan. PoA has out lived its purpose and has rightly held to be cancelled in the clause 7.33. We thus, do not find any error in the order of the Adjudicating Authority rejecting IA No.3689 of 2022.

22. Now we come to the order approving the Resolution Plan dated 09.08.2024. Counsel for the Appellant referring to Clause 8.4 of the Resolution Plan sought to contend that the Resolution Plan was conditional and contingent which could not have been approved. He has referred to Clause 8.4(iii) which contemplate that if the clarification/permission as specified in clause 8.4(ii) is not obtained prior to expiry of 180 days, the Resolution Plan shall stand terminated.

23. The law is well settled that the Resolution Plan which is approved by the CoC cannot be allowed to be withdrawn and any clause which contemplate withdrawal of the plan is unenforceable. Law in this case is settled by the Hon'ble Supreme Court in ***"Ebix Singapore Pvt. Ltd. vs. Committee of Creditors of Educomp Solutions Limited and Anr.- (2022) 2 SCC 401"***.

24. The submission with regard to Eco-sensitive zone with regard to clarification and permission as contemplated has been noticed and dealt by the Adjudicating Authority. In paragraph 41 and 42 of the judgment of the Adjudicating Authority dated 09.08.2024, following has been held:-

> *"41. In relation to this conditional clause, the Resolution Applicant also sent an email on 01.09.2022 at 11:33. Additionally, at 11:39, another email was sent stating that-*
>
> *"Please ignore my email of 1/Sep/2022 below.*
> *This is with reference to the Revised Resolution Plan dated 30/Aug/2022 submitted by us, and the discussion during the meeting Committee of Creditors held on 1/Sep/2022.*
> *As discussed during the aforesaid meeting, Section 8.4(ii) of the Revised Resolution Plan dated 30/Aug/2022, shall be read as under:*
> *In view of the above, prior to the expiry of 180 (one hundred and eighty) days from the NCLT Approval Date and as a condition to the implementation, consummation, completion, and effectiveness of the Resolution Plan, a clarification/permission shall be obtained from the competent authority and/or the State Government and/or the Supreme Court of India that the said Land is not within the Eco-Sensitive Zone and/or affected thereby, as per the relevant notifications issued by the concerned authorities from time to time/applicable law. The Resolution Applicant and the Resolution Professional will, from the date of the approval of the Resolution Plan by the COC, work together for an expeditious resolution of the matter, and*

the Resolution Professional shall render all necessary assistance and cooperation in this matter. For this purpose, the COC must authorize the Resolution Professional to provide its assistance and cooperation."

42. Therefore, Section 8.4(ii) of the Revised Resolution Plan shall be read as mentioned in above cited email."

25. Counsel appearing for the Respondents has also referred to the order of the Hon'ble Supreme Court dated 23.09.2022 in ***"T.N. Godavarman Thirumulpad"*** (supra) where the Hon'ble Supreme Court has already issued necessary clarification on application seeking clarification, the Hon'ble Supreme Court in its order dated 23.09.2022 directed as follows:-

"I.A. No.110348/2022 along with I.A. No.110338/2022, 137123/2022, 141500/2022

This application is filed for seeking clarification of the Judgment dated 03.06.2022 passed by this Court in I.A. No.1000 of 2003 etc. It is submitted by the applicant that the eco-sensitive zone (ESZs) around Sanjay Gandhi National Park has already been notified vide Final Notification No.SO 3645(E) dated 05.12.2016. It is further submitted that the eco-sensitive zone around Thane Flamingo Creek Sanctuary has already been notified vide final notification being S.O. 4293(E) dated 14.10.2021.

It is therefore submitted that the judgment and order dated 03.06.2022 which directs that each protected forest, that is a National Park or Wildlife Sanctuary must have eco-sensitive zone of minimum

one kilometre wide, would not be applicable to the Sanjay Gandhi National Park as well as the Thane Flamingo Creek Sanctuary.

Perusal of our Judgment and Order dated 03.06.2022 would reveal from paragraph 17 that the Court had noticed a draft notification dated 08.04.2021 concerning Thane Flamingo Creek Sanctuary that was already published by MoEF&CC, and Court noted that after a final decision was taken in respect of the said draft notification, the matter be placed before the Court. It appears however, that the final notification dated 14.10.2021 was already issued before the order dated 03.06.2022. The same was not brought to the notice of the Court.

The order would reveal that the Court had further noted that a one kilometre wide "no development zone" may not be feasible in all cases. Specific instances with regard to Sanjay Gandhi National Park and Guindy National Park have also been made in paragraph 42 of the Judgment.

Though Mr. A.D.N. Rao, learned Amicus Curiae submitted that the matter be referred to CEC or he may be granted an opportunity to file reply, we see no reason as to why the clarification as sought for should not be granted.

The Notification dated 05.12.2016 in respect of Sanjay Gandhi National Park as well as the Notification dated 14.10.2021 in respect of Thane Flamingo Creek Sanctuary have been issued after

following the entire procedure as prescribed under the law.

Mr. Tushar Mehta, learned Solicitor General appearing for the State of Maharashtra as well as for the Union of India also submits that in view of the final notifications being issued there should be no impediment in granting the relief as prayed for.

In that view of the matter, we are inclined to allow the application in terms of prayer Clauses B to E of the application in I.A. No.110348/2022. shall stand disposed of. IAS."

26. Thus, in view of the clarification issued by the Hon'ble Supreme Court, the submission advanced on the basis of clause 8.4 by the Appellant terming the Resolution Plan as un-implementable and conditional cannot be accepted. Present is not a case where any violation of Section 30(2) has been even alleged by the Appellant. The Hon'ble Supreme Court has laid down time and again that the jurisdiction of the NCLT and NCLAT is limited jurisdiction to see as to whether the Resolution Plan is in compliance of Section 30(2). Judgment of the Hon'ble Supreme Court in ***"K. Sashidhar vs. Indian Overseas Bank & Ors.- (2019) 12 SCC 150"*** is referred. Appellant has not been able to point out any other ground on the basis of which approval of the Resolution Plan can be faulted.

27. We thus, do not find any ground to interfere with the order dated 09.08.2024 passed by the Adjudicating Authority approving the Resolution Plan submitted by the Respondent No.2.

28. We do not find any merit in both the Appeals. Both the Appeals are dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

New Delhi
Anjali