NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI SPECIAL BENCH (COURT-II)
IN
IA-3395/ND/2026
IN
CP (IB) NO. 1114/(ND)/2020

IN THE MATTER OF CP NO. 1114/(ND)/2020

(Under Section 9 of IBC, 2016)

BVG India Ltd. **... Petitioner/ Financial Creditor**

Versus

Three C Facility Management **... Respondent/ Corporate Debtor**

IN THE MATTER OF IA-3395/ND/2026

(Under Section 60(5) r/w 14 and 238 of IBC, 2016)

Shaneshwara Properties Private Limited
Through Its Authorised Signatory
Mr. Shashi Bhushan Sharma, Director.
305, Nirmal Tower, Barakhamba Road,
New Delhi - 110001 **... Applicant**

Versus

1. **CFM Asset Reconstruction Private Limited**
   Acting in its capacity as Trustee of CFMARC Trust-201,
   Block No. A/1003,
   West Gate, Near YMCA Club,
   Sur. No. 835/1 + 3 S.G. Highway, Makarba,
   Ahmedabad, Gujarat-380051

2. **ICICI Bank**
   Office at-ICICI Tower,
   NBCC Place, Bisham Pitamah Marg,
   Pragati Vihar, Delhi, New Delhi, 110003

3. Three C Facility Management Private Limited
Through Mr. Devendra Umrao,
Resolution Professional
C-23, Greater Kailash Enclave,
Part-I, New Delhi – 110048 **... Respondents**

Order Delivered on: 05.08.2026

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)
SH. SHISHIR AGARWAL, HON'BLE MEMBER (T)

PRESENT:

For the Applicant	:	Adv. Anshuj Dhingra, Adv. Akansha Sharma in IA-3395/2026
For the RP	:	Abhishek Parmar, Adv. for RP A/W Devendra Umrao RP
For the Respondent	:	Adv. Kiran Singh and Jaya Garg

ORDER

PER: SHRI ASHOK KUMAR BHARDWAJ, MEMBER (J)

IA-3395 of 2026: The prayer made in the captioned application reads thus:-

"(a) Pass an order declaring the Sale Notice dated 11.07.2026 issued by Respondent No. 1 as invalid, together with the e-auction proposed to be conducted pursuant thereto in respect of Unit No. 2301, Tower FS-3, Four Seasons Private Residences, Delhi One, Sector-16B, Noida, as void ab initio, non est, illegal and without jurisdiction, having been issued during the subsistence of the moratorium under Section 14(1)(c) of the Insolvency and Bankruptcy Code, 2016, and being contrary to the provisions of Section 31(1) of the Code upon approval of the Applicant's Resolution Plan;

(b) Restrain Respondent Nos. 1 to 3, their officers, employees, agents, assigns or any person claiming through or under them from proceeding with, conducting, confirming or in any manner giving effect to the e-auction pursuant to the Sale Notice dated 11.07.2026, or from creating any third-party rights or interests in respect of Unit No. 2301, Tower FS-3, Four Seasons Private Residences, Delhi One, Sector-16B, Noida, including accepting, appropriating or dealing with any bid amount, Earnest Money Deposit or sale consideration received or proposed to be received pursuant thereto;

(c) Direct Respondent Nos. 1 to 3 to forthwith withdraw the Sale Notice dated 11.07.2026 and all consequential steps taken pursuant thereto;

(d) Pending further orders, pass an ex-parte ad-interim order restraining Respondent Nos. 1 to 3, their officers, agents, assigns, or anyone claiming through or under them, from (i) proceeding with, conducting, confirming, or giving effect in any manner to the e-auction under the Sale Notice dated 11.07.2026; (ii) accepting, opening, or appropriating any bid, Earnest Money Deposit, or sale consideration received or proposed to be received pursuant thereto; and (iii) creating any third-party right, title, or interest in Unit No. 2301, Tower FS-3, Four Seasons with liberty to the Private Residences, Noida, pursuant thereto Respondents to apply for vacation of this order on notice."

2. The salient pleas espoused in the application are:-

a) The Applicant is entitled to execution of Conveyance Deed in respect of Unit No. 2301, Tower FS-3, Four Seasons Private Residences, Delhi One, Sector-16B, Noida as the unit, hereinafter referred to Unit No. 2301 is allotted in favour of Respondent No. 3 viz. CD.

b) The impugned Sale Notice impinges not only upon the implementation of the approved Resolution Plan and the rights of the Applicant thereunder.

3. To examine the claim of the Applicant, we need to analysis the Tripartite Agreement dated 06.07.2017 entered into between Boulevard Projects Private Limited, M/s Three C Facility Management Pvt. Ltd. and ICICI Bank Limited, a banking company within the meaning of Banking Regulation Act, 1949 (Respondent No. 2) in the application. Indubitably, the Respondent No. 2 extended financial facility in respect of the Unit claimed by the Applicant. In terms of the provisions contained in clause 6 of the deed, in the event of default in terms of the Loan Agreement or there being other inability, incapacity, omission or negligence on the part of the mortgager, the bank shall be entitled to execution the sale/conveyance/sub-lease deed of the Schedule Properties in its favour upon the completion of the project. Apparently, there was default in repayment of the amount of debt which has not been denied or disputed either by the Applicant or the RP. Therefore, the clause 6 of the deed came into operation and it is the Respondent No. 2 which turned entitled to have Sale Deed of the scheduled property executed in its favour. Relevant excerpt of the deed reads thus:-

TRIPARTITE AGREEMENT

This Agreement is made At New Delhi on this 6th day of July, 2017 between:-

1. Boulevard Projects Private Limited, A company duly incorporated and registered under the Indian Companies Act, 1956, having its Registered office at C-23, Greater Kailash Enclave, Part-I, New Delhi-110048 and Corporate office at Tech Boulevard, Central Block, Plot no. 6, Sector-127, Noida-201301 acting through its Authorized Signatory(ies) Mr. Hardeep Singh Dadwal duly authorized vide Board's resolution dated June 21, 2017 to sign and execute this Agreement on its behalf (hereinafter referred to as "Builder" /"First Party" which expression shall unless it be repugnant to the context thereof, shall be deemed to mean include its assign, nominees and successors in interest) of the First Part

And

2. M/s Three C Facility Management Pvt. Ltd., a company incorporated under the Companies Act, 1956, having its registered office at C-23, Greater Kailash Enclave, Part-I, New Delhi-110048 through its Authorized Signatory and/or duly authorized vide Board's resolution dated to sign and execute this Agreement (hereinafter referred to as "Buyer"/"Mortgagor"/"Borrower", which expression shall, unless repugnant to the meaning or context thereof, mean and include its executors, successors in interest, administrators, and permitted assigns) of the Order Part. (A Copy of Board Resolution along with a certified copy of Memorandum & Articles of Association and specimen signature duly attested by the banker are enclosed)

And

3. ICICI Bank Ltd., a banking company within the meaning of the Banking Regulation Act, 1949 and having its registered/ head office at ICICI Bank Tower, Near Chakli Circle, Old Padra Road, Vadodara 390007, Gujarat and one of its Zonal Office at NBCC Tower Bhishma Pitamah Marg, Pragati Vihar, New Delhi, Delhi-110003 through its Authorized Signatory Sh. Dhirendra Pratap Singh, Chief Manager, ICICI Bank (hereinafter referred to as the 'Bank'/'Mortgagee' which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successor in interest and assigns) of the other part.

   For mortgage of properties more particularly specified in Schedule A (hereinafter also referred to as 'mortgage premises'/ 'schedule properties').

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And Whereas by a loan agreement dated 23rd December 2014 (the "Loan Agreement") made between the Mortgagor as the borrower of one part and the Bank as the lender of the other part, the Mortgagee has agreed to lend and advance to the mortgagor and the mortgagor has agreed to borrow from the Mortgagee the amount of Rs.15,00,00,000/- (Rupees Fifteen Crore Only) (the Loan) upon the terms and conditions set out therein against the security by way of mortgege of the said schedule properties inter alia other properties.

And Whereas the Bank has called upon the Mortgagor to create mortgage on the said Residential Property specified in Schedule A/ schedule properties as and by way of repayment of the Loan and payment of interest as hereinafter provided.

And Whereas the First Party and the Second Party have represented to the bank that the schedule properties are free from all encumbrances, burden, decree, sale, mortgage, gift, lien, liability, litigation, attachment, stay order, injunction, orders, acquisition, notifications, disputes, notices, legal flaws and that they are sufficiently entitled to mortgage, assign or encumber the said property to the bank/third party. The first party undertakes to obtain an NOC from the existing project lender for the schedule properties as the said flats have been fully paid up.

Now therefore this agreement witnesseth as under:-

1. That in consideration of the sum of Rs.15,00,00,000/- (Rupees Fifteen Crore Only) lent and advanced by the bank to the second party, (the receipt and utilization whereof the second party/ mortgagor do hereby admit) the first party and the second party hereby jointly charge/ mortgage and assign all of their rights in the property more particularly described in Schedule A/ schedule properties to the third party/ bank as a security for repayment and payment of the said Mortgage Debt with a condition that on the Mortgagor or his/its heirs, executors, administrator, assigns repaying/paying the Mortgage Debt due to the Bank in accordance with the provisions contained in the Loan Agreement and thereupon, the Bank will release the Mortgaged Premises specified in Schedule A/ schedule properties from the mortgage security and shall if so required by the Mortgagor execute a Deed of Release at the cost of the Mortgagor.

2. That the Party of the First Part (Builder) shall not either convey/transfer or give possession and the Party at the Second Party shall not get the conveyance or transfer/sub-lease executed/registered and take the possession of the property specified in Schedule A/ schedule properties without the express written consent of the Bank.

3. That the Borrower shall be obliged to make the payment of all dues specified in Loan Agreement Bank before taking the possession and or getting the sub-lease deed registered for the schedule properties.

4. That the Borrower desires that agreement to sell entered into between the Borrower and the Party of the First Part (Builder) & original payment receipt shall be kept by the Bank in its safe custody till terms and conditions of grant of loan are complied with as security for the lease stated loan facility.

5. That the Party of the First Part (Builder) has assured that it has clean title to the schedule properties and the same can be freely transferred/ registered and is not subject to any lien and/or encumbrance and that they have obtained all the requisite sanctions for developing and selling the flats/houses/ The party of the First Part (Builder) indemnities the Party of the Second Part (Borrower) and the Party of the Third Part (Bank) in this respect.

6. And it is further agreed that the event of default in terms of the Loan Agreement or in other inability, incapacity, omission or negligence on the part of the mortgagor, the bank shall be entitled to have the sale/conveyance/sub-lease deed of the Schedule Properties (upon the completion thereof) executed in its favour or such other person/persons or entities nominated by it and appropriate the proceeds for satisfaction of the mortgage debt in accordance with the loan agreement.

7. That the party of the First Part (Builder) shall inform the Party of the Third Part (Bank) about the date time and venue of the registration of the sub-lease deed at least seven days advance notice, in writing to enable the representative of the Bank to retrieve the original sub-lease deed upon registration.

8. That the party of the First Part (Builder) shall recognize the Bank as a duly authorized agent of the Borrower for implementation of all the terms and conditions of the present agreement.

9. That the Builder has assured the bank that the flat/ plot under consideration/development is free from all charges and encumbrances and the charges/lien of the Bank has been noted by it in the records. Builder shall not allow the transfer of property during the pendency of loan without the written consent of the Bank. Bank shall always hold the first charge on the said schedule properties till the entire loan is paid back by the Borrower.

10. That the first party undertakes that it shall not cancel, amend, modify or very the Flat Buyer Agreement dated 01.06.2017 in any manner whatsoever without he express written consent of the bank.

11. That the Banker hereby confirms that the terms of this agreement shall supersede and prevail over the terms of the Buyer's Agreement dated 01.06.2017 and nothing contained an Apartment Buyer Agreement dated 01.06.2017 shall restrict or in any manner or affect the right of the bank for enforcement of security interest created under the agreement.

12. And it is further agreed and declared by the Mortgagor that he shall also be liable to pay and shall pay all the costs, charges and expenses that the Bank will incur for the protection of the mortgage security and/or for the realization of the Mortgage Debt and the same shall be deemed to form part of the Mortgage Debt and the security thereof as aforesaid.

13. And it is further agreed that in the event of the Mortgaged Premises/ schedule properties being destroyed by fire or any accident as aforesaid, the Mortgagee will be entitled to receive the insurance claim under such policy to the exclusion of the Mortgagor and to appropriate the same first towards all arrears of interest and then the principal amount or any part thereof as may be sufficient to pay the Mortgage debt due and if any surplus remains the same only will become payable to Mortgagor.

4. During the course of hearing, the RP categorically submitted that the CD never claimed the Unit No. 2301 as part of its assets. He opposed the application filed by the Applicant. As can be seen from the e-mail dated 20.07.2026, the RP informed the Applicant that the bank already enforced the security interest created on the units. Relevant excerpt of the e-mail written by the RP reads thus:-

> *"Accordingly, based on the categorical position communicated by ICICI Bank, it appears the Bank had already enforced the security interest created on the units. However, the complete underlying records and supporting documents, including a copy of the approved Resolution Plan of Boulevard Projects Private Limited setting out the treatment of the said units, were not made available to the Resolution Professional."*

5. Indubitably, as the CD did not discharge the liability of repaying the loan amount to Respondent No. 2, in terms of clause 6 of Tripartite Agreement, the bank had become entitled to execution of Sale Deed/Conveyance Deed qua the unit in question in its favour.

6. Neither the Applicant nor the RP denied the Tripartite Agreement. It is not the case of the Applicant that any Conveyance Deed was executed in its favour. In the absence of execution of any Sale Deed, neither the Applicant nor the CD could claim itself the owner of the property. In terms of the provisions of Section 54 of Transfer of Property Act, sale is transfer of ownership in exchange for a price paid or promised or part-paid or part-promised. In terms of the provisions, the sale of Tangible immovable property can be made only by a registered instrument. The Applicant could not produce any instrument to show the ownership of the CD qua the Unit No. 2301 (ibid).

On the contrary, RP who could take control of CD as per the provisions of Section 17 and 18 of the Code himself denied that the Unit No. 2301 is owned by the CD. Besides, the notice assailed by the Applicant is dated 11.07.2026, while the application for approval of Resolution Plan was decided on 15.07.2026. On 15.07.2026, the SRA did not bring the sale notice to the notice of this Tribunal. Rather he chose to prefer the present application after the order dated 15.07.2026 passed by this Tribunal. Could the CD have any claim on the Unit No. 2301, the RP could assert the same during CIRP. Not only that the RP never asserted the claim on the property but he also participated in the hearing of the present application and specifically asserted that the Unit No. 2301 is not owned by CD.

7. A perusal of the Resolution Plan reveals that a reference to 'Information Memorandum' has been made therein. There is specific mention in the Resolution Plan that the ownership status of the properties in which the Corporate Debtor made investment remains unclear. The Plan makes a mention about investment in Delhi One Project, Noida- A Tripartite Agreement executed among Boulevard Projects Private Limited, Three Facility Management Private Limited and ICICI Bank (Lender). It has been clearly mentioned in the Plan that the money invested in three private Residence referred to therein viz. No. 3202 (Tower FS-1, 25th Level); 2301 (Tower FS-3, 15th Level); 3201 (Tower FS-1, 25th Level) was financed through a loan facility of Rs. 15 Crores from ICICI Bank, which was secured by way of mortgage over the aforementioned residential units. A stand is taken in the Plan that the aforementioned particulars disclosed in the Plan were mere information available with RP and besides such information, no other information was available. In clause 4 of the Plan, a reference has been made to financial statement of the CD for the financial years ending on 31.03.2018, 31.03.2017 and 31.03.2016. In the statement, there is no mention about any of the aforementioned units. The statement as reproduced in the Plan reads thus:-

"4. Financial Statements

The Financial statement of the Corporate Debtor is as follow;. However, upon inspecting the MCA portal for TCFMPL, it was observed that the balance sheet for the period ending 31 Mar 2018 has not been uploaded on the MCA portal.

Amount (In Rs)

Particulars	Figures at the end of 31st March, 2018 (Audited)	Figures at the end of 31st March, 2017 (Audited)	Figures at the end of 31st March, 2016 (Audited)
I. EQUITY AND LIABILITIES			
(1) Shareholder's Funds			
a) Share Capital	1,20,000	1,20,000	1,20,000
b) Reserves and Surplus	4,58,06,421	6,81,58,005	14,78,40,825
(2) Non-Current Liabilities			
a) Long Term Provisions	44,95,208	37,53,027	19,25,361
(1) Current Liabilities			
a) Short Term Borrowings	47,79,49,097	21,78,94,711	17,18,93,244
b) Trade Payables	26,71,84,762	21,34,17,663	15,30,24,365
c) Other Current Liabilities	16,26,69,540	12,87,50,552	12,41,14,094
d) Short Term Provisions	2,48,702	43,292	2,52,408
TOTAL	95,84,73,730	63,21,37,250	59,91,70,297
II. ASSETS			
(1) Non- Current Assets			
a) Property, Plant and Equipment	11,74,721	17,73,589	39,68,000
b) Intangible Assets	-	-	1,27,443
c)Deferred Tax Assets Net	5,42,91,122	6,09,84,240	2,79,22,159
d) Other non-current assets	55,833	52,098	48,328
Total	5,55,21,676	6,28,09,967	3,20,65,930
(2) Current Assets			
a) Inventories	1,60,93,480	1,50,02,978	94,37,842
b) Trade Receivables	7,75,64,765	6,35,58,997	5,12,77,124
c) Cash and Bank Balances	46,61,850	28,50,597	1,67,44,235
d) Short-Term Loans and Advances	80,46,30,496	48,79,14,710	48,73,16,705
e) Other Current Assets	1,465	-	23,28,461
Total	90,29,52,055	56,01,06,218	56,71,04,367
TOTAL	95,84,73,731	63,21,37,250	59,91,70,297

8. The Resolution Plan also does not make any reference to ICICI Bank as secured creditor, thus apparently, the RP did not assert any claim of CD on the units referred to hereinabove. However, the Plan make a reference to charge of Rs. 15 Crores on the CD.

9. It is seen from the Valuation Report given by the valuator Mr. Shravan Kumar Vishnoi, enclosed as Annexure A-36 to the application preferred for approval of Resolution Plan, both the fair value and liquidation value of the assets of the CD are nil. There is no mention of any immovable/fixed assets in the inventory of the assets of the CD noted by the said valuer. The relevant excerpt of the report reads thus:-

(24) Value and rationale for valuation

I have considered the documents and information provided by the Resolution Professional and determine the Realisable Value as follows:

Sr. No.	Particulars	Book Value	Fair Value	Liquidation Value
1	Deferred Tax Assets	5,42,91,122.00	Nil	Nil
2	Other Non-current Assets	55,833.00	Nil	Nil
3	Trade Receivables	7,75,64,765.00	Nil	Nil
4	Cash & Cash Equivalents	46,61,850.00	Nil	Nil
5	Short-term Loan & Advances	80,46,30,496.00	Nil	Nil
6	Other Current Assets	1,465.00	Nil	Nil
	Total	**94,12,05,530.00**	**Nil**	**Nil**

10. We also note from the Valuation Report given to RP by Mr. Gyaneshwar Sahai that no fixed assets far-less either of the aforementioned units were included in the assets of the CD. Clause 24 of the Valuation Report given by Mr. Gyaneshwar reads thus:-

(24) Value and rationale for valuation

Sl. No.	Particulars	Book Value as on 31/03/2018	Fair Value (Rs.)	Liquidation Value (Rs.)
1	Trade receivables	7,75,64,765	0	0
2	Cash and cash equivalents	46,61,850	0	0
3	Short-term loans and advances	80,46,30,496	0	0
4	Other current assets	1,465	0	0
	Total	**88,68,58,575.37**	**0**	**0**

11. Apparently, the valuation of assets of the CD as assessed by two valuators is nil. The Resolution Plan could be submitted by the SRA with reference to the Valuation Report and the information given in the Information Memorandum. As neither any of the secured or unsecured creditors of the CD were included in CoC nor the Plan has been approved by them, we clarify that the claim over the aforementioned assets would be of the creditors viz. secured or unsecured and the SRA will facilitate them to assert their claim over the same, as the SRA has submitted its claim only with reference to nil value of the assets. Indubitably, clean slate principle will apply only with reference to such assets for which value is assigned and such value is formed as basis for the Resolution Plan.

12. We also see from the certificate given by the RP in Form H, the fair value and liquidation value of CD is zero. Thus, the SRA who could offer the Resolution Plan with reference to zero fair and liquidation value of the CD cannot claim any right on any of its assets of the CD discovered and found in future. Clause 7A of the certificate reads thus:-

7A. Realizable amount:

Sl. No.	Particulars	Description
1.	Total Realisable amount under the plan *(In case of real estate CDs, provide the monetary value of flats etc. given to allottees)*	Rs. 13,12,000/- (Excluding amount proposed towards CIRP cost and contingent fund)
2.	Fair Value	Zero (0)
3.	Liquidation Value	Zero (0)
4.	Percentage (%) of realisable amount to Fair Value	100%
5.	Percentage (%) of realisable amount to Liquidation Value	100%
6.	Percentage (%) of realisable amount to Principal amount	2.93%
7.	Percentage (%) of realisable amount to Total admitted claims	2.74%
8.	Percentage (%) of realisable amount to Other than admitted Corporate Guarantee claims	N.A.

13. It is the misconception of the Applicant that in terms of the Resolution Plan, the Unit No. 2301 could accrue to CD or SRA. We may also be not oblivious of the fact that when the Plan Value is only Rs. 36,11,000/-, the value of unit 2301 is much higher. The SRA was fully conscious that if a plea could be taken regarding the Unit No. 2301 being asset of the CD, the Plan value as also the valuation report could be questioned. In a designed way, the SRA did not raise any issue regarding the asset of CD, valuation of which is nil and thereafter, he raised the issue, after the decision in the application preferred for approval of the Plan was taken.

14. The IA is misconceived and devoid of merits and is accordingly rejected. No cost. On filing of an appropriate application, by aggrieved party, we may take view under the provisions of Section 64A of IBC, 2016.

Sd/-
(SHISHIR AGARWAL)
MEMBER(T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)