

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL  
BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 1468 of 2019**

**IN THE MATTER OF:**

**1. Smti. Aditi Bezbaruah,  
Aged about 63 Years, Wife of Sri Vinay Bagla,  
Resident of Behind State Bank of India,  
Dispur Branch, Guwahati 781006.**

**... Appellant**

**-Versus -**

**1. Mr. Kamalesh Kumar Singhania, Resolution Professional in  
respect of Maxim Infrastructure & Real Estate Pvt Ltd, having its  
registered office at Vikash Enterprise, Lower Ground Floor,  
Salonsar Mansion, Police Bazar, Shillong 793003, Meghalaya.**

**... Respondent No. 1**

**2. The Committee Creditors constituted in respect of Maxim  
Infrastructure and Real Estate Pvt. Ltd; the Corporate debtor,  
presently undergoing corporate insolvency resolution under the  
authority of the Resolution Professional of the Corporate debtor,  
C/O General Manager North Eastern Development Finance  
Corporation Ltd., (NEDFI), G.S Road, Dispur Guwahati - 781006,  
Assam.**

**... Respondent No. 2**

**3. RARE Asset Reconstruction Limited, having registered  
address at 203, Gala Argos, Nr. Harikrupa Tower, Ellisbridge  
Gymkhana, Gujarat College Road, Ahmedabad, Gujarat 380006.**

**...Respondent No. 3**

**Present:**

**For Appellant: Mr. NPS Chawla, Mr.Surekh Kant Buxy and Mr.Satvik Issar, Advocates**

**For Respondent: Mr.Abhijeet Sinha, Mr.Pranay Agarwal, Ms.Ankita Baid, Advocates for R-1.  
Mr.Jitendra Kumar, Advocate for R-2.  
Mr.Prashant Mishra, Mr. P. K. Sachdeva, Advocates for R-3**

**With**

**Company Appeal (AT) (Insolvency) No. 1473 of 2019**

**IN THE MATTER OF:**

**1.Smti. UtpalaBezbaruah,**

**Aged about 60 years Wife of Mr. Baleshwar Takhelambam, Resident of 57, Mayaikoibi, Kwakeithel, Manipur and temporary resident of behind State Bank of India, Dispur Branch, P.O - Sachivalaya, Guwahati - 781006, in the District of Kamrup (M), Assam, ... Appellant**

**- Versus -**

**1. Mr.Kamalesh Kumar Singhania, Resolution Professional in respect of Maxim Infrastructure & Real Estate Pvt Ltd, having its registered office at Vikash Enterprise, Lower Ground Floor, Salonsar Mansion, Police Bazar, Shillong 793003, Meghalaya. ... Respondent No. 1**

**2. The Committee Creditors constituted in respect of Maxim Infrastructure and Real Estate Pvt. Ltd; the Corporate debtor, presently undergoing corporate insolvency resolution under the authority of the Resolution Professional of the Corporate debtor, C/O General Manager North Eastern Development Finance**

**Corporation Ltd., (NEDFI), G.S Road, Dispur Guwahati – 781006, Assam.**

**... Respondent No. 2**

**3. RARE Asset Reconstruction Limited, having registered address at 203, Gala Argos, Nr. Harikrupa Tower, Ellisbridge Gymkhana, Gujarat College Road, Ahmedabad, Gujarat 380006.**

**... Respondent No. 3**

**Present:**

**For Appellant: Mr. NPS Chawla, Mr.Surekh Kant Buxy and Mr.SatvikIssar, Advocates**

**For Respondent: Mr.AbhijeetSinha, Mr. Pranay Agarwal, Ms.Ankita Baid, Advocates for R-1. Mr.Jitendra Kumar, Advocate for R-2. Mr.Prashant Mishra, Mr. P. K. Sachdeva, Advocates for R-3**

## **J U D G M E N T**

**(Date: 05.04.2022)**

**[Per.: Dr. Alok Srivastava, Member (Technical)]**

These appeals viz (i) CA (AT) (Ins) No. 1468 of 2019 filed by Smti. Aditi Bezbaruah and (ii) CA (AT) (Ins) No. 1473 of 2019 filed by Smti. Utpala Bezbaruah have been preferred under Section 61 of the Insolvency and Bankruptcy Code, 2016 (in short 'IBC') against a common order dated 25.10.2019 (hereafter called 'Impugned Order') in CP (IB)/04/GB/2018 passed by the Adjudicating Authority (National Company Law Tribunal, Guwahati Bench).

2. The Appellants, who are sisters owning contiguous plots of land in District Kamrup in village Hengerabari, Mouza – Beltola, Assam entered into development agreement with M/s Maxim Infrastructure and Real Estate Pvt. Ltd. (Corporate debtor). It is

stated in the appeals that Smti. Aditi Bezbaruah entered into a development agreement on 08.07.2008 with the Corporate debtor/ Respondent for development of land in her ownership measuring 6.69 Ares covered by Dag No. 3973 (New) of K.P. Patta No. 1295 (New) of village Hengerabari, in the District of Kamrup, and Smti. Utpala Bezbaruah entered into a separate development agreement dated 26.05.2008 with the Corporate debtor in connection with her ownership land measuring 6.69 Ares, covered by Dag No. 3974 (New), Patta No. 1296 (New), situated at village Hengerabari, District – Kamrup, and also land measuring 13.94 Ares, covered by Dag No. 35 (New), Patta No. N.K. 27, situated at village Sarumotoria, Mouza – Beltola, District – Kamrup, Assam for development but the rights and full title were enjoyed by the respective Appellants.

3. The Appellants have further stated that in the implementation of the said respective development agreements, the Corporate debtor/Respondent was to construct a multi-storeyed commercial complex and to market the said commercial spaces so constructed and in lieu of their ownership rights it was mutually agreed that the Corporate debtor shall compensate the Appellants by handing over the exclusive right, title and possession of 12.94% of the constructed area inclusive of the common areas and utilities to the Appellant Smti. Aditi Bezbaruah and 24.66% of the constructed area inclusive of common areas and utilities to the Appellant Smti. Utpala Bezbaruah.

4. The Appellants have further stated that for smooth implementation of the terms and conditions of the respective development agreements, Smti. Aditi Bezbaruah executed a General Power of Attorney (in short 'GPA') on 08.07.2008 in favour of the Corporate debtor and Smti. Utpala Bezbaruah executed another GPA

on 08.05.2008 in favour of the Corporate debtor. Through these GPAs the Respondent/Corporate debtor was appointed as the lawful attorney of the Appellants to execute the covenants of the GPAs for smooth conduct of the terms and conditions of the development agreements.

5. The Appellants have further stated that there was no implementation whatsoever of the two development agreement and GPAs even after a lapse of almost 11 years since the date of execution of development agreements and the Respondent/Corporate debtor failed to perform his part of the development agreements, but directed his efforts towards a project for construction of five-star hotel over a plot of land which fell towards the north of the land. The Appellants, not satisfied with the performance of his obligations by the Respondent/Corporate debtor preferred a writ petition bearing number Writ Petition (C) No. 3752 of 2015 against the Corporate debtor which is pending for disposal.

6. The Appellants have further stated that the Respondent has obtained NOC from Guwahati Metropolitan Development Authority (in short 'GMDA') surreptitiously for developing a 'Five-Star Hotel and Commercial Complex' and also taken loans from various banks and financial institutions for the same. Due to non-repayment of the loans, the Bank of India which is a financial creditor of the Respondent initiated proceedings against the Respondent/Corporate debtor before the Adjudicating Authority under Section 7 of the IBC on 31.08.2018. During the pendency of this petition, the Appellants filed I.A. No. 59 of 2019 and I.A. No. 60 of 2019 before the Adjudicating Authority on 05.08.2019 praying that the possession of the lands which are subject of the development agreements but are fully owned by them and in no way connected with the proceedings

under section 7, should be handed back to them with compensation to the extent of their share in constructed space.

7. The Appellants have further stated that after appointment of Interim Resolution Professional (in short 'IRP') after admission of section 7 application against the Corporate debtor, progress reports were placed before the Adjudicating Authority by the IRP with the list of creditors, fixed assets of the Corporate debtor and other assets owned by the Corporate debtor as well as details of litigation against the Corporate debtor. The Appellants have claimed that nowhere in the said reports of the IRP for the periods 31.08.2018 to 29.03.2019 and 30.03.2019 to 03.05.2019 any reference to the Appellants' names or lands find place. The Appellants have added that they sent letters dated 06.04.2019 to the IRP for handing over their respective lands back to them, to which they did not receive any response. Thereafter, the Appellants filed I.A. No. 59 of 2019 (by Appellant Smti. Utpala Bezbaruah) and I.A. No. 60 of 2019 (by Appellant Smti. Aditi Bezbaruah) before the Adjudicating Authority for return of the lands belonging to them. By an order dated 25.09.2019 the Adjudicating Authority disposed of these Interlocutory Applications directing that the Appellants are at liberty to put forth their grievances before the IRP at an appropriate point of time whenever the IRP proceeds against their properties.

8. The Appellants have stated that they obtained copies of NOC granted by GMDA regarding building permission for their plots of land when they discovered that the NOC granted by GMDA on 12.08.2011 was for a five-star hotel cum commercial complex on a large plot of land which included Appellants' lands too and the Corporate debtor had not obtained building permission for constructing a commercial complex as was contained in the two

development agreements signed with the Appellants. Thereafter, the Appellants filed Writ Petition (C) No. 3752 of 2015 before the Guwahati High Court against this action of the Corporate debtor seeking return of their lands which is presently pending. The Appellants have further stated that the Respondent/Corporate debtor has taken loans from various banks and financial institutions mortgaging the said lands and on failing to repay the loan amounts, a Financial Creditor-Bank of India preferred an application section 7 of IBC against the Corporate debtor. On admission of the section 7 application, an RP was appointed in the CIRP of the Corporate debtor on 05.09.2018, and as has been mentioned earlier the Appellants filed their claims before the IRP seeking return of their lands vide letter dated 06.04.2019.

9. In the ongoing CIRP of the Corporate debtor, a resolution plan, submitted by the RARE Asset Reconstruction Limited, was approved by the CoC in its meeting held on 26.09.2019 with 100 % voting share. Upon coming to know of this, the Appellants sent emails dated 27.09.2019 and 16.10.2019 to the RP requesting him not to take any unilateral decision regarding the plots of land owned by them, without hearing them, and in his response dated 17.10.2019, the RP replied that he is not the authority to determine the claims of their lands, and the Appellants should deal with the Corporate debtor in the light of two development agreements. Later, by the impugned order dated 25.10.2019 passed by the Adjudicating Authority (NCLT Guwahati Bench) the resolution plan was approved and the Appellants have prayed in their appeals for quashing and setting aside the impugned order.

10. We heard the arguments submitted by the Ld. Counsels for the parties in both the appeals and also perused the related records.

11. The Ld. Counsel for the Appellants has submitted arguments in both the appeals together. For the sake of clarity and convenience we are referring to the arguments presented and documents filed in CA (AT)(Ins) No. 1468 of 2019 and we will refer to the documents and pleadings submitted in CA (AT)(Ins) No. 1473 of 2019 wherever necessary. The discussion and analysis for CA (AT)(Ins) 1468 of 2019 will be applicable *mutatis mutandis* in the other appeal CA (AT)(Ins) No. 1473 of 2019.

12. In his arguments, the Ld. Counsel for the Appellant Aditi Bezbaruah has submitted that the Appellant is the owner of the land admeasuring 6.69 acres, regarding which she entered into a development agreement with the Corporate debtor for the purpose of construction of a multi-storeyed commercial complex with the condition that in lieu of her contribution of land, she would get 12.34% of the constructed area, inclusive of the common areas in the project. The Appellant Aditi Bezbaruah also executed a General Power of Attorney ('GPA' in short) dated 08.07.2008 in terms of clause 1 of the Development Agreement in favour of Mr. Punkaj Jhunjhunwala, erstwhile director of the Corporate debtor. He has further submitted that on receiving information that the Corporate debtor had obtained a No Objection Certificate ('NOC' in short) dated 12.08.2011 from GMDA for construction of 'Five-Star Hotel cum Commercial Complex', the Appellant challenged the grant of NOC by way of a writ petition before the Guwahati High Court since the Corporate debtor had unilaterally change the entire nature of the project without intimating the Appellant. This Writ Petition is presently pending. He has further submitted that in view of several breaches of the Development Agreement, the Appellant terminated it though the corporate debtor continued to be in possession of the said land. He



has also submitted that the fact of the termination of development agreement was brought to the attention of the RP vide letter dated 06.04.2019 and again by an email dated 01.07.2019 through the legal counsel of the Appellant. He has further claimed that while Respondent No. 3/Successful Resolution Applicant (in short 'SRA') recognized the right of the Appellant in the land of her ownership, he (SRA) has unilaterally changed the terms development agreement in the approved resolution plans by providing that the Appellants share in the constructed project shall be equal to a total of 37% of the constructed space/area on the lands contributed to them, even though the development agreements with both the appellants clearly stipulate that their share shall be a total of 37% in the total constructed area of the project.

13. The Ld. Counsel for the Appellants has further argued that on taking up the matter with the RP and not eliciting any response thereon, the Appellants filed I.A. No. 59 of 2019 and I.A. No. 60 of 2019 before the Adjudicating Authority to secure their interest under the development agreements, which were being adversely modified unilaterally without giving any opportunity to the Appellants to raise their grievances. These Interlocutory Applications were dismissed by the Adjudicating Authority vide order dated 25.09.2019 with liberty granted to the Appellants to raise their grievances before the RP at an appropriate stage, whenever any action was being taken against their lands by the RP. The Ld. Counsel for the Appellants has also claimed that the resolution plan proposed by the SRA and approved by the CoC and the Adjudicating Authority has the following modifications with respect to the development agreement executed with the Appellant Aditi Bezbaruah which have been done without her knowledge and concurrence: -

<b>Development Agreement</b>	<b>Resolution Plan</b>
There was no provision which contemplated transfer of land contributed by Appellant in favour of Corporate debtor.	Upon fulfilment of the terms of Development Agreement, the land contributed by Appellant shall get transferred in favour of Corporate debtor. (at pg. 66/Appeal)
Appellants would have 12.34% share of the total constructed area, inclusive of common areas and utilities. (at pg. 24/Rejoinder to R-3's reply)	24.66 % of the constructed area in proportion to the land given under Development Agreement.
Floor Area Ratio ('FAR') was agreed to be 2.75 in the Development Agreement.	FAR has been reduced to be 1.75.
Roof rights in proportion to the share in the project (12.34%). (at pg. 28/Rejoinder to R-3's reply)	There is no discussion regarding roof rights, however, Respondent No. 3 denies roof rights.
Allocation of constructed area on Ground Floor was specified in Schedule C (at pg. 45/Rejoinder to R-3's reply)	Denies allocating area on Ground Floor,
Security deposit of Rs. 1.5 crore was made in favour of Appellant to secure performance of obligations on part of Respondent No. 3.	Security deposit was proposed to be forfeited on approval of resolution plan.

The Ld. Counsel for the Appellant has claimed that the above mentioned changes were proposed by SRA/Respondent No. 3 which are against the provisions of the development agreement.

14. The Ld. Counsel for the Appellant has further argued that the said land of the Appellant is a 'third party asset' and therefore, cannot be considered as part of the 'assets' of the Corporate debtor during CIRP which could have been included as part of the resolution

plan. He has referred to Explanation (a) to Section 18 of IBC which states that

*“assets do not include within its ambit, the assets owned by a third party, which are in possession of a corporate debtor under contractual arrangements”.*

15. He has further argued that this view has been affirmed by the Hon'ble Supreme Court in the matter of **Embassy Property Developments Pvt. Ltd. Vs. State of Karnataka [(2020) 13 SCC 308, Para 40]** and also by the NCLAT in **Encore Asset Reconstruction Company Pvt. Ltd. Vs. CharuSandeep Desai & Ors. [(2019) SCC Online NCLAT 284, Para 12]**. On this ground, he has argued, the RP could not have taken the lands owned by the Appellant which are part of the development agreements into his custody as only development rights were granted through a contractual arrangement of development agreement and possession was given to the corporate debtor for development purposes, and these development agreements also stand terminated. He has further argued that the resolution plan is void to the extent it deals with the said lands of the Appellants by erroneously assuming them to be 'assets' of the Corporate debtor and, therefore the resolution plan is not in conformity with criteria laid down under Section 31(2)(e) of the IBC.

16. The Ld. Counsel for the Appellant has further argued that the resolution plan has to conform to the provision of Section 31(2)(f) of IBC and Regulation 38 (3A) of IBBI (Insolvency Resolution Process for Corporate Persons), Regulations, 2016 which prescribe that a resolution plan must be 'feasible and viable' and must have

provisions for its effective implementation which are not satisfied in the Resolution Plan.

17. The Ld. Counsel for the Respondent No. 1/erstwhile RP has argued that the Appellants have sought to challenge the impugned order on the ground that the approved resolution plan fundamentally proceeds against the letter and spirit of development agreement, whereas in the approved resolution plan it is categorically recorded that the terms of the development agreement would be honoured by the SRA, and therefore the Appeals are not maintainable on this ground alone. He has further argued that, in view of the development agreements, the Corporate debtor had rights of possession and development in respect of the lands belonging to the Appellants and the same subsist till the development agreement is valid and admittedly, the development agreement was in force and not terminated as on the CIRP commencement date. Therefore, under Section 25(2)(a) of the IBC the RP is duty-bound to take control and custody of the 'assets' of the Corporate debtor which would include the lands in possession of the Corporate debtor as a result of the development agreement.

18. Furthermore, he has argued that in view of the moratorium imposed under Section 14 of the IBC the development agreement cannot be terminated or sought to be terminated during the CIRP. In this regard, he has cited the Judgment of Hon'ble Supreme Court in the matter of **Rajendra K Bhutta Vs. MHADA [2020 SCC Online SC 292]** to emphasize that the Ld. Adjudicating Authority and/or Hon'ble NCLAT has to only look at the fact whether the Corporate debtor has any rights over the asset in question. He has also submitted that in the matter of **Embassy Property Developments Pvt. Ltd. Vs. State of Karnataka [(2019) SCC Online SC 1542]** and

[Company Appeal \(AT\) \(Insolvency\) No. 1468 & 1473 of 2019](#)

**Gujrat Urja Vikas Nigam Limited Vs. Amit Gupta &Ors. [(2021) SCC Online SC 194]** wherein it has been categorically laid down by the Hon'ble Supreme Court that the jurisdiction of Adjudicating Authority is residuary in nature and this jurisdiction is available to consider any question of law or fact which relates to the insolvency resolution of the Corporate debtor. In the present case, he has submitted, the reliefs sought by the Appellant are essentially in the realm of public law and therefore, NCLAT does not have jurisdiction to grant relief as prayed for by the Appellants. Furthermore, he has argued, the lenders' consortium had earlier discussed the issue of necessity of Appellants' lands for success of the Five-Star Hotel and Commercial Complex project and later in the CIRP the Committee of Creditors (in short 'CoC') has considered the development agreement and approved the resolution plan submitted by the SRA in the meeting of the CoC held on 26.09.2019, and therefore, the commercial wisdom of the CoC so exhibited cannot be called in question.

19. The Ld. Counsel for the Respondent No. 1/erstwhile RP has submitted that once the Corporate debtor is in possession of the said lands owned by the Appellants through the development agreements, he cannot be dispossessed once the CIRP has kicked in, and also since the Corporate debtor holds development rights on the lands which was not terminated before the commencement of the CIRP, the same cannot be terminated during the ongoing CIRP as moratorium section 14 of the IBC is now in force.

20. In his arguments, the Ld. Counsel for the Respondent No. 3/SRA has submitted that the lands of both the Appellants are situated at the entrance of the project site and if they are not included in the project-land, the hotel and commercial complex would be

devoid of access from the main road. He has thus argued that the Appellants' lands are quite integral to the hotel project of the erstwhile corporate debtor. He has further submitted that these lands have been in valid and peaceful possession of the corporate debtor alongwith development rights since 2008 and the two development agreements provide rights to the corporate debtor to create charge, lien, encumbrance and mortgage over the said lands and to carry out construction on them. He has further submitted that the said lands are absolutely organic to the development of a five-star hotel and commercial complex.

21. He has also submitted that both the Appellants have certain entitlements under the development agreements but they have been adopting varying positions from time to time about the quantum of their shares, and their current claim is a collective entitlement of 37% of the total constructed area in the Guwahati project (five-star hotel and commercial complex) of the corporate debtor. He has added that the Appellants were in touch with the lender banks since March 2018, at least six months before the commencement of CIRP, when a meeting had been held between the lender banks on 06.03.2018. The minutes of this meeting and their subsequent communications and actions show that the Appellants are primarily interested in optimising their share in the project and were not serious about termination of the development agreements.

22. The Ld. Counsel for the Respondent No. 3 has added that I.A. No. 59 of 2019 and I.A. No. 60 of 2019 were dismissed on 25.09.2019 by the Adjudicating Authority, while holding that the Appellants could approach the RP at the right time regarding their entitlements. He has also stated that the Appellants did not submit any claim to the RP despite getting several opportunities and

therefore, in law, their claim stands extinguished. He has referred to Hon'ble Supreme Court's observation in the matter of **Committee of Creditors of Essar Steel India Limited through Authorised Signatory Versus Satish Kumar Gupta & Ors. [(2020) 8 SCC 531]** wherein in Para 107 it is held that,

*'...a successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate.....'*

23. The Ld. Counsel for the Respondent No. 3 has further submitted that the purported termination of the development agreements by the Appellants is *non-est* since on facts there was no termination, and furthermore the Appellants invoked, relied on and positively asserted the existence of the development agreements at various points of time even after their letter of purported intention for termination was given in October 2018. Moreover, the termination affected in 2018 as claimed by them is for a purported breach that took place in 2015 and hence the act of termination of the development agreements is hit by the law of limitation.

24. The Ld. Counsel for Respondent No. 3 has adverted to the judgments of Hon'ble Supreme Court in the matters of **Gujarat Urja Vikas Nigam Limited Vs. Amit Gupta & Ors. [(2021) 7 SCC 209]** and **Tata Consultancy Services Ltd. [(2022) 2 SCC 583]** wherein the principle, that NCLT has jurisdiction to adjudicate disputes, which arise solely from, or which relate to the insolvency of the

corporate debtor, and therefore nexus of the dispute with the insolvency of the corporate debtor must exist. He has clarified that in the **Gujarat Urja** case, the contract was terminated because insolvency was the result of default under the agreement whereas in the present case the insolvency is not the result of the breach of development agreements. Furthermore, the purported termination letter of October 2019 came during the currency of moratorium under Section 14(1)(d) of the IBC which came into effect on 31.08.2018, and therefore the termination is not legal. He has claimed that the Appellants themselves wanted the lands to be part of the CIRP and have been asking that their share be decided in accordance with the development agreements. He has further argued that the Approved Resolution Plan considers continuation of the development agreements and commits to honour them and, therefore, the interests and rights of the Appellants are suitably protected in the Approved Resolution Plan.

25. The Adjudicating Authority has held as follows in the impugned order in Para 12 :-

*“It is declared that the Approvals/Waivers/Reliefs sought from the NCLT are in the nature of requests and are not conditions under this resolution plan, EXCEPT that the Guwahati land and Shillong Lease matters in para 8 above are critical requests and essential to keep project on going concern basis and for Plan implementation. The Crystallised amount mentioned in Para 2.2.1.2 will be honoured by RA as per the proposed schedule.”*

*This Adjudicating Authority holds that it is beyond its scope to grant any concessions/waivers etc. in respect of any dealings/transactions between the different parties, and/or as regards any statutory obligations/liabilities that are visualised or may arise subsequently while giving effect to the Plan, as the same would be dealt with by the RA. No further comments are, therefore, offered on the same.”*



(Emphasis supplied)

26. The Appellants are mainly aggrieved by the following provision in the approved resolution plan (which is also reproduced in Paragraph 7 of the impugned order). This provision is contained in the table in para 2.1 of the resolution plan wherein against Regulation 37 (a)(b) the following is recorded : -

*“(i) It is proposed that entire mortgaged land more specifically defined under Point No. 8 of this plan, and admeasuring 83984 sq. ft. at Guwahati shall stand transferred to the corporate debtor and other land under development agreement/Power of Attorney admeasuring 28800 sq. ft. at Guwahati shall stand transferred to the corporate debtor upon fulfilment of the terms of the development agreement. Further, 8718 sq. ft. in the name of Mrs. Aruna Bezbarua & others, mortgaged to the bank, but, under development agreement, dated 21.05.2011 will be transferred to the corporate debtor upon fulfilment of the terms of the development agreement. Please refer to point no. 8 hereinafter for concessions and reliefs sought under the resolution plan.”*

27. Admittedly, the two development agreements and GPAs executed by Aditi Bezbaruah and Utpala Bezbaruah with the Corporate debtorgive rights of development to the Corporate debtor alongwith peaceful possession of the lands contained in schedules to the development agreements. The consideration to be given to the owner of the land in the case of Utpala Bezbaruah (included at pp. 77-101 of the Appeal Paperbook in CA (AT) (Ins) No. 1473 of 2019) is mentioned in the section **‘Rights of the Parties over the schedule land described in schedule A and B’** which is as follows:-

*“4. That the Owner, as aforesaid, upon completion of the commercial spaces and other structures over the scheduled land described in the Schedules – A and B, shall have the right, title and interest over the built up portion of 24.66% of constructed area inclusive of the common areas and utilities including space for car parking in proportionate to the allocation alongwith proportionate share in the land underneath and the proportionate rights of easement to the common areas. The remaining built up portion of commercial spaces and other constructions, alongwith proportionate share in the land underneath and the right of easements to the common areas shall be in the exclusive share of Builder-Developer.”*

28. It is an admitted fact that the erstwhile corporate debtor did not comply with the construction time schedule as stipulated in the development agreements and later changed the nature of the project into a ‘five-star hotel cum commercial complex project’ and he obtained NOC dated 12.8.2011 under Section 25 of the GMDA Act, 1985 for a ‘five-star hotel cum commercial complex’ project. This project was proposed on an integrated plots of land, which included the plots of land owned by the Appellants with the entrance and the entry ramp to the complex proposed to be built on the lands belonging to the Appellants. The five-star hotel was to come up on the land to the north of the said land belonging to the Appellants.

29. The lender banks, which had provided loans for the said project, upon discovering that the project could not be constructed unless the Appellants’ lands were included in the project, held a meeting on 06.03.2018 to consider the claims of the Appellants. The minutes of this meeting is attached at pp. 120–124 of the Appeal Paperbook in CA (AT)(Ins) No. 1468 of 2019 wherein the following is recorded in paras 3 and 4 :-

*“It is observed that since the said plot of land falls at the entrance to the project site and there is an issue regarding access to the project without the said plot of land being a part of the project. ShriLoyi also informed that, in this regard a discussion was held with the representative of the land owners and the land owners are agreeable to mortgage the land in favour of bankers if the land owners will be able to get their share of constructed space in the commercial Block as per the original agreement with the company.*

*Mr. Loyi also emphasized that, the issue should be resolved first before going forward with further action. He informed that as per the said development agreements the land owner Mrs. Utpala and Mrs. Aditi will get a total of 37,000 sq. ft. of floor area out of the total floor area of 1,00,000 sq. ft. spread out in basement, ground floor, 1<sup>st</sup> floor, 5<sup>th</sup> floor, 6<sup>th</sup> floor and 7<sup>th</sup> floor of the commercial building.*

*4. Mr.Loyi Informed that the land owner has given few points for discussion with the Bankers to clarify the positions of the land owners. The summary of land owners message is that, as per their original Development Agreement with M/s Maxim Infrastructure & Real Estate Pvt. Ltd. a commercial block was to be constructed in their plot of land in front of the project site. Maxim was to give them 37% share of the built up space. However, Maxim has not constructed the commercial block in that plot and has constructed it attached to the five-star hotel building. If Bankers assure them their share of space as per their original agreement with Maxim, they are agreeable to hand over their front plots of land to the bankers. The bankers should also ensure proper entry to the commercial part from the ground floor and separate electricity and water arrangement for the same.”*

30. The above-mentioned minutes were later sent to all the bankers in the lenders’ consortium and the Appellants addressed letter dated 06.04.2019 (attached at pp. 127–131 of Appeal Paperbook in CA (AT)(Ins) No. 1468 of 2019) to the RP Mr. Kamlesh Kumar Singhania stating as hereunder:-

*“In the process of going on their separate ways the Bank of India initiating liquidation proceedings against M/s Maxim Infrastructure and Real Estate Pvt. Ltd. before company law board, being I.A. No. 56 of 2018 in CP (IB)/04/GB/2018, DY No. 3 (093) of 2018. The undersigned are therefore given to understand that NCLT Guwahati has appointed you as the interim Resolution Professional to resolve the outstanding loans of the bank consortiums and the financial issues pending against M/s Maxim Infrastructure and Real Estate Pvt. Ltd.*

*We will hand over all the relevant papers relating to this case to you and request that you kindly read them and seek any necessary clarifications from us so that we get a fair compensation to our claims one that is mutually agreed upon. We have full faith and confidence that a solution will be found.*

*Thank You.”*

31. Later, both the Appellants preferred two separate Interlocutory Applications Nos. 59 of 2019 and 60 of 2019 before the Adjudicating Authority praying that the Appellants' lands be reverted back to them and compensation to the extent of 12.34% (in case of Aditi Bezbaruah) and 34.66% in case of Utpala Bezbaruah, of the total constructed area of the property as per the original development agreement besides compensation for loss of rental income to the tune of Rs. 7.5 Crores (approx) given to them. These Interlocutory Applications were disposed of by the Adjudicating Authority vide order dated 25.09.2019 (attached at PP. 111 to 113 of the Appeal paper book in CA (AT) (Ins) No. 1468 of 2019), wherein in paragraph 4 it is stated as follows:-

*“4. In view of the above facts and circumstances, this Tribunal is of the opinion that the reliefs claimed by the applicant are beyond the scope of this Tribunal as they are arising out of a development agreement between the applicant and the CD and the applicant is at liberty to put forth her grievance, if any, before the IRP at an appropriate point of time whenever the IRP proceeds against the scheduled property. Under these*

*circumstances, we see no reason to intervene in the matter and the application is accordingly liable to be dismissed.”*

32. The sum and substance of the letter dated 06.04.2019 and the decision of the Adjudicating Authority in I.A No. 59 of 2019 and I.A. No. 60 of 2019 dated 25.09.2019 (which was not appealed against) is that the Appellants were more interested in receiving their fair share as consideration in respect of their plots of land from the corporate debtor and the issue of termination of the development agreements and reversion of the land to the Appellants was not pursued seriously by them.

33. The Appellants have raised the issue of the reversion of their lands to them claiming that the development agreements were terminated after the onset of the CIRP. During the currency of the CIRP, when moratorium under section 14 of the IBC is in force, the following provision in section 14 is relevant:-

**“14. Moratorium.** – (1) *Subject to the provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-*

*Xxx xxxxxx*

*(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

*Xxxxxxxxxxxxx*

34. Thus the lands of the Appellant that were admittedly in ‘possession’ of the corporate debtor till the time the CIRP started and moratorium was imposed will continue to remain in the possession

of the corporate debtor. It is recalled that on admission of the section 7 application, RP was appointed in the CIRP of the Corporate debtor on 05.09.2018, and as has been mentioned earlier the Appellants filed their claims before the IRP seeking reversion of their lands vide letter dated 06.04.2019. Thus the request for reversion of their lands was made to the RP after the imposition of moratorium and hence the recovery of lands by the Appellants is hit by the imposition of the moratorium. The ‘development agreements’ entered into by the Appellants with the erstwhile corporate debtor thus remain in force during the CIRP period. The Ld. Counsel for the Appellants has adverted to section 18 (1)(f) and the Explanation (a) therein to point out that the assets of the Appellants cannot be considered as assets of the corporate debtor even if they are in possession of the corporate debtor.

35. Section 18 of the IBC outlines duties of the interim resolution professional wherein control and custody of assets on which corporate debtor has ownership rights has been included as hereunder:-

***“18. Duties of interim resolution professional. – (1) The interim resolution professional shall perform the following duties, namely:-***

*Xxx xxxxxx*

*(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including –For the purposes of this section, the term “assets” shall not include the following, namely:-*

*Xxx xxxxxx*

*Explanation. -*

*(a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;*

*Xxx xxxxxx*

36. In the matter of **TATA Consultancy Services Limited Versus Vishal Ghisulal Jain, Resolution Professional, SK Wheels Private Limited [Civil Appeal 3045 of 202]** Hon'ble Supreme Court has held as hereunder:-

*“28. While in the present case, the second issue formulated by this Court has no bearing, we would like to issue a note of caution to the NCLT and NCLAT regarding interference with a party’s contractual right to terminate a contract. Even if the contractual dispute arises in relation to the insolvency, a party can be restrained from terminating the contract only if it is central to the success of the CIRP. Crucially, the termination of the contract should result in the corporate death of the Corporate Debtor. In Gujarat Urja (supra), this Court held thus:*

*“176. Given that the terms used in Section 60(5)(c) are of wide import, as recognised in a consistent line of authority, we hold that NCLT was empowered to restrain the appellant from terminating PPA. However, our decision is premised upon a recognition of the centrality of PPA in the present case to the success of CIRP, in the factual matrix of this case, since it is the sole contract for the sale of electricity which was entered into by the corporate debtor. In doing so, we reiterate that NCLT would have been empowered to set aside the termination of PPA in this case because the termination took place solely on the ground of insolvency. The jurisdiction of NCLT under Section 60(5)(c) of IBC cannot be invoked in matters where a termination may take place on grounds unrelated to the insolvency of the corporate debtor. Even more crucially, it*

*cannot even be invoked in the event of a legitimate termination of a contract based on an ipso facto clause like Article 9.2.1(e) herein, if such termination will not have the effect of making certain the death of the corporate debtor. As such, in all future cases, NCLT would have to be wary of setting aside valid contractual terminations which would merely dilute the value of the corporate debtor, and not push it to its corporate death by virtue of it being the corporate debtor's sole contract (as was the case in this matter's unique factual matrix). 177. The terms of our intervention in the present case are limited. Judicial intervention should not create a fertile ground for the revival of the regime under Section 22 of SICA which provided for suspension of wide-ranging contracts. Section 22 of the SICA cannot be brought in through the back door. The basis of our intervention in this case arises from the fact that if we allow the termination of PPA which is the sole contract of the corporate debtor, governing the supply of electricity which it generates, it will pull the rug out from under CIRP, making the corporate death of the corporate debtor a foregone conclusion.”*

*(emphasis supplied)*

37. The lands which are assets of the Appellants, and which are in ‘possession’ of the corporate debtor at the time of beginning of moratorium remain in the possession of the corporate debtor/RP though the CIRP period. Moreover, the development agreements entered into by the Appellants which are central to the success of the CIRP are not liable to be terminated. The Appellants, who have vacillated between the thought of terminating the agreement or receiving their fair share in the constructed area, thus come into a position of receiving a share as promised in the development agreements by virtue of the approved resolution plan.



38. We, therefore, turn our attention to how the development agreements and the plots of land contained therein have been dealt with in the approved resolution plan of the SRA. In section 8 of the approved resolution plan, the following is included in respect of the development agreements of both the Appellants and the respective plots of land:-

**“8. Concessions and Reliefs, Waivers/Directions/Specific Orders from NCLT sought under the Resolution Plan:**

**Land related:**

- A. Approvals for implementation of ‘Development Agreement (s)’ - there are two separate Development Agreements (DA) both dated 08.07.2008 entered into between the Corporate debtor and Mrs. Aditi Bezbaruah (Land lord 1) and Mrs. Utpala Bezbaruah (Land lord 2) and subsequent Affidavits sworn in by Mrs. Aditi Bezbaruah (Land lord 1) and Mrs. Utpala Bezbaruah (Land lord 2) both on 27.04.2010 regarding grant of right of way.
- B. As per clause 1 (Consideration - Pg. 5) of the Development Agreement entered into with the Landowner No. 1 namely Mrs. Aditi Bezbaruah she is entitled to 12.34% actual approved constructed area (including common area and utilities area in proportion to their land under development agreement in the commercial building under the project.

*As per clause 1 (Consideration –Pg. 5) of the development agreement, entered into with the Land Owner No. 2 namely Utpala Bezbaruah she is entitled to 24.66% of the actual approved constructed area (including common area and utilities area) in proportion to their land under development agreement in the commercial building under the project”*

39. Further in the approved resolution plan the SRA has committed as hereunder: -

*“We will honour the said Development Agreement subject to no such penalty and additional amount is payable to Landlord No. 1 & 2 and (ii) such security deposit refunded to the Resolution Applicant on completion of project.”*

40. We now consider the issue whether any dispute in relation to two development agreements executed by the Appellants with the erstwhile corporate debtor much before the initiation of the CIRP proceedings against the Corporate debtor can be adjudicated during the CIRP. The Adjudicating Authority has held in I.A. No. 50 of 2019 and I.A. No. 60 of 2019 that the Appellants are within their rights to raise the issues relating to their rights and share accruing from the development agreements at an appropriate time before the RP.

41. We have noted that the Appellants are interested in getting a fair share in the constructed 'Five Star Hotel cum Commercial Complex' on the integrated plot of land by virtue of the development agreements, and are not particular about their termination. It is also noted that the development of the 'Five-Star Hotel cum Commercial Complex' project is totally dependent on inclusion of the lands owned by the Appellants for providing entrance ramp and entry in the five-star hotel project and that the resolution plan's implementation is organically linked to the said lands of the Appellants.

42. The judgment of Hon'ble Apex Court in the matter of **Gujarat Urja Vikas Nigam Limited Vs. Amit Gupta & Ors. [(2021) SCC Online SC 194]** concludes as follows which is relevant in the present case:-

*"184. In conclusion, we hold that:*

*(i) The NCLT/NCLAT could have exercised jurisdiction under section 60(5)(c) of the IBC to stay the termination of the PPA by the appellant, since the appellant sought to terminate the PPA*

*under Article 9.2.1(e) only on account of the CIRP being initiated against the Corporate debtor;*

*(ii) The NCLT/NCLAT correctly stayed the termination of the PPA by the appellant, since allowing it to terminate the PPA would certainly result in the corporate death of the Corporate debtor due to the PPA being its sole contract; ....”*

43. The above judgment of Hon’ble Supreme Court gives strength to the contention of the Ld. Counsel of Respondents that the development agreements in the present case should be held to be ‘alive’ during the CIRP period to ensure successful resolution of the CD otherwise the CD would die a certain corporate death.

44. The judgment of Hon’ble Supreme Court in the matter of **Rajendra K Bhutta Vs. MHADA & Anr. [(2020) SCC Online SC 292]** has also been cited by the Ld. Counsel of Appellants to wherein Hon’ble Supreme Court has held in substance as follows:-

*“28. Likewise, the recent judgment **Sushil Kumar Agarwal (supra)** deals with specific performance and whether a Development Agreement may be specifically performed. The ratio of that judgment appears to be that where Development Agreements create an interest in property, they may be specifically performed, but not otherwise. As we have pointed out herein above, it is clear that Section 14(1)(d) of the Insolvency & Bankruptcy Code, when it speaks about recovery of property “occupied”, does not refer to rights or interests created in property but only actual physical occupation of the property. For this reason also, this judgment is wholly distinguishable.*

*29. Regard being had to the above, we allow the appeal and set aside the impugned order of the NCLAT. Considering that this matter has been pending for some time, we direct the NCLT to dispose of the resolution professional’s application*

*(I.A. No.21433/2018) within a period of six weeks from today.”*

45. In view of the discussion regarding the necessity of keeping the development agreements alive in order to ensure successful insolvency resolution of the corporate debtor, reversion of the lands owned by the Appellants to them does not appear to be a viable alternative because the development agreements are germane to the development of the five-star hotel cum commercial complex and eventual insolvency resolution of the erstwhile corporate debtor. It is also supported by the fact that the Appellants have shown interest in receiving their share in the constructed area. The minutes of meeting held by the consortium of bankers on 06.03.2018 also make it clear that the bankers' interest is in seeing that the project comes up so that the loans provided by them are repaid and in that context too, the plots of land owned by the Appellants become critical for the integrated five-star hotel cum commercial complex project. Moreover, the stated objectives of the IBC, where successful resolution of the corporate debtor is a preferred option while taking care of the interests of the various stakeholders, also support the situation in which the lands included in the development agreements are dealt with in the resolution plan.

46. We are, therefore, of the opinion that the plots of land in the ownership of the Appellants are quite organic and necessary for the corporate debtor's project of five-star hotel cum commercial complex project in Guwahati, hence, inclusion of the said lands of the Appellants is a *sine` quanon* for success of the resolution plan and therefore cannot be removed from the integrated plot of land on which the project is to eventually come up.

47. The Approved Resolution Plan in Section 8 deals with reliefs, waivers/directions/specific orders from NCLT which were sought under the Resolution Plan and wherein it is further mentioned that they will honour the said development agreements subject to no such penalty and additional amount is payable to Landlord No. 1 & 2 and such security deposit is refunded to the Resolution Applicant on completion of project. Regarding this condition, we note that the Adjudicating Authority has not given any relief/waiver in the Impugned Order.

48. As noted above, since the insolvency resolution of the corporate debtor is closely linked to the inclusion of Appellants' lands in the construction project in Guwahati, and also the fact that the delay in implementation of the development agreements was due to the inactions of the erstwhile corporate debtor, the SRA cannot be held responsible for such a delay and consequently cannot be held liable to pay any penalty to the Appellants in view of the fact that the SRA is supposed to start on a clean slate. The security deposits were made by the Appellants in respect of their lands with the erstwhile corporate debtor as per the development agreements. Since the same lands for which the security deposits were made will now devolve to and come in possession of the SRA, the SRA shall be considered to hold the security deposits along with the said lands of the Appellants and should, therefore, refund the security deposits to the Appellants once the project is completed. The SRA is bound to honour all the other terms and conditions of the development agreements as per commitment given in the Resolution Plan.

49. In view of detailed discussion on various aspects of the approved resolution plan and the issues raised in the appeals by the Appellants, we are of the view that impugned order does not require intervention except for the clarifications given in the aforementioned paragraphs. The appeals namely CA (AT) (Ins) No. 1468 of 2019 and CA (AT) (Ins) No. 1473 of 2019 are disposed of accordingly.

50. In the facts of the case, there is no order as to costs.

**[Justice Ashok Bhushan]**  
**Chairperson**

**[Dr. Alok Srivastava]**  
**Member (Technical)**

**[Ms Shreesha Merla]**  
**Member (Technical)**

**New Delhi**

**05<sup>th</sup> April, 2022**

/ SC/