



IN THE NATIONAL COMPANY LAW TRIBUNAL,  
COURT II, MUMBAI BENCH

IA. NO. 5365 OF 2024  
IN  
C.P (IB) NO. 1029/MB/2017

*[Application under Section 60(5) of the  
Insolvency and Bankruptcy Code, 2016 read  
with Rule 11 and 32 of the National Company  
Law Tribunal Rules, 2016.]*

**In the matter of:**

**Mr. Prabhat Ranjan**

**...Applicant**

v/s.

**Mr. Milind Kasodekar**

(Liquidator for M/s. Phadnis Properties Ltd.)

**...Respondent No. 1**

**M/s. Stargold Infrastructure LLP**

**...Respondent No. 2**

**Union Bank of India**

**...Respondent No. 3**

**In the matter of**

**Pramod Kapse and Ors.**

**...Operational Creditors**

v/s.

**M/s. Phadnis Properties Ltd.**

**...Corporate Debtor**

**Pronounced: 11.07.2025**

**Coram:**

**SHRI ANIL RAJ CHELLAN**

**HON'BLE MEMBER (TECHNICAL)**

**SHRI K.R. SAJI KUMAR**

**HON'BLE MEMBER (JUDICIAL)**

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MUMBAI BENCH, COURT – II

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***Appearances: Hybrid***

For Applicant : Adv. Punit Dutt Tyagi a/w Adv. Smriti Sahay and  
Adv. Pragati Singh  
For Liquidator : Adv. Avinash R. Khanolkar a/w Adv. Surekha Yadav  
and Adv. Khushbu Bhanushali.

**ORDER**

***Per: Anil Raj Chellan, Member (Technical)***

1. This is an application filed by Mr. Prabhat Ranjan, on 06.11.2024 under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 11 and 32 of the National Company Law Tribunal Rules, 2016, seeking a declaration that land being Plot No. R-05, measuring approximately 571.33 sq. meters, located at S.No. 120 (old S.No. 8/1/1, 8/1/2 and 8/1/1/2) situated at Keshavnagar, Mundhava, Pune (hereinafter referred to as 'the said Property') is not part of the liquidation estate of Phadnis Properties Limited (Corporate Debtor). The main prayers of the application are as follows:

- "A. To adjudicate the present application and declare that the land at Plot No, R-05, Admeasuring About 571.33 sq. mtrs., out of the layout at Sr. No. 120 sq mtr (Old S.NO. 8/1/1, 8/1/2 AND 8/1/1/2) situated at Keshavnagar, Mundhava, Pune, does not form part of the liquidation estate of the corporate debtor as per the provisions of the Insolvency and Bankruptcy Code, 2016 and the rules thereunder; and/or*
- B. To direct the Respondent to handover the peaceful possession of above-mentioned land to the applicant herein; and/or*
- C. To direct Respondent No. 3 to relinquish its claim or interest in the said property, as the permission granted by the Respondent No. 1 for such relinquishment is unjust, inequitable, and contrary to the legislative intent; and/or*

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*D. To direct the Respondent No. 1 to move an application before competent authority of MPID for release of the said property in favour of Applicant by virtue of order dated 10.05.2021 passed by this Hon'ble Tribunal.*

**2. Background**

- 2.1 The Applicant, in the capacity as land owner, entered into a Development Agreement dated 16.06.2011 (hereinafter referred to as 'Development Agreement') with the Corporate Debtor for the development of the said Property by constructing residential/commercial premises/shops/offices thereon. As per the Development Agreement, the Corporate Debtor was to construct within 24 months from the sanction of revised plan at its expenses and allot ownership of 37.50% of the saleable built up area to the Applicant.
- 2.2 Meanwhile, the Corporate Debtor was admitted into the Corporate Insolvency Resolution Process (CIRP) *vide* order dated 14.09.2017 (Admission Order), passed in Company Petition No. (IB) 1029 of 2017. Since no resolution plan was received for the revival of the Corporate Debtor, liquidation process under Section 33 of the Code were initiated *vide* order dated 07.05.2018. The Corporate Debtor is currently undergoing liquidation, and Respondent No.1 is the liquidator of the Corporate Debtor.
- 2.3 Although the ownership of the said Property was never transferred to the Corporate Debtor, the Respondent No.1, as liquidator of the Corporate Debtor, continues to retain possession of the said Property. Various communications to Respondent No.1, including the emails dated 12.09.2024, 14.09.2024, 22.09.2024, have been issued asserting the above position. Further, the Applicant *vide* his letter dated 01.07.2018 and email dated 02.07.2018 requested the Respondent No.1 for cancellation/termination of the Development Agreement and handing over the said Property to the Applicant. However, Respondent No.1 did not respond to the communications.
- 2.4 The Applicant, upon receiving a partially incomplete Acquisition Plan, became aware that Respondent No.2 has proposed an acquisition plan which covers



the said Property and that the security interest created in favour of Respondent No.3 has not been relinquished.

**3. Submissions of the Applicant**

- 3.1 The Applicant further submits that the Applicant had never sold the said Property to the Corporate Debtor and hence does not form part of the liquidation estate of the Corporate Debtor. The said Property is the asset of a third party, and the Respondent No.1 is devoid of any legal right, title, or authority to include or liquidate the said Property of the Applicant.
- 3.2 The Development Agreement provides that the Applicant would receive two flats as consideration within a stipulated period of 24 months from the date of approval of the sanction plan. If the consideration is not provided, the Development Agreement is rendered invalid, and ownership of the land remains with the Applicant.
- 3.3 As per Clause 13 of the Development Agreement, claims made by third parties due to delay in delivering the flats/project will solely be borne and paid by the Corporate Debtor, and the Applicant shall remain indemnified from any such claims with regard to the property. Therefore, the Applicant cannot be made to suffer due to the ill action of the Corporate Debtor.
- 3.4 Further, there is no privity of contract between the Applicant and the homebuyers, and as such, the Applicant cannot be held liable for the Corporate Debtor's inability to fulfill its commitments to the homebuyers.
- 3.5 The rights, title and interests of the Applicant in the said Property do not get extinguished by virtue of the approval of resolution plan or acquisition plan, if any. Even if the acquisition plan proposed by Respondent No.2 succeeds, the rights of the Applicant over the said Property remain unaffected. The Applicant would continue to hold the absolute title and ownership over the said Property, and the Respondent No.2, if it takes control of the business of the Corporate



Debtor, would be obligated to comply with the terms of the Development Agreement.

- 3.6 The Development Agreement further provides that the Applicant is entitled to an increase in saleable built-up area, if any, at a constant rate of 37.50%. However, the Acquisition Plan, proposed by Respondent No.2, does not provide for such increase, and is limited to 37.50% of the original saleable area.
- 3.7 The mortgage created by the Corporate Debtor in favour of Respondent No.3 is invalid and unjustifiable as no explicit Non-Objection Certificate was obtained from the Applicant. Thus, the Respondent No.3 has no jurisdiction to take possession of the said Property in the guise of an unlawful mortgage.
- 3.8 The Development Agreement has become infructuous due to the passage of time and the non-fulfillment of the terms and conditions stipulated therein. Furthermore, the Applicant had issued a notice for termination of the Development Agreement on 01.07.2018 (also sent an email on 02.07.2018). Consequently, neither the Corporate Debtor nor the other Respondents has any authority to take possession of the said Property.

**4. Submissions of the Respondent**

- 4.1 It is observed that the Respondents have not filed any reply except for the written submissions filed by Respondent No.2.
- 4.2 The Respondent No.2 states that the Applicant failed to assert or address the purported breach of the Development Agreement between 2013 and 2018. It was only after the liquidation order was issued that the Applicant sent the termination letter. Subsequently, Applicant remained quiescent and undertook no further action between 2018 and 2024.
- 4.3 The Respondent No.2 further submits that, pertaining to the contentions raised by the Applicant concerning the FSI of the plot of the land, the Development Agreement stipulates that the Corporate Debtor is entitled to increased / future



FSI. Furthermore, the Development Agreement is devoid of any termination clause, default clause, or delay clause. The termination itself is, *ipso facto*, ineffectual, having been sought to be effected during the liquidation process, thereby, in violation of Sections 33(5) and 35 of the Code.

- 4.4 The Respondent further submits that under the Acquisition Plan, the treatment for land owners is addressed under clause 4.6.2 and is in line with what is provided under their respective Development Agreements.

**5. Analysis and Findings**

- 5.1 We have heard the Ld. Counsel for the parties and perused the documents on record.

- 5.2 The facts of the case reveal that the Corporate Debtor is presently undergoing the liquidation process pursuant to the Order passed on 07.05.2018, and the Respondent has been appointed as the liquidator of the Corporate Debtor. The Liquidator is presently evaluating a revival plan submitted by Respondent No.2 aimed at keeping the Corporate Debtor as a going concern. Meanwhile, several landowners, including the Applicant, have approached this Tribunal to exclude the said Property.

- 5.3 It is an admitted fact that the Applicant, in his capacity as land owner, entered into the Development Agreement with the Corporate Debtor for the development of the said Property on the terms and conditions contained therein. The nature of the arrangement under the Development Agreement is described as under:

1. *Agreement*

*The Owner hereby agrees to:*

- (a) *Grant to the Developer the development rights in respect of all that piece and parcel of land situate, lying and being at Plot No. R-5 admeasuring about 571.33 Sq. Mtrs., out of layout of s.No. 120 (old S.No. 8/1/1, 8/1/2 and 8/1/1/2) situated at*

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*Keshavnagar, Mundhava Pune and more particularly described in the Schedule hereunder written (hereinafter referred to as “the said Property”) and allow and permit the Developer to develop the said Property by construction of a new building comprising of residential flats, commercial premises, shops, office premises, garages, stilt car parking or any other units of premises for any lawful user, and*

*(b) Further grant into the Developer the right to sell, transfer, encumber or otherwise alienate or dispose of the said residential flats, commercial premises, shops, office premises, garages, stilt car parking or any other units or premises for any lawful user and to receive consideration for the same; and*

*(c) Also convey the said Property in favour of the Developer and/or their nominees or the Co-operative Housing Society or Company promoted by them or Condominium of Apartments formed by them, as the case may be.*

*In Consideration of grant of development rights referred to above in respect of the said property, the Developer shall construct for an allot on ownership basis a flat equivalent to 37.50% of presently available salable built up area to the said property and the developer shall have the ownership rights for 57.50% of the salable build-up area of the said property. In the event of any change in the salable area in the final approval of the project from competent authority i.e. the ratio of 37.50% and 57.50% shall remain constant for the salable built up area (excluding TDR). Immediately after approval of building plans of the proposed buildings upon the said property, upon written intimation to that effect by the Developer to the Owner, the Owners shall select the flat allocable to him within 7 days from such communication (such flat shall be excluding top floor flats including penthouses).*

*The Developer, if called upon shall execute supplementary agreement in respect of the flat allocable to him. After approval of building plans as referred to above stamp duty and registration charges for such agreement shall be borne and paid by the Owner.*

*In the event of any short fall in the area of the flat allocable to the Owner, the Developer shall pay Rs. 4000/- per Sq. Ft. being compensation for the deficit area to the Owner, at the time of finalizing the location of the flat. In the event of increase in area of the flat allocable to the owner, maximum to the extent of 10% of total area of*

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*flat, the owner shall pay @ 4000/- per Sq. Ft. of built up area to the developer. If increase is more than 10% the owner shall pay such difference at then prevailing market rate.*

- 5.4 The agreement clearly indicates that the Applicant granted development rights in respect of the said Property to the Corporate Debtor. This includes the right to sell, transfer, encumber, or otherwise alienate or dispose of the residential flats, etc., and to receive consideration for those sales. Clause 7 further provides that, “Simultaneously with execution of this agreement, the Owner shall execute an Irrevocable Power of Attorney in favour of the Developer or its nominee/s.” The Development Agreement also specifies the entitlements of the Applicant.
- 5.5 It is also an admitted fact that the possession of the said Property was handed over to the Corporate Debtor for development, and the Respondent No.1 continues to be in possession of the said Property. It is pertinent to note that the Corporate Debtor has mortgaged the said Property in favour of Respondent No.3 for raising loans for the construction of the building as allowed under the Development Agreement. Accordingly, various interests and rights have been created on the said Property not only in favour of the Corporate Debtor but also for homebuyers and lenders.
- 5.6 The primary contention of the Applicant is that the said Property is still owned by the Applicant and hence should not be included in the liquidation estate of the Corporate Debtor. In support of this argument, the Applicant cites Section 36(4) of the Code, which specifies that assets owned by a third party which are in the possession of the Corporate Debtor shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation.
- 5.7 Before dwelling on the above submissions of the Applicant, we may examine the arrangement between the parties. The parties have entered into a Development Agreement granting development rights on the said Property to the Corporate Debtor. Simultaneously, the Applicant has also executed an irrevocable power of attorney to represent before various authorities, develop



the property, sell and dispose of the flats/shops constructed thereon, form and register co-operative society of flat purchasers, sign and execute conveyance deed, create mortgage, etc. The Applicant has also handed over possession of the said Property to the Corporate Debtor. Thus, what is reserved with the Applicant is only the entitlement to a share in the developed property to the extent mentioned in the Development Agreement.

- 5.8 While the Development Agreement outlines the terms under which the Applicant has allowed the Corporate Debtor to use the said Property, the power of attorney executed in conjunction with the Development Agreement grants the Corporate Debtor the authority to act on the Applicant's behalf regarding the development. It is no more *res integra*, that Development Rights are covered by the definition of Property under Section 3 (27) of the Code, which reads as under:

*“property” includes money, goods, actionable claims, land, and every description of property situated in India or outside India and every description of interest, including present, future, vested, or contingent interest arising out of, or incidental to, property.*

- 5.9 In the circumstances, the contention of the Applicant is that the said Property continues to be an asset owned by a third party and does not form part of the liquidation estate. The 'ownership' in jurisprudence is considered a "bundle of rights", meaning it is not a single, indivisible right but rather a collection of various entitlements related to a thing. These rights can be separated and held by different individuals or entities, as in the present case. While the title continues to remain with the Applicant, the right of development, possession, etc, is transferred to the Corporate Debtor by virtue of the Development Agreement and irrevocable power of attorney. Thus, the right remaining with the Applicant is restricted ownership.
- 5.10 The above view is further supported by the absence of any provision for termination or revocation at any stage. Further, the power of attorney granted

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by the Applicant is irrevocable and coupled with interest. It is also worthwhile to note that the Development Agreement, the Corporate Debtor, appears to have further sold the proposed flats to the homebuyers and created third-party interests also. Having regard to the above, the whole arrangement between the Applicant and the Corporate Debtor cannot be construed as a mere contract which can be terminated. Thus, the letter dated 01.07.2018 and email dated 02.07.2018 issued by the Applicant for termination/cancellation of the Development Agreement, during the liquidation period, have no significant consequence.

- 5.11 On the basis of the above discussion, we have no hesitation in holding that the right remaining with the Applicant is a restricted ownership which is not sufficient to seek an exclusion from the liquidation estate of the Corporate Debtor. Any other interpretation, in our view, would go against the spirit of the Code and against the interests of many homebuyers. However, the Applicant can continue to claim his share as per the terms of the Development Agreement.
- 5.12 As far as the contentions of the Respondent that, as per the Development Agreement, the Corporate Debtor shall at its own expense construct the said flats and complete the same within 24 months from the sanction of the revised plan. In view of the Corporate Debtor's non-performance of the conditions towards the Applicant, the Development Agreement entered into between the parties has become infructuous. However, we notice that though the Applicant was fully aware of the initiation of CIRP against the Corporate Debtor, no action appears to have been taken to assert his rights. Further, the advocate of the Applicant, while seeking exclusion of the said Property from the liquidation estate of the Corporate Debtor, stated in his email dated 14.09.2024 inter alia, as under:

*“Furthermore, while I acknowledge that M/s Stargold Infrastructure LLP has proposed a acquisition plan, however, in case the acquisition plan fails and the Corporate Debtor be subjected to liquidation proceedings, the land belonging to my client must*

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*not be treated as an asset of the Corporate Debtor under Section 36 of the Insolvency and Bankruptcy Code, 2016 (IBC). In such an event, the land should be returned to my client pursuant to the notice for termination of the development agreement dated 01.07.2018.”*

- 5.13 The Ld. Counsel for the Respondents submits that a revival plan is under consideration, and the treatment for land owners would be in line with what is provided under their respective Development Agreements. Therefore, if a revival plan gets through, the Applicant would be able to enforce his rights as per the terms of the Development Agreement. As regards the dispute with respect to the entitlement to an increase in salable built-up area, we leave this issue open to be decided by a Civil Court having jurisdiction on the basis of oral and documentary evidence. We are of the view that this Tribunal is not competent to determine the same.
- 5.14 In the facts and circumstances of the case, we are of the view that the reliefs sought in the application lack merit and deserve to be dismissed. However, it is made clear that the observations in the Order will not affect the Applicant's assertion of his rights as per the terms and conditions of the Development Agreement.
- 5.15 Accordingly, **IA No. 5365/2024 is dismissed** with no order as to costs.

**Sd/-**  
**ANIL RAJ CHELLAN**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**K. R. SAJI KUMAR**  
**MEMBER (JUDICIAL)**