

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENGALURU BENCH, BENGALURU**

(Exercising powers of Adjudicating Authority under  
The Insolvency & Bankruptcy Code, 2016)  
*[Through Physical Hearing / VC Mode (Hybrid)]*

**IA No.285 of 2022 in**  
**CP (IB) No.32/BB/2020**  
U/s 60(5)(c) of the I&B Code, 2016

**IN THE MATTER OF:**

**Mr. Ratnakar Shetty**

Resolution Professional of  
M/s. Unishire Lifestyle Dwellings LLP  
#16, Level 3, Skyline Towers,  
7<sup>th</sup> Cross, Sampige Road,  
Malleshwaram,  
Bangalore – 560 003.

- Applicant

**Versus**

**1. Mr. A. Anil Kumar**

S/o. Late S. Anjanappa  
No.254, 4<sup>th</sup> 'B' Cross, Jakkur,  
Bengaluru – 560 064.

**2. Smt. Padma**

W/o. Mr. A. Anil Kumar  
No.254, 4<sup>th</sup> 'B' Cross, Jakkur,  
Bengaluru – 560 064.

**3. Kumari Mansi A. Gowda**

D/o. Mr. A. Anil Kumar  
No.254, 4<sup>th</sup> 'B' Cross, Jakkur,  
Bengaluru – 560 064.

**4. Mr. A. Narendra Babu**

S/o Late S. Anjanappa  
No.254, 4<sup>th</sup> 'B' Cross, Jakkur,  
Bengaluru – 560 064.

**5. Smt. Lakshmi G.**

W/o. A. Narendra Babu  
No.254, 4<sup>th</sup> 'B' Cross, Jakkur,  
Bengaluru – 560 064.

**6. Smt. A. Devika**

D/o Late S. Anjanappa  
No.254, 4<sup>th</sup> 'B' Cross, Jakkur,  
Bengaluru – 560 064.

**7. Mr. A. Prashanth**

S/o Late S. Anjanappa  
No.254, 4<sup>th</sup> 'B' Cross, Jakkur,  
Bengaluru – 560 064.

- Respondents

**Order pronounced on: 28<sup>th</sup> March, 2024**

**CORAM:** 1. Hon'ble Shri K. Biswal, Member (Judicial)  
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

**PRESENT:**

For the Applicant : Shri Abhijit Atur & Shri Srivatsa Rao, Advs.  
For the Respondents : Shri Sai Kiran R., Adv.

**ORDER**

**Per: K. Biswal, Member (Judicial)**

1. This Application has been filed by Mr. Ratnakar Shetty, RP of the Corporate Debtor under Section 60(5) of the I&B Code, 2016 seeking a direction to the Respondents to remove the illegal temporary construction on the Schedule Property and permit the Applicant to take possession of the same.
2. Brief facts of the case as stated by the Applicant are as under:
  - (a) In accordance with the Order dated 08.03.2022 in CP (IB) No.32/BB/2020 passed by this Adjudicating Authority, Corporate Insolvency Resolution Process was initiated against the Corporate Debtor i.e., M/s. Unishire Lifestyle Dwellings LLP and moratorium was imposed. The Applicant herein was appointed as the Resolution Professional of the Corporate Debtor by the Committee of Creditors, and the same was confirmed by this Tribunal *vide* Order dated 30.05.2022.
  - (b) The Corporate Debtor (CD) engaged in property development in Bengaluru, either by acquiring properties or through Joint Development Agreements (JDA) with landowners. Specifically, the CD entered into a JDA with the Respondents and the late S. Anjanappa, the father of Respondents No. 1, 4, 6 and 7, concerning properties in Jakkur Village, Bengaluru North Taluk having Survey No. 85/7B and Survey No. 85/6, totalling 2 acres 21 guntas, hereinafter referred to as the "Schedule Property." The JDA, executed on 13.09.2013, was duly registered, and the Respondents, along with S.

Anjanappa, granted powers to the CD to manage and carry out developmental activities on the Schedule Property. Additionally, the CD has been appointed as the agent for this purpose through a registered General Power of Attorney (GPA), dated 13.09.2013.

- (c) The CD stated that both the JDA and the GPA are registered documents, that is, the JDA was registered *vide* MLS-1-01510/2013-14 in the office of the Senior Sub-Registrar, Malleshwaram, Bengaluru, and the GPA was registered *vide* MLS-4-00162/2013-14 of Book-IV stored in C.D. No. MLSD65, in the office of the Senior Sub-Registrar, Malleshwaram, Bengaluru. These legal documents have conferred the authority upon the CD to effectively manage and develop the specified properties. Copies of the JDA and the GPA are annexed as Annexure A and Annexure B, respectively.
- (d) The Respondents executed the JDA and the GPA with the CD for developing the Schedule Property in Bengaluru. As consideration, the CD paid a non-refundable Security Deposit of Rs.20,00,000. Following the execution of the JDA and GPA on 13.09.2013, the Corporate Debtor obtained possession of the Schedule Property for development. This possession is described as permissive and constructive, and the CD has retained it since the Agreement's execution. The CD successfully obtained an order of conversion from agricultural to non-agricultural use for the Schedule Property, issued by the Deputy Commissioner, Bengaluru District.
- (f) Following the conversion of the Schedule Property, the CD obtained essential approvals for construction from the Airport Authority of India, Karnataka State Pollution Control Board, and the State Level Environment Impact Assessment Authority. Additionally, the CD secured No Objections from the Government Flying Training School, Jakkur Aerodrome, Government of Karnataka, Bharat Sanchar Nigam Limited and Bangalore Electricity Supply Company Limited. Copies of the above are provided as Annexures D through J, collectively demonstrating compliance with regulatory requirements before initiating construction on the Schedule Property.

- (g) After obtaining necessary consents, NOCs and approvals, the CD applied to Bruhat Bengaluru Mahanagara Palike (BBMP) for the sanction of plan to commence construction on the Schedule Property. According to the terms of the JDA, the CD is obligated to complete construction within 36 months from the issuance of the commencement certificate with an additional grace period of 6 months. However, despite the application for the sanction plan and construction license, the BBMP authorities have not yet issued the required approvals. The commencement certificate, crucial for initiating construction, is contingent upon the approval of the sanction plan by the BBMP authorities.
- (h) It is stated that the CD expended a substantial amount to obtain various statutory clearances and documents necessary for the sanction plan to proceed with the construction project. However, delays led to legal action, with Respondent No. 1 filing O.S. No.5275/2017 in the Hon'ble City Civil Judge at Bangalore, wherein, Respondent No. 1 sought a permanent injunction, claiming that the JDA and GPA, both dated 13.09.2013, had expired and were terminated. The CD, in response thereto, filed a written statement denying the termination and cancellation, as evidenced by Annexure-M. Furthermore, the CD initiated O.S. No.9481/2018, challenging the alleged unilateral termination and cancellation by the Respondents, with the proceedings currently pending consideration. Copies of the Plaint & Written Statement for O.S. No.9481/2018 are provided as Annexures N and O, respectively.
- (i) It is further stated that following an order dated 08.03.2022 in CP (IB) No. 32/BB/2020 passed by this Adjudicating Authority, the proceedings in both O.S. No.9481/2018 and O.S No.5275/2017 have been stayed in compliance with Section 14 of the Code.
- (k) It is also stated that Respondents have erected an unauthorized temporary structure on the Schedule Property without the CD's consent, obstructing the development of project, and that the Applicant is not being allowed to enter the Schedule Property. Copy of the photographs of illegal temporary structure is at Annexure-P (*Colly*). It is submitted that possession of the Schedule Property is crucial for the CD's substantial interest and effective progression of the CIRP. Further, there are potential Resolution Applicants

who have shown interest in developing the property, which could benefit all stakeholders, including the Respondents. The JDA and GPA grant significant interest to the CD. Cancellation of registered documents can only occur through a registered cancellation deed, and the Respondents' alleged termination is deemed illegal and non-binding, given that they lack the right to terminate under the JDA, and the completion timeline was dependent on obtaining the sanction plan.

3. The Respondents have filed their objections *vide* Diary No.5276 dt.07.12.2022 by *inter alia* contending as under:
  - (a) The Respondent No.1 is the eldest family member is also General Power of Attorney holder on behalf of the remaining Respondents who are his family members. The Respondent contended that the Applicant has failed to describe Schedule of the immovable property in the application though frequently referred as such and therefore, the application is liable to be dismissed. Admittedly, these Respondents are the absolute owners enjoying peaceful possession of all the piece and parcel of their immovable properties bearing Survey No. 85/7B (formerly Sy. No.85/7) measuring 35 guntas and Survey No.85/6 measure 1 acre 26 guntas situated in Jakkur Village, Yelahanka Hobli, Bengaluru North Taluk and totally measuring 2 acres and 21 guntas.
  - (b) It is stated by the Respondent that in the past few years, the Respondents with the knowledge of Applicant have also constructed permanent structures on the said Land. Also, presently, neither the Applicant nor any other third parties have any manner of existing legal right or interest over the said Lands that belongs exclusively to these Respondents.
  - (c) It is contended that the JDA or GPA dated 13.09.2013 is disputed and has not been acted upon by the parties; and has expired by efflux of time. Furthermore, these Respondents have also cancelled the JDA and GPA by issuing legal notice dated 16.08.2017. These Respondents, prior to the above application, have initiated Original Suit in O.S. No.5275/2017 as against the Applicant with whose alleged JDA and GPA have been terminated, and sought for restraining the Applicant or any person

claiming under them by permanent injunction with respect to the said immovable Property.

- (d) Subsequently, the Applicant also filed a counter suit in O.S. No.9481/2018 to declare such cancellation of the documents by these Applicants as null and void, which are both pending before the Hon'ble City Civil Judge, Bengaluru. Further, Writ Petition bearing W.P. No.36000/2018 is pending before the Hon'ble High Court of Karnataka, Bengaluru in which no interim relief has been granted. Also, the Applicant had approached the Hon'ble High Court with Miscellaneous First Appeal No.3584/2019 which came to be dismissed on 01.07.2019.
- (e) It is contended that the Applicant Company has been involved in unlawful transactions and is also facing criminal cases and that the Respondents are not involved in any issue of money transaction nor the Applicant has any manner of legal right as against the Respondents or their Properties.
- (f) Under this situation, the Respondents have approached the Hon'ble City Civil Judge, Bengaluru in O.S. No.5275/2017 seeking appropriate relief to protect their legal rights over their immovable Properties. It is contended that the Applicant has colluded with the Company personnel but cannot drag unrelated Respondents and raise the issue of legal title & possession of the immovable Property into the above proceedings which is pertaining to the insolvency of the Applicant Company. It is stated that Respondents have filed an application seeking police protection from the attempted acts of interference by the Applicant and their agents in pending Civil Suit.
- (g) It is true that there is no sanction plan granted in respect to Schedule Property in spite of the alleged efforts of the Applicant for reasons known only to the Applicant. It is contended that the Applicant has no case on merits and the balance of convenience is with protecting the legal rights of the Respondents.
- (h) In support of their contentions, the Respondents have relied upon the Judgment rendered by Hon'ble Supreme Court in the case of *M/s.Embassy Property Developments Pvt. Ltd. vs. State of Karnataka & Ors., in Civil Appeal No.9170 of 2019 decided on 03.12.2019.*

4. The Applicant-RP has filed Synopsis *vide* Diary No.809 dated 10.02.2023, in addition to the facts stated supra, has further submitted that he is seeking police protection to evict all the unauthorised persons living in the Schedule Property. He states that there is no provision in the said JDA for the unilateral cancellation of the JDA and the PoA. The Respondents at best could seek compensation for delay in completing the Project at the Schedule Property as per Clause 6.2 of the JDA. Further, it is trite law that in the absence of a specific provision of law, a document which is already registered by statutory authorities, cannot be unilaterally revoked. In this regard, reliance is placed on the Judgment of the Hon'ble Apex Court in *Thota Ganga Laxmi vs. Govt. of Andhra Pradesh [(2010) 15 SCC 207]* wherein it is categorically held that once a document is registered, no party can unilaterally execute cancellation of such a document. Hence, as on date there is no judicial pronouncement to state that the said JDA and PoA stand cancelled. Therefore, the said Property is an asset of the Corporate Debtor. As the Corporate Debtor has gone into insolvency, it is necessary for the Applicant to procure the possession of the Schedule Property to ascertain and maximise the value of the assets of the Corporate Debtor. The Corporate Debtor is a Developer of the Property having right and interest in the said Property. Further, the Hon'ble NCLT Mumbai in *Goa Auto Accessories vs. Mr. Suresh Saluja in MA No.130/2019 in CP (IB)-3863/MB/2018 vide* Order dated 12.12.2019, in a matter containing similar set of facts, has held that a Resolution Professional can take possession of the Assets of the Corporate Debtor. Furthermore, as per Section 231 of the Code, there is a bar on Civil Courts to entertain any proceedings which are subject matter of the proceedings under the Code.
5. The Respondents filed Synopsis *vide* Diary No.778 by reiterating the facts, as stated supra, has further contended that the purpose of moratorium is only to preserve the status quo and not to create a new right, and in this regard, has referred to Para 44 of *the Embassy Property (supra)* which reiterates that under Section 14 of the IBC, no new right can be created by this Tribunal. Further, the issues raised in this IA are pertaining to title and possession of immovable Property belonging to these Respondents and these issues are pending consideration before the Hon'ble City Civil Judge, Bengaluru for the past six years. Also, the explanation provided in Section 18(f)(vi) of the Code

clearly excludes the Property owned by third parties. References have also been made to Para 38 and 39 of the *Embassy Property (supra)* wherein the Hon'ble Supreme Court concluded that the IRP has no right to make a claim against the Property owned by third parties and explained the meaning as enshrined under Sections 18 and 25 of the IBC, 2016. Furthermore, the Respondents contended that the citations relied by the Applicant are not applicable to the facts of the instant case.

6. The Respondents have also filed Memo *vide* Diary No.4523 dated 30.08.2023 enclosing the copy of the Order dated 11.08.2023 passed by the Hon'ble City Civil Judge, Bengaluru in O.S. No.5275/2017, wherein, the Defendant/RP (Applicant herein) has undertaken on 11.08.2023 that in any way he will not cause an interference with the Plaintiff's (Respondents herein) possession and enjoyment of the Suit Schedule Property until disposal of the Suit. In view of the above, the Respondents stated that being admittedly the absolute owners and enjoying lawful possession of the Suit Schedule Property, the instant application is liable to be rejected. Copy of the Order in O.S. No. 5275/2017 is placed on record.
7. The Applicant *vide* Diary No.5776 dated 16.11.2023 has filed a note stating the list of cases involving the Corporate Debtor and the Respondents that are pending in various Courts and further stated that all the suits/petition were filed by the respective Parties before the commencement of the CIRP i.e. on 08.03.2022.
8. Heard the Ld. Counsels appearing for the Applicant and the Respondents and perused the pleadings on record.
9. It is seen that the Joint Development Agreement dated 13.09.2013, which is enclosed to the Application as Annexure-A, has been entered into by the Landowners ('First Party / Owners') and M/s. Victory Builders & Developers ('Second Party / Confirming Party') in favour of M/s. Unishire Lifestyle Dwellings LLP ('Third Party / Developer') and the same is duly registered. In order to determine the validity of the contention of the Respondents that they had cancelled the JDA and GPA by issuing legal notice dated 16.07.2018, it is apt to refer the below Clauses of the JDA, which reads as under:

**“6. COMMENCEMENT AND COMPLETION OF CONSTRUCTION:**

**6.1** *The THIRD PARTY/DEVELOPER shall under normal conditions and in the absence of any restrictions, complete the construction within 36 (THIRTY SIX) months from the date of Commencement Certificate with a grace period of 6 (SIX) months or such extended period as the PARTIES may mutually agree upon. However, the THIRD PARTY/DEVELOPER shall not incur any liability for any delay in delivery of possession of the “FIRST PARTY/ OWNERS’ CONSTRUCTED AREA” by reason of non-availability of Government Controlled Materials, and/or by reason of Government restrictions and/or civil Commotion, transporters strike, Act of God or due to any injunction or prohibitory orders (not attributable to any action of the THIRD PARTY/DEVELOPER) or conditions force majeure or for reasons beyond control of the THIRD PARTY/DEVELOPER shall be excluded at the time of computing the period stipulated for construction. In the event of delay in the issue of Sanction Building Plan/Modified Plan, non-availability of Occupancy Certificate or Power/Sanitary/Water connections, the THIRD PARTY/DEVELOPER shall be excluded at the time of computing the period stipulated for construction. The THIRD PARTY/DEVELOPER in any case shall endeavour to complete the construction within the stipulated period and deliver the “FIRST PARTY/ OWNERS’ CONSTRUCTED AREA” within the period agreed herein above.*

**6.2** *That if there is any delay on the part of the THIRD PARTY/ DEVELOPER in completing the project within the stipulated period and subject to the conditions mentioned in Para 6.1 supra, the THIRD PARTY/DEVELOPER shall pay a sum of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand Only) per month as compensation from the date of default reckoned between the PARTIES and the same shall be payable by the THIRD PARTY/DEVELOPER to the FIRST PARTY/OWNERS.”*

**“11. OBLIGATION OF THE FIRST PARTY/OWNERS:**

**11.1** *The FIRST PARTY/OWNERS shall on the execution of this Joint Development Agreement grant a General Power of Attorney in favour of the THIRD PARTY/DEVELOPER or their nominees, empowering to proceed with obtaining of licenses, sanction plans, modified plans, required in regard to the Building/s to be constructed on the Schedule Property and authorizing the THIRD PARTY/DEVELOPER to develop the Schedule Property and convey 77% undivided share in the land of the Schedule Property along with 77% of super built up area with proportionate car parking slot, out of which 17% of super built up area with 17% undivided share of land and proportionate car parking slot have been apportioned to SECOND PARTY/ CONFIRMING PARTY either under one Sale Deed or in portions thereof or any part thereof. **The FIRST PARTY/OWNERS agree not to revoke the said General Power of Attorney under any circumstances as the same is executed for the purpose of development and shall be cumulative and co-extensive.”***

**“18. BREACH AND CONSEQUENCES:**

*The PARTIES hereto shall mutually co-operate for the implementation of the terms herein recorded. **In the event of breach of the terms of this Joint Development Agreement by either PARTY, the aggrieved PARTY shall be entitled to enforce specific performance and also be entitled to***

***recover all the losses and expenses incurred as consequence of such breach from the PARTY committing the breach.***”

- 10.** As per Clause 6.1 of the JDA, the Corporate Debtor is required to complete the activity of construction within a period of 36 months from the date of issuance of the Commencement Certificate with a further grace period of six months. However, as stated supra, the Applicant-RP has stated that though the Corporate Debtor has applied for issuance of the sanction plan and licence to put up construction on the Schedule Property, the said authorities are yet to issue the sanction plan and licence for the purpose of developing the Schedule Property and that the Commencement Certificate in respect of the Schedule Property could be issued only after sanction is accorded to the Corporate Debtor to put up construction. From the aforesaid Clauses, it is apparent that the Respondents herein have no power to unilaterally terminate the said JDA and GPA as they have clearly agreed that they would not revoke the said GPA under any circumstances as the same is executed for the purpose of development and shall be cumulative and co-extensive. Further, the claim of the Respondents that the JDA as well as GPA has not been acted upon and has expired by efflux of time; is not tenable due to absence of any such Clause in the Agreement. As submitted by the Applicant in his Synopsis, the Respondents at best could seek compensation for delay in completing the Project at the Schedule Property as per Clause 6.2 of the JDA.
- 11.** It is settled principle of law that once a document is registered no party can unilaterally execute cancellation of such a document. The Applicant has cited the Judgment of the Hon'ble Apex Court in the case of *Thota Ganga Laxmi* (supra) in support of this contention. Therefore, the argument of the Respondents that they have cancelled the said JDA and GPA by issuing legal notice dated 16.08.2017 is not legally tenable, as such a registered Agreement cannot be cancelled by merely issuing such a notice. In effect, in terms of the said JDA and GPA the Respondents have authorised the Corporate Debtor to proceed with the development of the Project, and thus the Corporate Debtor is having the vested rights to develop the Schedule Property situated at Jakkur Village, Yelahanka Hobli, Bengaluru North Taluk. As such, now the Property comes under the possession of the Corporate Debtor for its development, since the CIRP has been initiated on the Corporate Debtor from

08.03.2022. It is argued by the Ld. Counsel for the Respondent that the purpose of moratorium is only to preserve the status quo and not to create a new right. However, in the instant case, right is already existing to develop the aforementioned Schedule Property in view of the registered JDA and GPA; and hence no new right has been proposed to be created.

12. In this context, it is apt to refer the Judgment rendered by the Hon'ble High Court of Delhi in *Liberty House Group Pte. Ltd. Vs. State Bank of India and Ors.*, decided on 22.02.2019 in which it has been *inter alia* observed that no Civil Court shall have jurisdiction in respect of any matter in which the NCLT had jurisdiction under I&B Code, 2016.
13. It is true that the Miscellaneous First Appeal No.3584 of 2019 filed by the Applicant herein before the Hon'ble High Court of Karnataka was dismissed *vide* order dated 01.07.2019, wherein, it has *inter alia* observed that just because this Order is vacated, it does not mean that the Plaintiff (Applicant herein) has lost his right to argue once again on the very same application.
14. In view of the foregoing reasons, we are of the considered opinion that the instant Application deserves to be allowed. Accordingly, **IA No.285 of 2022 is hereby allowed** with a direction to the Resolution Professional to take possession of the Schedule Property and the Respondents are directed to remove the illegal temporary construction made on the aforementioned Schedule Property of the Corporate Debtor forthwith and handover possession to the Resolution Professional to enable him to carry out further functions as required under the Code and the Regulations.

**Sd/-**  
**MANOJ KUMAR DUBEY**  
**MEMBER (TECHNICAL)**

*jsr*

**Sd/-**  
**K. BISWAL**  
**MEMBER (JUDICIAL)**