IN THE NATIONAL COMPANY LAW TRIBUNAL KOLKATA BENCH-II

KOLKATA

IA(IBC) No. 203/KB/2025

In

C.P. (IB) No. 378/KB/2018

In the Matter of:

Devi Trading and Holding
Private Limited **Financial Creditor**

Versus

Avani Projects & Infrastructure Limited **Corporate Debtor**

In the matter of:
Adone Hotels & Hospitality Limited
(Formerly DLF Hilton Hotels Limited)
An existing company within the
Meaning of the Companies Act, 2013
Having its registered office at:
Smartwork Business Centre Private
Limited, Unit Nos. 305-310, Plot No. 9,10
& 11, Vardhman Trade Centre,
Nehra Place 110019

Applicant

Versus

1. Ajay Kumar Agarwal, Resolution Professional
   Avani Projects and Infrastructure Limited
   Having IBBI Registration No. IBBI/
   IPA-002/IP-N00608/2018-2019/11859
   Working for gain at “P.S QUBE,” Plot
   No. IID/31/1 Street No. 1111, Unite Number
   1015 A 10th Floor, Beside City Centre-2
   Kolkata, West Bengal-700161.

2. The Committee of Creditors of
   Avani Projects & Infrastructure Limited
   Represented through the office of
   The Resolution Professional at
   “P.S QUBE,” Plot No. IID/31/1
   Street No. 1111, Unite Number
   10150th Floor, Beside City Centre-2
   Kolkata, West Bengal-700161.

3. Prominent Suppliers Private Limited
   Having CIN No. U51909UB2009PTC136788
   An existing Company within the
   Meaning of the Companies Act, 2013
   Having its registered office at:
   6, Kali Krishna Tagore Street,
   Kolkata, West Bengal-700007.

Respondents

Coram: **Labh Singh Hon’ble Member(Judicial)**
Rekha K Shah Hon’ble Member(Technical)

Present:

For the Applicant	Mr. Ratnanko Banerji Ld. Sr. Advocate Mr.Shaunak Mitra, Ld. Advocate Mr.Dripto Majumdar, Ld. Advocate Mr.Keshav Tibarewalla, Ld. Advocate
For Respondent No. 1/RP	Mr. Jishnu Saha Ld. Sr. Advocate Mr. Rishav Banerjee, Ld. Advocate Mr. Supriyo Gole, Ld. Advocate Ms. Madhuja Barman, Ld. Advocate Mr.Ajay Kumar Agarwal, RP
For Respondent no. 2	Mr. Abhrajit Mitra Ld. Sr. Advocate Ms.Shrivalii Kajur, Ld. Advocate
For Respondent No. 3	Mr.Joy Saha, Ld. Sr. Advocate Mr. Zeeshan Haque, Ld. Advocate Mr. Ritoban Sarkar Ld. Advocate Mr.Ankus Singhi, Ld. Advocate Ms.Riti Basu, Ld. Advocate Ms.Piyali Pan, Ld. Advocate Mr.Ayant Shaw, Ld. Advocate

Pronounced On:22.06.2026

ORDER

Labh Singh Member(Judicial)

1. The present application has been filed by the applicant for the following relief:

A. An order be passed excluding any reference of 3.70 acres(224.35 cottahs) being part of R.S Dag No. 27

of Mouza Boinchtola, Khaitan No. 160, Touzi No. 46B2, JL No. 4 Police Station Tiljala District South 24 Parganas at 08, JBS Haldern Avenue, Kolkata 700046, which was subject matter of joint development agreement dated November 09, 2013 be excluded from the corporate insolvency resolution process, being C.P(IB) No. 378/KB/2018, of the Corporate Debtor, Avani Projects & Infrastructure Limited;

B. An order of injunction be passed restraining the respondent from exercising any right or passing any direction or order in respect of 3.70 acres(224.35 cottahs) being a part of R.S Dag no. 27 of Mauza Boinchotla Khaitan no. 160, Touzi no. 46B2, J.L No.4, Police Station Tiljala District, South 24 Parganas at 08, JBS Halden Avenue, Kolkata 700 0046;

C. Injunction restraining the respondents, their man, agents, and assigns from giving any effect or further effect to the order dated December 9, 2024 passed in I.A(IBC) No. 1327/KB/2024;

D. Recall the order passed on December 9, 2024 in IA(IBC) No. 1327/SKB/2024;

E. Reject any resolution plan, if at all submitted or to be submitted by the respondent no. 3 or any other entity in regard to the said demarcated land and/or any development rights in respect their of;

F. Restrain the respondents from taking from consideration or giving effect to any purported resolution if at all submitted in terms of order dated 09th December 2024;

G. Direction upon respondent No. 1 to forthwith allow inspection and make over copies of record pertaining to CP(IB) No. 378/KB/2018 and or IA(IBC) No. 1327/KB/2024 and the various applications pending therein;

H. Leave be granted to the applicant to obtain certified copy or any other form of copies of all the records pertaining to IA(IBC) No. 1327/KB/2024 in CP(IB) No. 378/KB/2018;

I. Injunction staining the respondent, their men, agents and assigns from in any manner interfering with the right of the applicant as owner of the demarcated land or claiming any right therein;

J. Direct respondent number 1 to furnish to the applicant, the relevant extract of the information memorandum, if at all issued, minutes of meeting of

the COC and progress reports, dealing with the said demarcated land;

K. Such other and/or further orders;

L. Ad-interim orders in terms of prayers above.

2. Briefly stated the facts of the case are that Kolkata Municipal Corporation, for construction of hotel and other related commercial activities over its land admeasuring 5.59 acres situated at Plot No. 8, JBS Holden Avenue, Kolkata, Police Station: Tiljala District: South 24 Parganas, granted leasehold right to the applicant for 99 year with renewal clause for another 99 years. The applicant, in order to develop a part of the said land admeasuring 3.70 acres i.e 224.35 cottahs(hereinafter referred as **"the property in question**), granted development right to the Avani Projects and Infrastructure Limited(hereinafter referred as **"the Corporate Debtor**") vide Joint Development Agreement dated November 09, 2013.

2.1 The Corporate Debtor availed financial assistance of Rs. 250,00,00,000/- from Reliance Capital Limited which was disbursed during the month of September 2012 to October 2012 and rescheduled in the year 2015. The applicant stood as Corporate Guarantor to the loan advanced to the Corporate Debtor. The applicant also pledged its share and mortgaged leasehold rights in favour of Reliance Capital

Limited(Merged with Reliance Commercial Finance Limited) to secure the loan advanced to the Corporate Debtor.

2.2 One Ornate Tradecom Private Limited filed a winding up petition against Corporate Debtor before Hon'ble High Court of Calcutta. Hon'ble High Court of Calcutta, vide order dated December 1, 2017, passed an order on the said winding up petition to admit a sum of Rs. 73,95,617/-(Seventy Three Lakhs Ninety Five Thousands Six Hundred Seventeen Only) against the Corporate Debtor. Hon'ble High Court permitted the Corporate Debtor to pay the said sum within a period of three weeks of the said order failing which an order of admission would stand confirmed. Though no such winding up order has been passed till date; however, the Provisional Liquidator was appointed on September 7, 2018.

2.3 During the interregnum, the Corporate Debtor failed to repay the loan availed from Reliance Capital Private Limited (Reliance Commercial Finance Limited). Reliance Commercial Finance Limited, in view of default committed by the Corporate Debtor, recalled the loan facility on December 29, 2017 and issued notice to invoke the pledge with regard to the 534,533,525 numbers of shares of the applicant listed with it, comprising approximately 100% of the total issued, subscribed and paid up share capital of the applicant. Reliance Commercial Finance Limited further invoked the

pledge on all the shares of the applicant on January 8, 2018. The mortgage on the leasehold right continues to subsist till date. Thereafter on or before March 31, 2018, Reliance Commercial Finance Limited, in order to recover its debt, sold 100% share of the applicant to Vertical Infracon Private Limited.

2.4 M/s Devi Trading and Holding Private Limited filed a Company Petition against the Corporate Debtor being CP (IB) No. 378/KB/2018 under Section 7 of the IBC Code 2016 for initiating CIRP process and the Corporate Debtor was admitted in CIRP by this Tribunal vide order dated 13.03.2019.

2.5 The Prominent Suppliers Private Limited filed an application no. IA(I.B.C) No. 1327/KB/2024 before this Tribunal for seeking leave of this Tribunal to grant permission to the applicant in the said application and/or homebuyers of Avani Grand to submit a resolution plan for insolvency of Avani Gran at premises no. 08, JBS Halden Avenue Kolkata. The said application was allowed by the Tribunal vide order dated 09.12.2024.

3. The case of the applicant is that the applicant Company is engaged in real estate and allied business. There is a plot of land bearing no. 8, JBS Holden Avenue, Kolkata admeasuring approximately 5.59 acres of land owned by

Kolkata municipal Corporation. The Kolkata Municipal Corporation, in view of the upsurge of tourism business, invited bids for identification of reputed and well known Developers who could design, finance, construct and execute a hotel and other business and commercial activity on the said land. The applicant, in response to the same, submitted its bids/expression of interest with Kolkata Municipal Corporation.

3.1 The Kolkata Municipal Corporation, after technical and financial evaluation of bid, awarded a lease of 99 years with renewal clause for further period of 99 years to the applicant Company vide registered lease deed No. 10081 dated 10th August 2007, for the land admeasuring 5.59 acres with all piece and parcels being part of R.S Dag No. 27 of Mouza Boinchatola, Khatain No. 160, Touzi No. 46B2, J.L No. 2., P.S Tiljola District South 24 Pargana, at 8, JBS Halden Avenue, Kolkata 700046 (hereinafter referred as “Leasehold Property”). against a basic premium of approximately INR 155.46 lakh at annual rent of ₹1 only per cottahs.

3.2 The said lease deed No. 10081 dated 10th August 2007 was executed and registered between Kolkata Municipal Corporation and the applicant, at that time known in the name of DLF Hilton hotels Limited and DLF Limited being the confirming party. The name of DLF Hilton Hotels Limited was

subsequently changed to DLF Hotels and Hospitality Limited on 1st February 2011; and on 11.01.2012, further changed to Adone Hotels and Hospitality Limited i.e. the present applicant.

3.3 The applicant was permitted to construct and execute a hotel and other commercial activity on the said land in consideration for a Rs. 155,45,79,000/-. The Kolkata municipal Corporation also sanctioned a building plan submitted by the applicant on 8th September 2008. Thereafter, certain disputes emerged regarding change of user of the said land between the lessor and the lessee.

3.4 On June 11, 2012, the shareholding of the applicant Company owned by DLF group was acquired by the Corporate Debtor. Thus, the applicant became a wholly owned subsidiary of Corporate Debtor in the year 2012. Thereafter, a Joint Development Agreement(JDA) dated November 09, 2013 was executed by the applicant as lessee of the land appointing the Corporate Debtor as developer of the part of the said premises admeasuring 3.70 acres out of total land of 5.59 acres. The said development agreement is an invalid and inadmissible, having not been registered or stamped in accordance with the law.

3.5 It has further been submitted that for the purpose of facilitating construction and development of the hotel

project over the said land, the Reliance Capital Limited disbursed a term loan of Rs. 250,00,00,000/-(Rupees Two Fifty Crore Only) to the Corporate Debtor during the month of September 2012 to October 2012. The leasehold interest in the said land was mortgaged in favour of Reliance Capital Limited with written permission of Kolkata Municipal Corporation to secure repayment of the said loan. The applicant also pledged approximately 100% share of the applicant company in favour of Reliance Capital Limited. The applicant also stood as Corporate Guarantor for the loan facility granted to the Corporate Debtor.

3.6 Thereafter, the Corporate Debtor defaulted in repayment of loan facility as per loan agreement. However, the repayment of loan was rescheduled by the Reliance Capital Limited in the year 2015 for which further loan and security documents were executed particularly loan agreement dated June 30, 2015 and deed of extension of mortgage dated June 30, 2015. The Corporate Debtor further availed a loan in the form of working capital facility of Rs. 50 crores from Reliance Home Finance Limited; and to secure the said loan facility, a pari passu charge was created by the applicant company by mortgaging the said leasehold rights in favour of Reliance Home Finance Limited.

3.7 In the meantime, the building plan was sanctioned in the name of the applicant on September 8, 2008, which was further revised on 29th April 2013. The Kolkata Municipal Corporation by its Advocate issued notice dated 10 October 2015, for termination of the lease deed followed by another notice dated 22nd December 2015, directing the applicant to stop construction. The applicant challenged the said termination notice before Learned District Judge Alipore by filing a petition Misc No. 54 of 2018 under Section 9 of the Arbitration and Conciliation Act 1996 as per clause in the said lease deed dated 10 August 2007. Learned District Judge passed an order of status quo in respect of the land on 6th September 2018 which is being extended from time to time. The fact is that the applicant had been and still in actual possession of the demarcated land.

3.8 It has further been submitted that due to default of the Corporate Debtor and the applicant to repay the debt, the Reliance Capital Limited appointed a nominee director on the board of the applicant on 19th October 2016 and took control of the project over the said demarcated land. It was further decided that the Joint Development Agreement November 09, 2013 executed in favour of the Corporate Debtor shall be terminated and the applicant Company shall appoint a new

developer for the said project as per instruction of Reliance Capital Limited.

3.9 Thereafter, Hon'ble High Court of Calcutta vide order dated December 1, 2017 passed an order admitting a sum of Rs. 73,95,617/- on winding up petition filed by one Ornate Tradecom Private Limited against the Corporate Debtor Company and permitted the Corporate Debtor Company to pay the said sum within a period of three weeks, failing which an order of admission was allowed to be confirmed. However, no such winding up order has been passed till date and there is only a Provisional Liquidator appointed on September 7, 2018.

3.10 It is further submitted that in pursuance to an order of Hon'ble High Court of Bombay dated December 9, 2016, a scheme of arrangement between Reliance Capital Ltd and Reliance Commercial Finance Limited was sanctioned and right, obligation and interest of Reliance Capital Limited in the above mentioned loan with right stood vested in favour of Reliance Commercial Finance Limited with the effect from March 24, 2017.

3.11 Reliance Commercial Finance Limited, in view of default of Corporate Debtor, recalled the loan facility on December 29, 2017 and issued a notice to invoke the pledge with regard to the 534533525 numbers of shares of the applicant listed with

it, comprising approximately 100% of the total issued, subscribed and paid up share capital of the applicant. Reliance Commercial Finance Limited further invoked the pledge on all the shares of the applicant on January 8, 2018, while the mortgage on the leasehold right continues to subsist till date. By virtue of invocation of pledge of all the shares of the applicant, the applicant Company became a wholly subsidiary of Reliance Commercial Finance Limited and ceased to have any interest in the applicant Company even prior to commencement of CIRP date.

3.12 Thereafter on or before March 31, 2018, Reliance Commercial Finance Limited, in order to recover its debt, sold 100% share of the applicant to Vertical Infracon Private Limited and the applicant became a wholly subsidiary of Vertical infracon Private Limited. The Corporate Debtor accepted the invocation of shares and did not raise any issue. The shares are duly reflected in the record of MCA.

3.13 It has further been submitted that in view of material breach of terms and condition of Joint Development Agreement(JDA) dated 09.11.2013 by the Corporate Debtor, the applicant Company by letter dated 7th August 2018, terminated the Joint Development Agreement with effect from August 7th, 2018. The said termination was never challenged or disputed by the Corporator Debtor and as such the

Corporator Debtor ceased to have any right or interest in respect of the said demarcated land with effect from August 7th, 2018.

3.14 Reliance Commercial Finance Limited and Reliance Home Finance Ltd had filed an application being C.A no. 224 of 2018 in CP no. 1 of 2016 under section 450 of the Companies Act 1956 to which an affidavit affirmed on 23rd August 2018 was submitted on behalf of the Corporator Debtor wherein it has been affirmed and admitted that the Joint Development Agreement dated 09.11.2013 has been terminated. The Corporate Debtor further submitted a list of properties and Interest of the Corporate Debtor in its project, which did not include the demarcated land and project thereon. This establishes that the Corporate Debtor acknowledges the absolute revocable termination of the Joint Development Agreement.

3.15 Thereafter, on 7th September 2018, Hon'ble High Court of Calcutta allowed the application filed by the Reliance Commercial Finance Limited seeking appointment of the Provisional Liquidator. The official liquidator attached with the High Court of Calcutta was appointed as Provisional Liquidator with the direction to make an inventory of the assets of the Corporate Debtor and prepare a list and submit the same on the next date of hearing. Reliance Commercial

Financial Limited, through its Advocate issued a notice dated September 26, 2018, informing liquidator that Joint Development Agreement(JDA) has been terminated. The said demarcated land and any right or interest thereon does not belong to the Corporate Debtor.

3.16 The Official Liquidator, acting as Provisional Liquidator of the Corporator Debtor, submitted a report dated 27th September 2018 in terms and compliance of order dated 7th September 2018 mentioning therein that the demarcated land or any purported development right in respect there of particularly in Avani Grand Project has been mentioned.

3.17 It is further submitted that prior to any final order of winding up being passed in respect of the Corporate Debtor, Devi Trading and Holding Private Ltd filed an application under section 7 of the IBC code 2016 before this Tribunal being C.P No. 378/KB/2018. The CIRP process was initiated against the Corporate Debtor vide order dated 13th March 2019 and respondent no. 1 was appointed as Interim Resolution Professional of the Corporate Debtor.

3.18 Subsequently, Hon'ble High Court of Calcutta, vide order dated December 12, 2019 held that winding up petition and all connected application should not be proceeded with till this Tribunal came to a conclusion for approval or rejection of any resolution plan of the Corporate Debtor. It was

further held that upon rejection of a resolution plan, the winding up proceeding would be resumed by the Hon'ble High Court at Calcutta.

3.19 It has further been submitted that during the month of January 2025, the applicant came to know that respondent No. 3, who is holding itself to be an allottee of one of the units in the proposed building, has filed an application No. IA. No. 1327/KB/2024 seeking leave to submit the resolution plan for reverse insolvency of Avani Grand Project and/or the said demarcated land. The said application filed by respondent No. 3 has been allowed vide order dated December 9, 2024. The said application has been allowed with the consent of the parties appearing before this Tribunal in the said application. The respondent No. 3 has been permitted to submit a resolution plan within a period of eight weeks from the date of uploading the said order on the website of this Tribunal.

3.20 The applicant has challenged order dated 09.12.2024 passed on IA No. 1327/KB/2024 filed in CP(IB) No. 378/KB/2018 on the grounds that the reverse insolvency initiated in the present case is not within the scope of the IBC as conditions for reverse insolvency were not satisfied at all by the respondent no. 3. Respondent no. 3 is not a promoter

of the said project and in any event, does not satisfy the condition of reverse insolvency.

3.21 The applicant Company has not been given any notice of either the said application or order passed thereon denying the opportunity of hearing. There is a serious breach of principle of natural justice while passing the said order. In view of uncontested termination of the Joint Development Agreement, neither the said demarcated land nor any right or interest in respect of the said asset belongs to the Corporate Debtor. The respondent no. 3 or any other party can not be permitted to submit a resolution plan with respect to the land in question. The Joint Development Agreement was already terminated in the year 2018 much prior to initiation of CIRP.

3.22 The Official Liquidator, attached to the Hon'ble High Court at Calcutta, has also not considered the said demarcated land or any right or interest therein as an asset of the Corporate Debtor in his report. The fraud has been perpetrated on the applicant and this Tribunal by the respondents in connivance with each other which culminated in passing of order dated December 9, 2024, to encumber the leasehold property of the applicant Company.

3.23 The Corporate Debtor has no right title interest whatsoever in the said property. The affidavit dated 23rd August 2018

has not been brought to the notice of this Tribunal by the respondent no. 1, wherein it has been admitted that the Joint Development Agreement has been terminated. Respondent No. 3 has agreed to submit a resolution plan in respect of demarcated land with connivance of respondent no. 2 and 3 knowing fully well that the Corporate Debtor has no right title or interest in the said demarcated land.

3.24 Is further submitted that if demarcated land or any right or interest thereon was undisputed asset of the Corporate Debtor, respondent no. 1 as a responsible Insolvency Professional ought to have taken necessary steps for taking control or custody over the demarcated land. Respondent No. 3 has sought to submit a purported resolution plan in respect of a property which is not an asset of the Corporate Debtor. The inclusion or treatment of the said demarcated land and the development rights to be an asset of the Corporate Debtor is wrongful, illegal, irrational and whimsical.

3.25 Therefore, respondent no. 1 and 2 are required to be directed to exclude the demarcated land including developmental rights under the JDA which stood terminated in the year 2018 from the ambit of CIRP process of the Corporate Debtor and list of assets of the Corporate Debtor or the information memorandum.

4. Respondent no. 1 appeared in pursuance of notice issued by this Tribunal and filed its reply stating therein that on 4th June, 2012, the applicant invested a sum of Rs. 115 Crore towards subscription of 1,50,00,000 equity shares and 35,00,000 preference shares along-with premium thereby making the applicant 25.24% equity shareholder and 87.50% preference shareholder of the Corporate Debtor as is evident from the last Annual Return of the applicant filed for the Financial Years 2018-19. Thus, the applicant Company holds 25.24% of equity shares and 87.50% preference shares in the Corporate Debtor, which makes it a related party of the Corporate Debtor under Section 5(24) of the IBC Code 2016.

4.1. On the same day, i.e. 4th June, 2012, the applicant Company had invested a sum of Rs. 95 Crore along with share premium for subscription of 50,00,000 equity shares and 80,00,000 preference shares in one M/s. Subhraj Traders Pvt. Ltd. which is a promoter company of the Corporate Debtor as is evident from a copy of the Annual Return of the applicant Company filed for the Financial Year, 2018-19. Thus, admittedly, Subhraj Traders Pvt Ltd is a promoter company of the Corporate Debtor by virtue of holding 47.25% shares in the Corporate Debtor. The applicant holds 33.54% shareholding in Subhraj which is evident from the Annual Return of the applicant Company which is Annexure "A". Thus,

the applicant Company not only directly holds 25.24% equity shares in the Corporate Debtor, but it also holds equity shares of the Corporate Debtor through Subhraj and thus, controls the Corporate Debtor.

4.2. The applicant, apart from holding the equity shares, also holds preference shares in the Corporate Debtor and Subhraj Traders Pvt Ltd. The applicant had the right to vote as a preference shareholder on all the resolutions of the Corporate Debtor due to non-payment of dividends on the preference shares as is evident from the balance sheet and financial statement of the Corporate Debtor Annexure "B". Consequently, the applicant itself had a voting percentage of more than 50% in the Corporate Debtor which makes it a holding company of the Corporate Debtor. Thus, the applicant Company is a related party of the Corporate Debtor under section 5(24) of the IBC Code 2016. The applicant Company, by virtue of direct shareholding and indirectly through Subhraj Traders Pvt Ltd, continues to be the shareholder of the Corporate Debtor having control over the Corporate Debtor before the insolvency commencement date.

4.3. It is evident from the last available Annual Return of Subhraj for the Financial Year 2022-23 that the applicant Company holds 33.54% shares in Subhraj and Subhraj holds 47.20% shares in the Corporate Debtor. This proves that even

after the purported invocation of pledge of shares and purported transfer of shares by the Reliance Commercial Finance Ltd., the applicant Company continues to hold 1,18,596 shares in the Corporate Debtor, directly and/or indirectly, which proves that the applicant at all material times was controlling the Corporate Debtor. The applicant has control over the suspended Board of Directors who are acting on the applicant's advice or instructions, thereby qualifying the applicant as a related party under section 5(24) of the IBC 2016.

4.4. It has further been replied that after 4th June, 2012, when the applicant invested Rs. 115 Crore in the Corporate Debtor, the Corporate Debtor used the same money for purchase of the shares of the applicant Company on 11th June, 2012. The fact that the Corporate Debtor acquired 100% shares of the applicant Company on 11th June, 2012 is evident from the Annual Return of the Corporate Debtor as well as the Annual Return of the applicant Company.

4.5. The fact that the applicant was a wholly owned subsidiary of the Corporate Debtor is admitted by the applicant themselves in paragraph 6 at page 7 of the present application. However, the applicant has completely suppressed the fact that the applicant continues to be a substantial shareholder of the Corporate Debtor directly through itself and

indirectly through Subhraj. In fact, the applicant has also suppressed the fact that the Corporate Debtor utilised the subscription money infused by applicant Company, to purchase the shares of the applicant Company. The applicant Company became a wholly owned subsidiary of the Corporate Debtor.

4.6. It is further replied that pursuant to the Corporate Debtor acquiring 100% shares of the applicant, a Joint Development Agreement(hereinafter referred as "JDA") dated 9th November, 2013 was executed between the applicant Company and the Corporate Debtor as a Developer. It is evident from a bare perusal of the "JDA" that the Corporate Debtor was given valuable development rights to develop the said premises/land. As per the judgement of the Hon'ble Supreme Court of India, in Victory Iron Works Ltd. Versus Jitendra Lohia, the development rights of a Corporate Debtor forms an asset of the Corporate Debtor and can form a part of the Information Memorandum prepared in respect of a Corporate Debtor. Therefore, such development rights can be included in the Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor.

4.7. It is also evident from perusal of clause 6.1 of the 'JDA' that it is deemed to have commenced w.e.f. 18th June, 2012. The Corporate Debtor took over 100% shareholding of the applicant Company on 11th June, 2012. The applicant as well

as the Corporate Debtor jointly entered into various agreements for sublease of service apartments with various homebuyers. It is also evident from the various documents for sublease of service apartments that both the applicant and the Corporate Debtor jointly represented to purchasers and/or homebuyers that the applicant Company and the Corporate Debtor have complete power and absolute authority to construct and sublease the service apartments in the said land and/or premises. The various sub-lessees/Homebuyers/Purchaser of Service apartments which includes respondent no. 3, relying on the aforesaid representations and assurances of the applicant, invested a total sum of Rs. 196.72 crore in the said project to be developed by the Corporate Debtor as is evident from the Corporate Debtor annual returns for the Financial Year 2016-17.

4.8. It is also evident from the abovementioned facts and circumstances that the applicant and the Corporate Debtor collected a sum of Rs. 196.72 Crore from various homebuyers, even prior to entering into the Joint Development Agreement(JDA) dated 9th November, 2013. This is the reason that the applicant and the Corporate Debtor agreed to provide retrospective effect to the commencement of JDA. The Joint Development Agreement dated 09.11.2013 is deemed

to have commenced from 18th June, 2012 as per Clause 6.1 of the JDA.

4.9. It has further been replied that thus, the commencement date of the JDA was considered to be 18th June, 2012, which was seven days after the Corporate Debtor acquired 100% shareholding in the applicant, i.e. 11th June, 2012. This fact proves that the applicant and the Corporate Debtor were acting fraudulently in connivance with each other to defraud the home buyers/service apartment owners who had invested a total sum of Rs. 196.72 Crore in the project which was to be developed by the Corporate Debtor along with the applicant herein.

4.10. It has further been replied that in fact, clause 4.6 of the Homebuyer Agreement dated 31st March, 2013 entered between the applicant, the Corporate Debtor and one M/s. Prompt Barter Private Limited duly records the fact that for the purpose of undertaking the development of the said service apartment area, the applicant Company had entered into an agreement dated 18th June, 2012 with the Corporate Debtor. It has further been stipulated therein that the Corporate Debtor has agreed to make construction, erection and completion of service apartments and to sublease the service apartments to the intending sublessees in accordance with the terms and conditions as contained in the principal lease

deed entered between the applicant and Kolkata Municipal Corporation. The clause 8.1 of the same Sublease Agreement dated 31st March, 2013 also records that the applicant and the Corporate Debtor shall execute deeds of sublease in favour of the sublessees within a period of 15 days from the date of possession. Consequently, all the sublease agreements were entered into whereby an aggregate sum of Rs. 196.72 crore was collected by the Corporate Debtor along with the applicant Company for the purpose of handing over of service apartments to various homebuyers/customers of Corporate Debtor and the applicant. Thus, a systematic fraud has been committed by the Corporate Debtor with connivance of the applicant Company to siphon off the money collected from the homebuyers.

4.11. As per clause 12.1 of Joint Development Agreement(JDA) dated 09.11.2013, none of the parties to the JDA, namely, the applicant or the Corporate Debtor shall be entitled to cancel and/or rescind the JDA. Thus purported unilateral termination by the applicant vide purported notice dated 7th August, 2018 is bad in law. The purported termination notice is null and void in the eyes of law. In any event, the purported termination notice dated 7th August, 2018 has never been served upon the Corporate Debtor as no proof of

service of such termination notice is even annexed with the present application.

4.12. The purported notice dated 7th August, 2018 is also bad in law and a manufactured document being forged and fabricated for the present litigation. It is further evident from the Balance Sheet of the applicant Company for the Financial year 2018-19 signed on 24.10.2019 that the applicant has shown the Corporate Debtor as "Developer Partner"; and hence, the Joint Development Agreement has never been mutually terminated. The applicant Company has not annexed any document with the present application to prove the fact that the Corporate Debtor had adopted any Board Resolution by which the Joint Development Agreement(JDA) was mutually terminated. The fraudulent attempt has been made to contend that the Suspended Board of Directors had accepted the fact about termination of the Joint Development Agreement(JDA) by the applicant Company in an affidavit filed before the Calcutta High Court.

4.13. The fraud has been committed from the very beginning itself by the applicant Company and the Corporate Debtor who were and still are related parties at all material times. The fraud is further evident from the fact that on or around 10th October, 2012, the applicant Company has decided to commercially develop the Kolkata Property' i.e. property in

question. The fraud is further evident from the fact that the entire debt facilities were disbursed to the Corporate Debtor who is the first obligor and not to the applicant Company. It is an admitted fact that Reliance Capital Ltd. had not disbursed a single penny to the applicant Company who was the borrower under the Facility Agreement dated 10th October, 2012. Thus it is evident that the fraud has been committed and forged documents being brought on record. Since the applicant and the Corporate Debtor are related parties and are in control of each other through shareholding and/or cross-shareholding, the Corporate Debtor has also never objected to any wrong doings on the part of the applicant Company.

4.14. A perusal of clause 2 the purported agreement dated 12th October, 2012 reveals that the applicant Company shall apply the loan solely for the purpose of paying the development and construction cost of the Kolkata Project i.e., the property in question; however, clause 4 and more particularly, clauses 4.1 and 4.2 of the same agreement records that the amount disbursed by Reliance Capital Ltd. will be utilised by the borrower for repayment of in-corporate deposits. Even prior to the execution of the said agreement dated 10th October, 2012, the first tranche of Rs. 50 Crore and second tranche of Rs. 55 Crores

aggregating to Rs. 105 Crore was already disbursed on 20th September, 2012 and 3rd trench was disbursed in October, 2012, as is evident from Clause 4.5 and 4.6 of the said agreement dated 10th October, 2012.

4.15. It is evident from the deed of charge dated 10th October, 2012 that it was executed by the applicant and the Corporate Debtor; however, no charge or pledge of shares has been created over the shares of the Corporate Debtor in the applicant Company. It would further appear from the recital 'B' of the purported Deed of Pledge dated 10th October, 2012 that the lender has agreed to provide a Term Loan facility upto INR 250 Crore to the Pledgor i.e., the Corporate Debtor. The Deed of Pledge dated 10th October 2012 is not in consonance with the Facility Agreement dated 10th October 2012 as the Corporate Debtor was never intended to be a borrower' under the Facility Agreement dated 10th October 2012.

4.16. A bare reading of the Facility Agreement dated 30th June 2015 would reveal that the said Facility Agreement is not a document for restructuring of the previous facility of Rs. 250 Crore alleged to have been disbursed under the Facility Agreement dated 10th October 2012 as the obligation of the parties under both the facility agreements are different. The purported Deed of Extension of Pledge dated 30.01.2015

cannot be an extension of the previous pledge. Hence, such purported extension under Deed of Extension of Pledge dated 30th June 2015 is bad in law and unenforceable.

4.17. It appears from the application that the applicant has defaulted in making payment to Reliance Capital Ltd., pursuant to which the Reliance Capital Ltd., invoked the pledge of shares pledged by the Corporate Debtor in favour of Reliance Capital Ltd. It is clear that the applicant along with the Corporate Debtor are always in connivance with each other to deceive various creditors.

4.18. It is an admitted fact that the Joint Development Agreement(JDA) dated 9th November, 2013 has not been terminated and/or determined by the applicant and the Corporate Debtor by mutual consent. In any event, even as per Clause 6.2 of the JDA, the JDA can be terminated by mutual consent in writing. The applicant has failed to prove on record that the Joint Development Agreement was terminated by mutual consent at any time. Thus, the entire cause of action of the applicant is false and without any basis.

4.19. The applicant, by filing the instant application, is trying to review and/or recall the order dated 9th December, 2024, which is not permissible in law. This Adjudicating Authority does not have power to recall and/or review its own order

dated 9th December, 2024. The order dated 9th December, 2024 which has already attained finality.

4.20. It is denied that there has been any fraud that has been committed by the Respondents or there has been any fraudulent misrepresentation and/or fraudulent suppression, which warrants recall and/or review of the order dated 9th December, 2024. In fact, on the contrary, the fraud has been perpetrated the applicant, who had supressed material facts from this Tribunal including the fact that till the date of filing of the application, the applicant continues to be a related party of the Corporate Debtor by virtue of holding shares in the Corporate Debtor, directly and/or indirectly. Therefore, the present application is liable to be dismissed.

5. The CoC filed its separate reply stating therein that the Corporate Debtor being a real estate developer of Kolkata is primarily engaged in developing the commercial real estate project including malls in and around Kolkata. One of the projects which was sought to be developed by the Corporate Debtor was the project on the land admeasuring about 224.35 Cottahs situated at premises No. 8, JBS Halden Avenue, Kolkata - 700 105 which was leased by Kolkata Municipal Corporation in favour of Applicant.

5.1. The applicant formerly known as DLF Hilton Hotels Ltd. and thereafter as DLF Hotels & Hospitality Ltd. holds 25.24% equity shares; 100 % of the 8% cumulative redeemable preference share capital and 87.50% of the total preference share capital of the Corporate Debtor as is evident from the last filed annual returns for the Financial Year 2016-17 and from the last available account i.e. for the year ended 31st March 2017 and the financial year ended 31st March 2019 of the Applicant. The dividend @ 8% p.a. on the cumulative redeemable preference shares of the Corporate Debtor have not been paid at least since the year 2013-14 and consequently, the preference shares acquire voting rights as per the provisions of Section 47(2) of the Companies Act, 2013.

5.2. Therefore, taking into consideration the voting rights acquired by the preference shareholders of the CD, the applicant, Adone Hospitals & Hospitality Limited was having 50.29% voting rights in the CD. The CD thus at least since the financial year 2016-17 has been a subsidiary of the applicant Adone. M/s. Subhraj Traders Pvt. Ltd. holds(for short STPL) 47.25% equity share holding of the Corporate Debtor, thereby making it a related party and the largest shareholder of the Corporate Debtor. The applicant herein also holds 33.55% of equity shares of STPL as is evident

from the financial statements filed by STPL for the Financial Year 2023-24.

5.3. Thus, apart from 50.29% direct voting rights in the CD, the applicant through its related/associate company STPL exercised voting rights of 78.50% as a result of STPL having 47.20% in the equity share capital of the CD. Thus, the Applicant directly and through related companies exercise voting rights of 78.50% of the Corporate Debtor.

5.4. The applicant Adone was a wholly owned subsidiary of the CD till January 2018. The CD was the 100% shareholder of Adone is evident from the annual returns and the balance sheets. The Records reveal that there was a loan obtained by the applicant Adone from Reliance Capital Limited. The Reliance had invoked the pledge and caused the shares held by CD in Adone to be sold by which the CD ceased to be the holding company of Adone. However, the shareholders and persons in control of Adone have always been till commencement of CIRP on 13 March, 2019 the persons in control of the CD. The development rights of the CD in respect of the said premises is a valuable property of the CD. The development right in the said premises is likely to yield a profit of not less than Rs. 100 Crores/- considering the maximum FAR the said premises enjoy and the vantage location of the said premises on the most important thoroughfare in the city of Kolkata.

5.5. It has further been replied that the winding up Petition being C.P. No. 1 of 2016 was admitted by the order dated 1st December, 2017. Thereafter, a Provisional Liquidator was appointed vide order dated 7th September, 2018. The CD has been deprived of its most valuable property being the rights under the development agreement by way of purported termination of the agreement.

5.6. The purported termination by way of letter dated 7th August, 2018 has been brought into existence when the appointment of the Provisional Liquidator was inevitable. This was done only to denude the CD of its most valuable asset being the development right in respect of the said premises. The purported termination is the result of carrying on the business of the CD in a fraudulent manner. The termination has been done to prevent the Official Liquidator taking control of the said premises as developer and deriving the profits; the applicant being the holding company, with the intent to defraud the creditors of the CD, caused the development right of the CD to be terminated so that the profits derived from development is not available for satisfying the debts of the creditors of the CD; the termination notice of 7th August, 2018 is back- dated as had it not been back dated, it would have been sent by electronic mail; the persons in control of the CD being the

same as the persons in control of the applicant i.e. the lessee of the land, this termination has not been challenged.

5.7. It is relevant to state that in terms of clause 12.1 of the joint development agreement none of the parties were entitled to cancel and/or rescind the agreement in case of any default. A substantial part of the CoC are the home buyers of the said project. There are altogether approximately 30 numbers of home buyers of the said project who till the date of CIRP have paid Rs. 196.72 crores against their respective allotment agreements. The total dues of the CoC including home buyers of the said project as on the date is Rs. 399.67 Crores.

5.8. It is further replied that if the development right in respect of the said premise in not included in the CIRP of the Corporate Debtor, the Corporate Debtor will be pushed into liquidation which is not the object of the IBC, by defrauding the Homebuyers who had on the trust and believe invested a huge sum of Rs. 196.72 Crores. The along with the Corporate Debtor has collected substantial sum of money from the financial creditors and on the other hand the applicant has approached this Tribunal at the fag end of the CIRP to exclude the said premise from the list of assets of the

Corporate Debtor, in order to commit fraud and continue to deceive the home buyers.

5.9. It is stated that the instant application is nothing but an attempt to seek review or recall of the order dated 9 December 2024 which is not permissible. Having failed to file an appeal against the order dated 9 December 2024, the Applicant is hereby trying to achieve the same results indirectly. Therefore, the present application filed by the applicant should be dismissed on this score alone.

5.10. It is denied that the JDA was invalid or inadmissible for want of registration or stamp duty as alleged or at all. It is denied that the Corporate Debtor was required to get the document stamped or registered as alleged or at all. Therefore, the present application requires to be dismissed with cost.

6. From pleading of the parties, the following question arise for consideration and decision by this Tribunal:

(i) Whether the Joint Development Agreement(JDA) dated November 09, 2013 is an invalid and inadmissible having not been registered or stamped as per law?

(ii) Whether the Joint Development Agreement dated November 09, 2013 has rightly been terminated by the applicant?

(iii) Whether land admeasuring 3.70 acres which is subject matter of JDA dated November 09, 2013 be excluded from

CIRP of the Corporate Debtor, Avani Projects & Infrastructure Limited

(iv) Whether the order dated December 9, 2024 passed in IA(IBC) No. 1327/SKB/2024 requires to be recalled and set aside?

(v) Relief, if any, to which the applicant is entitled?

7. We have gone through the case file carefully and perused the pleadings of the parties and documents placed on record by the parties and heard the arguments put forth by Mr. Ratnanko Banerji Learned Sr. Advocate appearing for the applicant, Mr. Joy Saha Learned Sr. Advocate appearing for respondent No. 1, Mr. Jishnu Saha Ld. Sr. Advocate assisted by Mr. Rishav Benerjee appearing for Respondent No. 2 and Learned Advocate for respondent no. 3. we shall now proceed to consider the present petition on its merits, specifically within the ambit of points involved in the instant application.

Question No. (i)

8. The applicant Company has questioned the validity of Joint Development Agreement dated 09.11.2012 on the ground that it has not been registered or stamped in accordance with the law. Before entering upon this question, it is relevant to decide whether a development agreement creates rights and interest in the property to be developed and constitutes an

'asset' within the meaning of Section 18(f) and 25(2)(2) of the IBC Code 2016. This question came up for consideration before Hon'ble Supreme Court in case of Victory Iron Works Limited(Surpa).

9. On this aspect, Hon'ble Apex Court in case of ***Victory Iron Works Limited (Supra)*** laid down the proposition of law that the creation of a bundle of rights and interests in the property for a valid consideration amounts to property. The development rights created in favour of the Corporate Debtor constitute "property" within the meaning of the expression under Section 3(27) of IBC. The definition of the expression "property" under Section 3(27) includes every description of interest, including present or future or vested or contingent interest arising out of or incidental to property. Since the expression "asset" in common parlance denotes "property of any kind", the bundle of rights that the Corporate Debtor has over the property in question would constitute "asset" within the meaning of Section 18(f) and Section 25(2)(a) of IBC".

10. Hon'ble High Court of Bombay in case of ***Suhas Damodar Sathe Versus The State of Maharashtra 2025 SCC OnLine Bom 576,*** after relying upon judgment passed by Hon'ble Apex Court in case of Victory Iron Case(Supra) laid down the test by which

it could be ascertained whether a document is a development agreement or conveyance deed for stamp purpose.

"28. The following tests, distilled from the above precedents and reasoning, may be regarded as determinative in ascertaining whether a document is an instrument of conveyance or a development agreement for stamp duty purposes:

Test of Transfer of Title or Interest

(i) The principal test is to ascertain whether the instrument effects a transfer of title or any proprietary interest in the developer. In an instrument of conveyance, there is either an immediate vesting of ownership or an unequivocal agreement that upon execution, the ownership stands or shall stand transferred.

(ii) By contrast, a development agreement ordinarily envisages that the developer will construct and market the project but the title remains with the owner until a separate deed of conveyance is executed with prospective buyers.

Control and Possession

(i) Another crucial indicator is the degree of control exercised by the owner over the land. If possession is handed over merely for the limited

purpose of development– without conferring upon the developer the right to alienate or create third-party rights in its own name–this usually points to a mere development agreement.

(ii) However, if the developer obtains the right to dispose of the property in its own capacity, collect the sale consideration for itself, and thereby stands in the shoes of an owner, it suggests a conveyance under the Stamp Act.

Recitals Concerning Consideration

(i) The recitals regarding the nature of consideration can be telling. If the agreement reflects that the developer has paid a lump sum to the owner in exchange for all development and sale rights, the instrument may be seen as transferring beneficial interest.

(ii) Conversely, if the developer's only "consideration" is the opportunity to construct and earn profit from prospective purchasers, with no immediate purchase of title from the owner, it points more towards a license to develop rather than a conveyance.

Requirement of Separate Conveyance or Sale Deeds

(i) If the instrument itself contemplates that ownership will be conveyed to end purchasers solely by the original owner (or by the owner and developer jointly) in separate sale deeds, it indicates that the original owner retains the fundamental title.

(ii) In cases where the developer unilaterally executes sale deeds with no further recourse to the owner, collecting the entire purchase price, that instrument is more likely to be classified as a conveyance.

Intention of the Parties

(i) While intention is to be gleaned from the terms of the document, extrinsic evidence of the surrounding circumstances can also assist in interpretation. The Court must examine if the arrangement is essentially one of development (where the developer acts as a contractor with a right to share in revenue from the sale of flats/units) or if the developer acquires the property rights with the freedom to deal with the property independently.

11. In the instant case, applying the aforementioned principles, we note that there are certain clauses of the Joint

Development Agreement dated 09th November 2013 which will prove the nature of the document. The clause No. 10 of JDA provides that total constructed area including service apartments and /or units and car parking spaces and/or service apartment area shall be marketed by the Avani, the Corporate Debtor. The Corporate Debtor, the Avani has been authorised to enter into agreement for sub-lease and/or transfer constructed spaces and car parking spaces forming part of development to which the applicant has agreed. It has been agreed that the profit sharing will be in a ratio of 40/60 whereby the Corporate Debtor will be entitled to share 60% of profit and the applicant will be entitled to share 40% of the profit earned. It has further been agreed in clause 11.5 that all agreements to be entered into for sub-lease and/or transfer of the various space apartments and car parking spaces forming part of development shall be entered into in the name of Avani, the Corporate Debtor subject to the applicant sign and execute all such agreement in its name.

12. Though the applicant, by entering into Joint Development Agreement with the Corporate Debtor, has given right of marketing to the Corporate Debtor but subject to sign and execution of agreements of sublease by the applicant Company. Thus, transfer of development rights by way of a

Joint Development Agreement (JDA) does not amount to sale of land; rather it is a right given to the Corporate Debtor to develop the land with profit sharing as discussed above.

13. Secondly, the applicant Company, has acted upon the said Joint Development Agreement and further claimed termination of the same. If the Joint Development Agreement was invalid as pleaded by the applicant Company then there was no necessity for terminating the same since an invalid document cannot be cured at all. The applicant, at this stage, cannot be permitted to allege that the agreement was unstamped and inadmissible in law. It is a settled principle of law that a party cannot be permitted to approbate and reprobate.

14. A Constitutional Bench of Seven Judges of Hon'ble Supreme Court in case of, ***IN RE: INTERPLAY BETWEEN ARBITRATION AGREEMENTS UNDER THE ARBITRATION AND CONCILIATION ACT 1996 AND THE INDIAN STAMP ACT 1899(NN Global Case), 2023 INSC 1066,*** unanimously decided on the issue of the admissibility of unstamped or insufficiently stamped instrument in evidence. By overruling the five judge Bench decision in NN Global Mercantile Private Limited Vs. Indo Unique Flame Limited, the Hon'ble Supreme Court held that an unstamped instrument or insufficiently stamped instrument would be inadmissible in evidence; however, the same is a curable defect and that in itself does not make the agreement

invalid. The relevant observation of Hon'ble Apex Court is as follow:

> *"48.* Section 35 of the Stamp Act is unambiguous. It stipulates, "No instrument chargeable with duty shall be admitted in evidence…" The term "admitted in evidence" refers to the admissibility of the instrument. Sub-section (2) of Section 42, too, states that an instrument in respect of which stamp-duty is paid and which is endorsed as such will be "admissible in evidence." The effect of not paying duty or paying an inadequate amount renders an instrument inadmissible and not void. Non-stamping or improper stamping does not result in the instrument becoming invalid. The Stamp Act does not render such an instrument void. The non-payment of stamp duty is accurately characterised as a curable defect. The Stamp Act itself provides for the manner in which the defect may be cured and sets out a detailed procedure for it. It bears mentioning that there is no procedure by which a void agreement can be "cured."

15. Moreover, the joint development agreement(JDA) is already admitted in evidence as per information memorandum submitted by the respondent no. 1 before this Adjudicatory Authority

in IA No. 1327/KB/2024. This Tribunal has ordered for reverse CIRP process upon application filed by the respondent no. 3.

16. Therefore, in view of the above and law applicable thereon, we are of the considered view that improper stamping of Joint Development Agreement does not result in becoming the same invalid. The want of proper stamp duty has not rendered the Joint Development Agreement void as alleged by the applicant. The JDA November 09, 2013 does not require compulsory registration as per Section 17 of the Registration Act 1908.

Point No. (ii) & (iii)

17. It is undisputed fact that the applicant Company acquired leasehold right over the land admeasuring 5.59 acres from Kolkata Municipal Corporation vide registered lease deed No. 10081 dated 10th August 2007. The applicant Company was permitted to construct and execute a hotel and other commercial activity on the "leasehold land" in consideration for a sum of Rs. 155,45,79,000/-(Rupees One Fifty Five Crore Forty Five Lakh Seventy Nine Thousands Only). The Kolkata municipal Corporation also sanctioned a building plan submitted by the applicant on 8th September 2008.

18. On 18.06.2012, a 'Term Sheet' was executed between the applicant and the Corporate Debtor regarding development of

a part of the property situated at 08, JBS Halden Avenue, Kolkata. During the month of September to October 2022, the Corporate Debtor, for facilitating construction and development of the hotel project over the land in question, availed a term loan of Rs. 250,00,00,000/-(Rupees Two Fifty Crores Only) from Reliance Capital Limited in terms of Sanction Letter dated 26.09.2012. The Corporate Debtor, in order to secure the repayment of loan, mortgaged leasehold rights over the land in favour of Reliance Capital Limited with prior permission of the Kolkata Municipal Corporation. The several home buyers paid an amount of Rs. 196,72,44,681/- and agreement for sub-lease of 'Service Apartments' were executed with the Corporate Debtor and the applicant Company.

19. The applicant and the Corporate Debtor executed the Joint Development Agreement(JDA) dated November 09, 2013 whereby the Corporate Debtor was appointed as Developer to develop land admeasuring 224.35 Cotthas(15007.019 sq.m) i.e 3.70 acres of land forming part of Municipal Premises No. 8, JBS Halden Avenue comprising part of Dag No. 27 in Mouza Boinchatala appertaining to Khaitan No. 160 J.L No. 4, P.S Pragati Maidan, Kolkata -700105(hereinafter referred "the property in question") for construction of service apartments. Thus, the Corporate Debtor was given rights to

develop the land in question which is subject matter of the Joint Development Agreement (JDA) dated November 09, 2013.

20. The Corporate Debtor defaulted in repayment of loan facility as per loan agreement; and accordingly, Reliance Commercial Finance Limited having taken over Reliance Capital Limited recalled the loan facility on December 29th, 2017 and further issued notice to invoke the pledge. Reliance Commercial Finance Limited, in order to recover its debt, sold 100% share of the applicant to Vertical Infracon Private Limited.

21. The applicant claims that it had terminated the Joint Development Agreement(JDA) dated 09.11.2013 by issuing a letter of termination dated 7th August 2018 with effect from August 7th, 2018. It has further been claimed that the Corporator Debtor has ceased to have any right or interest in respect of the land in question with effect from August 7th, 2018. The question arises whether the applicant was entitled to terminate the Joint Development Agreement(JDA) dated November 09, 2013 by issuing a letter dated August 07, 2018 and rightly terminated the Joint Development Agreement.

22. Before we delve into this question, it is relevant to refer the relevant clause 6.2 and 12.1 of Joint Development Agreement(JDA) dated 09.11.2013 which read as follow:

"**6.2.** Unless terminated and/or determined by the parties hereto by mutual consent, in writing, this agreement shall remain in full force and effect until such time the said Project is completed.

12. Breaches and Consequences thereof:

12.1: None of the parties shall be entitled to cancel and/or rescind this agreement and in the event of any default on the part of either party(hereinafter referred to as the DEFAULTING PARTY) the other party shall be entitled to sue the party in default for specific performance of this agreement and for other consequential reliefs IT BEING EXPRESSELY AGREED AND DECLARED that it is the intention of the parties hereto jointly undertake development of the said premises and to share the net sale proceeds amongst themselves in the ratio as hereinbefore mentioned and as such in the event of any dispute amongst the parties hereto the parties as far as possible shall amicable try and resolve all disputes and differences. However, in the event of any such disputes and/or differences being incapable of being resolved amicably then and in that event the parties shall refer all such disputes and differences to arbitration in the

manner as hereinafter appearing before initiating legal proceedings."

23. Thus, it is apparent from clause 6.2 of the JDA dated 09.11.2013 that the Joint Development Agreement(JDA) could not be terminated or determined unless and until there is consensus ad-idem between the parties to the agreement for termination or cancellation of the same. Mr. Ratnokar Benerji Learned Sr. Counsel for applicant argued that the Corporate Debtor has not challenged the said termination till date before any court of law and accordingly, accepted the termination.

24. A similar question came for consideration and decision before Hon'ble Supreme Court in case of ***K.S Manjunath Versus Moorasavirappa 2025 SCC OnLine 3377*** wherein Hon'ble Apex Court after a detailed discussion recognised the principle of law as detailed in para no. 43 and held in para no. 44 that:

"43. Thus, in view of the above discussion, the following principles of law are discernible:

(i) Unilateral termination of the agreement to sell by one party is impermissible in law except in cases where the agreement itself is determinable in nature in terms of Section 14 of the Act of 1963;

(ii) If such unilateral termination of a non-determinable agreement to sell is permitted as a defence, then virtually every suit for specific performance can be frustrated by the defendant by placing an unfair burden on the plaintiff, who despite performing his part of the obligations and having showcased readiness and willingness, would require to also seek a separate declaration that the termination was bad in law. In such cases, the burden cannot be casted upon the plaintiff to challenge the alleged termination of agreement;

(iii) Where a party claims to have valid reasons to terminate or rescind a non-determinable agreement to sell, with a view to err on the side of caution, it should be such terminating party, if at all, who ideally should approach the court and obtain a declaration as to the validity of such termination or rescission, and not the non-terminating party. However, this must not mean that the defendant (the terminating party) in such cases would mandatorily be required to seek a declaration because Sections 27 and 31 of the Act of 1963 respectively, while using the phrase “may sue” merely give an option to

any person to have the contract rescinded or adjudged as void or voidable;

(iv) Once the alleged termination of a non-determinable agreement in question is found to be not for bona fide reasons and being done in a unilateral manner on part of the defendant, it cannot be said that any declaration challenging the alleged termination was required on part of plaintiff;

(v) If a contract itself gives no right to unilaterally terminate the contract, or such right has been waived, and a party still terminates the contract unilaterally then that termination would amount to a breach by repudiation, and the non- terminating party can directly seek specific performance without first seeking a declaration; and

(vi) In the event it is found that the termination of agreement to sell by the defendant was not valid, then such an agreement to sell will remain subsisting and executable.

44. Before applying the aforesaid principles of law to the facts of the present case, and ***bearing in mind that unilateral termination of an agreement to sell by one party is impermissible in law*** except where

the agreement is by its very nature determinable, it is, as a necessary corollary, essential to also determine whether the ATS dated 28.04.2000 was determinable in nature or not".

25. In the instant case, as per clause 6.1 of Joint Development Agreement(JDA) dated 09.11.2013, the agreement could not be terminated or determined unless and until terminated or cancelled by mutual consent by the parties to the agreement. The clause 12.1 of the Joint Development Agreement(JDA) gives a specific right to parties to the agreement to sue one of the parties in default in case of any event of default by the other party. This clause has been inserted with the specific purpose of completion of the project in which homebuyers are ultimately beneficiary.

26. Learned Sr. Counsels appearing for both the parties relied upon judgment passed by Hon'ble Apex Court in case of ***Victory Iron Works Limited Versus Jitendra Lohia & Anrs 2023 SCC OnLine 260***. Therefore, it is relevant to refer the proposition of law laid down by ***Hon'ble Apex Court in case of Victory Iron(Surpa)*** which is as follow:

"**35.** From the sequence of events narrated above and the terms and conditions contained in the Agreements entered into by the parties, it is more clear than a crystal that a bundle of rights and

interests were created in favour of the Corporate Debtor, over the immovable property in question. The creation of these bundles of rights and interests was actually for a valid consideration. But for the payment of such consideration, Energy Properties would not even have become the owner of the property in dispute. Therefore, the development rights created in favour of the Corporate Debtor constitute "property" within the meaning of the expression under Section 3(27) of IBC. At the cost of repetition, it must be recapitulated that the definition of the expression "property" under Section 3(27) includes "every description of interest, including present or future or vested or contingent interest arising out of or incidental to property". Since the expression "asset" in common parlance denotes "property of any kind", the bundle of rights that the Corporate Debtor has over the property in question would constitute "asset" within the meaning of Section 18(f) and Section 25(2)(a) of IBC".

27. Mr. Ratnanko Benerji Learned Sr. Advocate appearing for the applicant relied upon recent judgment passed by Hon'ble Supreme Court in case of ***AA Estates & Anrs. Versus Kher***

Nagar Sukhsadan Co-Operative Housing Society Limited & Ors 2025 SCC OnLine 2579 wherein Hon'ble Apex Court held that:

> "**16.11.** It is well settled that the moratorium under Section 14 does not revive terminated contracts or protect rights that have ceased to exist prior to insolvency. The protection is intended to preserve the existing value of the corporate debtor's estate, not to resurrect lapsed or extinguished interests. Extending moratorium to such non-existent rights would defeat commercial certainty and the sanctity of lawful termination under general law.
>
> **16.12.** Accordingly, we hold that the Development Agreement dated 16.10.2005 and the Supplementary Agreements dated 23.12.2005 and 09.04.2014 do not constitute "assets" or "property" of the corporate debtor within the meaning of Section 14 of the IBC, as the same stood terminated prior to initiation of the second CIRP. No proprietary, possessory, or enforceable right subsisted in favour of the corporate debtor on the insolvency commencement date. The moratorium declared under Section 14 would therefore not restrain Respondent No. 1

Society or its members from proceeding with redevelopment in accordance with law".

28. Mr. Joy Saha Learned Sr. Counsel also relied upon observations made by Hon'ble Apex Court in case of ***AA Estate(Supra)*** in paragraph no. 23 and 23.3 wherein it has been held by Hon'ble Apex Court that:

"**23.** This case highlights the larger human dimension underlying urban redevelopment – the right of citizens to live with dignity in safe and habitable dwellings. Slum redevelopment projects are not mere commercial ventures but social welfare initiatives aimed at transforming unsafe tenements into dignified homes. The role of a developer in such projects carries a public character; it entails a responsibility to fulfil the collective aspirations of hundreds of families awaiting rehabilitation and cannot be viewed solely through a profit-driven lens.

23.1. When such projects are delayed or abandoned, it is the residents – often living in hazardous or temporary conditions – who suffer the greatest hardship. In this context, the invocation of insolvency proceedings or the moratorium under the Insolvency and Bankruptcy Code, 2016 cannot become

a legal device to indefinitely stall redevelopment or to obstruct the legitimate rights of slum dwellers and cooperative housing societies. The Code was never intended to be used as a shield for non-performance at the cost of human rehabilitation.

23.2. Courts, while dealing with disputes arising from slum redevelopment, must therefore adopt a purposive and welfare-oriented approach, ensuring that the statutory objective of insolvency resolution does not defeat the social purpose of urban renewal. The balance of equities must tilt in favour of the residents who have waited for years for a roof over their heads. The law cannot countenance a situation where insolvency protection becomes an instrument to perpetuate displacement or to defer the promise of dignified housing guaranteed under Articles 19(1)(e) and 21 of the Constitution.

23.3. The IBC was never designed to serve as a refuge for corporate debtors who, by their conduct, display no bona fide intention to fulfil contractual or statutory obligations. Its purpose is to revive viable entities and ensure equitable

resolution of insolvency – not to extend protection to those who have persistently defaulted, abandoned performance, or frustrated projects of public significance. Urban redevelopment projects, particularly those involving cooperative housing societies, are exercises in social rejuvenation that seek to restore dignity, safety, and belonging to citizens. The law must, therefore, balance commercial rights with human realities and ensure that economic revival does not eclipse the constitutional promise of dignified living".

29. It is pertinent to note that Hon'ble Apex Court in case of ***AA Estate & Anrs.(Supra)*** has distinguished its earlier judgment in case of ***Victory Iron(Supra)*** and observed as follow:

"**16.10**. Reliance on Victory Iron Works (supra) is misconceived and inapplicable to the present case. In that case, the corporate debtor had a demonstrable proprietary and financial interest in the project property, having advanced funds and obtained development rights. Whereas, the present case is materially different; the agreements here were purely executory, conditional upon performance, and never resulted in any proprietary

or possessory right being created in favour of the developer".

30. In the present case, the applicant and the Corporate Debtor, during the year 2012-2013, collected an amount of Rs. 196,72,44,681/-(One Ninety Six Crores Seventy Two Lakh Forty Four Thousands Six Hundred Eighty One Only) from several homebuyers by executing agreement for sub-lease of Service Apartments. This fact has been admitted by the Corporate Debtor in its affidavit dated 23rd August 2018 filed in proceeding of CA No. 224 of 2018 before the Hon'ble High Court of Calcutta which is at page 336 of the present application wherein it has been recorded that as result of termination of Joint Development Agreement, the applicant had taken over all the liabilities in respect of the land including liability of the flat buyers.

31. The Corporate Debtor, during the month of September to October 2012, raised funds for facilitating construction and development of project over the land in question after availing a term loan of Rs. 250,00,00,000/- from Reliance Capital Limited against mortgage of leasehold rights over the land which include land in question in favour of Reliance Capital Limited with prior permission of the Kolkata Municipal Corporation. The Corporate Debtor further pledged 100% shares of the applicant with the Reliance

Capital Limited as is evident from pledge agreement dated 10.10.2012. Thereafter, the present Joint Development Agreement dated 09.11.2013 has been executed to complete the project.

32. The Joint Development Agreement dated November 09, 2013 was subsisting when the winding up proceedings were initiated before Hon'ble High Court of Calcutta in the year 2017. The Official Liquidator Report also proves that the Avani Grand Project was part of the insolvency proceedings wherein the details of the project were called by the Official Liquidator. The clause 8 of the Joint Development Agreement dated November 09, 2013 has conferred the possessory and proprietary right in favour of the Corporate Debtor to carry out development rights in the property.

33. With the utmost respect to the judgment of the Hon'ble Supreme Court in case of ***AA Estate & Anrs(Supra),*** the facts of the present case are squarely covered by the judgment passed by the Hon'ble Supreme Court in ***Victory Iron Case(Supra)*** since in the instant case also, the Joint Development Agreement dated November 09, 2013 is non-determinable in nature except with mutual consent or to seek remedy in court of law in case of default in term of agreement. There is no mutual consent to terminate the JDA dated November 09, 2013 nor any proceedings were initiated

by the applicant to terminate the agreement before a competent court of law.

34. Even the Hon'ble Supreme Court in the case of ***AA Estate & Anrs.(Supra)*** has categorically observed that the larger human dimension underlying urban redevelopment is the right of citizens to live with dignity in safe and habitable dwellings. Hon’ble Apex Court further held that the role of a developer in such projects carries a public character; it entails a responsibility to fulfil the collective aspirations of hundreds of families awaiting rehabilitation and cannot be viewed solely through a profit-driven lens.

35. The applicant has further taken a plea that despite the CIRP process having been initiated against the Corporate Debtor on 13.03.2019, the Interim Resolution Professional(IRP) and Resolution Professional(RP) has never taken any step to take possession of the property in question. It is further submitted that Resolution Professional filed an application under Section 19(2) of the IBC Code 2016 which was affirmed on 06.08.2024 wherein reply affidavit was filed by the applicant being respondent no. 1. The Resolution Professional in rejoinder filed a reply to the affidavit of the applicant admitting that the Joint Development Agreement has been terminated and the Corporate Debtor has ceased to have any right in the said property. Thereafter, an

application being IA No. 1327/KB/2024 was filed seeking a reverse insolvency of the Avani Grand Project. The Resolution Professional supported the applicant of this interim application No. 1327/KB/2024.

36. It is pertinent to refer relevant sub-para no.(j) to para No. D of the application filed under Section 19(2) of IBC 2016 which read as under:

> "The JDA(Joint Development Agreement) dated 09.11.2013 was terminated by Adone Hotels & Hospitality Limited on 06.08.2018 and CD ceased to have any right in the said property. Copy of this Joint Development Agreement is annexed hereto and marked as "Annexure F"."

37. It is pertinent to note that the Official Liquidator filed an dated 24.09.2018 before Hon'ble High Court Calcutta in CA No. 224 of 2018 stating therein that since the company has shown its properties and interest in various projects as enumerated and so intention is to make inspection of those properties firstly. The said affidavit is based on the affidavit dated 23.08.2018 filed by the erstwhile management/promoters of the Corporate Debtor. The erstwhile promoters/management of the Corporate Debtor removed the property in question from the list of assets of the

Corporate Debtor with the intention to justify the alleged termination of JDA dated 09.11.2013.

38. The Resolution Professional has no doubt pleaded termination of the Joint Development Agreement dated 09.11.2013 in sub-para no.(j) to para No. D of the application filed under Section 19(2) of IBC 2016; however, later on, he supported the application filed for insolvency process filed by the respondent no. 3. It is pertinent to mention here that the Resolution Professional was having no authority to state such a fact in the reply in absence of approval of resolution passed by the CoC.

39. Learned Sr. Advocate for the applicant further argued that the purported homebuyers have no right to seek reverse insolvency which can be initiated by the promoters of real estate based corporate debtors. On this aspect, it would be pertinent to refer observation of Hon'ble Apex in case of ***Mansi Brar Fernades Versus Shubham Sharma & Anrs. 2025 SCC OnLine 1972*** wherein Hon'ble Apex Court while dealing with the situation wherein the projects are at initial stage when even land is yet to be acquired or where construction has to be commenced, observed that:

> *"In projects at nascent stages, such as where land is yet to be acquired or construction has not commenced, proceeds from allottees shall be placed*

in an escrow account and disbursed in phases aligned with project progress, as per a RERA-sanctioned SOP. Every RERA shall devise such SOPs within six months from today".

40. The respondent no. 3 and other homebuyers, upon representation of the applicant and the Corporate Debtor, have invested their hard money in the project of the Corporate Debtor for service apartments. Their rights have been recognized upon execution of sub-lease agreements. The applicant, having accepted such investments and recognized the rights of the homebuyers under the said agreement, cannot be permitted at this stage to turn round on the pretext that the said homebuyers are merely purported homebuyers and possess no enforceable rights in relation to the project. Consequently, the said plea of the applicant is not tenable at law.

41. Insofar as admission of termination of Joint Development Agreement by the Corporate Debtor, it is well established fact on record that the applicant Company is a related party to the Corporate Debtor. The applicant invested Rs. 115 Crores towards subscription of 1,50,00,000 equity shares and 35,00,000 preference shares by which the applicant became 25.24% equity shareholder and 87.50% preference shareholder of the Corporate Debtor. The applicant, on 04.06.2012, also

invested a sum of Rs. 95 Crores towards subscription of 50,00,000 equity shares and 80,00,000 preference shares in M/s Subhraj Traders Private Limited which is holding 47.20% equity shares of the Corporate Debtor. The applicant holds 33.54% equity shares and 100% preference shareholding in M/s Subhraj Trading Pvt Limited.

42. On 11.06.2012, the Corporate Debtor acquired the entire shareholding of the applicant and accordingly, the applicant became a wholly owned subsidiary of the Corporate Debtor. This fact is specifically admitted by the applicant in the present application. The plea of the applicant that in view of invoking pledge and sale of pledge shares, the shareholding of the applicant is changed; and hence the applicant is not a related party is not acceptable at all. The applicant still holds voting rights of 50.29% in the Corporate Debtor from which it is clear that the applicant is a related party.

43. It is undisputed fact that despite alleged termination of JDA dated November 09, 2013, the sub-lease agreement entered with the homebuyers subsists till date by which the money was collected from the homebuyers for completion of the project. The project has not even been started for the reasons that the Joint Development Agreement(JDA) dated 09.11.2013 to develop the property has been unilaterally

cancelled. Hon'ble Supreme Court in case of ***Mansi Brar Fernades Case(Supra)*** while taking note of anxiety of genuine homebuyers who have invested their hard money to purchase a shelter home held that:

> "20.2. Yet, the plight of tax-paying middle-class citizens paints a disheartening picture. Having invested their lifelong savings in pursuit of a home, many are40 compelled to shoulder a double burden – servicing EMIs on one hand, and paying rent on the other – only to find their "dream home" reduced to an unfinished building. In some cases, construction has not even commenced despite full or substantial payment. An average homebuyer may be a teacher, lawyer, doctor, IT professional, or a government employee, who has poured his or her hard-earned money into the pockets of a developer. For such individuals, a stable roof over their family's head is all they desire. The anxiety of not having a home despite paying a fortune is bound to take a serious toll on health, productivity, and dignity".
>
> 20.3. It is therefore imperative that the life savings of a common person culminate in timely possession of their promised home. Article 21 would

mandate nothing less. In Samatha V. State of A.P

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44. Insofar as argument advanced that the sub-lease agreement made it clear that the money has been received by the Corporate Debtor and no money has been received by the applicant, Clause 11.2 of the JDA dated November 09, 2013 provided that profit from transfer of development rights shall be shared between the parties in the ratio whereby the applicant, the Adone shall be entitled to 40% of such profit and the Corporate Debtor shall retain 60% of such profit.

45. Therefore, in absence of mutual consent to terminate the agreement and any order of the competent court of law, the JDA dated November 09, 2013 subsists till date. The Respondent No. 1 being Resolution Professional has rightly included the property in question in the CIRP process of the Corporate Debtor. The applicant was having no unilateral right to terminate the Joint Development Agreement dated 09.11.2013.

Issue No.(iv)

46. The applicant Company has taken a plea that this Adjudicating Authority has passed an order dated 09.12.2024 upon application filed by respondent no. 3 without granting an opportunity of hearing to the applicant Company. Therefore, the said order dated 09.12.2024 requires to be

recalled and set aside. It is relevant to mention ***Rule 11 of the NCLT Rules, 2016*** which confer inherent power on this Tribunal and same read as under:

> "Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal."

47. The Hon'ble Supreme Court in ***Sri Budhia Swain and Ors Versus Gopinath Deb & Ors 1999(4) SCC 396*** opined that the Tribunal/Court has the inherent power to recall and set aside its order. The Apex Court held:

> "In our opinion a tribunal or a court may recall an order earlier made by it if (i) the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent, (ii) there exists fraud or collusion in obtaining the judgment, (iii) there has been a mistake of the court prejudicing a party or (iv) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented. The power to recall a judgment will not be exercised when the ground for re-opening the proceedings or vacating

the judgment was available to be pleaded in the original action but was not done or where a proper remedy in some other proceeding such as by way of appeal or revision was available but was not availed."

48. The Hon'ble Supreme Court in ***Greater Noida Industrial Development Authority Versus Prabhjit Singh Soni and Anothers 2024 SCC OnLine SC 122*** observed that:

"Further, Rule 11 of the NCLT Rules, 2016 preserves the inherent power of the Tribunal. Therefore, even in absence of a specific provision empowering the Tribunal to recall its order, the Tribunal has power to recall its order. However, such power is to be exercised sparingly, and not as a tool to re-hear the matter. Ordinarily, an application for recall of an order is maintainable on limited grounds, inter alia, where (a) the order is without jurisdiction; (b) the party aggrieved with the order is not served with notice of the proceedings in which the order under recall has been passed; and (c) the order has been obtained by misrepresentation of facts or by playing fraud upon the Court/Tribunal resulting in gross failure of justice"

49. The applicant Company, having aggrieved from order passed by this Adjudicatory Authority in IA No. 1327/KB/2024, was having right to prefer an appeal before Hon'ble NCLAT. However, they have opted not to challenge the said order passed by this Adjudicating Authority before Hon'ble NCLAT. This Adjudicating Authority has no power to review its own order which has attained finality. Therefore, this Tribunal has no power to recall the order passed on December 9, 2024 in IA(IBC) No. 1327/SKB/2024

50. Therefore, in view of the above, the present application stands dismissed being devoid of merits with no order as to cost.

51. A certified copy of this order, if applied for, be supplied to the parties as per applicable rules.

Rekha Kantilal Shah **Labh Singh**
Member(Technical) **Member(Judicial)**

(Order signed on the 22nd day of June, 2026)