IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH- I

IA(I.B.C)/1023/MB/2025

IN

CP(IB) No. 93 of 2022

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 read with Rule 11 of the NCLT Rules, 2016

In the Application of;

Mr. Birendra Kumar Agrawal

…Applicant/Liquidator

Versus

Middle East Management Services LLP

…Respondent No.1

Abdul Sathar

... Respondent No.2

Trade Square Premises Co-operative Society Ltd.

… Respondent No.3

In the matter of;

Archisha Steels Private Limited

…Financial Creditor

Versus

AJS Impex Private Limited

…Corporate Debtor

Order Pronouncement on 09.07.2026

Coram :

Appearances :

Adv. Malhar Zatakia, Adv. Atishay Jain for the Petitioner is present.

Adv. Amir Arsiwala a/w Adv. Sanath Warkar, Adv. Laukik Palkar and Adv. Sanath Deshpande for Respondent

ORDER

Brief facts:

1. The present Application is filed on 02.10.2024 under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("the Code/IBC") read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, read with Rule 11 of the NCLT Rules, 2016, by **Mr. Birendra Kumar Agrawal** ("Applicant/Liquidator"), the Liquidator for **AJS Impex Private Limited** ("Corporate Debtor"), to seek relief against **Middle East Management Services LLP** ("Respondent no.1"), **Abdul Sathar** ("Respondent no.2"), **Trade Square Premises Co-operative Society Ltd.** ("Respondent no.3").

2. The Applicant has sought directions of this Tribunal for removal of alleged unlawful encroachment by the Respondent No.1 and 2 from the property being Office No. "A-2 (Part 2), 2nd Floor, Trade Square Building, Andheri Kurla Road, Sakinaka, Mumbai - 400 072, having a built-up area of 81.30 sq. mtrs." ("Property") and handing over of vacant and peaceful possession thereof to the Liquidator, claiming it to form an integral part of the liquidation estate under Section 36 of the IBC. The Applicant has sought following reliefs:

a. *To allow the present Application;*

b. *To direct the Respondents to immediately hand over the possession of the said Property to the Applicant;*

c. *Direct the Superintendent of Police, Sakinaka Division to direct the concern police station to provide necessary assistance to the Applicant to re-take physical possession of the said Property from the Respondent;*

c1. *That this Hon'ble Tribunal be pleased to appoint an independent architect / surveyor to inspect and measure the A-2 premises in possession with the Respondent No.1 and 2 and to file a report before this Hon'ble Tribunal;*

d. *Pending the hearing and final disposal of the present application, to appoint a court receiver over the said Property;*

e. *Pending the hearing and final disposal of the present application, this Hon'ble Tribunal be pleased to restrain the Respondent from entering into or dealing with in any manner the said Property;*

f. *Cost of the present application; and*

g. *Any relief as may deem fit in the interest of justice.*

3. The captioned application was originally filed only against Respondent No.1. However, in its Affidavit in Reply, Respondent No.1 raised a preliminary objection of misjoinder / non-joinder of the original owner of the premises, contending that the alleged owner was a necessary party to the proceedings. In view of this objection, and with the leave of this Tribunal as recorded in the order dated 23.07.2025 and 19.08.2025 passed in the matter, the Applicant impleaded the said owner as Respondent No.2 as well as the Society as Respondent No.3. Later on, M/s Shradha Realtors was impleaded as Respondent No. 4 on 5.5.206 after this tribunal observed that the captioned property was purchased from the said party by the

corporate debtor and wife of one of suspended director is partner therein.

4. Respondent No. 1 is a Limited Liability Partnership incorporated under the provisions of the Limited Liability Partnership Act, 2008, which has allegedly encroached upon the property, legally owned by the Corporate Debtor and forming part of the liquidation estate under Section 36 of the Code. Respondent No. 2 claims to be the alleged owner of the said property. Respondent No. 3 is the society in which the said property is situated. Respondent No. 4, a Limited Liability Partnership firm having partners Chandrashekar Hingarh and Nisha Jayesh Mehta, had sold the property, alleged to be illegally encroached by Respondent No. 1 & 2, to the Corporate Debtor.

5. The Corporate Debtor, AJS Impex Private Limited, was admitted into Corporate Insolvency Resolution Process (CIRP) by this Tribunal vide order dated 15.07.2022 passed in Company Petition (IB) No. 93 of 2022 filed under Section 7 of the Insolvency and Bankruptcy Code, 2016.

6. Since no resolution plan was approved during the CIRP period, the Committee of Creditors resolved to liquidate the Corporate Debtor. Consequently, this Tribunal vide order dated 30.04.2024 in IA No. 5744/2023 ordered liquidation of the Corporate Debtor and appointed Mr. Birendra Kumar Agrawal as the Liquidator.

7. The Corporate Debtor is the owner of a property situated at A-2 (Part 2), 2nd Floor, Trade Square Building, Andheri-Kurla Road, Sakinaka, Mumbai, admeasuring 81.30 sq. mtrs (“said property”) by virtue of an Agreement for Sale dated 01.10.2009 executed with Respondent No. 4 for the said Property. The said property forms part of the liquidation

estate, however, the same is alleged to be in illegal encroachment caused by the Respondent No. 1 prior to the commencement of CIRP.

8. It is submitted by the Applicant that the premises A-2 was, from inception, was divided into two parts i.e., A-2 (Part II) admeasuring 81.30 sq. mtrs. purchased by the Corporate Debtor under an Agreement for Sale dated 01.10.2009. Further, A-2 (Part I) admeasuring 149.40 sq. mtrs. was purchased by Mukti Infrastructures Pvt. Ltd. under a separate Agreement for Sale dated 07.11.2009 from Respondent No. 4, and was later on sold to Mr. Sabu Joseph Thannikot vide Agreement for Sale dated 19.01.2012. It is further submitted that the Agreement for Sale dated 19.01.2012 makes it abundantly clear that Mukti Infrastructures, having acquired inter alia Office Premises No. A-2 Part (149.40 sq. mtrs.) from Shradha Realtors, agreed to sell only that portion admeasuring 149.90 sq. mtrs. to Mr. Sabu Joseph. The schedule to the said agreement expressly lists "Unit No. A-2 Part, Second Floor, built-up area 149.40 sq. mtrs." as one of several units purchased by Mukti Infrastructures from Shradha Realtors and then sold to Mr. Sabu Joseph. It is further submitted that the said sale deed in favor of Sabu Joseph, from whom Respondent No. 1/2 acquired the said property does not convey the rights in A-2 (Part II) of 81.30 sq. mtrs., which already stood transferred to the Corporate Debtor under the earlier agreement dated 01.10.2009. The Agreement for Sale dated 19.01.2012 executed in favor of Mr. Sabu Joseph is placed on record by the Applicant along with the written submissions to substantiate the same.

9. The Respondent No. 1 filed their replies, which was adopted by Respondent no. 2 also. Respondent No.3 has filed its independent Affidavit in Reply and Affidavit of Compliance pursuant to the

directions of this Tribunal vide order dated 28.01.2026. Respondent No. 4 filed a pursis along with site plan.

10. The Respondent No.1 submits that the premises in question is neither owned nor possessed by Middle East Management Services LLP, but is owned in the personal capacity of Mr. Abdul Sattar, who is a partner of the LLP, and was impleaded as Respondent no. 2 later on. Respondent No. 2 has adopted the reply of Respondent No. 1. It is further contended that the dispute raised by the Applicant pertains to title and possession of immovable property which requires detailed evidence regarding ownership, possession and building plans, accordingly. such disputes cannot be decided in summary proceedings under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 and fall within the jurisdiction of the competent civil court.

11. The Respondent No. 1 has also challenged the present application on ground of limitation stating that the Corporate Debtor allegedly took possession of its unit in the year 2009, and despite the alleged encroachment, no proceedings were initiated for several years. The Respondent further submits that the property passed through different owners, including Mr. Sabu Joseph in 2012, and was thereafter purchased by Mr. Abdul Sattar on 12.08.2016, who has since been in peaceful and lawful possession of the premises. The Respondent further denies having received the alleged notice dated 11.01.2019 from the Corporate Debtor and contends that the complaint dated 15.10.2019 is vague and an afterthought.

12. The Respondent No. 1 further submits that the Respondent No. 3, namely, Trade Square Co-operative Housing Society has recognized Unit A-2 as a single unit owned by Abdul Sattar and that the maintenance receipts and share certificate are in his name.

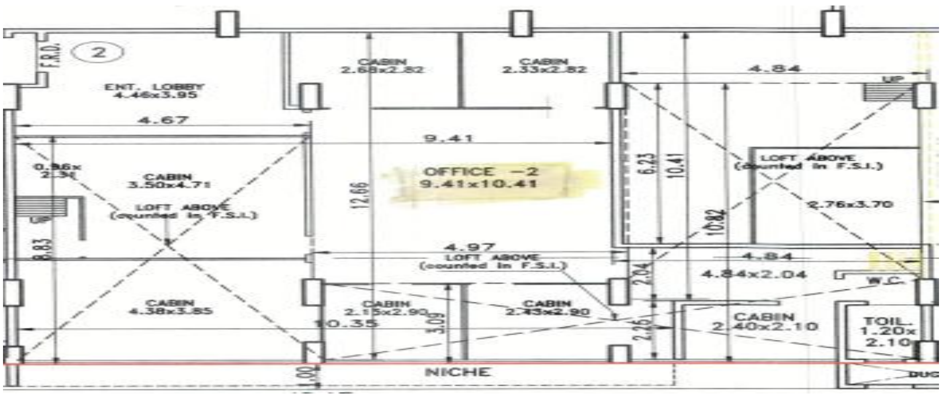
13. It is further submitted by Respondent No. 1 that they had replied to the notice issued by the Interim Resolution Professional dated 21.10.2022 by way of reply dated 12.12.2022, explaining that the Respondent holds clear and marketable title to the premises and has not encroached upon any property belonging to the Corporate Debtor. The Respondent also replied to the notice issued by the Liquidator dated 22.06.2024, reiterating the same position.

14. Respondent No. 3 submits that the Society was formed and registered on 11.04.2022 under the Maharashtra Co-operative Societies Act, 1960 by the unit purchasers due to the developer's failure to obtain the Occupation Certificate for the building, and society's role is limited to administrative and representative functions and it does not have any adjudicatory authority with respect to title or possession of individual units in the building. It is further submitted that the Society also does not possess the original title documents or agreements of unit holders since the developer has not handed over such documents to the Society, consequently, the Society has no verified information regarding the title, ownership or area of individual units. According to the Society, the dispute raised by the Applicant concerns the title and possession of immovable property between private parties, in which the Society has no role. The Society has further submitted that the mention of area in a society bill issued to one of the members was merely indicative and had no financial implication, since contributions are collected on a uniform basis from all members for common legal and administrative expenses relating to obtaining the Occupation Certificate.

15. We have heard the Learned Counsel appearing for the Applicant and the Respondents and have perused the pleadings, documents and submissions placed on record.

16. Having considered the rival submissions, it is evident that the core dispute raised in the present application pertains to ownership, title and possession of the premises forming part of Unit A-2 in Trade Square Building. While the Applicant asserts that the Corporate Debtor owns a portion of the premises described as A-2 (Part 2), the Respondents have categorically disputed the existence of such subdivision and have asserted independent ownership over the entire Unit A-2 based on registered documents.

17. Considering the counter claims by the Respondent No. 1 & 2 as well as neutral stand of the Respondent No. 3 society, this tribunal asked the Respondent No. 3 to place on record Authenticated floor map / layout plan of Wing A 2nd Floor, as per sanctioned plans. Respondent No.3 placed on record floor map as provided by developer M/s Atul Properties.



18. It is observed that there is a clear and material discrepancy between (i) the area reflected in the maintenance receipts and bills placed on record by the Respondents vide their replies, i.e. 2033 sq. ft. (188.8719 sq. mtrs.), (ii) the admitted contractual area of Respondent No.1 and

2's premises under the chain of title emanating from Mukti Infrastructures and Mr. Sabu Joseph, which is only 149.9 sq. mtrs. (approx. 1613 sq. ft.) (mentioned as 1607.55 sq. ft. at Pg. 37 of R1 & R2 Reply); and (iii) computed area as per above drawing which demonstrates the total area of office A2.

19. This matter was reserved for order(s) earlier, however, while drafting the order, this Bench noticed above discrepancies in the site-plan and relationship between the Corporate Debtor and Respondent no. 4, accordingly, the matter was de-reserved on 17.3.2026 recording the following :

> 2. ….. *as per Agreement to sale dated 05/10/2009 (page 30 of the IA), the property as per first schedule was sold by Shraddha Realtors through partners Chandrashekar Hingarh and Nisha Jayesh Mehta to AJS Impex Private Limited (CD) through its director Jayesh A. Mehta. It was further observed that the first schedule of the Agreement to sale dated 05/10/2009 pertains to sale of office premises Units No. A-1, B-1, B-2, B4, A-2 on the second floor and units No. B-4 Third Floor admeasuring about total 988.99 sq.mtrs. Built up area (inclusive of balcony nitch & common passage area) in the building known as TRADE SQUARE. It was also observed that Agreement to sale dated 19.1.2012 entered between Mukti Infrastructure Private Limited and Sabu Joseph Thannikot was in relation to sale of Office No. A-2 (Part), A-3, A-4, A-5, A-6 on second floor and , B-1, B-3 and B-4 (Part) on third floor. Earlier, Shradha Realtors is stated to have sold Office No. A-2 to Mukti Infrastructure Private Limited vide Sale Agreement dated 7.11.2009 to Mukti Infrastructure Private Limited. It follows therefrom that apart from office no. A2 at second floor, Office no. B-4 at third floor was also sold to Mukti Infrastructure while it was sold earlier to corporate debtor. It seems that the Applicant has missed out this vital information in*

relation to relationship between Shradha Realtors and sale of B-4 at third floor. Accordingly, the Applicant is directed to conduct an enquiry in both the aspects and file an affidavit in this relation, and if considered necessary, implead Shradha Realtors as a party to the present application.

20. Pursuant to directions issued by this Tribunal Respondent No.3 placed on record the authenticated sanctioned plan of 1st and 2nd, as received from the Developer of the building namely Atul Properties. On perusal of the floor plans it is noted that there are 6 offices in A-Wing on each floor and have more or less identical size. The size of office 2 on 1st floor is shown as 14.25 x 10.41 and office 2 on 2nd floor is similarly situated and appears to be having identical size. The office A2 on 2nd floor is divided into several Cabins of different size and Entrance Lobby, but, total size of office 2, as a whole, is not stated in the plan. However, as noted from the 1st floor plan the total size of office 2 comes to 148.34 sq mtrs., accordingly, the size of office 2 at 2nd floor cannot exceed the same. On the contrary it is noted that Respondent No.4 had sold A-2, claiming it to be in two parts, as Part II thereof admeasuring 81.30 sq. mtrs. under an Agreement for Sale dated 01.10.2009, and later on sold purported Part I of Office 2 admeasuring 149.40 sq. mtrs to Mukti Infrastructures Pvt. Ltd. under a separate Agreement for Sale dated 07.11.2009, which came to finally sold to Respondent No.2. Thus, Respondent No.4 sold office 2 at 2nd floor in two parts having total area of 230.70 sq mtrs., which in our considered view exceeds the total area of office 2 as per 2nd floor plan. It is further noted that none of the registered agreement to sale described the boundaries of the office so conveyed in terms of these agreements. It is also noted that the agreement for sale dated 01.10.2009 executed with Corporate Debtor does not describe the office A2 as in part. It follows from these facts that Respondent

No.4 has sold part of the office 2 initially to the Corporate Debtor, but Respondent No.4 later on sold whole of office 2 representing it to be a part thereof to Mukti Infrastructures Pvt. Ltd., who in turn sold to Respondent No.2 as it is. This clearly demonstrates that the office A2 has been sold twice, representing in the 2nd sale to Mukti Infrastructures Pvt. Ltd. the said office as office 2 Part, while office A2 on 2nd floor was already sold to the Corporate Debtor by Respondent No.4 prior in time.

21. It has already been noted that Respondent No.4's partner Smt. Nisha Jayesh Mehta is wife of Suspended Director of AJS Impex i.e. Jayesh A. Mehta indicating that the transaction of sale of A2 office to Corporate Debtor and thereafter sale of same office stating it as part thereof to Mukti Infrastructures Pvt. Ltd. is suspicious. It is noted that the property known as office 2 on 2nd floor is in occupation of Respondent No.1, which is a partnership firm of Respondent No.2, indicating that the Corporate Debtor was never given possession thereof despite the said office having been sold to Corporate Debtor prior in time.

22. The said property has also been consistently reflected as an asset of the Corporate Debtor in its audited financial statements, including the balance sheet as on 31.03.2023, thereby establishing the ownership of the Corporate Debtor over the said premises.

23. It is submitted that even prior to the commencement of CIRP, the suspended Board of Directors of the Corporate Debtor made several attempts to recover possession of the said property. A legal notice dated 11.01.2019 was issued to the Respondent calling upon it to vacate the premises and restore possession to the Corporate Debtor; however, the Respondent failed to comply with the same. A police complaint dated 15.10.2019 was also lodged with the Sakinaka Police Station regarding the illegal encroachment by the Respondent. Despite

the complaint, no effective action was taken and the Respondent continued to remain in unlawful possession of the property.

24. After commencement of CIRP on 15.07.2022, the Interim Resolution Professional issued a notice dated 21.10.2022 to the Respondent informing it of the CIRP proceedings and calling upon it to vacate the said property. However, the Respondent failed to respond or comply with the said notice.
25. After commencement of liquidation on 30.04.2024, the Applicant, in his capacity as Liquidator, issued a notice dated 22.06.2024 to the Respondent once again demanding that the Respondent vacate the property and hand over possession to the Liquidator. However, the Respondent did not respond to the said notice. On the same date, the Applicant also filed a police complaint dated 22.06.2024 with the Sakinaka Police Station regarding the continued illegal encroachment.
26. Indubitably, this continued unlawful occupation of the property by the Respondent is causing serious prejudice to the liquidation process, as the Liquidator is unable to take control and realize the value of the said asset for the benefit of the stakeholders.
27. It is well settled that although this Tribunal has residuary jurisdiction under Section 60(5) of the Insolvency and Bankruptcy Code, such jurisdiction is primarily intended to address issues arising out of or in relation to the insolvency resolution or liquidation process of the Corporate Debtor. The said jurisdiction cannot ordinarily be invoked to adjudicate complex and disputed questions of title and possession of immovable property between third parties, particularly where such disputes require a full-fledged trial and appreciation of evidence. The determination of these issues would require adjudication of civil rights which is beyond the scope of the summary jurisdiction exercised by this Tribunal under the Code.
28. While it is true that the Liquidator is duty-bound under Section 35 of the Code to take custody and control of the assets of the Corporate

Debtor, such power cannot be exercised in cases where the ownership of the asset itself is seriously disputed by a third party claiming independent title. In such circumstances, the appropriate course of action would be for the Liquidator to approach the competent civil forum for determination of the dispute.

29. Since the area of office 2 at 2nd floor appears to be exceeding 81.30 sq. mtr., and there is no demarcation in the 2nd floor office plan in relation to sub division of office 2, we consider it appropriate to direct the Applicant to appoint independent architect / surveyor to inspect and measure the A-2 premises in possession with the Respondent No.1 and 2 and take appropriate action for declaration of title in the name of Corporate Debtor in respect of the area in the office 2. The Respondent No.1 and 2 shall allow the architect / surveyor so engaged by the Resolution Professional to carry out the measurement and such measurement shall be carried out in the attendance of Respondent No.4. The exercise shall be completed within 30 days of the date of this order and all the Respondents, namely Respondent No.1 to 4 shall extend necessary co-operation and assistance to the Applicant and architect / surveyor so appointed by him.

30. Accordingly, IA No. 1023 of 2025 stands disposed of in the above terms.

-Sd/-
Prabhat Kumar
Member (Technical)

-Sd/-
Sushil Mahadeorao Kochey
Member (Judicial)