NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH COURT III

Item No. 01
IA - 286/2024
In
C.P. (IB)/27(MB)2019

CORAM:
SH. HARIHARAN NEELAKANTA IYER
Member (Technical)

Ms. LAKSHMI GURUNG
Member (Judicial)

ORDER SHEET OF THE HEARING ON **15.10.2026**

(HEARING THROUGH: HYBRID MODE)

NAME OF THE PARTIES: BANK OF INDIA

VS

HOUSING DEVELOPEMENT AND INFRASTRUCTURE LIMITED

Appearance

For Applicant : Adv Ankit Pitti i/b S&T Legal (VC)

For Respondent: Adv Vyoma Joshi i/b Crawford Bayley & Co.

SECTION 7 OF THE IBC, 2016

ORDER

IA - 286/2024

This above application is listed for pronouncement of order. The same is pronounced in open court, vide a separate order.

Sd/-
HARIHARAN NEELAKANTA IYER
Member (Technical)

Sd/-
LAKSHMI GURUNG
Member (Judicial)

---Ram Kishan---

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH COURT III

I.A. 286 of 2024

In

CP (IB) No. 27/MB/2019

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016

Recondo Limited

Co-Op. Insurance Building, P. M. Road, Mumbai – 400001

... Applicant

Vs.

Abhay Narayan Manudhane

Resolution Professional of Housing Development and Infrastructure Limited

1204, Maker Chamber V, Jamnalal Bajaj Road, Nariman Point, Mumbai - 400021

... Respondent

In the matter of

Bank of India

... Financial Creditor

Vs

Housing Development and Infrastructure Limited

... Corporate Debtor

Order Pronounced on: 15.10.2026

CORAM:

Sh. Hariharan Neelakanta Iyer
Member *(Technical)*

Ms. Lakshmi Gurung
Member *(Judicial)*

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APPEARANCES:

For the Applicant	:	Sr. Adv. Gaurav Joshi a/w Adv. Nausher Kohli, Adv. Saiee Nirgude, Adv. Ankit Pilti i/b S & T Legal
For the Respondent	:	Adv. Shadab S. Jan a/w Adv. Mufaddal Paperwala, Adv. Prerana Wagh i/b M/s Crawford Bayley & Co

Per: **Lakshmi Gurung, Member** ***(Judicial)***

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1. The present Interlocutory Application has been filed by the M/s Recondo Limited (**Applicant**) against the Resolution Professional of M/s Housing Development and Infrastructure Limited (**HDIL/Corporate Debtor**) seeking following prayers:

   a) *An order be passed directing the respondent to exclude any reference to the said property as mentioned in Schedule- "A" from the assets of the Corporate Debtor during the corporate insolvency resolution process.*

   b) *An order be passed restraining the Resolution Professional from illegally pursuing the said property including taking the possession of the said property as mentioned in Schedule "A" or interfering with the peaceful possession of the Applicant over the said property.*

   c) *Such further orders or directions be passed as this Tribunal may deem fit and proper as the same would tantamount to the interreference with the rights of the Applicant.*

Brief facts emerging from the pleadings:

2. In and around the year 1946, Municipal Corporation of Greater Mumbai (**MCGM**) had planned to improve and renovate old Bitumous Road constructed in the city and appointed Recondo Limited (**Applicant**) to avail its services. Thereafter, pursuant to Resolution dated 26.07.1947 passed by the Improvement Committee of the MCGM and subsequent Letter dated 26.07.1960, the Applicant was given possession of a plot situated in Asphalt Plant Yard, Sudam Kalu Ahire Marg, Worli, Mumbai- 400025 and bearing CTS No. 1629/2 and 1629/3 of Lower Parel Division, Worli

admeasuring approximately 1.5 acres (equivalent to 6000 sq. meters which as per Property Card is 8378 sq. meters and on actual measurement is 5731.18 sq. meters) (hereinafter referred to as the '**Larger Property**') to manufacture Bitumen for the renovation of the old Bitumous Roads.

3. The Applicant continued to use the land for the aforementioned purpose. The monthly rent payable to MCGM was revised vide letter dated 04.06.1963.

4. The Applicant constructed various structures on the Larger Property. The structures in the said large property were being used by various occupants by way of arrangements in the form of Leave and License Agreements.

5. Various other companies namely (1) Vital Pharmaceuticals and Healthware Pvt. Ltd., (2) Sterling International, (3) Rang Mandir Builders Private Limited, (4) Enjoy Builders Private Ltd., (5) Usha Kiran Builders Private Limited, (6) Prakalp Properties Private Limited, (7) Lavender Properties Private Limited and (8) Eden Garden Builders Private Limited, (hereinafter collectively referred to as the "**Nitco**") have been under individual separate agreements, being part of the said Larger Property collectively admeasuring about 1,100 sq. yards on Long lease.

6. The Applicant sent a letter dated 08.07.2003 and made a proposal to the MCGM to give the aforesaid Larger Property on lease to the Applicant for a period of 99 years.

7. Meanwhile on 08.03.2004, a development agreement (hereinafter referred to as '**Sapphire DA**') was executed between the Applicant, M/s Delegate Finvest & Development Private Limited (**Delegate Finvest**) as 'Confirming Party' and M/s Sapphire Land Developments Private Limited (**Sapphire**) as 'Developers'. Upon perusal of the same, it is seen the Applicant has made arrangement with Delegate Finvest in the form of Leave and License Agreements over the said Large Property.

8. Under the Sapphire DA, Sapphire was granted development rights in respect of the piece and parcel of land or ground hereditaments and

premises together with buildings and structures standing thereon situated at S.K. Ahire Marg (Municipal Asphalt Plant) Worli, Mumbai 400025, and bearing CTS Nos. 1629/2 and 1629/3 of Lower Parel Division, Worli, admeasuring about 4811 sq. meters (**Smaller Property/ 'Said Property'**) for a consideration. of Rs. 8,00,00,000.

9. It is pertinent to note that Sapphire DA mentions that the Applicant *"is likely to be granted lease for a period of 99 years"*.

10. The Improvement Committee of MCGM vide its Resolution bearing no. 221 dated 24.01.2006 directed MCGM to grant lease of the Larger Property to the Applicant for a period of 30 years commencing from 28.02.2003. Pursuant thereto, MCGM sent letter dated 16.02.2006 addressed to the Applicant and sanctioned the lease for 30 years.

11. Subsequently, Sapphire granted its development right over the 'said property' under the Sapphire DA dated 08.03.2004 to the Corporate Debtor for a consideration of Rs. 17,00,00,000. Accordingly, a development agreement was executed on 21.08.2006 (hereinafter referred to as '**HDIL DA**') by and among the Applicant, Delegate Finvest as Confirming Party, Sapphire and the Corporate Debtor.

12. The Corporate Debtor was admitted to CIRP vide order dated 20.08.2019. The Respondent being the RP of the Corporate Debtor had included the development rights under the HDIL DA as one of the assets of the Corporate Debtor.

13. The Applicant has filed the present application seeking an order restraining the RP from pursuing the 'said property' or interfere with the peaceful possession of the Applicant over the Larger Property, the description of which is provided in Schedule A of the Application as follows:

SCHEDULE – A

All those pieces and parcels of land or ground hereditaments and premises together with buildings and structures standing thereon situate, lying and being at- S.K. Ahire Marg (Municipal Asphalt Plant) Worli, Mumbai- 400025, and bearing CTS Nos. 162912 and 162913 of Lower Parel Division, Worli, in

the Registration District and Sub-District of Mumbai City and in the District of Mumbai City and Suburban, admeasuring atleast 6000 Sq. Meters (which as per Property Card is 8378 Sq. Meters) which area found on actual measurement is 573 1.18 sq. mtrs., and bounded as follows, i.e. to say:-

On or towards the North by: Common boundary wall with Wills Phone Poulenc Compound.

On or towards the South by: BMC Compound and balance area of Asphalt Plant Compound.

On or towards the West by: Boundary Wall common to Shed and Municipal Land adjoining S.K. Ahire Marg.

On or towards the East by: Compound of Municipal Corporation and balance Asphalt Plant.

14. **Affidavit dated 29.02.2024 by the Applicant**

14.1 This Affidavit was filed by the Applicant to place on record the Form G dated 01.12.2023 issued by the RP inviting Expression of Interest for submission of the resolution plans for the Corporate Debtor.

14.2 In the said Form G, "Land Rights at Worli" has been included under "Other assets" in Vertical VII.

14.3 It is submitted that section 25(2)(a) of the Code provides that the RP is entitled to take custody and control only of the assets of the Corporate Debtor and not of any third party. In the present case, the Larger Property belongs to the Applicant who is in uninterrupted continuous possession of the 'said property' and has the lawful right, interest and claim over the 'said property'.

15. **Reply dated 30.04.2024 of the Respondent**

Application is not maintainable

15.1 It is submitted that the reliefs sought in the present application are akin to seeking declaration on the status of the impugned development agreements which can be granted only by a civil court and cannot be

adjudicated by this Tribunal in its summary jurisdiction under the Code.

Applicant is not entitled to seek exclusion of sub-development rights

15.2 It is submitted that under the HDIL DA, the only obligation imposed on the Corporate Debtor was to make payment of the agreed consideration to Sapphire. Similarly, even under the Sapphire DA, the obligation cast upon Sapphire was to make payment of the agreed consideration to the Applicant. The Applicant has received full consideration under the Sapphire DA, and there was no further act/obligation to be performed on the part of Sapphire or Corporate Debtor under the respective development agreements to acquire right, title and interest in the Said Smaller Property.

15.3 It is submitted that upon execution of the HDIL DA, the right, title and interest created by the Applicant in favour of Sapphire was assigned and transferred to the Corporate Debtor. Thus, by signing the HDIL DA, the Applicant has agreed that the bundle of property rights vested in Sapphire would stand vested in the Corporate Debtor upon payment of the agreed consideration. While the Corporate Debtor has performed its obligation under the HDIL DA, the Applicant has till date failed and neglected to perform the reciprocal obligations set out in HDIL DA.

15.4 It is submitted that the HDIL DA is still binding and subsisting and in terms thereof, the RP has included only the sub-development rights as the asset of the Corporate Debtor and not the Larger Property. Though the said DA remains unregistered, the RP has addressed a Notice dated 04.04.2024 calling upon the Applicant to perform the obligations under the HDIL DA and to participate in the registration process.

15.5 It is submitted that by virtue of the commencement of CIRP of the Corporate Debtor, moratorium is in subsistence and therefore, there is prohibition on continuation or initiation of proceedings against the Corporate Debtor and transferring, encumbering, alienating or disposing off the assets of the Corporate Debtor.

Applicant has suppressed vital information and documents

15.6 It is submitted that the Applicant has not disclosed the details about the sub-development rights of the Corporate Debtor under the HDIL DA.

16. **Rejoinder dated 16.07.2024 of the Applicant**

16.1 The Sapphire DA was executed on 08.03.2004 but the same was subject to certain conditions such as obtaining lease for a period of 99 years, full consideration to be paid by Sapphire, etc. The Applicant was able to get lease only for a period of 30 years. Further, Sapphire has only made a partial payment of Rs. 5,28,00,000.

16.2 It is submitted that Sapphire as developers had obligations to be fulfilled under the Sapphire DA but was never performed by Sapphire, and there were other permissions which was mandatory for the transfer of possession but was never granted by the relevant authority. Thus, the Sapphire DA was thus never acted upon and was eventually terminated due to which the balance amount of Rs. 2,72,00,000 was never remitted by Sapphire.

16.3 It is submitted that Sapphire had issued a letter dated 26.08.2013 to the Applicant *inter alia* stating that due to their continuous failure to fulfil their obligation including failure to apply for and obtain the No Objection Certificate (NOC) from the Estate Department of MCGM, Sapphire could not proceed ahead with the DA and accordingly, confirmed that the Development Agreement stood terminated. Sapphire had also stated that they have no objection if the Applicant is dealing with the property with third party developers for the purposes of developing the same.

16.4 It is submitted that in view of the letter dated 26.08.2013, the development rights that were devolved upon Sapphire by the Applicant stood extinguished and any transfer of the development rights by the

Sapphire to the Corporate Debtor during the term of Development Agreement also stood extinguished in view of the legal maxim *nemo dat quod non habet* i. e., "no one can confer a better title than what he himself has".

16.5 It is submitted that the amount of Rs. 5.23 crores received from Sapphire is reflected in audited financial statements of the Applicant as on 31.03.2023 under the head "current liabilities" which shows that the same is due and payable by the Applicant to Sapphire.

16.6 It is further submitted that the Sapphire DA is an unregistered document and is also insufficiently stamped and therefore, cannot be considered or tendered as evidence. As per section 49 of the Registration Act *inter alia* provides that any document required by section 17 of the Registration Act to be registered shall not affect any immovable property unless it has been registered.

16.7 It is submitted that the development rights alongwith title and interest over the larger property were not transferred on the grounds of non-registration of the Sapphire DA and therefore, any subsequent transfer of the development agreement in favour of the Corporate Debtor does not hold any legal validity. Therefore, the RP cannot force the Applicant to provide assistance with respect to registration of the HDIL DA and no claim can be sought by the RP against the said HDIL DA and treating the sub-development rights arising therefrom as asset of the Corporate Debtor is dehors the law.

16.8 It is submitted that the moratorium under Section 14 of the Code and the duty of the resolution professional to take custody and protection of assets of the Corporate Debtor cannot stand in the way of welfare and the provisions of the Code cannot be used to exploit and bargain in order to market the Corporate Debtor better for the resolution applicants to show / invite their interest.

16.9 It is further submitted that the HDIL DA cannot be relied upon for the following reasons:

i. The said DA has neither been signed by all the parties nor has been witnessed.
ii. No right and interest was ever transferred to Sapphire and therefore, the question of Sapphire further transferring the same to the Corporate Debtor does not and cannot arise.
iii. The HDIL DA is also unregistered and insufficiently stamped.
iv. The HDIL DA contemplates that Sapphire has to handover the possession of the property to Corporate Debtor whereas in fact, the possession of the 'said property' has always been with the Applicant since 1946.
v. The DA states that Applicant is likely to be granted a lease for 99 years, however, the Applicant was actually granted lease for 30 years. Consequently, the terms of the Agreement cannot be performed.

16.10 With respect to the notice dated 04.04.2024 sent by the RP after the filing of the present application *inter alia* requesting the Applicant to provide assistance for registration of HDIL DA and execute other documents for transfer of the smaller property in favour of the Corporate Debtor, it is submitted that besides the HDIL DA being unregistered, no Power of Attorney was executed or registered in favour of the Corporate Debtor. Further, the HDIL DA dates back to the year 2006 and till date no steps were ever taken to execute or register the said DA. Furthermore, since the Sapphire DA has already been terminated vide letter dated 26.08.2013 which was confirmed by the Corporate Debtor on 02.09.2013, there is no basis for the RP to claim any right over the Larger or smaller Property.

16.11 The Applicant denies all the other contentions of the RP.

17. Sur-Rejoinder dated 30.12.2024 filed by RP

17.1 The RP in sur-rejoinder has objected to the additional documents placed on record by way of the Rejoinder. It is submitted that Rule 42 of the NCLT Rules, 2016 permits filing of Rejoinder to the limited extent of countering additional facts stated by a Respondent in the

Reply. There is no provision enabling an Applicant to supply or furnish additional documents or raising a new plea in its rejoinder.

17.2 It is submitted that after receiving the copy of the Rejoinder, the RP conducted a search of the data and documents of the Corporate Debtor. However, there exists no record of letter dated 26.08.2013 purportedly issued by Sapphire terminating the Sapphire DA and also of letter dated 02.09.2013 purportedly issued by Mr. Sarang Wadhwan. Further, there is no board resolution passed or minutes of any board meeting in which for the act of taking such a decision was discussed, authorised or ratified.

17.3 On 19.12.2024, the RP sent a letter calling upon Sapphire to confirm and share a copy of the letter dated 26.08.2013, however, the said letter was returned undelivered to the RP with the reason "Addressee Left". Thereafter, the RP addressed email dated 30.12.2024 to the RP of Sapphire in this regard but no response has been received as on date. Absence of corroborative documentation in the records of the Corporate Debtor raises serious doubts on the authenticity and genuineness of the documents produced by the Applicant, and thus, the existence of such letters and the consequences thereof is denied.

17.4 It is submitted that without prejudice, the Sapphire DA could not have been terminated due to the following reasons:

i. The Sapphire DA was acted upon by the parties.
ii. The Applicant received full consideration under the Sapphire DA.
iii. The HDIL DA was executed with the confirmation of the Applicant.
iv. The Corporate Debtor has paid the full consideration to Sapphire under the HDIL DA. After executing, acting upon and receiving consideration under the HPIL DA, Sapphire was not entitled to allegedly terminate the Sapphire DA.
v. The HDIL DA has substituted and superseded the Sapphire DA.

vi. Mr. Sarang Wadhawan was not authorized by the Board to confirm termination of the Sapphire DA.

17.5 Without further prejudice, it is submitted that even otherwise, the termination of Sapphire DA has no bearing or effect on the rights/title/interest of the Corporate Debtor emanating from the HDIL DA which is a standalone contract to which the Applicant is a confirming party.

17.6 It is submitted that after execution of the HDIL DA, the Corporate Debtor has gained possession of the Larger Land, and upon initiation of CIRP, the Respondent herein has taken charge of the Larger Land. Therefore, pursuant to execution of the HDIL DA and even till date the possession of the Larger Land has remained with the Corporate Debtor.

Analysis & Findings

18. Heard the Ld. counsel for the parties and perused the record.

19. Based on the averments and documents on record, it is noticed that the Applicant and Sapphire had executed a development agreement dated 08.03.2004 (**Sapphire DA**) whereby Sapphire was given the development rights on the property situated at S.K. Ahire Marg (Municipal Asphalt Plant) Worli, Mumbai 400025, and bearing CTS Nos. 1629/2 and 1629/3 of Lower Parel Division, Worli, in the Registration District and Sub-District of Mumbai City and in the District of Mumbai City and Suburban and admeasuring about 4811 sq. meters (**'said property'**) which forms part of the larger Worli Property which is taken on possession by the Applicant on lease from the MCGM.

20. Subsequently, Sapphire entered into a development agreement dated 21.08.2006 (**HDIL DA**) with the Corporate Debtor whereby the development rights created in favour of Sapphire under the Sapphire DA dated 08.03.2004 was assigned to the Corporate Debtor.

21. The Corporate Debtor was admitted to CIRP vide order dated 20.08.2019. The RP has included the development rights over the 'said property' under the HDIL DA in the Information memorandum of the Corporate Debtor under the category "Other Assets". The relevant extract of the Information Memorandum is reproduced below:

> ***VII. Rest of the Company (excluding the above projects and including Financial Assets/Investments)***
> … ..
> ***iv. Other Assets:***
> … ..
> *d. Land rights at Worli*

22. The Applicant through the present IA is disputing the inclusion of the said alleged land rights at Worli in the assets of the Corporate Debtor.

23. Mr. Gaurav Joshi, Ld. Sr. Counsel appearing for the Applicant, has made following submissions to substantiate that the inclusion of the development rights under HDIL DA as asset of the Corporate Debtor is unsustainable:

i. The Sapphire DA dated 08.03.2004 on the basis of which the HDIL DA was executed, was itself never given effect to since the conditions stipulated therein was not fulfilled.

ii. The Sapphire DA contemplated consideration of Rs. 8,00,00,000 of which only Rs. 5,28,00,000 was paid and the balance of Rs. 2,72,00,000 was never paid. It is further submitted that the Sapphire DA was premised on a 99-year MCGM lease whereas in fact MCGM sanctioned only 30 years of lease (w.e.f. 28.02.2003) so the foundational condition of the Sapphire DA itself has failed.

iii. The Applicant has been in continuous possession of the said Large Worli Property (of which the 'said property' forms part) as lessee of the MCGM, since 1946 and continues to pay property taxes and maintain its own security over it.

iv. Without prejudice, it is submitted that even otherwise, any rights created in favour of the Corporate Debtor by Sapphire based on the Sapphire DA has extinguished in view of the termination of the Sapphire DA on 26.08.2013. It is submitted that when Sapphire itself does not have any right over the 'said property', it cannot assign a better title. Reliance is placed on the judgment of ***P. Kishore Kumar v. Vittal K. Patkar [2023 SCC OnLine SC 1483].***

v. Both the development agreements have remained unregistered beyond the permissible period under section 23 of the Registration Act, 1908. As per the judgment of ***Kizhakke Vattakandiyil Madhavan v. Thiyyurkunnath Meethal Janaki, Civil Appeal No. 8616 of 2017***, a transferor without title cannot confer an enforceable right through such an instrument.

vi. The development agreements are also not sufficiently stamped and are inadmissible as evidence and cannot be acted upon as per the judgment of ***N N Global Mercantile Pvt. Ltd. vs. M/s Indo Unique Flame Ltd. & Ors. [(2024) 6 SCC 1]***.

vii. The HDIL DA is not signed by one of the confirming parties i.e. Delegate Finvest and the said DA is also unwitnessed and possession was never handed over. Further, the consideration was paid only to Sapphire much prior to the execution of the HDIL DA.

viii. The moratorium under section 14 of the Code is prospective and it protects only subsisting rights of the Corporate Debtor as on the insolvency commencement date and does not revive rights already extinguished in 2013. Reliance is placed on ***A A Estates Pvt. Ltd. vs. Kher Nagar Sukhsadan Co-op. Housing Society Ltd. [2025 SCC OnLine SC 2579]*** and ***Rajan Garg, RP of Truly Creative Developers Pvt. Ltd. vs. CEO, SRA [WP 1398/2024]***.

ix. Section 238A of the Code read with Article 137 of the Limitation Act, 1963 prescribes three years for enforcement of development agreements. Since the Sapphire DA was terminated in the year 2013,

any enforcement action after the year 2016 would be time-barred and the RP had sent notice only on 04.04.2024. This Tribunal cannot revisit an unchallenged termination and in absence of contractual arrangement, assets owned by third party cannot be considered as assets of the Corporate Debtor. Reliance is placed on ***Kolkata Municipal Corporation vs. Bengal Shelter [(2023) ibclaw.in 820 NCLAT].***

x. The Tribunal's residuary jurisdiction under section 60(5)(c) of the Code does not extend so far as to revive or enforce substantive contractual rights already extinguished before the commencement of CIRP. Reference is made to ***Tata Consultancy Services Ltd. vs. Vishal Ghisulal Jain [(2022) 2 SCC 583].*** However, the Tribunal does retain jurisdiction to determine whether the 'said property' forms part of the assets of the Corporate Debtor or not since the question bears nexus with the insolvency of the Corporate Debtor.

xi. The judgment of RP on estoppel itself states that estoppel does not keep alive a revocable or determinable right and in the present case, the Sapphire DA which is determinable under section 14(1)(d) of the Specific Relief Act has in fact been terminated.

24. The RP has objected to the present application and made the following submissions:

i. The reliefs as sought by the Applicant involve deciding disputed questions of title and ownership over the 'said property' and such cannot be dealt with by this Tribunal while exercising powers under the Code. The prayers sought in the IA to exclude the development rights arising out of HDIL DA is akin to seeking cancellation/ repudiation of the said Agreement which power is vested with the Civil Courts under Section 31 of the Specific Reliefs Act, 1963. Reliance is placed on ***Pradeep R. Kumar vs. Rajeev Sanghvi [(2022) SCC OnLine Bom 3147].***

ii. The Applicant has received the full consideration under the Sapphire DA and therefore, it cannot claim to have any vestige of right or claim in the 'said property' anymore. Upon payment and receipt of consideration from Sapphire, the Sapphire DA stood as a concluded contract and thereby, the development rights stood vested in Sapphire. The Applicant has confirmed the receipt of payment through deed and is therefore estopped from contending otherwise as per section 121 of the Bharatiya Sakhshyam Adhinyam, 2023. Thus, no act of purported termination by parties could reverse the concluded nature of the Sapphire DA or the vesting of development rights in favour of Sapphire. Reliance is placed on ***K.S. Manjunath & Ors. Vs. Moorasavirappa [2025 INSC 1298].***

iii. There is no record of any termination letter of Sapphire or confirmation letter of the Corporate Debtor as alleged by the Applicant and therefore, it is denied that the Sapphire DA is termination. Further, the Applicant has till date not offered to return the consideration received from Sapphire. However, even otherwise, under clause 27 of the Sapphire DA and clause 26 of HDIL DA, the Applicant has no right to terminate the agreements upon receipt of consideration. Since the Applicant has explicitly acknowledged the receipt of consideration, the purported termination letters are inconsequential. Reliance is placed on ***Annamalai vs. Vasanthi [2025 INSC 1267].***

iv. Without prejudice, it is submitted that the HDIL DA is a standalone agreement which is not only concluded in nature but also is independent of the existence of the Sapphire DA.

v. With respect to the signature of Delegate Finvest, it is submitted that all the concerned parties have initialised against each of the HDIL DA clauses and mere omission to sign the last page is of no consequence. Further, the Applicant has not denied the execution or existence of the HDIL DA. Reliance is placed on ***Aloka Bose vs.***

Parmatma Devi [2009 (2) SCC 582] and ***Rajendra Pratap Singh vs. Rameshwar Prasad [1998 (7) SCC 602].***

vi. The Corporate Debtor has paid the full consideration amount under the HDIL IA and therefore, has the right to claim development rights and irrespective of the HDIL DA being unregistered, the development rights arising therefrom would constitute as property under section 3(27) of the Code. Non-registration of HDIL IA does not bar its enforcement or its specific performance as per section 49 of the Indian Registration Act, 1908. ***Harilal vs. Amrik Singh [AIR 1978 All 292].***

vii. The possession of the 'said property' was legally and formally handed over to the Corporate Debtor and therefore, as per section 53A of the Transfer of Property Act, 1882, the Applicant is barred from challenging the legality and enforceability of the HDIL DA and the possessory right of the Corporate Debtor cannot be interfered with under section 14 of the Code.

viii. With respect to the limitation, it is submitted that as per Article 54 to Schedule of Limitation Act, 1963, the limitation period for filing a suit for specific performance is three years from the date when performance of contract is refused. In the present case, the RP had called upon the Applicant for specific performance vide letter dated 04.04.2024 and therefore, the limitation period for filing a suit for specific performance will have to be reckoned from this date. In any case, by virtue of section 60(6) of the Code, the operation of the limitation act is frozen during the continuance of CIRP.

25. Before proceeding, it is pertinent to note that the RP has objected to the Rejoinder filed by the Applicant and submitted that Rule 42 of the NCLT Rules, 2016 permits filing of Rejoinder to the limited extent of countering additional facts stated by a Respondent in the Reply and does not enable the Applicant to supply or furnish additional documents or raising a new plea in its rejoinder.

26. Rule 42 of the NCLT Rules which governs the filing of the Rejoinder states as follows:

> *"Where the respondent states such additional facts as may be necessary for the just decision of the case, the Bench may allow the petitioner to file a rejoinder to the reply filed by the respondent, with an advance copy to be served upon the respondent."*

27. In the present case, the RP in his reply has placed on record the Saphire DA and the HDIL DA and made submissions to that effect which are additional facts and to respond to the same, the Applicant has filed the Rejoinder and brought on record the Termination letter dated 26.08.2013 which, in our considered view, is necessary to adjudicate the present case. It is a common practice that whenever a party places additional documents, the other party is granted an opportunity to rebut to the same. Moreover, a plain reading of Rule 42 of the NCLT Rules shows that the said Rule merely states that Applicant may be allowed to file rejoinder and does not prevent the Applicant from producing additional documents on record.

28. In any case, Rule 55 of the NCLT Rules allows a party to pleadings subsequent to the reply can be presented subject to the permission of the Tribunal. In the present case, the Tribunal had granted leave to the Applicant to file Rejoinder. Further, Rule 11 of the NCLT Rules also gives this Tribunal inherent powers to pass necessary orders to secure the ends of justice. Since, in the present case, the facts brought on record by way of Rejoinder are necessary for adjudication, we had taken the Rejoinder on record and heard the submissions of the parties at length. Thus, the RP's plea to not consider the Rejoinder is rejected.

29. We have given our consideration on the rival contentions made by Ld. Counsel for both the parties. At the outset, Ld. Counsel for the RP has raised a preliminary issue on the jurisdiction of this Tribunal to decide the present IA.

30. It is vehemently argued by Ld. Counsel for the RP that the present application is in the nature of declaration on the enforceability/validity of

the development agreements which is beyond the scope of this Tribunal under the Code. Ld. Counsel has relied upon the judgment of ***Pradeep R. Kumar vs. Rajeev Sanghvi [(2022) SCC OnLine Bom 3147]***. We note that the said judgment pertains to the power of NCLT under the Companies Act, 2013 whereas in the present case, the issue is with respect to jurisdiction of NCLT under section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016. Thus, the observations in ***Pradeep Kumar vs. Rajeev Sanghvi*** *(supra)* does not aid the case of the RP.

31. In ***Gujarat Urja Vikas Nigam Limited vs. Mr. Amit Gupta [Civil Appeal No. 9241 of 2019]***, the Hon'ble Supreme Court has settled the law relating to the extent of residuary power of this Tribunal under section 60(5)(c) of the Code with the following observations:

> *"The residuary jurisdiction of the NCLT under Section 60(5)(c) of the IBC provides it a wide discretion to adjudicate questions of law or fact arising from or in relation to the insolvency resolution proceedings. If the jurisdiction of the NCLT were to be confined to actions prohibited by Section 14 of the IBC, there would have been no requirement for the legislature to enact Section 60(5)(c) of the IBC. Section 60(5)(c) would be rendered otiose if Section 14 is held to be the exhaustive of the grounds of judicial intervention contemplated under the IBC in matters of preserving the value of the corporate debtor and its status as a 'going concern'. We hasten to add that our finding on the validity of the exercise of residuary power by the NCLT is premised on the facts of this case. We are not laying down a general principle on the contours of the exercise of residuary power by the NCLT. However, it is pertinent to mention that the NCLT cannot exercise its jurisdiction over matters dehors the insolvency proceedings since such matters would fall outside the realm of IBC."*

32. Thus, this Tribunal, under the Code, has the power to adjudicate on issues arising from or in relation to the CIRP of the Corporate Debtor.

33. In the present case, the main issue revolves around the inclusion of the development rights of the Corporate Debtor purportedly arising from the HDIL DA in the Information Memorandum of the Corporate Debtor. Under the Code, the RP prepares the Information Memorandum wherein

the assets of the Corporate Debtor are specified. Whether or not such assets belong to the Corporate Debtor is a question relating to the insolvency of the Corporate Debtor as it would have an impact on the CIRP process. Thus, in our view, this Tribunal has the necessary jurisdiction under section 60(5)(c) of the Code to decide whether the development rights arising from the HDIL DA is an asset of the Corporate Debtor.

34. We are supported by the observations of Hon'ble NCLAT in ***K. H. Khan & Anr. Vs. Art Constructions Pvt. Ltd. & Ors. [Company Appeal (AT) (Ins) No. 1116 of 2024]:***

> *"19. The first question which needs to be considered is as whether the Adjudicating Authority had jurisdiction to enter into issue as to whether the subject land is asset of the corporate debtor or the parties were required to be relegated to the Competent Civil Court having jurisdiction.*
>
> *20. The Information Memorandum which was prepared by the Resolution Professional reflected the subject land as a land in which the Corporate Debtor has development rights by virtue of Collaboration Agreement dated 05.07.2008. The Assets of a corporate debtor are foundation for any CIRP process. All subsequent acts including inviting EoI, Resolution Plan are based on asset which is claimed as asset of the Corporate Debtor. In the CIRP process of a Corporate Debtor, determination of the assets, preparation of Information Memorandum is a solemn duty of the Resolution Professional. Under Section 29 of the IBC, Information Memorandum is to be prepared for being used for CIRP process by the Resolution Professional.*
>
> *21. The Resolution Professional is also obliged to obtain documents and details of the assets from personnel of the corporate debtor. Regulation 3A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 enjoin the Resolution Professional to take into custody the records of information relating to the assets, finances and operations of the corporate debtor as well as assets recorded in the balance sheet of the corporate debtor or in any other records referred in clause (f) of section 18. Section 60(5)(c) enumerates the jurisdiction of the National Company Law Tribunal to entertain or dispose of any question of priorities or any question of law or facts, arising out of or*

in relation to the insolvency resolution or liquidation proceedings. Section 60(5)(c) is as follows:-

xxx

22. Whether an asset is required to be reflected in the Information Memorandum or the asset belong to the Corporate Debtor are the question which arise out of or in relation to the insolvency resolution process. The present is a case where the Corporate Debtor has claimed development rights in the land. It is no more res-integra that the development rights are property within the meaning of Section 3(27) of the IBC. We may refer to the judgment of the Hon'ble Supreme Court in "Victory Iron Works Ltd. vs. Jitendra Lohia & Anr. (2023) 7 SCC 227" where the Hon'ble Supreme Court had held that the development rights created in favour of the corporate debtor constitute "property" within the meaning of Section 3(27) of the IBC.

xxx

28. In the present case, in the Information Memorandum, Resolution Professional has included the subject land as asset of the corporate debtor in which corporate debtor claimed development rights. An IA was filed by the owners, Appellants herein being IA No.4648 of 2020 for excluding the assets from the CIRP of the Corporate Debtor, hence, in the above background, we are of the view that the Adjudicating Authority had jurisdiction to examine the application on merits and take a decision as to whether the subject land can be treated to be asset of the corporate debtor or not. xxx

29. The question as to whether the assets which are included in the Information Memorandum are the assets of the corporate debtor is foundation of entire CIRP process. When the inclusion of the said asset is questioned before the NCLT by the Appellant, Adjudicating Authority does not lack jurisdiction in entering into question and deciding as to whether assets are part of the CIRP or it should be excluded. We, thus, are of the view that the above question could be determined by the Adjudicating Authority and parties need not have to be relegated to the Civil Court having jurisdiction, the view of the NCLT to the contrary cannot be approved. Judgment of the Hon'ble Supreme Court in Victory Iron, as noticed above, clearly has held that the NCLT and NCLAT can exercise jurisdiction in the above facts. We, thus, answer Question No.(I) in following manner:

> *The Adjudicating Authority had jurisdiction to enter into as to whether the subject land is asset of the corporate debtor and for decision of the question, the parties were not required to be relegated to the Competent Civil Court having jurisdiction."*

35. Accordingly, we proceed to examine the case on merits. It is an admitted fact that the Applicant and Sapphire had executed the Sapphire DA dated 08.03.2004 whereby the development rights over the 'said property' was given to Sapphire for a consideration of Rs. 8,00,00,000. Some of the relevant terms of the Sapphire DA are as follows:

> *3. The Said Recondo have hereby granted to the Developers and the Developers hereto have acquired and taken from the said Recondo the Development Rights of each and every nature whatsoever, whether available today or in the future, in respect of the Said Large Property more particularly described in the SECOND SCHEDULE hereunder given with the right to develop and use and consume all and every kind of FSI whether available now or in future and by whatever name called and with the right ultimately to receive the lease and/or sub-lease of the Said balance Property from the said Recondo for a consideration of Rs. 8,00,00,000/- (Rupees Eight Crores only) to be paid and discharged by the Developers to the said Recondo.*
> *... ..*
> *5. This Agreement will not be treated as a partnership between said Recondo and the Developers. The Developers are given only the right to develop the Said Large Property as aforesaid.*
>
> *6. Simultaneously, on the execution hereof the said Recondo have handed over all the necessary and available documents in respect of the Said Large Property to the Developers.*
>
> *7. Simultaneously, on the execution of these presents, said Recondo have handed over the possession of the 'said property' to the Developers with the authority to the Said Developers to carry out the Development Activities.*
>
> *8. Simultaneously, upon the execution hereof, the Developers shall be entitled to put up their boards-and hoarding on the Said Property.*
> *.... ...*
> *11. On execution hereof the said Recondo and Confirming Party made and executed in favour of the nominees of the Developers, a Power of Attorney and the Developers have made and executed a Deed of Indemnity in favour of the said Recondo in usual terms. The said Recondo agree, confirm and declare that they shall not revoke or cancel the said Power of Attorney as the said Recondo have received substantial consideration for the grant of the Development Rights.*

…. …

26. It is further agreed by and between the Parties that:

(e) The Developers shall from the date hereof pay all municipal taxes, cesses, dues, duties and outgoings including all increases therein as also any new or additional taxes and levies imposed hereafter on the Said Property by the Municipal Corporation, Government or any other authority, including by way of tax on Land Under Construction for the period after the Developers taking possession of' the Said balance Property and the said Recondo shall not be liable for the same.

27. The said Recondo have received substantial consideration as provided in Clause No. 3 above, they shall not be entitled to cancel or terminate this agreement, or revoke the Power of Attorney.

36. Subsequently, the HDIL DA was executed on 21.08.2006 by the Applicant, Delegate Finvest as Confirming Party, Sapphire and the Corporate Debtor whereby Sapphire granted its development rights under the Sapphire DA dated 08.03.2004 to the Corporate Debtor for a consideration of Rs. 17,00,00,000.

37. The purported development rights of the Corporate Debtor arising from the HDIL DA is the subject-matter before this Tribunal as the RP has included the said development rights in the pool of assets of the Corporate Debtor which is challenged by the Applicant.

38. It is the case of the Applicant that Sapphire had not paid the entire consideration to the Applicant and had taken no further steps to develop the 'said property'. It is submitted that the possession of the 'said property' also continues to remain with the Applicant and that the Sapphire DA was never acted upon.

39. The Applicant has also placed on record letter dated 26.08.2013 whereby Sapphire confirmed the termination of the Sapphire DA dated 08.03.2004. It is relevant to quote the extracts from the said letter:

"Dear Sir,

*We refer to the development agreement dated March 8, 2004 executed by the Sapphire Land Development Private Limited and you ("**Development Agreement**") for the grant of development rights in*

*respect of land admeasuring 5,731 square meters (**approximately**) bearing CTS Nos. 1629/2 and 1629/3 of Lower Parel Division, S. K. Ahire Marg, Worli, Mumbai 400025 ("**Property**"). The rights under the Development Agreement were since assigned by Sapphire Land Development Private Limited in favour of Housing Development and Infrastructure Limited vide agreement to assign dated 21st August 2006 ("**Assignment Agreement**").*

Under the Development Agreement, out of the total consideration of Rs. 8,00,00,000/-, we Sapphire Land Development Private Limited paid to you amounts aggregating to Rs. 5,28,00,000/-, leaving an amount of Rs. 2,72,00,000/-, as due and payable thereunder by us to you.

Although under the Development Agreement, you are supposed to handover vacant possession of the Property to us, you have till date not done so. You have time and again pointed out that on account of our failure to (i) pay to you the balance consideration of Rs. 2,72,00,000/- being the amount outstanding under the Development Agreement, (ii) pay the arrears of ground rent, licence fee and property taxes, you are being burdened with unnecessary financial liabilities. You have also pointed out that on account of our failure as aforesaid, coupled with our failure to apply to the Estate Department of MCGM for its NOC for development of the Property, has put the Property at risk, whereby the MCGM can terminate the lease in your favour for no reasons attributable to you.

Despite our repeated assurances to make payment of the balance consideration under the Development Agreement and/or to make payment of the arrears of ground rent, license fee, property taxes, etc. as also our failure to apply for and obtain the NOC from the Estate Department of MCGM, we haven't been able to comply with any of our assurances made to you. In view of our repeated failure, we have decided not to proceed further with the Development Agreement. We hereby confirm that the Development Agreement stand cancelled and/or terminated and we shall not make any claims there under against you. Hence, you are now requested to refund to us the amount of Rs. 5,28,00,000/- paid by us to you under the Development Agreement.

As per our discussions, we confirm that we have no objection to your dealing with the Property with third party developers for the purposes of developing the same and upon execution of Definitive Documents in favour of such third-party developer/s you shall forthwith refund to us the amount aggregating to Rs. 5,28,00,000/-

paid by us to you under the above-mentioned Development Agreement, without any further delay. You are, thus, requested to refund us the amount at the earliest by entering into necessary documents with third party developers for developing the property."

40. This termination letter was endorsed to the Corporate Debtor. The Applicant has also placed on record letter dated 02.09.2013 whereby the Corporate Debtor has confirmed the termination of the Sapphire DA. The contents of the letter are reproduced below:

"Subject: Confirmation of Letter Dated 26/08/2013 from Sapphire Land Development Pvt. Ltd. to Recondo Ltd.

Dear Sir,

I, Sarang Rakeshkumar Wadhawan, Managing Director of Housing Development & Infrastructure Ltd. do hereby confirm the contents of the letter dated 26/08/2013 addressed by you to Recondo Ltd. in respect of land admeasuring 5731 sq mt., approximately bearing CTS Number 1629/2 & 1629/3 of Lower Parel Division S. KAhire Marg, Worli, Mumbai 4000025.

For Housing Development & Infrastructure Ltd.

Sarang Rakeshkumar Wadhawan
Managing Director

41. It is submitted by Ld. Sr. Counsel for the Applicant that when the Sapphire DA, on the basis of which HDIL DA was executed, itself has ceased to exist, there is no question of subsisting development rights of the Corporate Debtor under the HDIL DA.

42. The RP submitted that the termination of Sapphire DA is bad in law due to the following reasons:

i. The Applicant has no right to terminate the DAs in view of the payment of entire consideration by Sapphire and HDIL. Reliance was placed on ***K.S. Manjunath & Ors. Vs. Moorasavirappa [2025 INSC 1298]***.

ii. The clauses of the development agreements prohibit the Applicant from terminating the agreements and therefore, the purported

termination is invalid. Reference is made to the case of ***Annamalai vs. Vasanthi [2025 INSC 1267].***

43. In the case of ***Annamalai vs. Vasanthi [2025 INSC 1267]*** relied upon by the RP, the Hon'ble Supreme Court has observed that where there is no right conferred on any party to terminate the contract but is terminated unilaterally, then such termination may be taken as a breach of contract by repudiation and that the aggrieved party may treat the contract as subsisting and sue for specific performance. Similarly, in ***K. S. Manjunath vs. Moorasavirappa*** *(supra)* also relied upon by the RP, the Hon'ble Supreme Court has discussed on the principles relating to unilateral termination of non-determinable agreements.

44. In the present case, on perusal of the Sapphire Termination Letter dated 26.08.2013, we note the following:

i. Out of the total consideration of Rs. 8,00,00,000 under the Sapphire DA, Sapphire has paid only Rs. 5,28,00,000.

ii. Sapphire has not fulfilled its obligation under the Sapphire DA with respect to payment of required fees, taxes etc. with respect to the 'said property' and also failed to take necessary steps for development of the property.

iii. The possession of the 'said property' was never handed over to Sapphire by the Applicant.

iv. Due to the failure of Sapphire to adhere to the obligations under the Sapphire DA, Sapphire decided to not proceed with the development agreement and accordingly, confirmed the termination of Sapphire DA.

v. Sapphire has expressed its no objection to the Applicant to deal with the 'said property' with third party developers.

vi. While seeking refund of the amount of Rs. 5,28,00,000, Sapphire has stated that the refund shall be made upon execution of documents in favour of third-party developers.

45. Thus, it is clear that Sapphire has expressed its inability to pay the balance consideration and admitted its default in not taking any steps towards the development of the 'said property'. Eventually, Sapphire itself decided to terminate the development agreement. It is pertinent to note that while the development agreements restrict the Applicant who is the lessee of the 'said property' from terminating the development agreements, they are silent on the rights of the developers to terminate the agreements. The termination letter dated 26.08.2013 was issued by Sapphire (developer) to the Applicant. Thus, the contention of the RP that Applicant could not have terminated the Sapphire DA is devoid of merits.

46. The RP has also expressed suspicion over the genuineness of the aforesaid letters dated 26.08.2013 and 02.09.2013 on the following grounds:

i. The said letters are not available in the records of the Corporate Debtor.

ii. There are no corroborative documents including board resolutions or minutes of meeting authorising Mr. Sarang Wadhwan to issue confirmation letter.

iii. The RP sent letter dated 19.12.2024 to Sapphire to confirm the alleged termination but received no response.

47. It is observed that the letter dated 26.08.2013 is issued in the letterhead of Sapphire and also bears its stamp. Similarly, the letter dated 02.09.2013 was issued in the letter head of the Corporate Debtor and was signed by Mr. Sarang Rakeshkumar Wadhwan (director) on behalf of the Corporate Debtor. The RP has sought clarification from Sapphire but received no response in this regard. The contentions of the RP regarding the genuineness of the letters dated 26.08.2013 and 02.09.2013 are

merely conjectural in nature without any evidence. Thus, the existence of the said letters cannot be denied merely because it is not available with the Corporate Debtor.

48. As far as the merits of termination is concerned, it is relevant to note that the termination of the Sapphire DA was made in the year 2013 and has no connection to the insolvency of the Corporate Debtor. Thus, this Tribunal cannot extend its jurisdiction to adjudicate on the legality or otherwise of the termination letter dated 26.08.2013.

49. From the evidence produced before this Tribunal especially in view of the letter dated 26.08.2013, we are of considered view that the Sapphire DA stood terminated which has been also confirmed by the Corporate Debtor vide letter dated 02.09.2013.

50. This brings us to the next argument of the RP that even if the Sapphire DA is said to be terminated, it would have no bearing or impact on the subsistence of the HDIL DA which is a concluded transaction and independent of the Sapphire DA.

51. Ld. Counsel for the RP also argued that the letter dated 02.09.2013 issued by the Corporate Debtor merely acknowledges the termination of Sapphire DA and not mentioned anything on HDIL DA.

52. At this juncture, it is relevant to look at the following clause/s in the HDIL DA:

> *"8. The Developers are taking the development rights of the Said Property on **'AS IS WHERE IS'** basis and have accepted the title of Said Recondo and Said Company. Provided however, it is the responsibility of Said Recondo to settle with and remove all Occupants and/or Licensees occupying the Said Property or part thereof, save and except Said Nitco. It is agreed by and between the parties that Said Nitco shall be entitled to retain to themselves an area of 1100 Sq. Yards. It is agreed by and between the parties that the said Recondo may obtain for the Developer and/or the Developer may directly obtain from the Corporation Lease / Sub-Lease in favour of the Developers in respect of the Said Property. The Said Recondo and the Confirming Party agree and confirm that the grant of the Development Rights of the Said Property by the Developers on the terms and conditions herein stated*

without claiming any consideration either from the Developers or Said Company. Said Recondo and the Confirming Party further state that they have no objection now and shall not in future raise any objection to the development of the Said Property by the Developers."

53. The aforesaid clause essentially indicates that Corporate Debtor has acquired rights of Sapphire on an "As is where is basis" and was under the obligation to discharge the obligations of Sapphire.

54. The HDIL DA states about the following obligations to be fulfilled by HDIL:

Clause No.	**Contractual Obligation of Developer**
6	Sapphire to hand over possession of the 'said property' to HDIL to carry out development activities.
7	HDIL entitled to put up boards and hoardings on the 'said property'.
14	HDIL to prepare and submit plans to BMC and obtain IOD/CC.
15	HDIL solely responsible for obtaining change of user from asphalt plant to permissible use.
20	HDIL entitled to a proper Sub-Lease Agreement and all muniments of title from the Applicant.
21	Sapphire to cause the Applicant to execute the Sub-Lease Deed and transfer documents, without demanding additional consideration.
22	HDIL to pay fees of architects and RCC Consultants appointed by it.
25(b)	Sapphire to cause the Applicant to grant lease/sub-lease for 99 years in favour of HDIL
25(d)	HDIL, after taking possession, may sub-divide/amalgamate or change user of the 'said property'.
25(e)	HDIL to pay all municipal taxes, cesses and outgoings after taking possession.
25(f)(i)	HDIL to obtain sanctioned building plans and complete construction.

25(f)(iii)	HDIL to comply with I.O.D. conditions imposed by MCGM.
25(f)(ix)	HDIL entitled to deal with MCGM/Revenue Authorities and represent the Applicant and Sapphire in respect of the property.

55. The Applicant has vehemently argued that none of the obligations have been discharged by the Corporate Debtor. The RP has not brought on record any material that runs contrary to the submission of the Applicant. Thus, the facts and surrounding circumstances has clearly corroborated that the HDIL DA was never acted upon by the Corporate Debtor.

56. Moreover, it is undisputed fact that both the development agreements have remained unregistered since the date of their execution and no steps whatsoever have been taken towards the registration of the same. Ld. Counsel for the RP submitted that non-registration of an agreement would not bar its specific performance and relied on the judgment of ***Hari Lal vs Amrik Singh & Anr. [AIR 1978 All 292]*** which deals with the admissibility of non-registered documents in evidence for the collateral purpose of establishing the character of possession.

57. The RP has referred to the development agreements to say that it is recorded that the possession of the 'said property' has been handed over to the Sapphire and thereafter to the Corporate Debtor. However, as already noted above, Sapphire in its termination letter has clearly stated that possession of the 'said property' was never handed over to Sapphire by the Applicant. Thus, when the possession was not given from Applicant to Sapphire, the question of the possession being further handed over by Sapphire to the Corporate Debtor could not arise. The Applicant has also submitted that it has been regularly paying the property taxes. There is no material placed on record by the RP to show that the Corporate Debtor is in actual possession of the 'said property' and has been paying the taxes or taken any steps towards the development of the 'said property'.

58. We further note that in the termination letter dated 26.08.2013, Sapphire has mentioned about the HDIL DA but went ahead to give its no objection to the Applicant to deal with property with third party developers which has been confirmed by the Corporate Debtor in its letter dated 02.09.2013. Thus, it cannot be said that termination of Sapphire DA was intended to have no bearing on the HDIL DA.

59. Furthermore, even after the commencement of CIRP of the Corporate Debtor on 20.08.2019, the RP has not taken any steps in furtherance of the development agreements till the filing of the present application on 02.01.2024. It was only thereafter that the RP had sent letter dated 04.04.2024 calling upon the Applicant to register the development agreements.

60. At this juncture, we deem it appropriate to refer to the case of ***A A Estates Private Limited through its RP Harshad Shamkant Deshpande & Anr vs. Kher Nagar Sukhsadan Co-operative Housing Society Limited & Ors. [SLP (C) No. 10758 of 2025].*** In this case, one of the issues before Hon'ble Supreme Court was whether the development agreement constitute assets or property of the Corporate Debtor. The Hon'ble Supreme Court while holding that the development agreement does not constitute asset or property of the Corporate Debtor within the meaning of section 14 of the Code, has made the following observations:

> *"16.2. The object of Section 14 is to maintain the corporate debtor's estate as a going concern and to preserve its assets so as to facilitate resolution. The term "property" under Section 3(27) of the IBC is defined in the widest terms to include money, goods, actionable claims, land and every description of movable or immovable, tangible or intangible property, and extends to deeds and instruments evidencing title or interest therein. However, for the purposes of Section 14, only such property or assets which form part of the corporate debtor's estate as on the insolvency commencement date are protected. Mere expectant, contingent or uncrystallized contractual rights do not constitute "assets" within the meaning of the Code.*
>
> *…*
>
> *16.4. The above exposition clarifies that whether a development agreement constitutes an "asset" of the corporate debtor depends on*

whether it creates a proprietary, possessory or enforceable right in its favour at the relevant time. Not every executory or conditional contract amounts to an asset. The protection of Section 14 is confined to existing, subsisting and enforceable rights as on the date of commencement of the CIRP.

16.5. In Rajendra K. Bhutta (supra), this Court held that termination of a joint development agreement during the subsistence of moratorium under Section 14 was impermissible since the corporate debtor was in occupation and possession of the property. The Court explained that where the developer is "in occupation" or has entered upon the property pursuant to the agreement, such occupation attracts the protection of Section 14(1)(d). Conversely, where termination occurred prior to CIRP and the developer was never in possession, the moratorium would not apply.

16.6. Similarly, in Tata Consultancy Services Ltd (supra), this Court held that the Resolution Professional cannot compel continuation of a contract that was validly terminated prior to initiation of CIRP. Once a contract stands lawfully terminated, it ceases to exist and cannot be treated as an "asset" or "property" of the corporate debtor. The moratorium under Section 14 does not have the effect of reviving or re-creating contractual rights that have been extinguished before insolvency.

…

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.

xxx

18.7. In any event, the conduct of the appellants does not inspire equity. The record discloses persistent defaults in payment of transit rent, repeated delays, and failure to commence redevelopment despite multiple extensions. The Society, acting in the collective interest of its members, lawfully terminated the agreement and appointed a new developer who has since made substantial progress. The invocation of Section 14 of the IBC to obstruct rehabilitation of residents was a misconceived attempt to shield inaction under the guise of moratorium protection.

18.8. … The Courts consistently held that a defaulting developer cannot invoke the moratorium under Section 14 of the IBC to

perpetuate inaction or defeat the legitimate rights of residents. The rights of a developer are purely contingent upon due performance, and no subsisting "asset" or "proprietary right" survives once termination has lawfully occurred.

... ..

Conclusion

....

20. As indicated earlier, the moratorium under Section 14 protects only existing, enforceable, and subsisting rights – not inchoate or forfeited rights arising from default or non-performance. Development rights of a defaulting developer who neither secured possession nor undertook any redevelopment activity cannot be elevated to the status of an "asset" or "property" within the meaning of Section 3(27) of the IBC."

61. Considering the entire gamut of the case and guided by the judgment of Hon'ble Supreme Court in ***A A Estates*** *(supra)*, we have no hesitation to conclude that the development rights over the 'said property' arising under the HDIL DA dated 21.08.2006 is not an "asset" of the Corporate Debtor. The RP's prayer to protect the development rights under section 14 of the Code cannot be granted for the reason that the Sapphire DA dated 08.03.2004 on the basis of which the HDIL DA dated 21.08.2006 was executed, already stood terminated on 26.08.2013 i.e. 6 (six) years prior to the commencement of CIRP, of which the Corporate Debtor had full knowledge and even issued the confirmation letter dated 02.09.2013.

62. Accordingly, we direct the RP to exclude the development rights/land rights in the 'said property' (specified in Schedule A of the IA) from the pool of assets of the Corporate Debtor. IA is **allowed** and **disposed of**.

Sd/-

Hariharan Neelakanta Iyer

Member (Technical)

Sd/-

Lakshmi Gurung

Member (Judicial)

Uma