THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

IA 2140 OF 2026

Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of the NCLT Rules, 2016

Kohinoor Development Corporation Through its Partner Mr. Rajesh Goyal

...**Applicant**

V/s

Mr. Vijendra Kumar Jain Liquidator Dreans Construction Pune Private Limited

…**Respondent**

In the matter of

COMPANY PETITION (IB) NO. 59/IB/2020

PRADEEP DEVICHAND AGARWAL

…Petitioner

V/s

DREAMS CONSTRUCTION (PUNE) PRIVATE LIMITED

…Respondent

Order delivered on: 23.10.2026

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Shri Sushil Mahadeorao Kochey
Hon'ble Member (Judicial)

Appearances:

For the Applicant	:	Adv. Rohan Agrawal a/w Adv. Rahul Totala a/w Adv. Iqra Qureshi i/b Adv. Sidhant Somani
For the Respondent No.4	:	Adv. Chaitanya Nikte i/b Adv. Manish Jha a/w Adv. Shweta Pandey

ORDER

1. The present Application is filed by Kohinoor Development Corporation through its Partner Mr Rajesh Goyal (Applicant) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of the NCLT Rules, 2016, seeking the following reliefs:-

   a) *This Hon'ble Tribunal may kindly be pleased to declare that Auction dated 12.01.2026, conducted by the Respondent/Liquidator in respect of the 31 flats situated in Wings Pl and P2 of the project Dreams Ayana, is void ab initio, illegal and without jurisdiction:"*

   b) *"This Hon'ble Tribunal may kindly be pleased to set aside the said Auction dated 12.01.2026, together with any confirmation of sale, sale agreement, sale certificate or handing over of possession made pursuant thereto;"*

   c) *"This Hon'ble Tribunal may kindly be pleased to restrain the Respondent from taking any further steps towards confirmation. execution or completion of the said auction, or from creating any third-party rights in respect of the said 31 flats, pending disposal of I.A. No. 2140 of 2026;"*

d) *" This Hon'ble Tribunal may kindly be pleased to direct the Respondent/Liquidator to disclose complete particulars of Auction dated 12.1.2026, including the identity of the successful bidder(s), the bid amount(s) and the terms of sale:"*

e) *"This Hon'ble Tribunal may kindly be pleased to pass such other and further order(s) as this Hon'ble Tribunal may deem fit and proper in the interest of justice.;*

2. The present Application is filed by Kohinoor Development Corporation ("KDC"), a constituent member and landowner of the Association of Persons/Joint Venture known as M/s Kohinoor Dreams Associates ("JV/AOP"), under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016, seeking declaration that the auction dated 12.01.2026 in respect of 31 flats situated in Wings P1 and P2 of the project "Dreams Ayana' at Gat No. 13, Village State, Taluka Maval, District Pune is void ab initio, illegal and without jurisdiction, and for setting aside the auction and all consequential steps.
3. The Corporate Debtor was ordered to be liquidated on 22.11.2023, and the Respondent was appointed as Liquidator. The Applicant had formed the aforesaid AOP with the Corporate Debtor and Mr Subhash Devichand Agarwal ("SDA") under the Joint Venture Deed dated 24.10.2011, and it is an undisputed fact that the said AOP owned the following properties on the commencement of liquidation of the Corporate Debtor
   i. 21 fully constructed but unsold flats;
   ii. 31 under-construction/unsold flats;
   iii. The balance FSI of 12,918.07 square meters which remains to be developed.

4. The Liquidator took control of the AOP and proceeded to auction the aforesaid flats owned by said AOP, in which Corporate Debtor is a 30% interest holder as its member. The Liquidator concluded the auction of 21 fully constructed flats pursuant to public notice dated 26.05.2025, which was not challenged by KDC; however, the Applicant has challenged the subsequent auction of 31 under-construction flats in terms of public notice dated 09.12.2025, scheduling the auction thereof on 12.01.2026. The said auction is stated to be complete.
5. The liquidator proceeded to take control of these assets on the ground that the other two members of AOP, namely KDC and SDA, had filed claims in the liquidation process of the Corporate Debtor on 31.10.2025 and 09.01.2026 respectively, thereby upholding the right of the liquidator to monetise the assets in the ownership of AOP for settlement of accounts. It is further submitted that the liquidator was opined by a M/s Little & Co. vide opinion dated 15.05.2026 that he can do so in terms of Section 35 and 36 of the IBC.
6. Indubitably, the assets owned by AOP are not the assets of the Corporate Debtor and do not form part of the liquidation estate of the Corporate Debtor as the assets owned by third parties are excluded from the liquidation estate under Section 36(4)(a) of the Code. Mere filing of the claim by AOP members in relation to their claim against the AOP in the CIRP of the Corporate Debtor and admission in the process by the Liquidator for settlement thereof in terms of Section 53 of the Code cannot itself convey the title and interest in the properties owned by AOP in favour of Corporate Debtor. Nonetheless, in our considered view, the AOP members cannot be said to be Creditors of the Corporate Debtor in relation to their claim against the AOP as its members, as no member of the AOP has a

claim against other members, and such claim could not be and ought not to be admitted in the liquidation process of the Corporate Debtor in the absence of any obligation on the part of Corporate Debtor to pay such claim amounts to them from its own resources. Accordingly, the question of waiver, acquiescence and abandonment of its right on the part of AOP members does not arise.

7. Section 35(1)(b) read with sub clause (f) empowers the liquidator to take into his custody or control all the assets, property, effects and actionable claims of the Corporate Debtor and sell these properties in liquidation by public auctions subject to Section 52 of the Code. The said AOP was formed for the limited purpose of development of a plot of land at Village Sate Tq. Mavel, Dist. Pune, which was owned by the other two members, namely KDC and SDA, by the Corporate Debtor, as is evident from clause 27 of the JV agreement and for this purpose, these three members entered into a JV agreement dated 24.10.2011 defining their respective obligations and entitlements. There is no dispute that, in terms of said agreement, the Corporate Debtor had a 30% interest in the AOP and was responsible for the entire construction of the housing project and thereafter sale thereof at a price fixed with mutual consent of all the parties; however, it cannot be said that the assets owned by AOP were ever owned by Corporate Debtor, who only had the right to participate in the profits thereof and settlement of its account in terms of JV agreement. Accordingly, the Corporate Debtor had only an actionable claim against the JV and its members as one of its members to have its account settled after realisation of the assets owned by JV on completion of development.
8. Further, it is also noted that the AOP also owns balance FSI 12,918.07 square meters, which remains to be developed, and the

same is required to be monetized/factored for final settlement of accounts of the members. Further, clause 13 of the JV agreement deals with how the contribution from each of the AOP member shall be taken into account for settlement of their accounts. Also, clause 32 of the JV agreement provides for reference to an arbitrator for disputes or differences arising out of or touching the JV agreement. It is also trite that this Tribunal does not have jurisdiction to deal with the matters which do not arise out of the Insolvency of the Corporate Debtor, and the present dispute in relation to the settlement account is certainly one such dispute which does not arise amongst the members on account of Insolvency of the Corporate Debtor and is required to be settled in accordance with the JV agreement and the mechanism provided thereunder.

9. Section 36(4)(a) specifically excludes assets owned by a third party even though in the possession of the Corporate Debtor from the liquidation estate of the Corporate Debtor, and Section 35(1)(f) only empowers the liquidator to sell immovable and movable property and actionable claims of the Corporate Debtor and not to auction the properties owned by AOP to settle the account of Corporate Debtor as a member of AOP.

10. It is relevant to note that M/s Little & Co. has also observed at Para 3 of Part D of its opinion that "*The scheme of the Agreement clearly indicates that the constructed inventory, receivables, project revenues and development rights formed part of the business assets of the AOP. Clause 20 of the JV Deed contemplates only sharing of profits/losses after accounting and adjustment of all liabilities and expenses incurred for development of the project*", and M/s Little & Co. has opined that *the Liquidator pursuant to the approval granted by the Stakeholders' Consultation Committee ("SCC") in its meeting*

held on 28th November 2025, was justified in proceeding with the auction of the 31 under-construction flats to the extent of the Corporate Debtor's beneficial and commercial interest in the JV project."

11. It is also relevant to note Clause 15 and 16 of the JV agreement which read as under :

> *15. The Marketing shall be done by all the parties with the consent of each other with the Third Party taking lead in the matter of marketing. The rate shall be fixed with mutual consent from time to time, which may be varied with the mutual consent of all the parties. Except sharing of the profit as agreed no party to this Agreement would be entitled to any commission/remuneration for carrying out their duty/responsibility on behalf of the AOP.*
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> *16. Anyone from first party or second party jointly with third party shall sign all sales agreements/documents for and on behalf of the AOP / Joint Venture. The Joint Venture will incur the expenses on the administration, establishment, marketing travelling telephone etc. which is required for the purpose of the business of the Joint Venture. The responsibility of funding the expenses will be on the Third Party but the expenditure on these items will be the liability of the Joint Venture. All the parties agree to render all their expertise and assistance, co-operation and guidance to the AOP.*

12. The aforesaid clause 15 and 16 clearly contemplate that the rates have to be fixed with mutual consent and all sale agreements/documents for and on behalf of the AOP shall be signed by Corporate Debtor and one from the other two members. Further, clause 25 of the JV agreement vesting responsibility of day-to-day management of the AOP with the Corporate Debtor does not make it its absolute owner and further contemplates that strategic decisions

regarding business shall be taken by all the parties together. Accordingly, the liquidator on his own representing Corporate Debtor in the process could not have executed any document conveying the title or interest in the properties owned by AOP, and the liquidator could not have decided the auction price individually in consultation with the SCC without concurrence of other AOP members. It is contended by the liquidator that the other two members had contemplated a realisable value of Rs.4,000 per sq.ft. for 31 under-constructed flats and the auction was concluded at the rate of Rs. 3,950 per sq.ft., which is close to the value assigned by AOP members to these flats. This Tribunal had also inquired from the learned Counsel for the Applicant whether they are aggrieved by the sale under auction on the ground of realisable value; the learned Counsel fairly considered that they are not alleging sale at a value less than what these flats could ordinarily have fetched at the present stage.

13. In view of the foregoing, we are of the view that the liquidator could not have auctioned the flats owned by AOP without consultation/consent of other AOP members and could not have conveyed any interest/right/title in the property owned by AOP under his sole signature. However, considering no opposition to the realised value from the other AOP members and the bona fide act of the auction buyers, we do not consider it appropriate to annul the auction sale as prayed in terms of the present Application as the power to annul such sale shall be beyond the competence of this Tribunal in the facts of the present case. Nonetheless, we consider it appropriate to direct the liquidator to keep the proceeds of both auction sales in a separate interest-bearing account. Needless to say, the liquidator or the members of AOP shall be at liberty to take appropriate remedial action in case their accounts are not settled on

account of differences arising in relation to the understanding recorded in the JV agreement. The liquidator shall have approval of this Tribunal to do so in terms of Section 33(5) of the Code.

14. In terms of the above, IA 2140 of 2026 is disposed of.

-Sd/-
Prabhat Kumar
Member (Technical)

-Sd/-
Sushil Mahadeorao Kochey
Member (Judicial)