2025 INSC 1366

**IN THE SUPREME COURT OF INDIA**
**CIVIL APPELLATE JURISDICTION**

**Civil Appeal No……. of 2025**
**[Arising out of SLP (C) No. 10758 of 2025]**

**A A ESTATES PRIVATE LIMITED**
**THROUGH ITS RESOLUTION PROFESSIONAL**
**HARSHAD SHAMKANT DESHPANDE**
**AND ANOTHER … APPELLANT(S)**

**VERSUS**

**KHER NAGAR SUKHSADAN CO-OPERATIVE**
**HOUSING SOCIETY LTD & ORS. … RESPONDENT(S)**

**J U D G M E N T**

**R. MAHADEVAN, J.**

Leave granted.

**2.** This Civil Appeal has been preferred against the final judgment and order dated 11.09.2024 passed by the High Court of Judicature at Bombay[1] in Writ Petition No. 3893 of 2024.



[1] Hereinafter referred to as "the High Court"

**3.** Appellant No. 1 is the Corporate Debtor, which is presently undergoing Corporate Insolvency Resolution Process[2] under the provisions of the Insolvency and Bankruptcy Code, 2016[3]. Appellant No. 2, Mr. Harshad Shamkant Deshpande is the Resolution Professional appointed in respect of Appellant No. 1 in the said proceedings. Before the High Court, they were arrayed as Respondent Nos. 8 and 9 in the writ petition, out of which the present appeal arises.

**4.** Respondent No. 1, Kher Nagar Sukhsadan Co-operative Housing Society Ltd., preferred the aforesaid writ petition before the High Court against Respondent Nos. 2 to 7 and the present appellants, *inter alia* seeking the following reliefs:

(a) issuance of a writ of mandamus directing Respondent Nos. 2 to 7 to grant Respondent No. 1 and/or Respondent No. 8 the requisite permissions and approvals, in accordance with law, for redevelopment of Respondent No. 1 Society in furtherance of the Development Agreement dated 10.12.2023 executed with Respondent No. 8, within such period as the Court deems fit;

(b) issuance of a writ of mandamus directing Respondent Nos. 2 to 7 to recognize and accept Respondent No. 8 as the duly appointed Developer of Respondent No. 1 Society and to disregard / reject any claims or objections raised by the appellants in relation thereto;

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[2] For short, "CIRP"

[3] For short, "IBC"

(c) issuance of a writ of mandamus directing Respondent Nos. 2 to 7 to grant Respondent No. 1 and/or Respondent No. 8 the necessary permissions and approvals, in accordance with law for redevelopment of Respondent No. 1 Society in furtherance of the Development Agreement dated 10.12.2023 executed with Respondent No. 8, within such period as the Court deems fit.

**5.** By the impugned judgment, the High Court made the Rule absolute in terms of the aforesaid prayer clauses and accordingly, disposed of the writ petition filed by Respondent No. 1.

## Factual matrix

**6.** Originally, Respondent No. 1 Society and Respondent No. 3 Maharashtra Housing & Area Development Authority[4], had entered into a Lease Deed dated 12.02.1996 thereby leasing a plot of land admeasuring 1890.31 sq.m. along with the building thereon known as "Kher Nagar Sukh Sadan" situated at Building No. 33, Survey No. 341 (part), CTS No. 607 (part), Kher Nagar Mumbai Suburban District, Bandra (E), Mumbai[5] in favour of Respondent No. 1 Society for a period of 99 years with effect from 01.04.1980.

**6.1.** On 16.10.2005, Respondent No. 1 Society executed a registered Development Agreement with Appellant No. 1 for redevelopment of the subject project. Pursuant to the same, a Power of Attorney dated 23.12.2005 was also

[4] For short, "MHADA"
[5] For short, "the subject project"

executed by Respondent No. 1 in favour of Appellant No. 1 and its directors. After disputes and negotiations, a Supplementary Development Agreement dated 09.04.2014 was executed, under which Appellant No. 1 was required to complete redevelopment within 40 months from the receipt of the commencement certificate. Appellant No. 1 obtained approvals, including No Objection Certificate from Respondent No. 3, Intimation of Disapproval (IOD) and Plan sanctions from the Municipal Corporation, after paying substantial amounts of Rs. 4,02,20,590/- and Rs. 52,70,836/- towards infrastructure charges.

**6.2.** However, redevelopment was stalled as the remaining 41 members failed to vacate the premises, and the Society continued to raise repeated allegations against Appellant No. 1. Appellant No. 1 also incurred expenses to carry out necessary repairs to the existing building, but the Society persisted in attributing the delays to the developer.

**6.3.** Disputes deepened, and in 2019, CIRP was initiated against Appellant No. 1, but was set aside on 12.06.2020. Subsequently, by order dated 06.12.2022, CIRP was admitted against Appellant No. 1 at the instance of State Bank of India, and Appellant No. 2 was appointed as the Resolution Professional.

**6.4.** In the meanwhile, Respondent No. 1 Society disregarding its own lapses and the statutory moratorium under Section 14 of the IBC, purported to terminate the Development Agreement with Appellant No. 1 and, by executing a

fresh Development Agreement and Power of Attorney dated 10.12.2023, appointed Respondent No. 8 as a new developer. The Society also sought approvals from MHADA in favour of Respondent No. 8. This was done despite the express objections raised by Appellant No. 2 in his capacity as Resolution Professional.

**6.5.** Thereafter, Respondent No. 1 Society filed WP. No. 3893 of 2024 which was disposed of by the High Court, by the impugned judgment dated 11.09.2024. Aggrieved by the same, the appellants are before this Court with the present appeal.

**Contentions of the Parties**

**7.** The learned senior counsel for the appellants submitted that the impugned judgement is in manifest disregard of the principles of natural justice. The High Court proceeded to hear the writ petition on 02.09.2024 and reserved it for orders on the very next day, without affording the appellants an opportunity to file their reply on record. Such undue haste has resulted in grave prejudice to the appellants and is contrary to settled law.

**7.1.** It was submitted that Appellant No. 1 was vested with valid and subsisting development rights in respect of the subject property arising from a registered Development Agreement dated 16.10.2005 and a Supplementary Agreement dated 09.04.2014. These rights were duly created and acted upon

through substantial investment exceeding Rs. 10.82 crores, including payments for additional buildable area, infrastructure charges, compensation to allottees, and statutory approvals from MHADA and MCGM. These investments and rights constitute valuable assets of the corporate debtor. However, delays and disputes attributable to Respondent No. 1 Society, including the refusal by a majority of members to vacate the premises and the legal proceedings initiated by dissenting members, prevented redevelopment from progressing.

**7.2.** According to the learned senior counsel, the impugned judgment, granting permission to Respondent No. 1 Society to appoint a new developer (Respondent No. 8) for redevelopment of the subject property, ignored the subsisting and registered Development Agreements and the statutory moratorium imposed under Section 14 of the IBC. It has the effect of extinguishing valuable development rights forming part of the estate of Appellant No. 1, being the corporate debtor, in violation of both contract and Code. The redevelopment dispute culminated in Respondent No. 1 Society purportedly appointing a new developer, Respondent No. 8 in December 2023 during the pendency of the CIRP of Appellant No. 1, in contravention of the moratorium imposed under Section 14 of the IBC. Instead of approaching the adjudicating authority under the Code or resolving contractual disputes through arbitration, Respondent No. 1 Society instituted a writ petition seeking a mandamus to facilitate permissions in favour of Respondent No. 8. The High

Court failed to appreciate that no document evidencing the termination of the Development Agreement was ever placed on record.

**7.3.** The learned senior counsel further submitted that the impugned judgment disregards binding precedent that prohibits adjudication of contractual disputes under Article 226 of the Constitution in the face of an arbitration agreement and wrongly validates an alleged termination that was neither effected in law nor on fact. The judgment, in effect, deprives the corporate debtor of valuable development rights recognized as assets under Section 3(27) of the IBC, at a time when resolution plan proposing the revival of the subject project was actively under consideration by the Committee of Creditors. In these circumstances, the impugned judgment not only undermines the objective of the Code but also frustrates the statutory mandate of maximizing the value of assets during the CIRP. The present appeal, therefore, raises substantial questions of law concerning the interplay between contract, moratorium, and constitutional remedies, and deserves to be allowed.

**7.4.** It was further contended that the impugned judgment has a direct and adverse impact on the CIRP of Appellant No. 1 by unilaterally extinguishing valuable development rights held by the corporate debtor. These rights, arising from duly executed and registered agreements, constitute “property” within the meaning of Section 3(27) of the IBC, which includes all legal or equitable interests, whether present or future, vested or contingent, tangible or intangible.

The development rights bestowed upon Appellant No. 1 by Respondent No. 1 Society form part of the assets of the corporate debtor and are included in the information memorandum. To divest the corporate debtor of these valuable assets would have a detrimental effect on its revival and adversely impact the interests of creditors, primarily public sector financial institutions.

**7.5.** The learned senior counsel placed reliance on ***Victory Iron Works Ltd v. Jitendra Lohia and another***[6], wherein it was held that development rights are "assets" within the meaning of Sections 18(f) and 25(2)(a) of the IBC. The Resolution Professional is duty-bound to take custody and control of such assets, and any extinguishment without due process undermines the object of the Code and the ability of the Resolution Professional and the Committee of Creditors to maximize asset value. Hence, the impugned judgment violates Section 14(1)(b) of the IBC.

**7.6.** It was further submitted that the impugned judgment violates the statutory moratorium under Section 14. The CIRP against Appellant No. 1 was admitted on 06.12.2022, upon which a moratorium was imposed interdicting the institution or continuation of proceedings against the corporate debtor. Despite being fully aware of the moratorium and the appointment of the Resolution Professional, Respondent No. 1 instituted Writ Petition No. 3893 of 2024 seeking to validate a fresh Development Agreement with Respondent No. 8. The High Court's directions, rendered during the subsistence of the moratorium, are

[6] (2023) 7 SCC 227

*non est* in law, as held in ***Alchemist Asset Reconstruction Co. Ltd v. Hotel Gaudavan (P) Ltd. and others***[7], which emphasis that Section 14 creates a statutory *status quo* to ensure the unhindered conduct of the insolvency process.

**7.7.** The learned senior counsel also highlighted the substantial financial contributions made by Appellant No. 1 towards the project, including Rs.4,02,20,590/- paid to Respondent No. 3 on 14.09.2011 towards the purchase of additional buildable area of 2961.20 sq.m., whose current value is Rs.12,78,57,213/-, and Rs.52,70,936/- paid to Respondent No. 7 on 19.10.2011 towards infrastructure charges. Further, Appellant No. 1 paid Rs. 5,66,46,428/- towards compensation to allottees between 2008 and 2016, apart from rent payments made at their request even before the IOD was issued. The cumulative expenditure incurred by Appellant No. 1, valued at around Rs. 24 crores with interest, has a direct bearing on its rights and equities in the project. The failure of the High Court to consider these significant contributions renders the impugned judgment legally unsustainable.

**7.8.** It was further pointed out that there exists a valid and subsisting arbitration agreement between Appellant No. 1 and Respondent No. 1 Society, which has already been invoked. Despite having agreed to arbitration *vide* letter dated 06.11.2021, Respondent No. 1 deliberately chose to bypass the arbitral mechanism and instead invoked the extraordinary writ jurisdiction. Such conduct amounts to forum shopping, as writ jurisdiction cannot be invoked in

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[7] 2017 SCC OnLine SC 1362

matters arising from private contractual disputes, particularly where parties have agreed to arbitration, as held in ***Empire Jute Co. Ltd and others v. Jute Corporation of India Ltd. and another***[8]***, Joshi Technologies International Inc. v. Union of India and others***[9], and ***Union of India and others v. Puna Hinda***[10]. Respondent No. 1, despite having recourse to arbitration under the Development Agreement and Supplementary Agreement, failed to exercise that remedy in a timely manner. Instead, upon commencement of the CIRP and the imposition of the moratorium, it approached the High Court to circumvent the statutory bar under Section 14 of the IBC.

**7.9.** The learned senior counsel submitted that Respondent No. 1 Society was fully aware of the CIRP proceedings and the appointment of the Resolution Professional, having received communications dated 11.04.2023 and 19.08.2023 and hence, the writ petition filed by them was nothing but an attempt to bypass the moratorium and abuse the process of law. It was also submitted that once the CIRP had commenced, the appropriate forum for Respondent No. 1 Society to raise its grievances was the Adjudicating Authority in accordance with the framework of the Code and the failure to do so reinforces that the writ proceedings were misconceived and not maintainable in law.

**7.10.** It was further submitted that the inordinate delay in execution and completion of redevelopment of the subject project is wholly attributable to

[8] (2007) 14 SCC 680
[9] (2015) 7 SCC 728
[10] (2021) 10 SCC 690

Respondent No. 1 Society. From 2005 till the initiation of CIRP proceedings, internal disputes among members, unreasonable demands for additional benefits, and persistent obstruction in handing over possession repeatedly stalled the project. These acts and omissions are recorded in contemporaneous documents and show that delays were caused by the Society's internal discord and obstructionist behaviour, despite the appellant's consistent readiness to proceed. Out of 60 allottees, 41 refused to vacate the premises, litigation was initiated by members, and several illegal constructions hampered progress. Delays also arose due to late receipt of spill-over FSI clearance and persistent demands for further revision of the redevelopment proposal between 2014 and 2019. Accordingly, no blame can be fastened on Appellant No. 1 and the delay must be attributed solely to Respondent No. 1 Society.

**7.11.** The learned senior counsel further submitted that the High Court erred in holding that the Development Agreement dated 16.10.2005 and the Supplementary Agreement dated 09.04.2014 stood terminated pursuant to the Special General Body Meeting of Respondent No. 1 Society held on 09.06.2019. This finding is patently erroneous, as no resolution effecting such termination was passed in that meeting, and no document evidencing the same was produced before the High Court. Even the alleged notice dated 02.12.2019 merely threatened termination, while the alleged public notice dated 31.12.2019 was issued during the moratorium period and without following due process. It is well settled that a registered agreement cannot be terminated unilaterally;

cancellation of such an instrument must be effected by a competent civil court. Any unilateral act purporting to terminate a registered agreement is legally untenable and without effect.

**7.12.** In conclusion, it was submitted by the learned senior counsel that the impugned judgment dated 11.09.2024 passed by the High Court is unsustainable in law and on facts and deserves to be set aside. The development rights of the corporate debtor in the subject project, being valuable assets under the Code, must be protected from arbitrary extinguishment in the interest of justice, equity, and to safeguard the sanctity of the CIRP process.

**8.** Per contra, the learned senior counsel for Respondent No. 1 submitted that the respondent is a registered Co-operative Housing Society comprising about 60 members belonging to the lower-income group, including tailors, stenographers, and drivers. The Society is located at Building No. 33, known as Sukhsadan CHS situated at Kher Nagar, Bandra (East), Mumbai. The building constructed in 1956, was declared a C-1 category (dangerous structure) under Section 264 of the Maharashtra Municipal Corporations Act, 1949[11]. Between 2006 and 2017, several notices were issued to Respondent No. 1 Society by the Municipal Corporation of Greater Mumbai (MCGM) under Sections 353B, 354, and 354A of the MMC Act as well as by MHADA, indicating that the structure was dilapidated and required redevelopment.

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[11] For short, "the MMC Act"

**8.1.** It was further submitted that a Development Agreement dated 16.10.2005 and a power of attorney dated 23.12.2005 were executed, requiring completion of construction within 24 months (18 months plus 6 months' grace), i.e., by October 2007. Despite these timelines, no progress was made for almost two decades. MHADA issued an offer letter on 24.08.2011 and a NOC on 05.01.2012. Clause 18 of the NOC mandated submission of building plans within six months, failing which the NOC would stand cancelled. A Supplementary Development Agreement dated 09.04.2014 again required Appellant No. 1 to complete the project within 40 months from commencement, pay transit rent, and provide compensation before vacating the premises. An Intimation of Disapproval (IOD) was received only on 04.09.2014 i.e., almost ten years later, subject to the condition requiring negotiation and provision of alternate accommodation to the tenants. Between 01.07.2010 and 15.12.2018, only 19 of the 60 members vacated their premises based on the transit rent paid by Appellant No. 1. The payments were subsequently stopped, forcing re-occupation of unsafe premises. Repeated correspondences were addressed to Appellant No. 1 calling upon it to register the Supplementary Agreement, execute Permanent Alternate Accommodation Agreements, and commence construction, but no steps were taken. This compelled Respondent No. 1 Society to terminate the Development and Supplementary Agreements by a resolution dated 09.06.2019. The said decision was communicated to Appellant No. 1 by

notice dated 02.12.2019 and reiterated by reply dated 06.11.2021. Consequently, a public notice confirming termination was issued on 31.12.2019.

**8.2.** The learned senior counsel further submitted that the first CIRP against Appellant No. 1 was initiated on 14.11.2019, but was subsequently vacated on 12.06.2020 after settlement. Despite this, Appellant No. 1 took no action to restart the project. Thereafter, arbitration was invoked by Appellant No. 1 on 28.10.2021, admitting termination. In such circumstances, Respondent No. 1 appointed Respondent No. 8 as the new developer on 07.11.2021, and MHADA, by letter dated 18.11.2021, permitted redevelopment through Respondent No. 8.

**8.3.** It was submitted that the second CIRP was initiated against Appellant No.1 only on 06.12.2022 at the instance of State Bank of India for a debt of Rs.130 crores, well after termination. Thereafter, on 10.12.2023, a Development Agreement was executed between Respondent Nos. 1 and 8, and possession was handed over. Respondent No. 8 commenced redevelopment, including demolition, payment of transit rent, and piling work. Claiming protection under moratorium, Appellant No. 2, the Resolution Professional, addressed letters to MHADA not to entertain any proposal for redevelopment of Respondent No. 1. Therefore, Respondent No. 1 filed Writ Petition No. 3893 of 2024 before the High Court seeking directions to Respondent Nos. 2 to 7 (statutory authorities) for redevelopment permissions. However, no relief was sought against the appellants.

**8.4.** It was submitted that after serving an advance copy of the writ petition and in the presence of the counsel for appellants, the High Court by judgment dated 11.09.2024, disposed of the writ petition and directed the authorities to grant approvals for redevelopment within two months. Pursuant thereto, Respondent No. 8 entered into agreements for alternate accommodation with members in January and February 2025, demolished the building, and commenced the redevelopment work. In April 2025, a commencement certificate was obtained by Respondent No. 8, and piling work was underway. While so, this Court issued notice and directed the parties to maintain *status quo* on 15.04.2025, in consequence of which, MHADA revoked the commencement certificate granted to Respondent No. 8 citing the interim order of this Court. According to the learned senior counsel, the present appeal filed belatedly on 10.02.2025, i.e., seven months after demolition, was clearly an afterthought to obstruct redevelopment.

**8.5.** The learned senior counsel contended that the submission of the appellants that their development rights are assets protected under Section 14 of the IBC is clearly misconceived. The development agreements stood terminated by valid resolutions long before the second CIRP (December 2022), possession of the property always remained with the Society, and no physical possession was ever given to Appellant No.1. Therefore, no “asset” or “occupied property” of the corporate debtor existed to attract moratorium protection.

**8.6.** The learned senior counsel relied on ***Rajendra K. Bhutta v. Maharashtra Housing and Area Development Authority and another***[12] to contend that the moratorium under section 14(1)(d) extends only to properties "occupied" by the corporate debtor – requiring actual physical possession – which never occurred in the present case. It was further submitted that the ratio of ***Victory Iron works*** is inapplicable both on facts and in law to the present case as that case involved a composite arrangement including financial assistance, shareholding, sale certificates, and possession, thereby conferring quasi-ownership rights. None of these features exist here – no financial assistance was given by Appellant No. 1 to Respondent No. 1, no shareholding or transfer of interest occurred, the Development Agreement was terminated, and possession was never delivered.

**8.7.** It was further pointed out that the same appellant and Resolution Professional previously relied on an identical plea of moratorium in another redevelopment (Govind Tower) which tragically collapsed in Mumbai. The Bombay High Court rejected that contention, permitting redevelopment through a new developer, and this Court upheld the said decision by order 07.02.2025 in SLP (C) No. 18909 of 2024. In yet another matter concerning Tagore Nagar, Appellant No. 1 failed to redevelop a society and claimed immunity under the IBC. The High Court, by its judgment dated 21.03.2024, noted the chronic failures of Appellant No.1 and permitted redevelopment through another developer. The SLP filed against the same was dismissed as withdrawn on

[12] (2020) 13 SCC 208

28.04.2025 in SLP (C) No. 24807 of 2024. All these orders have been suppressed by the appellants, thereby disentitling them to any relief under Article 136 as held in ***G. Narayanaswamy Reddy (Dead) By LRs. and another v. Government of Karnataka and another***[13].

**8.8.** According to the learned senior counsel, the appellants' plea of breach of natural justice is unfounded. The writ petition was served in advance, the appellants were represented, and they neither filed a counter-affidavit nor sought time. They consciously chose not to respond, thereby waiving their right to reply. The High Court correctly recorded their appearance and submissions. Hence, there is neither procedural irregularity nor prejudice.

**8.9.** It was further submitted that for nearly two decades, Appellant No. 1 failed to fulfil its two core obligations *viz.*, (i) payment of transit rent and (ii)timely completion of redevelopment. Out of 60 members, 41 never received any rent; 19 received it only briefly before stoppage. This forced members to reoccupy unsafe premises despite repeated demolition notices under the MMC Act. Appellant No.1's conduct has been exploitative and obstructive, depriving low-income members of their fundamental right to life and shelter under Article 21 of Constitution of India. In contrast, Respondent No. 8 has provided alternate accommodation, paid transit rent, and commenced redevelopment work. To stall this project now would cause grave and irreparable hardship to innocent members.

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[13] (1991) 3 SCC 261

**8.10.** It was lastly submitted that Appellant No. 1's development rights were at best contingent upon fulfilment of contractual obligations. With total failure of consideration, no enforceable or vested rights accrued. Therefore, the appeal is devoid of merit – factually and legally – and any interference at this stage would unjustly penalize 60 low-income families who have already vacated and are awaiting their rehabilitated homes.

**9.** The learned counsel appearing for Respondent No. 8 – Tri Star Development LLP, submitted that Respondent No. 8 is the duly appointed developer of Respondent No. 1 Society and has acquired lawful rights to undertake redevelopment of the subject property. By the impugned judgment dated 11.09.2024, the High Court directed Respondent Nos. 2 to 7 to grant necessary permissions and approvals for the redevelopment of the Society to Respondent No. 8.

**9.1.** It was further submitted that the writ petition before the High Court became necessary due to the conduct of Appellant No. 2, who, in his capacity as Resolution Professional of Appellant No. 1, had addressed communications to various authorities seeking to obstruct the redevelopment being carried out by Respondent No. 8.

**9.2.** The learned counsel submitted that Respondent No. 8 has achieved substantial progress in the project that Appellant No. 1 failed to execute for nearly two decades. Respondent No. 8 has demolished the old unsafe structure,

paid transit rent for one year from 01.11.2024, disbursed corpus amounts to the original occupants, many of whom belong to modest means such as drivers and tailors, expended about Rs. 33.65 crores towards redevelopment works, and obtained all requisite permissions and approvals from statutory authorities.

**9.3.** It was further submitted that the development agreement is not an asset or property of Appellant No. 1 (corporate debtor). The contention of Appellant No.1 that the Development Agreements of 2005 and 2014 conferred exclusive and subsisting rights forming part of the assets to be included in any resolution plan is wholly untenable, as those agreements had been terminated on three distinct occasions viz., on 09.06.2019, 02.12.2019, and 06.11.2021 – all prior to the initiation of the second and subsisting CIRP, and none during the operation of any moratorium under Section 14 of the IBC. Consequently, in the absence of a subsisting development agreement, the appellants can claim no right, title or interest in the redevelopment project, nor can the same be treated as part of the assets of the corporate debtor.

**9.4.** The learned counsel contended that the reliance placed by the appellants on ***Victory Iron Works*** is misconceived, as in that case, the corporate debtor possessed a bundle of extant rights in immovable property arising from several agreements with the landowner, which collectively partook the character of ownership rights and were rightly treated as assets in insolvency. In the present case, however, no such subsisting rights exist.

**9.5.** Lastly, it was submitted that the contention of the appellants regarding violation of natural justice is equally untenable, since the appearance of their counsel and their participation in the High Court proceedings were duly recorded in the impugned judgment.

**9.6.** On these grounds, it was prayed that the appeal be dismissed, affirming the impugned judgment of the High Court dated 11.09.2024, and Respondent No. 8 be permitted to continue and complete redevelopment in accordance with law.

**Analysis and Determination**

**10.** We have heard the learned counsel appearing for all the parties and perused the materials available on record.

**11.** This Court, by order dated 15.04.2025, directed all the parties to maintain *status quo* with respect to the subject property and the redevelopment work.

**12.** The undisputed facts reveal that Appellant No. 1 is a developer, who had originally entered into a Development Agreement with Respondent No. 1 Society on 16.10.2005. Under the said agreement, Appellant No. 1 was required to demolish the existing building and reconstruct a new building in its place. To facilitate vacant possession of the existing structure, the developer was obligated to pay rent compensation and transportation charges to the members of the

Society. The redevelopment was stipulated to be completed within a period of 18 months, with an additional grace period of 6 months, making a total of 24 months. For better appreciation, the relevant clauses of the Development Agreement are reproduced below:

> *"13……..*
> *(a) The Developers shall be given the possession on the said plot of land for the purposes of the development of the said plot of land.*
> *(b) The society and the members shall vacate the said building and move to the temporary alternative accommodation of their choice as per mutually agreed terms for the purpose of development of the said plot of land within 30 days of intimation received from the Developers. However, the Developers shall provide monthly compensation and also shifting charges to each member separately towards vacating the existing Nat and going to temporary alternative accommodation and returning back to the new permanent accommodation in the newly constructed building. At the time of shifting the Developer has agreed to give each members rent compensation of Rs.10,000/- per month for the period of 18 months plus transportation charges of Rs.5,000/- totaling to Rs.1,85,000/- (Rupees One Lakh Eighty Five Thousand Only). It is hereto agreed that if the redevelopment work is prolonged beyond a period of 18 months then the Developer shall be entitled to pay the rent for additional period at the rate of Rs. 10,000/- per month to each of the member till the date of completion of project. If for any reason the work gets prolonged beyond a period of 18 months then the Developer shall be able to pay the rent for additional period beyond the stipulated period of 18 months at the rate of Rs.12,000/- per month to the existing members till the date of handing over possession of their premises.*
>
> *…*
> *e) In the event of failure on the part of the developer to complete the work within a period of 18 months plus a grace period of 6 months totaling to a total duration of 24 months, society shall be entitled to take following, action*
>
> *a) issue of notice of 30 days to the developer to complete balance work within a reasonable time.*
>
> *b) In the event of failure of Developer to expedite the progress of work within a reasonable time of 3 months, take following action by passing a unanimous resolution in its General Body.*
>
> *i) Appoint jointly chartered value to work out the balance cost of construction work of rehab building for which the profession fees will be borne by the developer.*

*ii) Appoint a contractor to complete the balance work of rehab Wing only and charge the same to the Developer.*

*iii) Developer shall make the payment of balance work of rehab building to the Society within 30 days time after completion of work and its intimation to the developer. In case of failure of payment to the Society the society reserves the right to encash the Bank Guarantee.*

*iv) The rights of developer on his quota of flats shall remain intact on payment of construction cost of balance work to the society. It is however specifically agreed that the responsibility and right of completing the balance work of sale building as also the rights of sale in Sale building shall continue to remain with the developer and society shall not obstruct the developer in any way of continue the work nor the sale of sale building. The Power of Attorney issued to the Developer shall continue to remain in force.*

*....*

*(m)…….*

*That in consideration of the Developers agreeing to construct/reconstruct the said new building and their agreement to incur the costs and expenditures as listed in clauses (a) to (m) hereinabove the society and the granted/ allotted/transferred development rights to the Developers of the said plot of land and the said building and the rights to develop an construct the said new building on the said plot of land and the right to construct and develop and retain and sale and appropriate sale processed of the balance area remaining (which balance area is hereinafter referred to as the "said area available for sale") after accommodating the members as per the terms and conditions of these presents.*

*..."*

**12.1.** Admittedly, Appellant No. 1 failed to complete the redevelopment within the stipulated time. It was only in 2012 that Appellant No. 1 obtained the requisite NOC for redevelopment, nearly seven years after execution of the original agreement. Thereafter, on 09.04.2014, a Supplementary Development Agreement was executed between the parties, extending the completion period to 40 months from the date of receipt of the commencement certificate from Respondent No. 7 (the Planning Authority), and revising the rent and hardship

compensation payable to the Society members. The relevant clauses of the Supplementary Development Agreement read as under:

> *"5.1. Pay the following amounts:-*
> *5.1.1. HARDSHIP COMPENSATION:- The hardship compensation as stated in clause (c) on page 8 of development agreement dated 16.10.2005, be further revised to Rs. 35,00,000/- (Rupees Thiry five lakhs Only) to each member in lieu of the earlier agreed amount of Rs. 2,50,000/- (Rupees two lakh fifty thousand only) per member. The said hardship compensation to be paid as per schedule mentioned herein below:-*
> *5.1.2. 70% (Rs. 24,50,000/-) of total hardship compensation as mentioned herein above shall be paid within 7 days after the last member has vacated their premises and society has handed over the possession of all the premises and the building and the plot to the developer for carrying out redevelopment work. Developer will start demolition of the building only after giving the initial corpus fund as mentioned herein above.*
> *5.1.3. Balance hardship compensation (Rs. 10,50,000/-) shall be paid to the members at the time of possession of permanent alternative accommodation in the new building.*
> *5.1.4....*
>
> *5.2. RENT COMPENSATION:- The Developer shall not be responsible to provide any temporary alternate accommodation during the period of redevelopment of the said property and the Members shall procure the same at their entire cost and expense. However the Developer shall pay to all the Members rent / compensation for accruing the temporary alternate accommodation in the following manner:*
> *5.2.1. Rent compensation payable under clause (b) on page no. 7 of the development agreement dated 16.10.2005 be revised to Rs. 35,000/- (Rupees Thirty five thousand only) per month for 24 months as follows:-*
> *(a) Developer shall pay 12 month rent in advance @ Rs. 35,000/- per month for amounting to Rs. 4,20,000/- to each member with effective from date of vacating and handing over possession of existing premises to the developer.*
> *(b) Developer shall pay balance 12 months rent by way of post dated cheques (PDC)*
>
> *It is clarified that 19 members out of 60 have already vacated the respective premises and handed over possession of their premises to the developer after taking rent compensation and Developer is paying rent compensation regularly for 19 members. The schedule of vacating balance 41 members is as follows:*
> *(a) Rent compensation to be taken by the members after obtaining the IOD from MCGM. Accordingly developer shall give 1 month notice to the members for collecting the rent and vacated their premises*

*(b) To vacate the respective premises and handover peaceful possession to the developer after taking rent compensation*
*(c) Developer shall issue 1 month advance post dated cheques before expiry of rent compensation of 24 months for further rent.*

*5.2.2. The above rent compensation shall be paid and be effective from the date of vacating and handing over possession of existing premises to the Developer. Developer shall increase 10% rent after completion of 30 months period from the date of commencement certificate. If the construction work of proposed rehab building is not completed within 40 months from the date of commencement certificate, increase rent after 40 months to be decided mutually. Developer shall pay rent compensation in extended period until delivering of possession by the Developer of new flat in new building.*

*5.2.3. BROKERAGE & SHIFTING CHARGES:- Developer shall pay an amount of Rs. 1,00,000/- (Rupees One lakh only) towards brokerage charges, shifting, re-shifting during the entire period of construction and same to be given along with rent compensation to each member on handing over vacate possession of premises by individual members.*
*....*

*6.1. The Developer shall complete the project in the manner provided in this agreement by the Completion Date. It is clarified that the completion of the project by the Completion Date shall also mean the obligation of the Developer to provide to each of the Members, possession of the premises comprised in the society's premises (i.e. rehab building) and the Car Parking Spaces comprised in the Society's Car Parking Spaces to be allotted as per norms of MCGM with occupation certificate within 40 months from the date of commencement certificate from MCGM."*

Despite these modifications, the reconstruction work did not commence due to disputes between the parties.

**12.2.** Subsequently, on 14.11.2019, Corporate Insolvency Resolution Process was initiated against Appellant No. 1, which was, however, set aside on 12.06.2020 pursuant to a settlement between the parties. Meanwhile, Respondent No. 1 Society issued communication(s) / notice(s) terminating the

development agreement entered into with Appellant No. 1, and on 07.11.2021, appointed Respondent No. 8 as the new developer for the subject project. A second CIRP proceedings were initiated against Appellant No. 1 and Appellant No. 2 was appointed as the Resolution Professional on 06.12.2022. Thereafter, Respondent No. 1 executed a fresh Development Agreement with Respondent No. 8 on 10.12.2023. However, owing to the pendency of the second CIRP and the moratorium operating under Section 14 of the IBC, the authority concerned revoked the permission already granted, due to which, Respondent No. 8 was unable to proceed with the redevelopment work. Therefore, Respondent No.1 Society filed W.P. No. 3893 of 2024 to direct the authorities concerned to grant approvals / permissions to Respondent No. 8. The High Court disposed of the writ petition in favour of Respondent No. 1. Challenging the same, the present appeal came to be filed.

**13.** On the basis of the pleadings and the rival submissions, the following issues arise for consideration in this appeal:

(i) Whether the termination of the Development Agreement dated 16.10.2005 and Supplementary Agreements dated 23.12.2005 and 09.04.2014 by Respondent No. 1 Society prior to the initiation of the second CIRP was valid and effective in law.

(ii) Whether the aforesaid Development Agreement and the Supplementary Agreements constitute “assets” or “property” of the

corporate debtor so as to attract the protection of moratorium under Section 14 of the IBC.

(iii) Whether the High Court was justified in allowing the writ petition filed by Respondent No. 1 Society and directing the statutory authorities to process and grant approvals in favour of Respondent No.8 for redevelopment of the subject project.

(iv) Whether the proceedings before the High Court stood vitiated by violation of the principles of natural justice, as alleged by the appellants.

**14.** We shall now discuss the issues in detail as follows:

**Issue No. 1**

**Whether the termination of the Development Agreement dated 16.10.2005 and Supplementary Agreements dated 23.12.2005 and 09.04.2014 by Respondent No. 1 Society prior to the initiation of the second CIRP was valid and effective in law.**

**15.** According to the appellants, the termination of the Development Agreement dated 16.10.2005 and the Supplementary Agreements dated 23.12.2005 and 09.04.2014 by Respondent No. 1 Society was arbitrary, invalid, and contrary to the contractual terms. It was contended that once the agreement conferred an exclusive right upon the developer to undertake redevelopment, such right could not be unilaterally withdrawn. It was further submitted that the

Society's subsequent appointment of a new developer amounts to interference with the corporate debtor's assets, which are protected under the IBC.

**15.1.** Conversely, the Society asserts that the termination was validly and lawfully effected after prolonged and repeated defaults on the part of the developer. The record indicates that despite the execution of the Development Agreement and subsequent Supplementary Agreements, the developer did not commence or complete any substantial portion of the redevelopment work, thereby defeating the very object of the project. The stipulated period of forty months from the receipt of the commencement certificate had long expired, and no satisfactory explanation was offered for such an inordinate delay.

**15.2.** The correspondence exchanged between the parties demonstrates that the Society repeatedly called upon the developer to fulfil its obligations. Notices of default and reminders were issued over several years, culminating in termination notices dated 09.06.2019, 02.12.2019, and 06.11.2021. These communications specifically cited persistent non-performance, failure to pay transit rent, and failure to commence redevelopment. Out of 60 members, 41 received no rent while 19 received it only intermittently. Such chronic default justified the Society's decision to terminate, which was duly communicated and never revoked.

**15.3.** In contract law, time is of the essence in a redevelopment agreement, whose object is timely rehabilitation of displaced members. Prolonged delay defeats the foundation of the contract and constitutes a material breach entitling

the owner to terminate. The right to terminate for default was expressly reserved in the Development Agreement and the Supplementary Agreements.

**15.4.** The termination was thus effected after due notice and prolonged default, and cannot be termed arbitrary or mala fide. The Society, being the owner of the property and guardian of the members' welfare, cannot be compelled to indefinitely await performance from a defaulting developer. The IBC is not intended to freeze urban welfare projects or protect commercial indolence at the cost of citizens awaiting rehabilitation.

**15.5.** In ***Gujarat Urja Vikas Nigam Ltd v. Amit Gupta and others***[14], this Court examined the NCLT's jurisdiction under Section 60(5)(c) of the IBC and held that the power to restrain or set aside termination is confined to cases where –

(i) the termination is solely on account of insolvency (for example, by an ipso facto clause); and

(ii) such termination would inevitably result in the corporate death of the debtor by depriving it of its sole or central contract essential to the success of the CIRP.

The Court cautioned that the NCLT must refrain from interfering with valid contractual terminations, based on breaches unrelated to insolvency. The following observation is pertinent:

> ***"176.*** *Given that the terms used in Section 60(5)(c) are of wide import, as recognised in a consistent line of authority, we hold that NCLT was empowered to restrain the appellant from terminating PPA. However, our decision is*

[14] (2021) 7 SCC 209

*premised upon a recognition of the centrality of PPA in the present case to the success of CIRP, in the factual matrix of this case, since it is the sole contract for the sale of electricity which was entered into by the corporate debtor. In doing so, we reiterate that NCLT would have been empowered to set aside the termination of PPA in this case because the termination took place solely on the ground of insolvency. The jurisdiction of NCLT under Section 60(5)(c) of IBC cannot be invoked in matters where a termination may take place on grounds unrelated to the insolvency of the corporate debtor. Even more crucially, it cannot even be invoked in the event of a legitimate termination of a contract based on an ipso facto clause like Article 9.2.1(e) herein, if such termination will not have the effect of making certain the death of the corporate debtor. As such, in all future cases, NCLT would have to be wary of setting aside valid contractual terminations which would merely dilute the value of the corporate debtor, and not push it to its corporate death by virtue of it being the corporate debtor's sole contract (as was the case in this matter's unique factual matrix)."*

**15.6.** The above reasoning was reiterated in ***Tata Consultancy Services Ltd v. SK Wheels Pvt. Ltd. Resolution Professional, Vishal Ghisulal Jain*** [15], where this Court held that NCLT's residuary jurisdiction cannot be invoked if the termination of a contract arises from deficiencies or defaults independent of insolvency. Intervention is justified only where the termination would make certain the corporate death of the debtor. The following paragraphs are apposite in this regard:

*"**28.** In Gujarat Urja [Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta, (2021) 7 SCC 209 : (2021) 4 SCC (Civ) 1, the contract in question was terminated by a third party based on an ipso facto clause i.e. the fact of insolvency itself constituted an event of default. It was in that context, this Court held that the contractual dispute between the parties arose in relation to the insolvency of corporate debtor and it was amenable to the jurisdiction of NCLT under Section 60(5)(c). This Court observed that : (SCC pp. 262-63, para 69)*

> *"69. … NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of corporate debtor… The nexus with the insolvency of corporate debtor must exist."*

*(emphasis supplied)*

[15] (2022) 2 SCC 583

***Thus, the residuary jurisdiction of NCLT cannot be invoked if the termination of a contract is based on grounds unrelated to the insolvency of corporate debtor.***

***29. It is evident that the appellant had time and again informed corporate debtor that its services were deficient, and it was falling foul of its contractual obligations. There is nothing to indicate that the termination of the facilities agreement was motivated by the insolvency of corporate debtor. The trajectory of events makes it clear that the alleged breaches noted in the termination notice dated 10-6-2019 were not a smokescreen to terminate the agreement because of the insolvency of corporate debtor****. Thus, we are of the view that NCLT does not have any residuary jurisdiction to entertain the present contractual dispute which has arisen dehors the insolvency of corporate debtor. In the absence of jurisdiction over the dispute, NCLT could not have imposed an ad interim stay on the termination notice. NCLAT has incorrectly upheld [Tata Consultancy Services Ltd. v. Vishal Ghisulal Jain, 2020 SCC OnLine NCLAT 484] the interim order [BMW Financial Services (P) Ltd. v. S.K. Wheels (P) Ltd., 2019 SCC OnLine NCLT 28273] of NCLT.*

***30.*** *While in the present case, the second issue formulated by this Court has no bearing, we would like to issue a note of caution to NCLT and NCLAT regarding interference with a party's contractual right to terminate a contract. Even if the contractual dispute arises in relation to the insolvency, a party can be restrained from terminating the contract only if it is central to the success of CIRP. Crucially, the termination of the contract should result in the corporate death of corporate debtor."*

**15.7.** Applying these principles, the termination in the present case was not occasioned by the insolvency of the corporate debtor but by its persistent non-performance. Letters issued by the Society, including one dated 31.05.2019, record that continuation of the agreement was conditional upon compliance by the developer, failing which the contract would stand cancelled. These defaults occurred well before initiation of the CIRP. Thus, the termination was based on legitimate grounds unrelated to insolvency.

**15.8.** Moreover, the redevelopment agreement was not the sole or life-sustaining contract of the corporate debtor. Appellant No. 1 (AA Estates) was engaged in multiple projects; continuation of this particular redevelopment was not significant to the success of the CIRP. The Expression of Interest issued by the Resolution Professional did not even list this project among the corporate debtor's assets. Hence, termination of the contract neither arose from insolvency nor imperiled the corporate debtor's survival. It was a lawful termination for non-performance, falling outside the jurisdiction of the NCLT under Section 60(5)(c).

**15.9.** The contention raised on behalf of the appellants that the termination became ineffective upon initiation of the first CIRP in 2019 is untenable. The said CIRP was set aside in 2020 upon settlement, and no act of revival or affirmation of the terminated contract occurred thereafter. Consequently, the subsequent termination notices stood valid and operative in their own right.

**15.10.** Reliance placed on ***Rajendra K. Bhutta*** *(supra)*, is wholly misplaced. In that case, Section 14(1)(d) of the IBC applied because the corporate debtor was in actual occupation of the property under a subsisting joint development licence, and the termination sought to recover such occupied property during the moratorium. In the present case, as mentioned earlier, Appellant No. 1 – AA Estates never obtained physical possession. The Society and its members remained in continuous occupation. Termination was effected before the CIRP and was not a recovery during moratorium.

**15.11.** Section 52 of the Indian Easements Act, 1882 defines a "licence" as a right to do something upon immovable property of another without creating an easement or interest therein. In ***Associated Hotels of India Limited v. R.N. Kapoor***[16], this Court clarified that a licence merely permits use of premises for a particular purpose while possession and control remain with the owner. The relevant paragraph of the said judgment is extracted below:

> *"28. Under the aforesaid section, if a document gives only a right to use the property in a particular way or under certain terms while it remains in possession and control of the owner thereof, it will be a licence. The legal possession, therefore, continues to be with the owner of the property, but the licensee is permitted to make use of the premises for a particular purpose. But for the permission, his occupation would be unlawful. It does not create in his favour any estate or interest in the property."*

**15.12.** Similarly, in ***Qudrat Ullah v. Municipal Board, Bareilly***[17], it was held that where exclusive possession is not transferred, the transaction is a licence, not a lease.

**15.13.** In light of these authorities and the terms of the Development Agreement, the developer was granted only a limited licence to enter and use the land for redevelopment. No estate, proprietary right, or transferable interest was created; ownership and legal possession always remained with the Society. Consequently, the so-called "development rights" of the corporate debtor constitute, at best, a contractual permission and not an "interest in property" within the meaning of Section 14(1)(d) of the IBC.

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[16] AIR 1959 SC 1262
[17] (1974) 1 SCC 202

**15.14.** Accordingly, this Court holds that the termination of the Development Agreement dated 16.10.2005 and the Supplementary Agreements dated 23.12.2005 and 09.04.2014 by Respondent No. 1 Society was valid, lawful, and effective in law. No subsisting contractual or proprietary right survived in favour of the corporate debtor on the date of initiation of the second CIRP. Consequently, the NCLT lacked jurisdiction under Section 60(5)(c) of the IBC to interfere with such termination.

**Issue No. 2**

**Whether the Development Agreement and the Supplementary Agreements constitute "assets" or "property" of the corporate debtor so as to attract the protection of moratorium under Section 14 of the IBC.**

**16.** The learned senior counsel for the appellants contended that the rights arising from the Development Agreement executed between Appellant No. 1 (developer) and Respondent No. 1 Society constitute an "asset" or "property" of the corporate debtor within the meaning of Section 14 of the IBC, thereby attracting the protection of moratorium upon commencement of the CIRP.

**16.1.** It is not in dispute that the corporate debtor is entitled to the protection of Section 14 of the IBC, which mandates that on the insolvency commencement date, the Adjudicating Authority shall by order declare a moratorium prohibiting, *inter alia* –

(a) the institution or continuation of suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) the transfer encumbrance, alienation or disposal by the corporate debtor of any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property; and

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

**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.

**16.3.** In ***Sushil Kumar Agarwal v. Meenakshi Sadhu and others***[18], this Court observed that "development agreements" are not of a uniform kind. While some merely create contractual rights to construct without any proprietary interest, others may, depending upon their terms, confer valuable proprietary or possessory rights in land or the constructed area. The Court emphasized that the determination depends on the nature and extent of rights created under the specific agreement, and whether such rights are capable of being specifically enforced or transferred. The relevant extracts are as follows:

> *"17. The expression "development agreement" has not been defined statutorily. In a sense, it is a catch-all nomenclature which is used to be describe a wide range of agreements which an owner of a property may enter into for development of immovable property. As real estate transactions have grown in complexity, the nature of these agreements has become increasingly intricate. Broadly speaking, (without intending to be exhaustive), development agreements may be of various kinds:*
> ***(i) An agreement may envisage that the owner of the immovable property engages someone to carry out the work of construction on the property for monetary consideration. This is a pure construction contract;***
> *(ii) An agreement by which the owner or a person holding other rights in an immovable property grants rights to a third party to carry on development for a monetary consideration payable by the developer to the other. In such a situation, the owner or right holder may in effect create an interest in the property in favour of the developer for a monetary consideration;*
> *(iii) An agreement where the owner or a person holding any other rights in an immovable property grants rights to another person to carry out development. In consideration, the developer has to hand over a part of the constructed area to the owner. The developer is entitled to deal with the balance of the constructed area. In some situations, a society or similar other association is formed and the land is conveyed or leased to the society or association;*
> *(iv) A development agreement may be entered into in a situation where the immovable property is occupied by tenants or other right holders. In some cases, the property may be encroached upon. The developer may take on the entire responsibility to settle with the occupants and to thereafter carry out construction; and*

[18] (2019) 2 SCC 241

*(v) An owner may negotiate with a developer to develop a plot of land which is occupied by slum dwellers and which has been declared as a slum. Alternately, there may be old and dilapidated buildings which are occupied by a number of occupants or tenants. The developer may undertake to rehabilitate the occupants or, as the case may be, the slum dwellers and thereafter share the saleable constructed area with the owner.*

***18. When a pure construction contract is entered into, the contractor has no interest in either the land or the construction which is carried out. But in various other categories of development agreements, the developer may have acquired a valuable right either in the property or in the constructed area. The terms of the agreement are crucial in determining whether any interest has been created in the land or in respect of rights in the land in favour of the developer and if so, the nature and extent of the rights.***

*19. In a construction contract, the contractor has no interest in either the land or the construction carried out on the land. But, in other species of development agreements, the developer may have acquired a valuable right either in the property or the constructed area. There are various incidents of ownership of in respect of an immovable property. Primarily, ownership imports the right of exclusive possession and the enjoyment of the thing owned. The owner in possession of the thing has the right to exclude all others from its possession and enjoyment. The right to ownership of a property carries with it the right to its enjoyment, right to its access and to other beneficial enjoyments incidental to it. (B Gangadhar v BG Rajalingam, (1995) 5 SCC 239). Ownership denotes the relationship between a person and an object forming the subject matter of the ownership. It consists of a complex of rights, all of which are rights in rem, being good against the world and not merely against specific persons. There are various rights or incidents of ownership all of which need not necessarily be present in every case. They may include a right to possess, use and enjoy the thing owned; and a right to consume, destroy or alienate it. (Swadesh Ranjan Sinha v Haradeb Banerjee, (1991) 4 SCC 572). An essential incident of ownership of land is the right to exploit the development, potential to construct and to deal with the constructed area. In some situations, under a development agreement, an owner may part with such rights to a developer. This in essence is a parting of some of the incidents of ownership of the immovable property. There could be situations where pursuant to the grant of such rights, the developer has incurred a substantial investment, altered the state of the property and even created third party rights in the property or the construction carried out to be carried out. There could be situations where it is the developer who by his efforts has rendered a property developable by taking steps in law. In development agreements of this nature, where an interest is created in the land or in the development in favour of the developer, it may be difficult to hold that the agreement is not capable of being specifically performed. For example, the*

> *developer may have evicted or settled with occupants, got land which was agricultural converted into non-agricultural use, carried out a partial development of the property and pursuant to the rights conferred under the agreement, created third party rights in favour of flat purchasers in the proposed building. In such a situation, if for no fault of the developer, the owner seeks to resile from the agreement and terminates the development agreement, it may be difficult to hold that the developer is not entitled to enforce his rights. This of course is dependent on the terms of the agreement in each case. There cannot be a uniform formula for determining whether an agreement granting development rights can be specifically enforced and it would depend on the nature of the agreement in each case and the rights created under it."*

**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. The following paragraphs are apposite in this regard:

> *"23. The conspectus of the aforesaid judgments would show that the expression "occupied by" would mean or be synonymous with being in actual physical possession of or being actually used by, in contra-distinction to the expression "possession", which would connote possession being either constructive or actual and which, in turn, would include legally being in possession, though factually not being in physical possession. Since it is clear that the joint development agreement read with the deed of modification has granted a licence to the developer (corporate debtor) to enter upon the property, with a view to do all the things that are mentioned in it, there can be no gainsaying that after such entry, the property would be "occupied by" the developer. Indeed, this becomes clear from the termination notice dated 12-1-2018, issued by MHADA to the developer, in which it is stated:*
>
> > *"35. This is therefore to inform you that on the expiry of 30 days from the date of receipt of this notice, the joint development agreement dated 10-4-2008 and deed of confirmation and modification dated 3-11-2011 and letter dated 18-1-2014 stand terminated and you will not be allowed to enter the property and your authority/licence to enter the property or remain thereupon is terminated. MHADA thereupon will not allow you to do anything on or in relation to the property and MHADA shall take possession of all the structures standing at whatever stage they are situated at Goregaon (West) and bearing CTS No. ..."*

**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.

**16.7.** As already stated, in the present case, it is evident that the Development Agreement dated 16.10.2005 and the Supplementary Agreements dated 23.12.2005 and 09.04.2014 stood terminated by Respondent No. 1 Society on

account of persistent default and failure of the developer to commence or complete the project. The termination was duly communicated through letters dated 09.06.2019, 02.12.2019 and 06.11.2021 – each preceding the initiation of the second CIRP on 06.12.2022. No subsisting challenge to such termination was pending when CIRP commenced. Upon such termination, the corporate debtor was left, at best, with a claim for damages, which is a mere unsecured monetary claim and not a proprietary right capable of protection under Section 14.

**16.8.** The Development Agreement expressly stipulates that redevelopment of accommodation for the society members was a contractual obligation of the developer and did not create any proprietary right in its favour. Only upon full and proper performance would the developer earn a "free-sale" entitlement, which alone could be treated as an asset. As the developer failed to perform its obligations, no contingent or beneficial right ever crystallized in its favour.

**16.9.** The record further reveals that possession of the property at all times remained with Respondent No. 1 Society. No actual, constructive, or juridical possession was ever transferred to Appellant No. 1. The developer never commenced demolition, construction, or payment of rent and compensation as required under the agreement. In absence of possession or any incident of ownership, Section 14(1)(d) has no application.

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

**16.11.** It is well settled that the moratorium under Section 14 does not revive terminated contracts or protect rights that have ceased to exist prior to insolvency. The protection is intended to preserve the existing value of the corporate debtor's estate, not to resurrect lapsed or extinguished interests. Extending moratorium to such non-existent rights would defeat commercial certainty and the sanctity of lawful termination under general law.

**16.12.** Accordingly, we hold that the Development Agreement dated 16.10.2005 and the Supplementary Agreements dated 23.12.2005 and 09.04.2014 do not constitute "assets" or "property" of the corporate debtor within the meaning of Section 14 of the IBC, as the same stood terminated prior to initiation of the second CIRP. No proprietary, possessory, or enforceable right subsisted in favour of the corporate debtor on the insolvency commencement date. The moratorium declared under Section 14 would therefore not restrain Respondent No. 1 Society or its members from proceeding with redevelopment in accordance with law.

**Issue No. 3**

**Whether the High Court was justified in allowing the writ petition filed by Respondent No. 1 Society and directing the statutory authorities to process and grant approvals in favour of Respondent No. 8 for redevelopment of the subject project.**

**17.** With respect to the maintainability of the writ petition, the principal grievance of the appellants is that the High Court exceeded its jurisdiction in entertaining the writ petition filed by Respondent No. 1 Society and issuing directions to the planning and municipal authorities to process and grant approvals in favour of Respondent No. 8. The appellants contend that once the CIRP had commenced against the corporate debtor, the High Court ought to have deferred to the jurisdiction of the National Company Law Tribunal and refrained from passing any order that could interfere with the moratorium under Section 14 of the IBC. The appellants further state that the writ petition involved disputed questions of fact concerning the validity of termination and ownership of redevelopment rights, which could not have been adjudicated in proceedings under Article 226 of the Constitution.

**17.1.** On the other hand, Respondent No. 1 Society contends that the High Court's intervention was necessitated by the paralysis caused by the pendency of CIRP and the refusal of the statutory authorities to process its proposal for redevelopment through the newly appointed developer, Respondent No. 8. The

Society submits that, being the absolute owner of the land, it was entitled, after valid termination of the earlier agreements, to appoint a new developer to safeguard the interests of its members. It was argued that the High Court merely directed the statutory authorities to process the Society's proposal in accordance with law, without adjudicating any private contractual dispute.

**17.2.** It is well settled that while Section 14 of the IBC bars the institution or continuation of suits and proceedings during the moratorium, the constitutional jurisdiction of this Court and the High Courts under Articles 32 and 226 cannot be curtailed by statute. In ***Embassy Property Developments Pvt. Ltd. v. State of Karnataka and others***[19], this Court held that the NCLT, being a creature of a special statute to discharge specific functions, cannot be elevated to the status of a superior court exercising powers of judicial review over administrative or statutory action. Matters in the public law domain do not "arise out of or relate to" insolvency proceedings within the meaning of Section 60(5) of the IBC. The Court further observed that decisions taken by governmental or statutory authorities in the realm of public law may be corrected only through the High Court's power of judicial review. The following paragraphs are relevant in this context:

> *"**13.**What is recognizedby Article 226 (1) is the power of every High Court to issue (i) directions, (ii) orders or (iii) writs. They can be issued to (i) any person or (ii) authority including the Government. They may be issued (i) for the enforcement of any of the rights conferred by Part III and (ii) for any other purpose. But the exercise of the power recognized by Clause (1) of Article 226, is restricted by the territorial jurisdiction of the High Court, determined*

[19] (2020) 13 SCC 308

*either by its geographical location or by the place where the cause of action, in whole or in part, arose. While the nature of the power exercised by the High Court is delineated in Clause (1) of Article 226, the jurisdiction of the High Court for the exercise of such power, is spelt out in both Clauses (1) and (2) of Article 226.*

***14.*** *Traditionally, the jurisdiction under Article 226 was considered as limited to ensuring that the judicial or quasijudicial tribunals or administrative bodies do not exercise their powers in excess of their statutory limits. But in view of the use of the expression "any person" in Article 226 (1), courts recognized that the jurisdiction of the High Court extended even over private individuals, provided the nature of the duties performed by such private individuals, are public in nature. Therefore, the remedies provided under Article 226 are public law remedies, which stand in contrast to the remedies available in private law.*

***28.*** *As we have indicated elsewhere, the MMDR Act, 1957 is a Parliamentary enactment traceable to Entry 54 in List I of the Seventh Schedule. This Entry 54 speaks about regulation of mines and development of minerals to the extent to which such regulation and development under the control of the Union, is declared by Parliament by law to be expedient in public interest. In fact the expression "public interest" is used only in 3 out of 97 entries in List I, one of which is Entry 54, the other two being Entries 52 and 56. Interestingly, Entry 23 in List II does not use the expression "public interest", though it also deals with regulation of mines and mineral development, subject to the provisions of List I. It is this element of "public interest" that finds a place in Section 2 of the MMDR Act, 1957, in the form of a declaration…..*

***29.*** *Therefore as rightly contended by the learned Attorney General, the decision of the Government of Karnataka to refuse the benefit of deemed extension of lease, is in the public law domain and hence the correctness of the said decision can be called into question only in a superior court which is vested with the power of judicial review over administrative action. The NCLT, being a creature of a special statute to discharge certain specific functions, cannot be elevated to the status of a superior court having the power of judicial review over administrative action…"*

**17.3.** A perusal of the judgment impugned herein reveals that the High Court recorded a categorical finding that the Development Agreement with Appellant No. 1 stood validly terminated prior to the initiation of the second CIRP. Once

the High Court found that the termination preceded the CIRP and that no subsisting right of the corporate debtor survived in the project, it correctly concluded that the bar under Section 14 of the IBC was inapplicable. Accordingly, the High Court directed the planning and municipal authorities to consider the Society's redevelopment proposal in favour of the new developer (Respondent No. 8) in accordance with law.

**17.4.** The approach adopted by the High Court cannot be faulted. The jurisdiction under Article 226 is wide enough to ensure that statutory authorities perform their public duties and do not withhold approvals without legal justification. The High Court did not usurp the jurisdiction of the NCLT or interfere with any matter directly arising from the insolvency process. Its directions were confined to ensuring that the Society's rights as owner of the land were not indefinitely suspended due to the pendency of CIRP proceedings against a developer who no longer had any subsisting contractual or proprietary interest in the project.

**17.5.** This Court has consistently affirmed that the IBC does not oust the constitutional jurisdiction of the High Courts, particularly where intervention is sought against administrative or statutory inaction in the public law domain, provided such intervention does not obstruct or undermine the insolvency process. (See ***Embassy Property Development Pvt. Ltd (supra); and***

***Ghanashyam Mishra & Sons Pvt. Ltd v. Edelweiss Asset Reconstruction Co. Ltd.***[20])

**17.6.** It is also significant to note that the High Court did not direct the authorities to grant approvals as a matter of right; it merely required them to consider and process the Society's application on its own merits. Such an order is procedural in nature and ensures that the statutory authorities discharge their duties in accordance with law. It neither prejudices the CIRP proceedings nor affects any stakeholder's rights under the IBC.

**17.7.** Furthermore, the record discloses that Respondent No. 8 has already commenced redevelopment pursuant to a fresh agreement executed in December 2023 and achieved substantial progress, including demolition of the existing structure and payment of rent to the members. The High Court rightly took note of these developments and passed the impugned judgment to prevent administrative paralysis and to protect the rehabilitation rights of the residents who had long awaited redevelopment.

**17.8.** In light of the above, this Court holds that the High Court was justified in entertaining the writ petition and issuing directions to the statutory authorities to process and consider the redevelopment proposal of Respondent No. 8 in accordance with law. These directions do not encroach upon the jurisdiction of the NCLT nor offend the moratorium under Section 14 of the IBC.

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[20] (2021) 9 SCC 657

**Issue No. 4**

**Whether the proceedings before the High Court stood vitiated by breach of the principles of natural justice, as alleged by the appellants.**

**18.** According to the appellants, the impugned judgment of the High Court stands vitiated for non-observance of the principles of natural justice. It was specifically contended that the writ petition was taken up for hearing on 02.09.2024 and reserved for orders on the very next day, without affording the appellants adequate opportunity to file their reply or place their defence on record. Such undue haste resulted in serious prejudice and contravened the settled principles of procedural fairness implicit in the exercise of jurisdiction under Article 226 of the Constitution of India.

**18.1.** Per contra, the learned senior counsel for Respondent No. 1 Society submitted that the appellants were duly served with notice and had knowledge of the proceedings before the High Court. The matter was listed on several occasions prior to the final hearing, and the appellants neither sought time nor placed on record any material explaining their inability to file a reply. It was further submitted that the High Court, being satisfied that the relevant documents were already before it, proceeded to decide the matter on merits after hearing all parties represented. Hence, no procedural irregularity or denial of opportunity can be alleged.

**18.2.** The principles of natural justice act as fundamental safeguards ensuring fairness, equity, and reasonableness in decision making. The twin pillars – *nemo judex in causa sua* (no one shall be a Judge in their own cause) and *audi alteram partem* (the right to be heard) – are essential components of the rule of law. However, their application depends upon the context and nature of the proceedings. As held in ***Union of India and another v. W.N. Chadha***[21], and ***Canara Bank and others v. Debasis Das and others***[22], the principles of natural justice are not rigid rules of universal application; they are flexible, contextual, and aimed at preventing real, not theoretical, injustice. The touchstone is not whether every procedural formality was observed, but whether the party complaining has suffered actual prejudice or denial of a fair opportunity.

**18.3.** In the present case, the writ petition filed by Respondent No. 1 Society was pending before the High Court for a considerable period prior to its final hearing. The record shows that the appellants were duly represented by counsel throughout and were aware of the proceedings. No application for adjournment or extension of time to file a reply was made. The proceedings on 03.09.2024 were conducted in the presence of the counsel for the Resolution Professional, whose submissions were duly recorded in the impugned judgment. In these circumstances, it cannot be said that the High Court acted in undue haste or deprived the appellants of a reasonable opportunity of being heard.

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[21] 1993 Supp (4) SCC 260

[22] (2003) 4 SCC 557

**18.4.** Notably, the writ petition did not seek any direct relief against the appellants. The prayer was confined to a mandamus directing the statutory authorities to process and grant redevelopment approvals in favour of Respondent No. 8, the newly appointed developer. The High Court's directions were limited to the administrative authorities and did not adjudicate upon private contractual disputes or alter the rights *inter se* between the Society and the appellants.

**18.5.** The questions before the High Court were essentially legal in nature – relating to the applicability of the moratorium under Section 14 of the IBC and the validity of termination of the redevelopment agreement – both turning upon undisputed documents. No complex factual adjudication was required. Even before this Court, the appellants have failed to point out any specific prejudice or material that they were prevented from placing before the High Court.

**18.6.** The principles of natural justice are intended to ensure fairness, not to operate as technical obstacles. They cannot be invoked as empty ritual where no real injustice has occurred. The grievance of the appellants is, therefore, more formal than substantive. Having been duly represented and having failed to demonstrate any actual prejudice, the appellants cannot now be permitted to impugn the judgment on grounds of procedural technicality.

**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.** This pattern of defaults on the part of Appellant No. 1 is not isolated. In ***Manohar M. Ghatalia and others v. State of Maharashtra and others***[23], and ***Tagore Nagar Shree Ganesh Krupa CHS Ltd v. State of Maharashtra and others***[24], the same developer defaulted in payment of transit rent and failed to commence or complete redevelopment despite contractual obligations. 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.

**18.9.** These repeated defaults and prolonged inaction reveal a consistent lack of *bona fides* on the part of the appellants. The High Court's intervention in the present case was therefore not only legally sustainable but also necessary to safeguard the rights of the residents and to ensure that the appellants did not

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[23] 2023: BHC – OS: 15669 arising out of which SLP. (C) No. 18909 of 2024 decided on 07.02.2025 titled *'A A Estates Pvt. Ltd. v. Bhavana Manohar Ghatalia'*

[24] W.P. No. 1349 of 2024, BHC, arising out of which SLP (C) No. 24807 of 2024 decided on 28.04.2025 titled *'A A Estates Pvt. Ltd v. Tagore Nagar Shree Ganesh Krupa Co-operative Housing Society Ltd.'*

misuse the pendency of insolvency proceedings to indefinitely stall redevelopment.

**18.10.** Accordingly, we hold that the proceedings before the High Court were conducted in substantial compliance with the principles of natural justice. The appellants were duly represented, were not denied any reasonable opportunity of hearing, and have failed to establish any demonstrable prejudice. The plea of violation of natural justice is therefore devoid of substance and stands rejected.

**Conclusion**

**19.** In the present case, Appellant No. 1 – corporate debtor failed to take any meaningful steps towards fulfilling its obligations under the Development Agreement and Supplementary Agreements. Consequently, the slum dwellers and members of Respondent No. 1 Society – among the most vulnerable sections of society – continue to be deprived of their right to proper housing and rehabilitation. Such conduct cannot be permitted to take refuge under the moratorium provisions of Section 14 of the IBC. A clear distinction must, therefore, be maintained between corporate debtors who have acted *bona fide* and those who have merely secured development rights in form but never acted in substance.

**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.

**21.** Upon a comprehensive consideration, the conclusions of this Court on the issues framed are as follows:

(i) The termination of the Development Agreement dated 16.10.2005 and Supplementary Agreements dated 23.12.2005 and 09.04.2014 by Respondent No. 1 Society was valid, lawful, and effective in law, having been carried out after due notice and in consequence of prolonged and inexcusable default by the developer. The Society, as the owner of the land, was entitled to revoke the contract and appoint a new developer to protect the interest of its members.

(ii) The aforesaid Development Agreement and the Supplementary Agreements do not constitute "assets" or "property" of the corporate debtor within the meaning of Section 14 of the IBC. The said agreements stood validly terminated prior to the initiation of the second CIRP, and hence, no subsisting or enforceable right survived in favour of the corporate debtor.

(iii) The High Court was justified in entertaining the writ petition filed by Respondent No. 1 Society and directing the statutory authorities to

process and grant approvals in favour of Respondent No. 8, subject to compliance with law. Such directions were procedural in nature, did not encroach upon the jurisdiction of the NCLT, and did not contravene the moratorium under Section 14 of the IBC.

(iv) The proceedings before the High Court were conducted in substantial compliance with the principles of natural justice. The appellants were afforded a fair opportunity of hearing, and no real prejudice or failure of justice has been demonstrated.

**22.** Accordingly, this appeal is devoid of merit and is liable to be dismissed.

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

**23.1.** When such projects are delayed or abandoned, it is the residents – often living in hazardous or temporary conditions – who suffer the greatest hardship. In this context, the invocation of insolvency proceedings or the moratorium under the Insolvency and Bankruptcy Code, 2016 cannot become a legal device to indefinitely stall redevelopment or to obstruct the legitimate rights of slum

dwellers and cooperative housing societies. The Code was never intended to be used as a shield for non-performance at the cost of human rehabilitation.

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

**23.3.** The IBC was never designed to serve as a refuge for corporate debtors who, by their conduct, display no *bona fide* intention to fulfil contractual or statutory obligations. Its purpose is to revive viable entities and ensure equitable resolution of insolvency – not to extend protection to those who have persistently defaulted, abandoned performance, or frustrated projects of public significance. Urban redevelopment projects, particularly those involving cooperative housing societies, are exercises in social rejuvenation that seek to restore dignity, safety, and belonging to citizens. The law must, therefore, balance commercial rights with human realities and ensure that economic revival does not eclipse the constitutional promise of dignified living.

**24.** In fine, the instant appeal is dismissed. The directions of the High Court shall be complied with within a period of two months from today. Needless to state, the appellants may work out their remedy with respect to the amount alleged to have been expended in the subject project, in the manner known to law. In the facts and circumstances of the case, there shall be no order as to costs.

**25.** All pending application(s), if any, stand disposed of.

**…….J.**
**[J.B. PARDIWALA]**

**…….J.**
**[R. MAHADEVAN]**

**NEW DELHI;**
**NOVEMBER 28, 2025**