

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

**CORAM: MS. REETA KOHLI,
HON'BLE JUDICIAL MEMBER**

**MS. KAVITA BHATNAGAR
HON'BLE TECHNICAL MEMBER**

IA (IBC) No. 124/JPR/2019
CP (IB) No.- 726/(ND)/2018

IN THE MATTER OF:

MANOHAR KARAMCHANDANI

...Operational Creditors

VERSUS

BALAJIDHAM BUILDESTATES Pvt. Ltd.

...Corporate Debtor

IA (IBC) No. 124/JPR/2019

MEMO OF PARTIES

Mr. Ravi Maheshwari

R/o: C-13, Metal Colony, Ambabari,
Jaipur- 302039, Rajasthan.

... Applicant

VERSUS

1. Balajidham Buildestates Pvt. Ltd.

R/o: 3rd Floor, E 295-296, Lal Kothi
Scheme, Behind New Vidhan Sabha,
Jaipur-302015, Rajasthan.

2. Miss Sarita Duck

(Interim Resolution Professional/
Resolution Professional), Office at: H-
15, Chitrangan Marg, C-scheme Jaipur-
302001, Rajasthan.

3. Mr. Amod Agarwal



(Erstwhile Director)
R/o: Balajidham 3A, Achrol House
Colony, Civil Lines, Jaipur-302006.

4. Mr. Pramod Agarwal

(Erstwhile Director)
R/o: Balajidham 3A, Achrol House
Colony, Civil Lines, Jaipur-302006.

5. Ms. Anjana Agrawal

(Erstwhile Director)
R/o: Balajidham 3A, Achrol House, Civil
Lines, Jaipur-302006.

...Respondents

For the Applicant	: Prashant Agrawal, CA
For the Respondents	: Puneet Maheshwari, Adv. Siddharth Bapna, Adv.
For the Liquidator	: Prateek Kedawat, Adv. Amol Vyas, Adv. Abhishek Purohit, Adv.

Order Pronounced On: 06.05.2026

ORDER

Per: Ms. Reeta Kohli, Judicial Member

1. This Application has been filed by *Mr. Ravi Maheshwari ('Applicant')* against the Corporate Debtor i.e. *Balajidham Buildestates Pvt. Ltd.* and Interim Resolution Professional/ Resolution Professional under Section 60(5) of Insolvency and Bankruptcy Code, 2016 (the 'Code'/ 'IBC') inter-alia seeking the following reliefs:

"a) This Hon'ble Tribunal may be pleased to direct the Interim Resolution Professional/Resolution Professional of the Corporate Debtor to vacate the above-subjected plot of the applicant with immediate effect.

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b) This Hon'ble Tribunal may be pleased to direct the Interim Resolution Professional/Resolution Professional of the Corporate Debtor to exclude this plot from the assets of the Corporate Debtor."

2. It is stated that the Applicant is the owner of a residential property situated at *Plot No. 44, Keshav Nagar, Sirsi Road, Panchawala, District Jaipur* having a total area of 166.66 sq. yards. The said property was purchased by the Applicant on 25.07.2013 from *Mrs. Babita Pareek* against the Sale consideration of Rs.6,50,000/- and was duly registered in favour of Applicant on the same date.
3. It is submitted that the Corporate Debtor had possession of two other plots no. 45 measuring 166.66 sq. Yards and 46 measuring 194.44 sq. Yards adjoining the Applicant's plot bearing No. 44. The Corporate Debtor once approached the Applicant for developing the project named *Nishant Nupur* by adjoining his plot with two other plots of the Corporate Debtor but the Applicant declined for the same.
4. However, it came to the notice a few days ago to the Applicant that Corporate Debtor had constructed a building over Applicant's plot without any authority. The moment Applicant came to know about this incident, he tried to approach Corporate Debtor but could not contact to any of the directors/authorized persons of the Corporate Debtor.
5. Subsequently, the Applicant came to know that Corporate Insolvency Resolution Process has been initiated against the Corporate Debtor under Section 9 of the Insolvency and Bankruptcy Code, 2016 vide order dated

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02/11/2018 passed by Hon'ble National Company Law Tribunal, Jaipur Bench.

6. It is submitted that as per provisions of the Code and as per Section 18 of the code, Applicant's subject plot shall not be termed as assets of the corporate Debtor. The Corporate Debtor has constructed residential apartments over the Applicant's plot amalgamating with its two other plots without entering into any sort of agreement with the Applicant and no consideration was paid to the Applicant.
7. From the above facts of the case, the Applicant could not find any place to file a claim under any of the categories of insolvency and Bankruptcy Code, 2016 in relation to the financial loss incurred on account of unauthorized use of his plot by Corporate Debtor.
8. The Respondent no. 3 i.e. *Mr. Amod Agarwal S/o Shri Ramesh Chandra Agarwal*, (Erstwhile Director of the Corporate Debtor) had filed reply and submitted the following:
 - 8.1. It is submitted that the Respondent was one of the directors of the Corporate Debtor; however, his elder brother, *Late Mr. Pramod Agarwal*, who died of cancer on 24.07.2018, was solely managing the affairs of the Corporate Debtor.
 - 8.2. *Late Mr. Pramod Agarwal*, who was solely managing the affairs of the Corporate Debtor, entered into an arrangement with the Applicant for the development of a residential project named *Nishant Nupur* jointly

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on Plot Nos. 44, 45, and 46. The said arrangement, in the nature of a joint venture, was made in the year 2013, and construction of the aforesaid residential project commenced in October 2013.

8.3. It is stated that Respondent No. 3 was not aware of the specific arrangement between the Applicant and *Late Mr. Pramod Agarwal*. It is relevant to mention that the entire construction cost was borne by the Corporate Debtor.

8.4. It is contended that the Applicant's claim of having come to know only a few days ago that the Corporate Debtor constructed a building on his plot is beyond comprehension. It is inconceivable that a person, on whose plot a building is constructed, would remain unaware of such construction for six years. In fact, the Applicant was aware of the construction, which was carried out in accordance with the understanding between the Applicant and *Late Mr. Pramod Agarwal*.

8.5. Further, Respondent No. 3 vide an additional affidavit has submitted the sale deeds in relation to Plot Nos. 45 and 46. It is stated that the Applicant, *Mr. Ravi Maheshwari*, also purchased Plot No. 44, Kesar Nagar, Sirsi Road, Panchyawala, District Jaipur – 302034, from Ms. Babita Pareek on the same date, i.e., 25.07.2013. The said sale deed was signed by Respondent No. 3 as one of the witnesses.

8.6. The aforementioned three plots are adjacent to each other. The said plots were purchased by the Applicant and the Corporate Debtor from the



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same person, i.e., *Ms. Babita Pareek* (with Plot No. 46 purchased from her husband), and the sale deeds in relation thereto were executed on the same date, i.e., 25.07.2013. The said sale deeds were executed in the presence of the Applicant and Respondent No. 3. The above facts clearly vindicate that all three plots were purchased simultaneously for a specific purpose, namely, the joint construction of a residential building on the said plots.

9. Further, the Resolution Professional had filed its reply vide Diary No. 943/2019 and stated the following submissions:

9.1. The Resolution Professional submits that an application filed under the relevant provisions of the Code was admitted by this Adjudicating Authority vide Order dated 02.11.2019. The project in the present case, namely Nishant Nupur, was constructed on Plot Nos. 44, 45, and 46, out of which Plot No. 44 belongs to Ravi Maheshwari, whereas Plot Nos. 45 and 46 belong to the Corporate Debtor.

9.2. It is stated that no written MoU exists between the Corporate Debtor and the Applicant; however, it was found that the building constructed on the said plots cannot be divided, as it was constructed on the combined land. From the agreements available on record, it is clear that the flats were sold as early as 2013. Therefore, the Applicant's contention of "unauthorized use of land" after six years is not tenable.



- 9.3. It is further stated that various flats in the building have already been sold, with 14 sale deeds executed and 11 agreements entered into by the Corporate Debtor. Therefore, at this stage, the plot cannot be vacated or excluded.
- 9.4. The Resolution Professional submits that the Applicant's share may be determined on the basis that Plot No. 44 was purchased for Rs. 6.50 lakh, while Plot Nos. 45 and 46 were purchased by the Corporate Debtor along with construction costs amounting to Rs. 166.50 lakh. The Corporate Debtor has borne the entire construction cost. Therefore, the Applicant's share in the total investment in the project is calculated at 3.90%.
- 9.5. Thus, in the absence of any MoU between the Applicant and the Corporate Debtor, it is submitted that the Applicant is entitled only to a 3.90% share in the project cost. Since the Applicant has contributed land to the Corporate Debtor, it is prayed that the Applicant be directed to submit his claim as an operational creditor to the extent of his share.
10. This Adjudicating Authority have perused the Application, Replies, Additional Affidavits, and Submissions, along with the documents annexed therewith.
11. At the outset, this Adjudicating Authority deems it appropriate to discuss the provision of Section 60(5) of the Code as envisaged under the scheme of IBC. For ease of reference, the same is reproduced hereunder: -

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Section 60: Adjudicating Authority for corporate persons.

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

12. The scope of Section 60(5) of the Code needs to be understood in the terms of the judgment of the Hon'ble Supreme Court of India in the case of *Gujrat Urja Vikas v. Amit Gupta & Ors.* (2021) ibclaw.in 44 SC wherein the Hon'ble Apex Court tried to interpret the words “arising out of” or “related to” under Section 60(5). The relevant paragraphs of the aforementioned judgment are reproduced hereunder: -

48. In varying contexts, this Court has expansively construed the expressions “relating to” and “arising out of” in its previous decisions. The respondents have relied on some of these judgments to buttress their submissions in regard to the width of Section 60(5)(c). In **Renusagar Power Co. Ltd. vs General Electric Company**³⁹, a two judge Bench while interpreting the words “arising out of” or “related to” in an arbitration clause held as follows, speaking through Justice V.D. Tulzapurkar

“25...(2) Expressions such as “arising out of” or “in respect of” or “in connection with” or “in relation to” or “in consequence of” or “concerning” or “relating to” the contract are of the widest amplitude and content..”

...

52. Bearing in mind the above caution, it may be of relevance to discuss the interpretation of similar provisions in other insolvency laws. Textually, the provisions of Section 60(5) bear a flavor of resemblance

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to the provisions which were contained in sub-Section 2 of Section 446⁴⁴ of the CA 1956, which correspond now to Section 280⁴⁵ of CA 2013.

53. A textual comparison of the provisions of Section 60(5) of the IBC with Section 446(2) of CA 1956 would reveal some similarities of expression, with textual variations. For the purposes of the present proceedings, it suffices to note that clause (c) of Section 60(5) confers jurisdiction on the NCLT to entertain or dispose of “any question of priorities or any question of law or facts arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under the Code...”.

...

“67. The institutional framework under the IBC contemplated the establishment of a single forum to deal with matters of insolvency, which were distributed earlier across multiple fora. In the absence of a court exercising exclusive jurisdiction over matters relating to insolvency, the corporate debtor would have to file and/or defend multiple proceedings in different fora. These proceedings may cause undue delay in the insolvency resolution process due to multiple proceedings in trial courts and courts of appeal. A delay in completion of the insolvency proceedings would diminish the value of the debtor’s assets and hamper the prospects of a successful reorganization or liquidation. For the success of an insolvency regime, it is necessary that insolvency proceedings are dealt with in a timely, effective and efficient manner. Pursuing this theme in *Innoventive* (supra) this court observed that “one of the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the object of speeding up of the insolvency process”. The principle was reiterated in *Arcelor Mittal* (supra) where this court held that “the non-obstante Clause in Section 60(5) is designed for a different purpose: to ensure that the NCLT alone has jurisdiction when it comes to applications and proceedings by or against a corporate debtor covered by the Code, making it clear that no other forum has jurisdiction to entertain or dispose of such applications or proceedings”. Therefore, considering the text of Section 60(5)(c) and the interpretation of similar provisions in other insolvency related statutes, NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the Corporate Debtor. However, in doing do, we issue a note of caution to the NCLT and NCLAT to ensure that they do not usurp the legitimate jurisdiction of other courts, tribunals and fora when the dispute is one which does not arise solely from or relate to the insolvency of the Corporate Debtor. The nexus with the insolvency of the Corporate Debtor must exist.”

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13. Hence, the Hon'ble Apex court has held that Section 60(5)(c), read in consonance with the interpretation of similar provisions in other insolvency related statutes, that the NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the Corporate Debtor.
14. Further, upon a careful reading of the Paragraph No. 52, 53 and 67 of the judgment in *Gujrat Urja* (supra), the Hon'ble Supreme Court issued a note of caution to the NCLT and the NCLAT that they must not usurp the legitimate jurisdiction of other courts, tribunals and fora when the dispute is one which does not arise solely from or relate to the insolvency of the Corporate Debtor. The nexus with the insolvency of the Corporate Debtor must exist. Therefore, it is established that for adjudication of disputes that arise *dehors* the insolvency of the Corporate Debtor, the relevant competent authority must be approached. However, when the dispute to be adjudicated upon is *dehors* the insolvency proceedings, it falls out of the ambit of the NCLT.
15. In the instant case, it is an undisputed fact that the Applicant along with Corporate Debtor purchased three adjacent plots i.e. Plot No. 44 purchased by the Applicant and Plot No. 45 and 46 of the Corporate Debtor on the same day (25.07.2013) from the same vendor family, with the Corporate Debtor's director as witness to the Applicant's sale deed.
16. However, the Applicant sought directions to vacate the aforementioned plot and exclude it from the assets of the Corporate Debtor. Nevertheless, the

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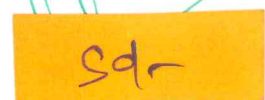
materials on record indicate that the construction was undertaken by the Corporate Debtor, who also bore the entire construction cost. The Resolution Professional in the instant case has submitted that the Applicant, having contributed land, may file his claim as an operational creditor to the extent of his share.

17. At this juncture, keeping in view the judgment in the case of *Gujarat Urja* (supra), it is pertinent to mention that the scope of jurisdiction under Section 60(5) of the Code is limited to matters arising out of or in relation to the insolvency resolution process of the Corporate Debtor. Given the facts and circumstances of the instant Application, this Adjudicating Authority is not appropriate authority to decide upon disputed questions of Ownership or possession, particularly where such disputes require detailed examination of evidence.
18. In the present case, the Applicant has asserted absolute ownership over Plot No. 44 and has alleged unauthorized construction by the Corporate Debtor. However, the materials on record, including the reply of the erstwhile director and the Resolution Professional, *prima facie* establish that the said plot was part of a composite development along with Plot Nos. 45 and 46.
19. It is also noteworthy that all three plots i.e. Plot No. 44 purchased by the Applicant and Plot No. 45 and 46 of the Corporate Debtor were purchased on the same date from the same vendor, and the sale deeds were executed in the presence of both parties. The construction of the project on all the above



stated three plots commenced in the year 2013 and multiple flats have already been sold to third-party purchasers. These facts give rise to a serious dispute regarding the nature of arrangement between the Applicant and the Corporate Debtor, which cannot be conclusively determined in summary proceedings under the Code.

20. Further, the Applicant's contention that he became aware of the construction only recently does not inspire confidence, particularly when the project has been in existence for several years and third-party rights have already been created. No documentary evidence, whatsoever, has been placed on record by the Applicant to either demonstrate or prove the delay which has occurred. In the light of *Vigilantibus non dormientibus jura subveniunt*, this Adjudicating Authority does not find any strength in the argument of the Applicant.
21. It is pertinent to note that the project of the Corporate Debtor, namely *Nishant Nupur* commenced in the year 2013. Thereafter third-party rights were created through sale of flats in the project from 2013 itself. It is alleged by the Respondent No. 3 that in the year 2018 the director of the Corporate Debtor who was managing and controlling its affairs passed away which resulted in disruption in the management of the Corporate Debtor. In the year 2019 the Applicant has filed the present application.
22. The Applicant in the instant matter failed to submit a claim before the Resolution Professional in terms of his submission as required under the



applicable process. The decision of the Applicant to seek vacation of the plot at this belated stage without any cognizant reason or explanation despite having full knowledge of the facts and circumstances itself raises doubt on the intention and fairness of the Applicant. Otherwise also in view of the fact that the director of the Corporate Debtor was a witness to the sale deed executed in favour of the Applicant further reinforces the fact that the present application has been preferred with an ulterior motive on the part of the Applicant.

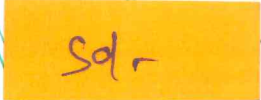
23. Keeping in view of the foregoing discussions, this Adjudicating Authority is of the considered view that the CIRP of the Corporate Debtor has already progressed to the **liquidation stage**. The present application is filed frivolously, in order to hamper the ongoing liquidation process, create unnecessary hurdles in the realization of assets, and derail the timely conclusion of the liquidation proceedings. Granting the extraordinary reliefs of directing the Liquidator to vacate the plot and exclude the same from the assets of the Corporate Debtor at this advanced stage would not only cause irreparable prejudice to the secured and unsecured creditors but would also seriously prejudice the rights of numerous third-party homebuyers who have already purchased flats in the Corporate Debtor's project *Nishant Nupur* and whose interests are statutorily protected under the provisions of the Code.

24. At the cost of repetition, the Applicant's plea of having recently discovered the construction lacks credibility, especially when the project was developed

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openly since 2013, multiple sale deeds and agreements have been executed in favour of third parties, and the Applicant himself was a party to the simultaneous purchase of the contiguous plots on the very same day.

25. Keeping in view the scope of Section 60(5) of the Code as discussed in the case of *Gujarat Urja* (Supra), the facts and circumstances and the prayer sought by the Applicant, this Adjudicating Authority is of the considered view that instant Application cannot be entertained in summary proceedings under the IBC. Allowing such applications at the liquidation stage would open the floodgates for similar frivolous claims and defeat the very object of the Code, which is to ensure time-bound resolution and value maximization of the Corporate Debtor's assets.
26. Hence, in view of the aforesaid reasons, the Interlocutory Application bearing no. *IA(IBC) No. 124/JPR/2019* is hereby rejected and disposed of.


REETA KOHLI
JUDICIAL MEMBER

Dated: 06.05.2026

Dissenting Order by Member (T)

in

Manohar Karamchandani Vs. Balajidham Build Estate Pvt. Ltd.,

in

IA No. 124/JPR/2019 in CP (IB) No. 726(ND)/2018

1. The present Interlocutory Application has been filed by the Applicant during the CIRP of the CD, seeking exclusion of Plot No. 44 from the assets being dealt with by the Resolution Professional. Subsequently, vide order dated 06.09.2019 the CD was directed into liquidation and a Liquidator was appointed in place of the Resolution Professional. The RP (Ms. Sarita Duck) continued as Liquidator till she was replaced by Saurabh Malpani on 17.06.2021.
2. Notwithstanding the commencement of liquidation, the present Application continued to remain pending. Thereafter, vide order dated 14.05.2025, this Adjudicating Authority directed that a valuation be carried out in respect of Plots No. 44, 45 and 46 and a valuation report has been placed on record by the Liquidator.
3. In view of the above it is clarified at the outset that though the Application was instituted during CIRP, the same is being adjudicated in the context of liquidation proceedings now and the applicable legal framework is that governing liquidation particularly Sections 35 and 36 of the IBC. The report

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of the erstwhile Resolution Professional (Ms. Sarita Duck) including her observations regarding absence of any Memorandum of Understanding between the parties (Applicant and the CD) is treated as part of the record for factual purposes but cannot be regarded as determinative of rights at the stage of liquidation.

Brief Facts

4. The Applicant asserts ownership over Plot No. 44 while the CD is stated to be the owner of adjoining plots namely Plot No. 45 and 46. It is not in dispute that: -

- i) There exists no written Joint Development Agreement, MOU or any other document between the Applicant and the Corporate Debtor for development of the said plots.
- ii) Construction has been undertaken over the combined land parcels forming a housing project.
- iii) Units have been constructed and certain units have already been sold to third parties.

The Resolution Professional in her report dated 24.05.2019 during CIRP had noted that: -

- i) No formal development agreement existed.
- ii) Construction had already taken place and units were sold.

The Liquidator has during the course of hearing emphasized: -

- i) The composite nature of the project.
- ii) The practical difficulty in segregation and;

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- iii) The need for a value-based approach.
5. It is further an admitted position that the Applicant did not raise objection during the period of construction and has approached this Adjudicating Authority after considerable lapse of time.

Jurisdiction of this Tribunal

6. The Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Ltd. vs. Amit Gupta & Others has authoritatively held that the jurisdiction of the Adjudicating Authority under Section 60(5) of the Code extends to all matters "arising out of" or "in relation to" the insolvency resolution or liquidation proceedings of the Corporate Debtor. In my considered view, the present matter squarely falls within such jurisdiction, since the prayer pertains to whether the subject property can lawfully be included in the liquidation estate of the Corporate Debtor and dealt with by the Liquidator as an asset of the Corporate Debtor. The issue therefore is not one of adjudication of title in abstract but of determining for the purposes of the liquidation process under the Code, whether the asset in question is liable to form part of the liquidation estate. Merely because examination of ownership documents may incidentally arise, it does not *ipso facto* divest this Tribunal of jurisdiction or compel the parties to go to Civil Court, particularly when the determination directly impacts the scope and composition of the liquidation estate under the Code.

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Issue for consideration

- i) Whether Plot No. 44 forms part of the liquidation estate of the CD.
- ii) Whether the absence of a written agreement precludes any right of the CD over Plot No. 44.
- iii) Whether the delay and inaction on the part of the Applicant defeats his claim.
- iv) Whether the valuation report can be relied upon for determining entitlement.
- v) What is the appropriate mechanism for dealing with the intermingled constructions.

Analysis and Findings

Ownership and Liquidation Estate

7. It is not in dispute that Plot No. 44 stands in the name of the Applicant. The Sale deed is in favour of the Applicant which was registered on 25.07.2013 and the same is on the record. No document has been placed on record evidencing transfer of title in favour of Corporate Debtor.

7.1 The Hon'ble Supreme Court in *State of Haryana vs. Mukesh Kumar* has emphasized the importance of property rights and held that a person cannot be deprived of property except in accordance with law. The Hon'ble Supreme Court in *Suraj Lamp and Industries Pvt. Ltd. vs.*

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State of Haryana has categorically held that transfer of immovable property can only be affected through legally recognized instruments.

7.2 Under section 36 of the Code, the liquidation estate comprises only assets over which the Corporate Debtor has ownership rights and excludes assets owned by third parties. In this case Applicant is the third party. Accordingly, it is unequivocally held that in terms of the provisions of the Code Plot No. 44 does not form part of the liquidation estate of the Corporate Debtor.

Absence of Development Agreement

8. On the basis of material on record including the report of Resolution Professional clearly establishes that there is no written agreement, MOU between the Applicant and the CD governing development of Plot No. 44 by the Corporate Debtor.

In law, rights in immovable property cannot be created or transferred except through a legally enforceable instrument. Rights in immovable property cannot arise from oral understanding. Therefore, the CD has no enforceable rights over Plot No. 44 and no legally recognizable right, title or interest in Plot No. 44 can be said to have vested in the Corporate Debtor.

Delay and Limitation

9. It is a fact that the Applicant did not object to the construction undertaken by the CD for a considerable period of time. However, it is also well settled

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that mere inaction or acquiescence does not result in transfer of title in immovable property. At best the delay affects nature of relief, not existence of right.

10. The present proceedings relate to constitution of the liquidation estate, which is a continuing obligation. Accordingly, the plea of limitation cannot defeat the Applicants claim. At the same time the conduct of the Applicant is relevant while moulding relief, particularly where third party rights have intervened and the structure has become indivisible.

Valuation Report

11. This Adjudicating Authority by order dated 14.05.2025 directed that a valuation be carried out in respect of Plot No. 44, 45 and 46. This Adjudicating Authority has carefully examined the valuation report placed on record pursuant to order dated 14.05.2025.
12. While the report refers to Plot No. 44, 45 and 46, it is evident that the valuation has been undertaken from the stand point of liquidation realisation and is confined to the residual assets presently available for sale. It is apparent that: -
- i) The valuation of the superstructure is confined to unsold units and;
 - ii) The land value reflected corresponds only to the underlying land relatable to such realisable portion and not to the entirety of all three plots.



- iii) The valuer has also expressly stated that issues of legal title have not been examined and the report does not provide any plot wise allocation.
- iv) In these circumstances valuation report cannot be relied upon for determining ownership or precise inter-se entitlement. However, the report provides a reasonable indication of the residual realisable value of the project i.e. the value that can actually be realised in liquidation.

Accordingly, the said valuation may be utilised as an indicative base for determining value attributable to Plot No. 44 by applying a proportionate or equitable allocation.

Feasibility of Physical Segregation

13. It is an admitted position that a composite building has been constructed over Plots No. 44, 45 and 46. The structure is indivisible and flats are vertically and structurally integrated. Accordingly physical demarcation or unit wise segregation is not feasible.

The only workable method is to treat the project as a composite asset for the purpose of realisation while ensuring protection of the Applicants ownership rights through value allocation.

Rejection of Operational Creditor's Approach

14. The suggestion by the RP to treat the Applicant as an operational creditor is misconceived. The Applicant asserts a proprietary right, not a claim arising from services or recovery of loan. Therefore, the applicant cannot be brought

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within the ambit of Section 53 distribution. In the light of the above facts, I therefore hold that: -

- i) Ownership must be preserved.
- ii) Liquidation must remain workable.
- iii) The applicant's entitlement must be satisfied prior to distribution under Section 53.

Conclusions and Directions

15. In view of the foregoing discussion and upon careful consideration of the pleadings, documents on record and the statutory framework of the Code, I record the following conclusion.

Regarding Prayer for Eviction

15.1 The relief sought by the Applicant, namely a direction to vacate the subject plot and restore the possession cannot be granted in the present proceedings. The relief sought entails adjudication of possession and consequential rights in immovable property, which would require a detailed examination of evidence and cannot be conclusively be determined in the summary proceedings exercised under Section 60(5) of the Code. The Tribunal does not act as a Civil Court for adjudication of such disputes requiring full-fledged trial.

Regarding Prayer for Exclusion of the Subject Property from the Liquidation Estate

15.2 This relief falls squarely within the jurisdiction under the Code. The statutory scheme under Section 18, Section 25 and Section 36 mandates

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that only those assets over which the Corporate Debtor has ownership rights can be taken into custody and treated as part of the insolvency/liquidation estate. The explanation to Section 18 expressly excludes third party assets. In this case the Applicant has placed on record a registered sale deed asserting the ownership over Plot No. 44. In the absence of any cogent material demonstrating that the Corporate Debtor has acquired ownership over Plot No. 44 or enforceable development rights over the said plot, the treatment of the said asset as an asset of the Corporate Debtor cannot be accepted.

16. Accordingly, the subject property i.e. Plot No. 44 shall not be treated as part of the liquidation estate of the Corporate Debtor subject to the directions issued hereinafter.
- i) The Liquidator shall take the valuation report on record as the base for determining the total residual realisable value of the project being the value of the
 - a) Unsold units and;
 - b) The underlying land component relatable thereto.

Determination of Value of Plot No. 44

- ii) The Liquidator shall determine the value attributable to Plot No. 44 as follows: -
 - a) Ascertain the total land area of Plots No. 44, 45 and 46.
 - b) Ascertain land area of Plot No. 44.

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- c) Compute proportionate share of Plot No. 44.
- d) Apply this proportion share to the realisable value to determine the value attributable to Plot No. 44.
- e) The Liquidator may make reasonable adjustments considering.
 - i) Location and positioning of Plot No. 44.
 - ii) Extent of construction on it.
 - iii) Any other relevant factor.

Realisation

Given the indivisible nature of the project –

- a) The Liquidator may proceed with composite sale.
- b) The value attributable to Plot No. 44 shall be carved out and paid to the Applicant prior to application of Section 53.

17. The Liquidator shall place the computation before this Adjudicating Authority for approval prior to distribution. No distribution under Section 53 shall be undertaken until approval is obtained. *Application is partly allowed.*

Reasons for Dissent

1. I have carefully considered the reasoning and conclusions recorded in the order of the learned Member (Judicial). With utmost respect, I am unable to concur with the same for the following reasons: -

Failure to Recognize the Applicable Statutory Regime – Liquidation vs CIRP

2. At the outset, the order of Member (J) proceeds on an incorrect foundation by analysing the issue as though the Corporate Debtor is still undergoing the

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CIRP. The reasoning throughout reflects reliance on the role, duties, and framework applicable to the Resolution Professional, without due recognition that the Corporate Debtor has already entered the liquidation stage.

2.1 This distinction is of substantive legal significance. Upon commencement of liquidation, the legal framework undergoes a shift, and the powers and duties are exercised by the Liquidator, not the Resolution Professional. The statutory framework governing custody, control, and realization of assets is correspondingly altered.

2.2 The failure to recognize this transition has resulted in an incorrect application of law, as the reasoning is based at a stage of the proceedings which is no longer operative. This fundamental error vitiates the subsequent analysis.

Misplaced Reliance on the Role of the Resolution Professional

3. Closely connected with the above, the order repeatedly refers to the duties and conduct of the Resolution Professional, whereas the present proceedings are situated in liquidation. The statutory obligations of a Resolution Professional during CIRP and those of a Liquidator during liquidation are not identical. The continued reliance on the CIRP framework, without aligning the reasoning to the role and duties of the Liquidator, renders the analysis legally inconsistent with the factual position on record.

Sd/-

Non-Consideration and Ignoring of the Valuation Process and Valuation Report Undertaken Pursuant to directions of this Tribunal itself.

4. It is a matter of record that this Tribunal had directed a valuation exercise in respect of the assets of the Corporate Debtor. However, the order does not take cognizance of the valuation report at all, nor does it discuss as to why it was called for in the first place. In a proceeding where the central issue concerns the identification and inclusion of assets in the liquidation estate, the valuation process assumes critical importance. The complete absence of any discussion on this aspect constitutes a material omission.

Erroneous Characterization of the Issue as a Pure Civil Title Dispute

5. The order proceeds on the premise that the dispute raised by the Applicant is a complex civil dispute relating to title and ownership, and therefore falls outside the jurisdiction of this Tribunal. While it is settled that this Tribunal cannot finally adjudicate intricate questions of title requiring detailed evidence, the present application does not merely seek a declaration of ownership in abstract terms. The issue is whether the subject property of the Applicant can be treated as part of the liquidation estate of the Corporate Debtor on the basis of a registered sale deed. This requires, at the very least, a prima facie determination as to whether the asset belongs to the Corporate Debtor. The failure to draw this distinction has led to an unduly restrictive view of jurisdiction.

Sdr

Failure to Apply the Statutory Scheme of Sections 35 and 36 of the Code

6. The order does not meaningfully apply these provisions. The statutory mandate is clear that only those assets over which the Corporate Debtor has ownership rights can be taken into custody and control. **The Section 36(4) expressly excludes third-party assets.** Where a third party asserts ownership supported by a registered instrument, the Tribunal is required to examine whether such asset can legitimately be included in the Liquidation estate. The order bypasses this statutory inquiry altogether.

Absence of Prima Facie Examination of the Applicant's Title

7. The Applicant has placed reliance on a registered sale deed and has alleged unauthorized construction by the Corporate Debtor. Despite this, the order of Member (J) does not undertake even a prima facie evaluation of the Applicant's claim. The Tribunal is not required to conduct a full-fledged trial; however, it cannot refuse to acknowledge that the claim is supported by binding evidence in the nature of an undisputed/ unchallenged registered sale deed. The rejection of the application without countering the firm evidence of a registered sale document is flawed.

Failure to Examine the Corporate Debtor's Basis of Claim

8. The order of Member (J) does not analyse whether the Corporate Debtor has placed on record any document evidencing ownership, development rights,

Sd/-

consent, or any contractual arrangement in respect of the subject plot. In the absence of such material, merely an alleged oral agreement or possession or construction cannot confer ownership. The omission to scrutinize the basis of the Corporate Debtor's claim has resulted in an incomplete adjudication to which it is not possible for me to agree.

Improper Reliance on Delay and Third-Party Interests

9. The order of Member (J) places significant reliance on the alleged delay on the part of the Applicant and the existence of third-party purchasers. While these factors may be relevant for moulding final relief, they cannot determine the fundamental issue of whether the property forms part of the Corporate Debtor's assets. Delay does not extinguish ownership rights, nor can subsequent third-party transactions validate an otherwise unauthorized inclusion of property.

Failure to distinguish between distinct reliefs sought by the Applicant

10. The Applicant has sought two distinct reliefs, namely, (i) eviction/vacation of the plot, and (ii) exclusion of the plot from the assets of the Corporate Debtor. The order treats both reliefs as inseparable and rejects the application in entirety. Even if the relief of eviction may not be grantable in summary proceedings, the prayer for exclusion of the asset from the liquidation estate required independent adjudication. The failure to do so constitutes a material infirmity.

Solr

Unwarranted Characterization of the Application as Frivolous

11. The order of Ld. Member (J) characterises the application as frivolous. Such a finding is not supported by the record. The Applicant has asserted ownership based on a registered document which remains undisputed and unchallenged and has invoked specific statutory provisions under the Code. An application raising a bona fide issue concerning the exclusion of such property from the Liquidation Estate cannot be dismissed as frivolous without proper examination.

Incomplete Application of the Law Laid Down in Gujarat Urja

12. While reliance has been placed on the judgment of the Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta, the order applies only the restrictive aspect of jurisdiction. The said judgment also recognizes that the NCLT / NCLAT have jurisdiction over matters "arising out of or in relation to" the insolvency process. The present dispute, concerning the composition of the liquidation estate, clearly bears a direct nexus with and is related to the insolvency proceedings. This appears to be only a selective application of the judgment.

For the aforesaid reasons, I am unable to concur with the conclusions reached in the order of Member (J).



Kavita Bhatnagar
Member Technical

**NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH**
(through web-based video conferencing platform)

Item No. 105
Rst. App. (IBC) No. 4/JPR/2026
CP No. (IB)- 726(ND)/2018
Under Section 9 of IBC, 2016

In the matter of:

Manohar Karamchandani ... Operational Creditor/Applicant
Versus
Balajidham Build Estate Pvt. Ltd. ... Corporate Debtor/Respondent

Coram: HON'BLE MS. REETA KOHLI, JUDICIAL MEMBER
HON'BLE MS. KAVITA BHATNAGAR, TECHNICAL MEMBER

PRESENT: -

For the Applicant : Counsel for the applicant

ORDER

Rst. A. (IBC) No. 04/JPR/2026

The ld. counsel has preferred the present application for restoration and setting aside the order dated 25.03.2026. The order dated 25.03.2026 is as under:-

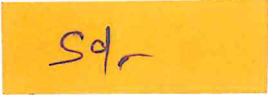
"The matter is called out twice but there is no representation on behalf of the applicant. After having perused the order dated 30.01.2026. We find no reason to recall the order as the contents of the letter dated 20.01.2021 are not denied by the applicant. It is the applicant who has stated that the amount shall be paid. In view of the same, IA disposed off."

During the course of argument, the ld. Counsel has drawn our attention to the judgment of the Hon'ble NCLAT in Company Appeal No. 1 & 2 of 2017 stating that the principal of natural justice deserves to be adhered to by the Adjudicating Authority. The perusal of the above said order makes it clear that the matter had been called out twice and then also before disposing off the IA, the contention raised in the IA were duly considered. Even prior to this order of 25.03.2026,

Sdr

Sdr

when IA No. 92 of 2021 was disposed off on 30.01.2026, the Id. Counsel for the respondent-applicant had advanced his arguments and the said IA was disposed off only after due consideration of the arguments advanced by the counsels and after consideration of the documents placed on record. The present IA is thus disposed off as no further indulgence deserves to be granted to the applicant. The counsel is at liberty to avail the opportunity in terms of law against the orders dated 30.01.2026 and dated 25.03.2026. With these observations, IA disposed off.



(Kavita Bhatnagar)
Technical Member

May 06, 2026



(Reeta Kohli)
Judicial Member