

IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

IA 5638/2024
In
CP (IB) No. 353(PB)/2022

(Under Section 60(5) of the Insolvency and Bankruptcy Code 2016)

IN THE MATTER OF:

BANK OF BARODA

...PETITIONER/FINANCIAL CREDITOR

VERSUS

**IBD UNIVERSAL PVT LTD.
CORPORATE GUARANTOR OF M/S NIL
INFRASTRUCTURE PRIVATE LIMITED,
PRINCIPAL BORROWER**

...RESPONDENT/CORPORATE DEBTOR

AND

IN

IA- 5638/2024

IN THE MATTER OF:

**SH. NARMADA ENTERPRISES
THROUGH SH. ASHOK PALOD**

... APPLICANT

Versus

1. LIQUIDATOR-IBD UNIVERSAL PRIVATE LIMITED

...RESPONDENT NO. 1

2. IBD UNIVERSAL PVT. LTD.

...RESPONDENT NO. 2

**3. IBD UNIVERSAL PVT. LTD.
CORPORATE GUARANTOR OF
M/S. NIL INFRASTRUCTURE
PRIVATE LIMITED, PRINCIPAL BORROWER**

...RESPONDENT NO. 3

CORAM:

JUSTICE ANUPINDER SINGH GREWAL
HON'BLE PRESIDENT

SHRI RAVINDRA CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

Present:

For the Applicant : Mr. Shivansh Soni, Adv.
For the Liquidator : Mr. Abhishek Anand, Mr. Karan Kohli, Ms.
Simran Gupta, Advs.

ORDER

1. The instant application has been filed by M/s Shree Narmada Enterprises ("**Applicant**") through its Partner Sh. Ashok Palod, under section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("**Code**") read with rule 11 of the National Company Law Tribunal Rules, 2016, ("**Rules**") in the liquidation proceedings of M/s IBD Universal Private Limited ("**Corporate Debtor**" / "**Respondent**" / "**CD**"), seeking directions to the Liquidator to remove the project namely "IBD Royale Park, Hoshangabad" from the list of projects/assets of the Corporate Debtor and to hand over all documents pertaining thereto to the Applicant. The prayers in the abovementioned application are as follows:

- a. *Direct the liquidator to remove "IBD Royale Park" from the list of projects of the Corporate Debtor, in terms of the termination letter dated 19.06.2024;*
- b. *Direct the liquidator to return all documents related to the IBD Royale Park project to the Applicant;*

c. *Pass any other order that this Hon'ble Tribunal may deem fit.*

Brief Facts of the case:

2. The Applicant is the owner of two parcels of land admeasuring 7.03 acres (Khasra Nos. 537 & 533) and 4 acres (Khasra No. 536/1), aggregating to 11.03 acres, situated at Village Raipur, Hoshangabad-Babai Road, District Hoshangabad (Narmadapura), Madhya Pradesh (“subject land”).
3. The Applicant contends that the Joint Venture Agreement (“**JVA**”) dated 09.04.2005 executed between the Applicant and the Corporate Debtor (then known as Indus Dwellings Pvt. Ltd.) for development of a residential colony on the subject land under the name “IBD Royale Park, Hoshangabad”, stood validly terminated vide termination letter dated 19.06.2024 and consequently the development rights of the Corporate Debtor ceased to exist.
4. In September 2011, the Applicant requested a revision of the development rate to Rs. 30/- (Rupees Thirty only) per sq. ft., which was countered and approved by the Corporate Debtor at Rs. 27/- (Rupees Twenty-Seven only) per sq. ft., accepted by all partners vide letter dated 29.09.2011.
5. The project was subsequently registered under the Real Estate Regulatory Authority (RERA) in 2017, with a completion deadline of 2018, which also lapsed due to the continuous inaction of the Corporate Debtor.
6. In the year 2017-18, financial discrepancies emerged in statements furnished by the Corporate Debtor, with a total outstanding amount of Rs. 5,18,957/- (Rupees Five Lakhs Eighteen Thousand Nine Hundred and Fifty-Seven only) remaining unpaid to the Applicant. A separate claim was raised by the Applicant in this regard, part of which has been admitted by the Liquidator to the extent of Rs. 4,85,374/- (Rupees Four Lakhs Eighty Five Thousands Three Hundred and Seventy-Four only).

7. On 22.10.2021, the Court of the Sub Divisional Officer, Hoshangabad, ruled that the Corporate Debtor's development work violated the Madhya Pradesh Colonizer Act, leading to rejection of the Corporate Debtor's application.
8. The Applicant's erstwhile partner, Late Sh. Suresh Maheshwari, had initiated discussions with the Corporate Debtor for termination of the JVA. However, due to his sudden demise, no formal termination deed was executed. Subsequent to those discussions, the Corporate Debtor undertook no further work on the project, bringing all operations to a standstill.
9. The Application has been opposed by the Liquidator who submits that the development rights arising from the JVA constitute property of the Corporate Debtor and form part of the liquidation estate and, therefore, the purported termination is invalid and unenforceable.
10. CIRP against the Corporate Debtor was initiated vide order dated 30.01.2023 passed under Section 7 of the Code. During the CIRP, the Applicant raised objections to the inclusion of IBD Royale Park as an asset of the Corporate Debtor and informed the erstwhile Resolution Professional of the mutual understanding of termination between the parties. However, no action was taken by the Resolution Professional thereon. Since no viable resolution plan was approved by the Committee of Creditors, liquidation of the Corporate Debtor was ordered on 22.05.2024 under Section 33 of the Code and Sh. Rajeev Khurana was appointed as the Liquidator.
11. Upon learning of the Liquidator's appointment, the Applicant, vide termination letter dated 19.06.2024, formally terminated the JVA dated 09.04.2005, citing continuous and material breaches by the Corporate Debtor, and requested the Liquidator to remove IBD Royale Park from the list of projects/liquidation estate of the Corporate Debtor and hand over all documents pertaining to the project.

12. The Liquidator, vide letter dated 27.09.2024, declined to act upon the said termination, treating it as a request for the Liquidator himself to terminate the JVA, and held that the JVA cannot be terminated under the provisions governing the liquidation process. The Liquidator further stated that he does not possess the authority to hand over unsold and mortgaged portions of the land. Aggrieved thereby, the Applicant has filed the present application.

Submissions of the Applicant

13. Learned Counsel for the Applicant submitted that the JVA dated 09.04.2005 merely granted the Corporate Debtor the right to develop and construct on the subject land on a turnkey basis. No ownership or title over the subject land was ever transferred to the Corporate Debtor. Accordingly, the subject land and the IBD Royale Park project do not constitute assets of the liquidation estate of the Corporate Debtor and have been wrongly included therein.

14. It is contended that the Corporate Debtor committed several breaches including non-completion of the project, financial irregularities discovered during 2017-18, violations under the Madhya Pradesh Colonizer Act, and failure to clear outstanding dues which culminated in an order dated 22.10.2021 passed by the concerned authority and because of the aforesaid breaches, the Applicant was entitled to terminate the JVA and accordingly issued the termination notice dated 19.06.2024. It is submitted that the termination was not on account of the Corporate Debtor's involvement in the insolvency process.

15. It is submitted that as per Section 36(4)(a)(i) of the Code, 2016, assets owned by third parties but held by the Corporate Debtor under possession only, are excluded from the liquidation estate. Since the subject land is legally owned by the Applicant and was only used by the Corporate Debtor under the terms of the JVA, it cannot be treated as an asset of the Corporate Debtor for the purposes of liquidation.

16. It is further submitted that as per Section 36(4)(a)(iv) of the Code, 2016, assets under contractual arrangements that provide only usage rights, without transferring ownership, are excluded from the liquidation estate. The JVA between the Applicant and the Corporate Debtor granted only development and usage rights to the Corporate Debtor and did not transfer ownership of the land. Therefore, the subject project is expressly excluded from the liquidation estate.
17. Reliance is placed on the judgment of the Hon'ble Supreme Court in TATA Consultancy Services Limited v. Vishal Ghisulal Jain, Resolution Professional, SK Wheels Private Limited [Civil Appeal No. 3045 of 2020], wherein it was held that the NCLT cannot interfere with the termination of a contract where the grounds for termination are unrelated to the insolvency of the Corporate Debtor, and that a contract may only be preserved if it is central to the success of the CIRP and its termination would result in the corporate death of the Corporate Debtor. Neither condition is applicable in the present case.
18. It is submitted that under the provisions of the Code, 2016, there is no restriction or bar on the Applicant from terminating the JVA. The only limitation under the Code pertains to the initiation of suits or legal proceedings against the Corporate Debtor under liquidation, which is not the case here. The Liquidator has therefore erred in refusing to give effect to the termination notice.
19. It is further submitted that the JVA does not qualify as a critical contract necessary to keep the Corporate Debtor as a going concern. Moreover, there is no outstanding claim of the Corporate Debtor from the project, nor any claim from any plot buyer that would necessitate its continued inclusion in the liquidation estate.

20. It is submitted that the Liquidator has misinterpreted the provisions of Section 33(5) of the Code, 2016, which provides only for a stay on suits or legal proceedings against the Corporate Debtor and does not in any manner prohibit the termination of service or contractual agreements by third parties. Similarly, Section 35 of the Code only empowers the Liquidator to take custody and control of the assets of the Corporate Debtor and does not confer any authority upon the Liquidator to resist or negate a valid termination effected by a third party.
21. The Applicant therefore seeks exclusion of the project from the liquidation estate and return of all project documents.
22. The Application was listed for hearing on 17.12.2024, wherein the following order was passed by this Adjudicating Authority:

IA-5638/2024

Issue notice of this application to the Respondent(s) by all modes, returnable by 25.02.2025.

List the matter on **25.02.2025**.

23. On 25.02.2025, the following order was passed by this Adjudicating Authority:

IA-5638/2024

Ld. Counsel appeared on behalf of the Applicant.

Ld. Counsel appeared on behalf of the Respondent and sought time to file the reply. Ld. Counsel is given the liberty to place the reply on record before the next date of hearing .

At request and with consent of the parties, list the matter **on 11.03.2025**.

24. On 11.03.2025, the following order was passed by this Adjudicating Authority:

IA-5638/2024

Ld. Counsel Mr. Shivansh Soni, on behalf of Applicant is present.

Ld. Counsel Mr. Abhishek Anand on behalf of the Respondent/Liquidator is also present and sought further time to file the reply. Reply be filed within a period of 2 weeks.

At request and with consent of the parties, list the matter before the Regular (Principial) Bench **on 07.05.2025.**

In compliance of the aforesaid order, reply was uploaded on behalf of the Liquidator on 16.07.2025, on the DMS-e portal.

Submissions of the Respondent/Liquidator

25. Learned Counsel for the Liquidator submits that from a bare perusal of the title, memo of parties, and the contents of the present Application, it is apparent that the Applicant has not arrayed any party as Respondent in the present Application. Despite being aware of the fact that liquidation of the Corporate Debtor is underway, the Applicant has filed the present Application without arraying the Corporate Debtor or the Liquidator (i.e., the Answering Respondent) as a Respondent therein, which is contrary to the settled position of law and amounts to non-joinder of necessary parties. the development rights acquired under the JVA constitute valuable rights and assets of the Corporate Debtor.

26. It is submitted that it is a well-settled principle of law that development rights constitute "property" as defined under Section 3(27) of the Code. The said provision defines property in broad terms, encompassing all types of rights, title, interest, and claims that are capable of being enforced, whether tangible or intangible, movable or immovable. Development rights, being contractual entitlements to develop, utilize, or exploit land or property, clearly fall within this ambit.

27. Reliance is placed on the judgment of the Hon'ble Supreme Court in **Victory Iron Works Ltd v. Jitendra Lohia & Anr., Civil Appeal No. 1743 of 2021**, wherein it was held that development rights created in favour of the Corporate Debtor constitute "property" within the meaning of Section 3(27) of the Code, and the bundle of rights and interests created over immovable property for a valid consideration constitute "assets" within the meaning of the Code. The said principle has also been affirmed by this Hon'ble Appellate Tribunal in the case of **KJI Khan and Anr. v. Art Constructions Pvt. Ltd. and Ors., Company Appeal (AT) (Insolvency) No. 1116 of 2024**.
28. It is submitted that the subject project comprises a total of 215 residential plots of various sizes-39 plots measuring 1,500 sq. ft., 95 plots of 1,250 sq. ft., and 81 plots of 1,050 sq. ft.-with a total developable area, as per the layout plan approved by the Town and Country Planning Department. The initial consideration payable to the Applicant was calculated at the rate of Rs. 12/- (Rupees Twelve only) per sq. ft. for the entire developable area of 2,62,300 sq. ft., resulting in a total consideration of Rs. 31,47,600/- (Rupees Thirty-One Lakhs Forty-Seven Thousand Six Hundred only). Subsequently, the rate was revised to Rs. 27/- (Rupees Twenty-Seven only) per sq. ft. on 29.09.2011, resulting in an enhanced total sales consideration of Rs. 70,82,100/- (Rupees Seventy Lakhs Eighty-Two Thousand One Hundred only).
29. It is submitted that out of this revised total, the Corporate Debtor has paid Rs. 58,29,263/- (Rupees Fifty-Eight Lakhs Twenty-Nine Thousand Two Hundred Sixty-Three only) as acknowledged by way of written confirmation issued to the Applicant. A further amount of Rs. 7,69,000/- (Rupees Seven Lakhs Sixty-Nine Thousand only) has also been paid, bringing the total amount received by the Applicant to Rs. 65,98,263/- (Rupees Sixty-Five Lakhs Ninety-Eight Thousand Two Hundred Sixty-Three only). Accordingly, a balance sum of Rs. 11,83,837/- (Rupees Eleven Lakhs Eighty-Three Thousand Eight Hundred Thirty-Seven only) remains outstanding as unpaid sales consideration.

30. It is submitted that the Liquidator, under Section 35(1)(b) of the Code, is entrusted with the responsibility of taking control and custody of all assets of the Corporate Debtor, including those under its ownership and possession. Development rights, being valuable contractual entitlements with significant economic implications, fall squarely within the expansive definition of “property” under Section 3(27) of the Code and are thus deemed to be assets of the Corporate Debtor. These rights are not merely incidental or collateral but constitute core business assets essential to the Corporate Debtor's commercial viability. Accordingly, the Liquidator is duty-bound under Section 35 of the Code to take into his control all such rights and interests and to take appropriate steps for their protection, preservation, and realisation for the benefit of the creditors and stakeholders.
31. It is submitted that the present Application amounts to forum shopping and a clear abuse of the process of law. The Applicant has already submitted its claim before the Liquidator in accordance with the provisions of the Code, and the said claim has been duly verified and admitted by the Liquidator to the extent of Rs. 4,85,374/- (Rupees Four Lakhs Eighty-Five Thousand Three Hundred Seventy-Four only). Having thus elected to participate in the liquidation proceedings and having submitted itself to the jurisdictional framework under the Code, the Applicant cannot now be permitted to initiate parallel proceedings seeking additional or inconsistent remedies before this Hon'ble Adjudicating Authority.
32. It is further submitted that the rights and entitlements of the Applicant have been clearly defined under the Joint Venture Agreement executed between the Applicant and the Corporate Debtor, which limits the Applicant's financial entitlement strictly to recovery of the land cost at the mutually agreed rate and nothing beyond. The Applicant has in fact acted on the basis of this arrangement by filing its claim before the Liquidator. Having submitted its claim in accordance with the contract and participated in the liquidation proceedings, the Applicant is now estopped

from initiating parallel proceedings or seeking remedies beyond what has already been adjudicated under the Code. The present proceedings are nothing but a collateral attack on the liquidation process and deserve to be dismissed in limine.

33. It is submitted that the present Application is barred under the express provisions of Section 33(5) of the Code, which imposes a statutory moratorium on the institution or continuation of any suit or legal proceeding against the Corporate Debtor once an order of liquidation has been passed by the Adjudicating Authority. The present Application, by seeking to unilaterally terminate the subsisting Joint Venture Agreement and reclaim possession of the land or assert alleged monetary entitlements, squarely falls within the ambit of a "legal proceeding" against the Corporate Debtor.
34. It is submitted that the reliefs sought by the Applicant are not within the jurisdictional ambit of this Hon'ble Adjudicating Authority under the Code. Reliance is placed on the judgment in ***Tata Consultancy Services Limited v. Vishal Ghisulal Jain, (2022) 2 SCC 585***, wherein the Hon'ble Supreme Court held that disputes of a purely contractual nature, which do not relate to or arise from the CIRP, fall outside the jurisdiction of this Hon'ble Adjudicating Authority under Section 60(5) of the Code. The Hon'ble Supreme Court clarified that when a dispute arises dehors the insolvency of the Corporate Debtor, recourse must be had to the civil courts or other competent fora.
35. It is further submitted that in ***Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta (2021) 7 SCC 209***, the Hon'ble Supreme Court held that only those disputes which directly and solely arise from the insolvency of the Corporate Debtor are amenable to the jurisdiction of this Hon'ble Adjudicating Authority. The Court carved out a "narrow exception" to this rule, applicable only where the contractual termination is on account of insolvency per se, and not otherwise. In the present case, the Applicant's

purported termination is not based on the insolvency of the Corporate Debtor but on alleged pre-existing contractual breaches, which are dehors the insolvency proceedings. Accordingly, the residuary jurisdiction of this Hon'ble Adjudicating Authority cannot be invoked.

36. It is further submitted that the Hon'ble Supreme Court in ***Embassy Property Developments Pvt. Ltd. vs. State of Karnataka, (2020) 13 SCC 308*** held that where the right being exercised arises under a domain outside the Code, including public law or statutory rights, the jurisdiction lies with the appropriate authority or court, and not with this Hon'ble Adjudicating Authority under the Code. The Applicant must be relegated to the appropriate forum having jurisdiction over the subject matter, as the residuary jurisdiction of this Hon'ble Authority cannot be invoked merely because CIRP or liquidation is ongoing.

37. On 07.05.2025, the following order was passed by this Adjudicating Authority:

IA-5638/2024

As prayed by the Ld. Counsel for the Applicant, two weeks time is granted to file the amended memo of parties.

At his request, list the matter **on 15.07.2025**.

In compliance of the aforesaid order, an affidavit of amended memo of parties was uploaded on 10.06.2025 on the DMS-e portal by the Applicant.

38. On 05.08.2025, the following order was passed by this Adjudicating Authority:

IA-5638/2024

Ld. Counsel Mr. Shivansh Soni for Applicant appears through VC.

Ld. Counsel for the respondent states that the reply has been filed. Rejoinder, if any, to be filed before the next date of hearing.

At request and with consent, list the matter **on 26.11.2025**.

39. On 26.11.2025, the following order was passed by this Adjudicating Authority:

IA-5638/2024

Ld. Counsel for the Applicant appears and seeks further time to comply with the order dated 05.08.2025. A final opportunity is given to applicant to comply with the order.

At his request and with consent of the parties, list the matter along with IA-3134/2025 before the Regular (Principal) Bench on **15.12.2025**.

40. On 15.12.2025, the following order was passed by this Adjudicating Authority:

IA-5638/2024, IA-3134/2025

Ld. Counsel Mr. Shivansh Soni appeared on behalf of the Applicant and stated that he does not want to file the rejoinder.

Ld. Counsel Mr. Karan Kohli appeared on behalf of the Liquidator.

At request and with consent of the parties, list the matter **on 18.02.2026**.

41. On 18.02.2026, the following order was passed by this Adjudicating Authority:

IA-5638/2024, IA-3134/2025

1. Proxy Counsel Mr. Dhanesh Kumar appeared through VC on behalf of the arguing counsel Mr. Shivansh Soni, for the Applicant. It is stated that the arguing counsel is not available today, therefore, there is a request for an adjournment.

2. Ld. Counsel Mr. Abhishek Anand appeared physically on behalf of the Respondent and stated that the reply to the application has been filed.
3. It is further stated that pleadings are complete in the matter and there is no prayer for filing the rejoinder.
4. Both parties are directed to file a short notes within 7 days, not exceeding three pages.
5. List the matter **on 08.04.2026** for further consideration.

42. On 08.04.2026, the following order was passed by this Adjudicating Authority:

IA-5638/2024, IA-3134/2025

At request, one week's further time is granted to enable both the parties to file short written notes as directed vide order dated 18.02.2026.

At request made by the Ld. Counsels, list the matter on **01.06.2026**.

In compliance of the aforesaid order, Written Submission on behalf of the Applicant and the Liquidator/Respondent were uploaded on 23.04.2026 and 30.05.2026, respectively, on the DMS-e portal.

43. On 01.06.2026, orders were reserved in the present Application i.e., IA-5638 of 2024, by this Adjudicating Authority.

Findings and Analysis

44. We have heard the Learned Counsel appearing on behalf of the parties and have perused the material available on record. The termination letter dated 19.06.2024 reads as follows:

5. In the meanwhile, Real Estate Regulatory Authority Act, 2016 was implement in the State of MP, after which the concerned project was registered with the Authority in 2017, and the parties were given time until 2018 to complete the project, but due to the inactions of M/s IBD the said time line also lapsed.
6. That later certain discrepancies emerged in the financial statements provided by M/s IBD in the year 2017-18 regarding outstanding land cost of Rs. 1,99,551/-, and inclusion of the sale consideration for Plot No. 42, measuring 1243.81 sq.ft., which amounted to Rs. 33,583/-, by virtue of which a total outstanding amount of Rs. 5,18,957/- remained unpaid by M/s IBD to out client; in relation to which a separate claim has been raised by my Client vide FORM C under Regulation 17 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 to you the Addressee.
7. Further more, on 22/10/2021, the Court Sub Divisional Officer, Hoshangabad, ruled that M/s IBD's development work in the concerned project, violated the Madhya Pradesh Colonizer Act, leading to the rejection of IBD's application.
8. Subsequent to which our client through it's erstwhile partner Late Sh. Suresh Maheshwari initiated discussions with IBD for the termination of the joint venture, and taking control back of the project development work. But, due to the sudden demise of Late Sh. Suresh Maheshwari, the said discussion were halted and no formal termination was made between the parties. However, subsequent to the said discussion no work was undertaken by M/s IBD on the project and all operations regarding the same, came to a stand still.
9. That, in the year 2022, application seeking initiation of Insolvency Proceedings was admitted against M/s IBD, as a result of which, moratorium was imposed and our client's hand were tied to await the outcome of the said proceedings, until the order dated 22.05.2024 was passed by the Ld. NCLT New Delhi, ordering liquidation of M/s IBD Universal Private Ltd.
10. That in light of the said development, our client is now entitled to terminate the subject joint venture agreement dated 09.04.2005, to not only protect and preserve the commercial value of our client's land, but to complete the development of the project on our own accord, which has been seriously prejudiced by the inactions of M/s IBD in the past, compelling us to take the said action of terminating the agreement.

45. The above termination letter makes it clear that violations and discrepancies were figured out in 2017-18 and 2021, which is well before commencement of CIRP, however no steps were taken for the termination. The CIRP came to an end and liquidation was commenced vide order dated 22.05.2024. Immediately after commencement of liquidation, the Applicant has unilaterally terminated the JVA vide above-mentioned termination letter.

46. It is a settled law that development rights constitute property of the CD. The Liquidator has relied upon a case of **Victory Iron Works Ltd. v. Jitendra Lohia & Anr.**, Civil Appeal No.1743 of 2021 with Civil Appeal No.1782 of 2021, wherein the Supreme court held as follows: *“Therefore, the development rights created in favour of the Corporate Debtor constitute “property” within the meaning of the expression under Section 3(27) of the Code. At the cost of repetition, it must be recapitulated that **the definition of the expression “property” under Section 3(27) includes “every description of interest, including present or future or vested or contingent interest arising out of or incidental to property”**. Since the expression “asset” in common parlance denotes property of any kind, the bundle of rights that the Corporate Debtor has over the property in question would constitute “asset” within the meaning of Section 18(f) and Section 25(2)(a) of the Code.”*

47. Further, in **AA Estates Pvt. Ltd. v. Kher Nagar Sukhsadan Cooperative Housing Society Ltd. (SLP (C) No. 10758 of 2025)**, relied upon by the Applicant, the NCLAT held as follows:

“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 Code. 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 Code.

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 Code. 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 Code.”

48. The above case relied upon by the Applicant requires a lawful termination to treat the termination to be valid. Further, the case speaks in the context of CIRP, meaning thereby that when the development rights have been taken out of the purview of the property is the period prior to CIRP is when the CD, having taken the land for development, has failed to develop the same and therefore the CD was prevented from claiming such rights as its property and seek protection. To the contrary, in the instant case, the CIRP for the CD commenced in 2022 and liquidation in 2024. The Applicant is primarily aggrieved from violations of Madhya Pradesh Colonizer Act, which were determined 2021 and financial discrepancies which turned up in

2017-18. Since, these violations and discrepancies, huge time has lapsed and it is only immediately after liquidation order, the Applicant has chosen to terminate the JVA. The contention that there was verbal conversation previously for termination cannot be accepted as there is no record supporting the same. *Prima facie*, the chronology of events suggests that act of termination by the Applicant is triggered by liquidation and not by violations which occurred even prior to commencement of CIRP. Therefore, ruling in *AA Estates (Supra)* will not apply to the case at hand. The ruling of the Supreme Court in the matter of *Victory Iron Works (Supra)* is binding on us.

49. Further, it is pertinent to take note of the fact that the Applicant has not denied the payment of ongoing dues during CIRP and liquidation in terms of the JVA, nor has such an issue been raised in the Application. Therefore, attempt of the Applicant of terminating the JVA does not seem to be a bona fide action.

50. Thus, in the instant case, development rights granted by the Applicant vide JVA dated 09.04.2005 constitute the property of the CD and termination thereof sought be made vide letter dated 19.06.2024 is invalid for the reason that the Applicant, having not terminated the JVA at any time before, including during the CIRP, cannot be allowed to terminate during the Liquidation period.

IA (I.B.C)/5638/2024 is dismissed.

Files be consigned to record room (current).

Sd/-
(ANUPINDER SINGH GREWAL)
PRESIDENT

Sd/-
(RAVINDRA CHATURVEDI)
MEMBER (TECHNICAL)