



NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH COURT III

Item No. 01

IA 325/2021 & IA 1301/2021

In

C.P. (IB)4135(MB)/2018

CORAM:

SH. HARIHARAN NEELAKANTA IYER
Member (Technical)

MS. LAKSHMI GURUNG
Member (Judicial)

ORDER SHEET OF THE HEARING ON **23.06.2026**
(HEARING THROUGH: HYBRID MODE)

NAME OF THE PARTIES: USV Pvt Ltd.

VS

Lok Housing and Construction Limited

Appearance

For Petitioner /Applicant /Liquidator :

For Respondent : Adv. Shyam Kapadia a/w Adv. Gaurav Gopal

Adv. Mohit Goyal i/b Wadia Ghandy & Co. for R-5 in

IA No. 1301 of 2021. (VC)

SECTION 7 OF THE IBC, 2016

ORDER

IA 325/2021 & IA 1301/2021 IN CP (IB) 4135(MB)/2018

This application is listed for pronouncement of order. The same is pronounced in Open Court, vide a separate order.

Sd/-

HARIHARAN NEELAKANTA IYER
Member (Technical)

---Shrinivas---

Sd/-

LAKSHMI GURUNG
Member (Judicial)



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH COURT-III**

I.A. 325/2021 & I.A. 1301/2021

In

C.P.(IB) 4135/MB/C-III/2018

IA/325/2021

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

Hemant Mehta

Resolution Professional of M/s. Lok Housing and Constructions Limited

D-613/614 Neelkanth Business Park Near Railway Station, Vidyavihar (W), Mumbai – 400086

... Applicant

Vs.

1. Apex Grievance Redressal Committee

Administrative Building, 4th Floor, Legal Department, Anant Kanekar Marg, Mumbai – 400051

2. Dr. Ambedkar Co-operative Housing Society

C/o Ground Floor, Asmita Apartment, Dr. Ambedkar Road, Khar West, Mumbai-400052

3. Krantisurya Dr. Babasaheb Ambedkar

Sahakari CHS Ltd. (Proposed) C/o, 9/114, 1st floor, Navi Pali, Dr. Babasaheb Ambedkar Road, Khar (west), Mumbai – 400052

... Respondents



IA/1301/2021

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

Hemant Mehta

Resolution Professional of M/s. Lok Housing and Constructions Limited

D-613/614 Neelkanth Business Park Near Railway Station, Vidyavihar (W), Mumbai – 400086

... Applicant

Vs.

1. Apex Grievance Redressal Committee

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2. Dr. Ambedkar Co-operative Housing Society

C/o Ground Floor, Asmita Apartment, Dr. Ambedkar Road, Khar West, Mumbai-400052

3. Krantisurya Dr. Babasaheb Ambedkar

Sahakari CHS Ltd. (Proposed)

C/o, 9/114, 1st floor, Navi Pali, Dr. Babasaheb Ambedkar Road, Khar (west), Mumbai -400052

4. Chief Executive Officer – SRA

3rd Floor, Administrative Building, Anand Kanekar Marg, Bandra (E), Mumbai – 400051

5. Keystone Realtors Pvt. Ltd.

702 Natraj, M V Road Junction, Western Express Highway. Andheri (E), Mumbai – 400069

6. Vishwa Ratna Dr. Babasaheb Ambedkar SRA CHS Limited



... Respondents

In the matter of

USV Private Limited

... Financial Creditor

Vs.

Lok Housing and Constructions Limited

Having office at: Shop No. 4, Lok Bhavan, Lok
Bharati Complex, Marol Maroshi Road, Marol,
Andheri (East), Mumbai – 400059
CIN No: L76210MH1985PLC037143

... Corporate Debtor

Order pronounced on: 23.06.2026

Coram:

Sh. Hariharan Neelakanta Iyer
Member (*Technical*)

Ms. Lakshmi Gurung
Member (*Judicial*)

Appearances:

For the Applicant : Sr. Adv. Vikram Nankani a/w Adv. Orijit
Chatterjee a/w Swati Dalmia

For Respondent 1 & 4 : Adv. Anoop Patil

For Respondent 5 in : Adv. Shyam Kapadia a/w Adv. Gaurav
IA/1301/2021 Gopal, Adv. Mohit Goyal i/b Wadia Ghandy
& Co.

For Respondent 6 : Adv. Rohit Gupta i/b Ravi Ingala

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

1. The Interlocutory Application No. 325/2021 (**IA/325/2021**) has been filed by the Resolution Professional (**RP**) of M/s Lok Housing and



Constructions Limited (**Corporate Debtor**) seeking stay of the order dated 25.09.2019 passed by the Apex Grievance Redressal Committee (**Respondent 1**) till the completion of Corporate Insolvency Resolution Process (**CIRP**) of the Corporate Debtor.

2. The Interlocutory Application No. 1301/2021 (**IA/1301/2021**) is also filed by the RP seeking to quash the revised Letter of Intent (LoI) dated 04.03.2021 issued by the Slum Rehabilitation Authority.
3. Both the IAs were heard together and are being disposed of by this common order.
4. **Brief background emerging from the pleadings:**
 - a) Dr. Babasaheb Ambedkar CHS Ltd. (hereinafter referred to as '**the Society**') was formed by the residents who were residing at CTS No. E-86/14A & B and E-86/15A & B of Village Bandra, Taluka – Andheri (hereinafter referred to as "**the Property**").
 - b) The Society had entered into an agreement dated 19.11.1978 with M/s L. L. Construction for implementation of a Slum Rehabilitation Scheme on the said Property.
 - c) On 21.10.1996, a Modification Agreement was executed between the Society, M/s L. L. Construction and M/s Lok Shelters Private Limited, whereby M/s L. L. Constructions transferred all its ownership right, title and interest in respect of the said property including the benefits under the agreement dated 19.11.1978 to M/s Lok Shelters Private Limited. Subsequently, the Chief Executive Officer, Slum Rehabilitation Authority (In short '**CEO, SRA**') issued Letter of Intent dated 19.06.1999 in favour of Lok Shelters Private Limited.
 - d) As per the Corporate Debtor's website, the Corporate Debtor was incorporated on 14.08.1985 as 'Navdeep Construction Co. Ltd.' and was subsequently, renamed as 'Lok Housing and Constructions Co. Ltd. in the year 1990.



- e) The Corporate Debtor was amalgamated with M/s Lok Shelters Private Limited vide order dated 02.11.2007 passed by the Hon'ble Bombay High Court sanctioning the scheme of the amalgamation. Accordingly, on 14.11.2007, the Society passed a resolution wherein the Corporate Debtor was appointed to develop the property.
- f) Due to failure of the Corporate Debtor to complete the development work, the Slum Rehabilitation Authority (**SRA**) vide Roznama dated 30.08.2018 and order dated 16.10.2018 terminated the appointment of the Corporate Debtor under section 13(2) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (hereinafter referred to as "**Slums Act**").
- g) The Roznama dated 30.08.2018 and order dated 16.10.2018 were challenged by the Corporate Debtor in Appeal (L) No. 215 of 2018 before the Apex Grievance Redressal Committee (**AGRC/ Respondent 1**).
- h) The Corporate Debtor also filed Writ Petition (L) No. 3515 of 2018 (**WP 3515**) before the Hon'ble Bombay High Court challenging the Roznama dated 30.08.2018 and the order dated 16.10.2018. On 19.10.2018, the Hon'ble Bombay High Court in WP 3515/2018 directed that, "*no further action will be taken on the basis of the impugned order.*"
- i) The Hon'ble Bombay High Court, Single Judge Bench, refused to interfere in the matter in view of the pending appeal before Ld. AGRC and vide order dated 02.11.2018, disposed of the writ petition with following observations:

"11. ... in my view no interference is called for. In the facts of the case, the failure of the petitioner to complete the project is not in dispute. The issues raised by Mr. Madon apropos the manner in which the petitioners have conducted themselves is a matter for the appellate body to consider all these aspects while considering the appeal against the impugned order as on the date of impugned order is relevant. In view of the pendency of the appeal, I do not see any reason to interfere with the impugned orders in the writ jurisdiction of this court. I therefore pass the following order:



(i) The petitioners having filed their appeal challenging the impugned order dated 16th October, 2018 before the Apex Grievance Redressal Committee – respondent no. 1, it will be open for them to make an appropriate application for urgent hearing of interim relief that they may seek in the said appeal.

(ii) In order to enable them to do so the impugned order passed on 19th October 2018 shall remain in force upto 21st November, 2018.”

- j) Thereafter, the Corporate Debtor filed Writ Petition (L) No. 3900 of 2018 alleging that the AGRC could not consider the interim reliefs as the AGRC did not meet on 17.11.2018. Considering the fact that the stay order dated 19.10.2018 passed in WP 3515/2018 was to be continued only till 21.11.2018, the Hon’ble Bombay High Court disposed of WP/3900/2018 vide order dated 21.11.2018 directing that the interim order granted on 02.11.2018 in WP No. 3515/2018 to be continued till 04.12.2018 when the appeal no. 215/2018 is listed before AGRC.
- k) The Appeal No. 215 of 2018 was heard by the AGRC on 04.12.2018 and after considering the submissions of the parties, the AGRC directed that *“no further action be taken on the basis of impugned order dated 16.10.2018 passed by CEO/SRA till next date of hearing.”*
- l) On 07.12.2018, the AGRC directed to continue the interim relief granted vide order dated 04.12.2018, however, the AGRC further observed:
- “Stay granted by this Committee as per aforesaid Para 8(a) shall not preclude the eligible Slum Dwellers from convening General Body Meeting in the presence of Asst. Registrar, Co-Operative Societies/SRA from appointing new developer of their own choice as per Law, Rules, Regulation and prevailing norms and policy of SRA.*
- However, if any Resolution appointing new developer is passed at such proposed General Body Meeting of eligible Slum Dwellers, the same shall not be implemented till next date of hearing.”*
- m) Challenging the said order dated 07.12.2018, the Corporate Debtor filed yet another Writ Petition (L) No. 138 of 2019 before the Hon’ble Bombay



High Court which was disposed of vide order dated 17.01.2019 with following observations:

“5. We dispose of the petition by observing that in case the Committee of slum dwellers convene a General Body Meeting, the decision taken by the Committee would not be given effect to till the final outcome of the Application No. 215/18 filed by the petitioners herein pending consideration of the Apex Grievance Redressal Committee. This direction will continue for a period of ten days from the date of uploading of the order by the Committee if the order is adverse to the petitioner.”

- n) On 22.01.2019, the eligible slum dwellers held a General Body Meeting in the presence of the Assistant Registrar, Co-operative Societies/SRA, and appointed M/s Keystone Realtors Private Limited (**Respondent No. 5**) as the developer of the Scheme.
- o) On 06.02.2019, the Assistant Registrar, Co-operative Societies/SRA informed the AGRC about the appointment of Respondent No. 5 as the new developer.
- p) In the meantime, petition initiating Corporate Insolvency Resolution Process (**CIRP**) in respect of the Corporate Debtor was filed under section 7 of the Code. The said Petition was admitted by this Adjudicating Authority vide order dated 03.06.2019 while the Appeal No. 215 of 2018 was pending before Ld. AGRC. The Applicant herein was appointed as the Interim Resolution Professional.
- q) While the Corporate Debtor was undergoing the insolvency process, the Ld. AGRC dismissed the Appeal No. 215 of 2018 on 25.09.2019 and upheld the termination of the Corporate Debtor as developer of the said Property.

IA/325/2021

- 5. The Applicant being the Resolution Professional (RP) of the Corporate Debtor has filed IA/325/2021 seeking stay of the order dated 25.09.2019 till the completion of the CIRP of the Corporate Debtor.



6. **Submissions of the Applicant in IA/325/2025**

- a) It is submitted that the order was passed by AGRC during the subsistence of moratorium under section 14 of the Code, which bars the continuation of pending proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority. Reference is made to the order dated 01.10.2019 passed by NCLT Mumbai Bench in **ICICI Prudential Real Estate vs. Sunshine Housing & Infrastructure Pvt. Ltd. [MA/3193/2019 in CP(IB)/4733/MB/2018]** wherein the order passed by the SRA was stayed in view of the moratorium.
- b) It is submitted that the fact that the Corporate Debtor was admitted to CIRP was not brought to the notice of AGRC and therefore, the order dated 25.09.2019 passed by AGRC is *per incuriam*.
- c) It is submitted that section 238 of the Code has an overriding power over other laws. Reference is made to **Bhanu Ram & Ors. vs. HBN Daries & Allied Ltd. [CP(IB)/547/PB/2018]** wherein the NCLT, Principal Bench relying upon the Hon'ble Supreme Court Judgment in **Pr. Commissioner of Income Tax vs. Monnet Ispat & Energy Ltd. [SLP (C) No. 6487/2018]** held that the Code will override anything inconsistent contained in any other enactment including the Income Tax Act.

7. **Reply of Respondents in IA/325/2021**

The RP has impleaded the Apex Grievance Redressal Committee (**Respondent 1**), the Ambedkar Co-operative Housing Society (**Respondent 2**) and Krantisurya Dr. Babasaheb Ambedkar CHS Ltd. (**Respondent 3**) as Respondents in IA/325/2021. Respondent No. 2 has filed its reply. Respondent No. 1 is a proforma party and Respondent No. 3 has not filed reply.

7.1 **Submission of Respondent 2:**

The reply of Respondent No. 2/ the Society revolves around the following issues:



- I. Jurisdiction
- II. Merits
- III. Delay

I. On Jurisdiction

- a) The execution of the Slum Rehabilitation Scheme is impressed with a public character. The land on which the scheme is sanctioned belongs to the State of Maharashtra. The State being the owner of the land upon which a slum is situated has a vital interest in ensuring that the object for which the land is utilized sub-serves the purpose of rehabilitation of the slum dwellers. The SRA as the authority which is vested with the power to regulate the implementation of the Scheme and the owner of the land are vital components in the implementation of the Slum Rehabilitation Scheme. Their statutory powers to ensure that the scheme is not misused and is utilized to sub-serve the public purpose underlying the scheme is not trammelled by private contractual arrangements.
- b) It is submitted that where there are designated authorities and tribunals under the Slums Act with powers vested in the said authorities and tribunals, it will not be open for this Tribunal to exercise any powers under the Slums Act. The decision taken by the Slum Rehabilitation Authority was in relation to a matter which is the realm of public law and cannot be brought within the folds of the jurisdiction of NCLT under section 60(5) of the Code.
- c) It is submitted that this Tribunal does not have jurisdiction to decide on the validity of the Orders passed by the CEO, SRA and the AGRC and to examine the legality or validity of any action taken by the CEO, SRA and the AGRC under the Slums Act as these authorities will have the exclusive jurisdiction to deal with the same.
- d) It is further submitted that despite the commencement of CIRP on 03.06.2019, the Advocates for the Corporate Debtor continued to appear before the AGRC and argued the said Appeal No. 215 of 2018.



It is thus submitted that during the period from 03.06.2019 until the order dated 25.09.2019, the stated position of the RP was that (i) the subject matter of Appeal No. 215 of 2018 did not fall within the scope of the moratorium order within the meaning of Section 14(1)(a) IBC because he did not inform the Respondent No. 1/ CEO, SRA about his appointment until 02.12.2019 and (ii) that the proper remedy for the Applicant was to pursue the remedies available to the Corporate Debtor under the Slums Act. The Applicant has altered this legal position only in January, 2021 (16 months after the order dated 25.09.2019 passed by the Respondent No. 1) and preferred the present Application.

- e) It is submitted that the Slums Act has its own statutory machinery for redressal of grievances. If the Corporate Debtor had any alleged grievances with respect to the exercise of the powers and authorities under the Slums Act by the AGRC or the CEO, SRA then RP would have to resort to the statutory machinery prescribed by the Slums Act.
- f) It is submitted that Section 238 of the Code cannot be read as overriding the provisions of the Slums Act as the Slums Act decides the rights of the slum dwellers, public duty of the SRA for the control and regulation of the Slum Rehabilitation Scheme.
- g) It is submitted that the provisions of Section 14(1)(a) of the Code have no application to the Appeal No. 215 of 2018 which is not a proceeding against the Corporate Debtor but a proceeding by the Corporate Debtor.
- h) It is submitted that the Applicant has suppressed from this Tribunal that the SRA addressed a letter dated 06.02.2020 to Applicant denying that the SRA is bound by the orders of moratorium for the reasons as stated in letter. It is further submitted that the SRA being a necessary party in the present case but the Applicant has not made SRA a party to the application.

II. On Merits

- a) The Corporate Debtor had been appointed by the Respondent No. 2 as a developer under the Slums Act and was required to fulfill the mandate



of DCR 33(10) by securing the implementation of the Scheme. Since the Corporate Debtor failed to implement the Slum Rehabilitation Scheme, the CEO, SRA vide order dated 16.10.2018 terminated the appointment of the Corporate Debtor as the developer of the Slum Rehabilitation Scheme of the Respondent No. 2 for reasons including delay of 19 years in implementation of the Slum Rehabilitation Scheme.

- b) It is submitted that under a Development Agreement, the Corporate Debtor would have entrusted with two duties under the Slums Act (i) the clearance of slums and (ii) construction of rehabilitation tenements for eligible slum dwellers. The Corporate Debtor could avail of the development rights under the said Development Agreement only if it fulfilled the statutory obligations under the Slums Act, which the Corporate Debtor failed to do at the relevant time. Hence, it is submitted that the Development Agreement cannot be said to be a contract for land.
- c) It was further submitted that in the present case, the insolvency commencement date is 03.06.2019 while the date of termination of the Corporate Debtor under Section 13(2) of the Slums Act is 16.10.2018 i.e. prior to the commencement of CIRP.
- d) It is submitted that Section 14 of the IBC speaks of the assets of the Corporate Debtor. However, in the present case, the land for which the SR Scheme was sanctioned and for which development rights were earlier granted to the Corporate Debtor is owned by the State of Maharashtra and is offered as a grant to the Respondent No. 2 Society. Thus, the right given by the SRA to any developer under a sanctioned SR Scheme cannot be subject to insolvency proceedings considering the proviso to Section 14 of the IBC.
- e) It is submitted that by virtue of the provisions of the Slums Act and the statutory scheme contained in Regulation 33(10) of the Development Control and Promotion Regulations For Greater Mumbai, 2034, the slum rehabilitation scheme cannot form a part of the asset pool of a corporate debtor or a part of a resolution plan and neither the



Committee of Creditors nor the Resolution Professional can make a choice of a developer in the case of a slum rehabilitation scheme.

- f) It is submitted that the judgements relied upon by the Applicant and the provisions of the overriding effect of IBC has no application to the facts of the present case because the asset in question ceased to be an asset of the Corporate Debtor on the date the Corporate Debtor was admitted to the Resolution Process.

III. On Delay

- a) It is submitted that there is delay and laches on the part of the Applicant in moving this Application in January, 2021. The termination of the appointment of the Corporate Debtor became final on 16.10.2018 and in the manner stated hereinafter, the eligible slum dwellers of the slum property have on 22.01.2019 chosen Keystone Realtors Private Limited as a developer of their choice in accordance with Law, Rules, Regulation and prevailing norms and policy of SRA. Accordingly, the Applicant is not entitled to any of the reliefs as sought in the present Application.

Affidavit dated 15.04.2021 filed by Applicant

8. The Applicant filed affidavit dated 15.04.2021 and placed on record the Letter of Intent dated 04.03.2021 issued by the Slum Rehabilitation Authority/SRA in favour of M/s Keystone Realtors Private Limited to act as the new developer of the Project.
9. It is submitted that the RP had earlier sent letters dated 02.12.2019, 12.02.2020, and 06.01.2021 to the SRA intimating about the CIRP of the Corporate Debtor and the subsisting moratorium, however, despite that the SRA has issued the LoI dated 04.03.2021 in favour of the new developer. The letters sent by RP to the SRA are annexed to the Affidavit.

IA/1301/2021

10. This IA has been filed by the RP whereby the RP repeated and reiterated his submissions made in the Affidavit dated 15.04.2021 that after the filing of the IA/325/2021, the SRA issued a revised Letter of Intent (LoI)



dated 04.03.2021 bearing Ref No. SRA/ENG/325/HW/ PL/LOI in favour of M/s Keystone Realtors Pvt. Ltd. for the development of the Plot.

11. It is further submitted that after the issuance of LoI dated 04.03.2021, the RP through his advocate, had sent letter dated 26.05.2021 and has informed the AGRC, the SRA as well as Keystone Realtors to not act on the revised LoI issued by SRA as the matter is *sub judice* before this Tribunal.
12. The RP reiterated that if the order dated 25.09.2019 passed by AGRC and the consequent actions by the SRA are not stayed, then it will decrease the value of the Corporate Debtor as well as the possibility of getting viable resolution plans.

13. **Reply of Respondents in IA/1301/2021**

The RP has impleaded the Apex Grievance Redressal Committee as Respondent 1, the Ambedkar Co-operative Housing Society as Respondent 2, Krantisurya Dr. Babasaheb Ambedkar Sahakari CHS as Respondent 3, the Chief Executive Officer – SRA 1 as Respondent 4 and M/s Keystone Realtors Pvt. Ltd., the new developer, as Respondent 5 in IA/1301/2021. Respondent No. 1 is a proforma party. Replies have been filed respectively by the Society (R-2), the CEO, SRA (R-4) and the new Developer (R-5). No reply has been filed by Respondent 3.

13.1 **Submission of the Society/Respondent 2:**

- a) It is submitted that termination of appointment of the Corporate Debtor as the developer was passed on 30.08.2018 and 16.10.2018 which is prior to the declaration of moratorium under section 14 of the Code on 03.06.2019.
- b) It is submitted that this Tribunal does not have the jurisdiction to examine the legality or validity of any action taken by the Slum Rehabilitation Authority and/or by the Respondent No. 1 under the



Slums Act as these authorities have the exclusive jurisdiction to deal with the same under the Slums Act.

- c) The Respondent No. 2 has denied all the contentions raised by the RP in IA/1301/2021.

13.2 **Submission of CEO- SRA/Respondent 4:**

- a) It is submitted that prohibition contemplated under Section 14 (1) of the Code would only hold any force, if the said Authority, before whom such proceedings were being conducted, was intimated/ made aware about the said CIRP proceedings. The appeal before AGRC was filed on 05.10.2018 which is prior to the commencement of CIRP on 03.06.2019, however, the AGRC or the SRA was never made aware of the CIRP of the Corporate Debtor prior to passing of appeal order by AGRC and the contentions have been raised by the RP only because the order dated 25.09.2019 passed by AGRC was adverse to the interest of the Corporate Debtor and therefore, the RP is not entitled to seek any relief against the order dated 25.09.2019.
- b) It is submitted that the Corporate Debtor has committed illegal acts that are in contravention to the Slum Act. The object of the Slum Act is to re-house and resettle the Slum dwellers in Slum colonies and to uplift their living. The order dated 25.09.2019 passed by AGRC is for the welfare of the slum dwellers. It is submitted that the said order of AGRC has not been quashed or stayed and accordingly, it has attained finality.
- c) It is submitted that IA/325 seeking stay of 25.09.2019 is pending and the SRA has rightly acted in its rights to appoint a new developer for implementation of the Slum Rehabilitation Scheme and the filing of an application by the RP does not cast any duty on the SRA to stall the implementation of the Scheme.
- d) It is further submitted that the subject land is owned by the State Government and the Corporate Debtor was merely appointed as a developer which does not construe transfer of rights on the said land in favour of the Corporate Debtor.



- e) The Respondent No. 2 has denied all the contentions raised by the RP in IA/1301/2021.

13.3 **Submission of Respondent 5:**

- a) It is submitted that the powers of this Tribunal under the Code cannot be attracted to affect third party rights and third-party contracts and the Tribunal does not have the jurisdiction to quash the letter of intent issued by the SRA under the Slum Act since the same is not arising out of or in relation to the insolvency resolution of the Corporate Debtor.
- b) It is submitted that the developer implementing the slum rehabilitation scheme is expected to complete the scheme within a reasonable time and rehabilitate the eligible slum dwellers
- c) It is submitted that the provisions of section 14(1)(a) of the Code prohibits initiation and/or continuation of any action, litigation and process bring issued “against” the Corporate Debtor post the imposition of moratorium and any judgment, decree or order passed in lieu of such proceedings initiated against the Corporate Debtor. Section 14 does not prohibit the proceedings or continuation of proceedings initiated by the Corporate Debtor. Further, section 14(1)(b) prohibits transferring, encumbering and/or disposing any “assets” belonging to the Corporate Debtor during the moratorium.
- d) The Corporate Debtor’s appointment as developer was terminated on 16.10.2018 i.e. much prior to the imposition of the moratorium and there is no stay on the said termination order. Thus, the rights, title and interest in the said Scheme was not an asset of the Corporate Debtor in accordance with section 18(f) of the Code.

13.4 **Submission of Vishwa Ratna CHS/Respondent 6**

It is pertinent to note that Vishwa Ratna Dr. Babasaheb Ambedkar SRA CHS Limited filed IA No. 879/2022 seeking intervention in IA/1301/2021. The IA 879/2022 was heard and disposed of vide order dated 05.04.2022 and liberty was given to Vishwa Ratna Society to file



its reply in IA/1301/2021. Accordingly, the Vishwa Ratna Society filed its reply dated 29.04.2022 and submitted as follows:

- a) The AGRC vide its order dated 04.12.2018 read with the subsequent clarificatory order dated 07.12.2018 had permitted the eligible slum dwellers to convene a General Body Meeting for appointment of a new developer. It was clarified that in case a resolution is passed for appointment of a new developer, the same shall not be implanted till the next date of hearing.
- b) Accordingly, on 22.01.2019, the eligible slum dwellers held a General Body Meeting in the presence of the Assistant Registrar, Co-operative Societies/SRA, and appointed Respondent No. 5 as the developer of the Scheme. Further, the eligible slum dwellers formed the Vishwa Ratna Dr. Babasaheb Ambedkar SRA CHS Ltd. i.e. the present Intervenor.
- c) It is submitted that on 06.02.2019, the Assistant Registrar, Co-operative Societies/SRA addressed a letter to the AGRC wherein he confirmed the appointment of Respondent No. 5 as the new developer and in view thereof, the appointment of Respondent No. 5 as the new developer was confirmed prior to the commencement of CIRP of the Corporate Debtor on 03.06.2019.
- d) It is submitted that after the dismissal of the appeal on 25.09.2019, the Assistant Registrar, Co-operative Societies/SRA addressed a letter on 07.11.2019, to the Executive Engineer, SRA, confirming the appointment of Respondent No. 5 as the developer.
- e) It is submitted that while the RP has informed the Tribunal about his letter dated 02.12.2019 addressed to the SRA, however, the RP failed to bring to this Tribunal's notice about the reply letter dated 06.02.2022 sent by SRA to the RP *inter alia* giving reasons as to why the moratorium order would frustrate and be contrary to the Slum Act and the government policy in respect thereof.



- f) It is submitted that under Regulation 33(10) of the DCR and the Development Control and Promotion Regulations for Greater Mumbai, 2043, the eligible slum developers have been given the right to appoint the developer.
- g) It is submitted that the purpose of moratorium is only to preserve the status quo as on the date of CIRP. In the present case, as on the date of commencement of CIRP on 03.06.2019, the appointment of the Corporate Debtor already stood terminated by SRA 16.10.2018 and the Respondent No. 5 was appointed as the new developer on 22.01.2019 which was confirmed by the Assistant Registrar, Co-operative Societies/SRA on 06.02.2019. Thus, it is submitted that when the Corporate Debtor was admitted to CIRP, the Corporate Debtor had no right in respect of the Scheme. Further, the eligible slum dwellers are not part of the CoC of the Corporate Debtor.
- h) It is further submitted that moratorium under section 14 of the Code does not apply to proceedings instituted by the Corporate Debtor and therefore, the order dated 25.09.2019 which was passed in Appeal No. 215/2018 filed by the Corporate Debtor, is not hit by the moratorium.
- i) It is submitted that Section 238 of the Code cannot be read as overriding the Government of Maharashtra's or the SRA's right and/or public duty to control and regulate the properties.

Affidavit dated 29.06.2022 filed by Applicant

14. The Applicant has filed an affidavit dated 29.06.2022 and submitted as follows:
- a) In the Letter of Intent (LoI) dated 04.03.2021, it is mentioned that Dr. Babasaheb Ambedkar Cooperative Housing Society Limited (**Respondent No. 2**) is presently known as 'Vishwa Ratna Dr. Babasaheb Ambedkar SRA CHS Limited. In this regard, it is submitted that the registration no. of Babasaheb Ambedkar CHS Ltd. is 420 LA of 1948 whereas the registration of Vishwa Ratna Dr. Babasaheb Ambedkar SRA CHS Ltd. is



MUM/SRA/HSG/TC13059/2020 dated 11.03.2020. In view of the same, both the SRA societies are different.

- b) It is submitted that the Corporate Debtor had an arrangement with the Dr. Babasaheb Ambedkar CHS Ltd. around the 1999-2000 whereas the SRA has presently issued LoI with respect to the Vishwa Ratna Dr. Babasaheb Ambedkar SRA CHS Ltd. It is contended that there is no basis provided regarding the eligibility of Vishwa Ratna Dr. Babasaheb Ambedkar SRA CHS Ltd. to receive the LoI in place of the earlier Dr. Babasaheb Ambedkar CHS Ltd. whose name is appearing as the owner of the subject land.
- c) As regards the impugned order dated 25.09.2019 passed by AGRC is concerned, it is submitted that based on the available information, the RP had initially submitted before this Tribunal that the AGRC was not communicated about the CIRP of the Corporate Debtor, however, after continuous follow-ups with the advocates of the Corporate Debtor who represented the Corporate Debtor before the AGRC, the RP received a copy of the written submissions dated 28.06.2019 filed on behalf of the Corporate Debtor before the AGRC wherein the CIRP of the Corporate Debtor is mentioned. The copy of the written submissions is annexed to the Affidavit.
- d) It is submitted that despite being cognizant of the ongoing CIRP process, the AGRC in its order dated 25.09.2019 has not dealt with the moratorium of the Corporate Debtor.

Analysis and Findings

- 15. We have heard Ld. Counsel for the parties and perused the record.
- 16. The following facts are undisputed:

Pre-CIRP facts:

- a) The Corporate Debtor's development rights over the land bearing CTS No. E-86/14A & B and E-86/15A & B of Village Bandra,



Taluka – Andheri (**Property**) were terminated by the Slum Rehabilitation Authority (**SRA**) vide its order dated 16.10.2018 on account of the failure on part of the Corporate Debtor to perform its obligations. Copy of the order dated 16.10.2018 is annexed to the application.

- b) Aggrieved by the same, the Corporate Debtor preferred appeal no. 215 of 2018 before the Ld. Apex Grievance Redressal Committee (**AGRC**) challenging the order dated 16.10.2018 passed by the SRA.
- c) In the meantime, the Respondent No. 2 Society decided to appointed a new developer to develop the Property. The Ld. AGRC permitted the same vide order dated 07.12.2018. The Corporate Debtor challenged the said order dated 07.12.2018 before Hon'ble Bombay High Court by way of Writ Petition (L) No. 138 of 2019. The Hon'ble Bombay High Court disposed of the said Writ Petition vide order dated 17.01.2019 with a direction to Respondent No. 2 to not give effect to the decision regarding the appointment of a new developer till the disposal of the appeal before AGRC.
- d) On 22.01.2019, the Society held a General Body Meeting in the presence of the Assistant Registrar, Co-operative Societies/SRA, and appointed M/s Keystone Realtors Private Limited (**Respondent No. 5**) as the developer of the Scheme. On 06.02.2019, the Assistant Registrar, Co-operative Societies/SRA informed the AGRC about the appointment of Respondent No. 5 as the new developer.

Post-CIRP facts:

- e) The Corporate Debtor was admitted to CIRP vide order dated 03.06.2019. As per the RP's own submission, the RP continued to pursue the appeal no. 215/2018 before Ld. AGRC on behalf of the Corporate Debtor.



- f) The Ld. AGRC dismissed the Appeal vide order dated 25.09.2019. Subsequently, the SRA issued Letter of Intent dated 04.03.2021 confirming the appointment of Respondent No. 5 as the new developer.
17. The instant two applications have been moved by the RP seeking stay of the order dated 25.09.2019 passed by Ld. AGRC and the Letter of Intent dated 04.03.2021 issued by the SRA confirming the appointment of Respondent No. 5 as the new developer.
18. The RP's contention is that the appeal order dated 25.09.2019 could not have been passed by AGRC during the subsistence of moratorium which began on 03.06.2019. The RP further contended that though the SRA was informed of CIRP of the Corporate Debtor, it issued fresh LoI to Respondent No. 5/New Developers which will decrease the value of Corporate Debtor.
19. The Respondent Society and SRA have made similar submissions contending that termination of Corporate Debtor's development rights on account of failure to comply with the obligations under the Slum Rehabilitation Scheme was prior to commencement of CIRP and therefore, section 14(1) moratorium is not available to the Corporate Debtor.
20. The rival contentions raised on both sides give rise to the following issue:
- Whether the order dated 25.09.2019 passed by the AGRC and the Letter of Intent dated 04.03.2021 issued by the SRA confirming the appointment of Keystone Realtors Private Limited are hit by moratorium under section 14 of the Code?*
21. Section 14(1) of the Code is reproduced below:
- “Section 14 – Moratorium**
- 1. Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-*



(a) the institution of suits or **continuation of pending 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) transferring, encumbering, alienating or disposing off by the corporate debtor 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 including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(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.

22. **Applicability of Section 14(1)(a) of the Code**

22.1 Section 14(1)(a) of the Code prohibits institution and/or continuation of suits or proceedings against the Corporate Debtor.

22.2 Mr. Vikram Nankani, Ld. Sr. Counsel for the RP would submit that the appeal is continuation of proceedings and therefore, appeal proceedings are also hit by section 14(1)(a) of the Code. Reliance is placed on the following judgments:

- a) *Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta* [(2020) 8 SCC 531]
- b) *Malluru Mallappa vs. Kuruvathappa & Ors.* [(2020) 4 SCC 313]
- c) *Shiv Shakti Coop. Housing Society vs. Swaraj Developers & Ors.* [(2003) 6 SCC 659]

22.3 The Hon'ble Supreme Court in the matter of **Malluru Mallappa vs. Kuruvathappa & Ors.** [(2020) 4 SCC 313] has observed that appeal is a continuation of the proceedings. The relevant observations are as under:



“14. It is a settled position of law that an appeal is a continuation of the proceedings of the original court. Ordinarily, the appellate jurisdiction involves a re-hearing on law as well as on fact and is invoked by an aggrieved person. The first appeal is a valuable right of the appellant and therein all questions of fact and law decided by the trial court are open for re-consideration. Therefore, the first appellate court is required to address itself to all the issues and decide the case by giving reasons. The court of first appeal must record its findings only after dealing with all issues of law as well as fact and with the evidence, oral as well as documentary, led by the parties. The judgment of the first appellate court must display conscious application of mind and record findings supported by reasons on all issues and contentions.”

- 22.4 There is no quarrel to the proposition that appeal is a continuation of the proceedings, however, what needs to be examined here is that whether in the given facts and circumstances, the appeal falls under section 14(1)(a) of the Code, and barred by moratorium.
- 22.5 Ld. Counsel for the Respondents have argued that the provision of section 14(1)(a) would not cover proceedings initiated by the Corporate Debtor and since in the present case, the appeal was preferred by the Corporate Debtor, there is no question of applicability of section 14(1)(a) of the Code in the present case.
- 22.6 We find force in the submission of the Respondents that moratorium under section 14 of the Code is applicable for proceedings against the Corporate Debtor and not for proceedings filed by the Corporate Debtor to protect its assets, if any.
- 22.7 In the matter of ***New Delhi Municipal Council vs. Minosha India Limited [Civil Appeal No. 3470 of 2022]***, the Hon’ble Supreme Court while discussing on the applicability of section 60(6) of the Code, has made the following observations:

“24. Under the IBC, by virtue of the order admitting the application, be it under Sections 7, 9 or 10, and imposing moratorium, proceedings as are contemplated in Section 14



would be tabooed. This undoubtedly **does not include an application under Section 11(6) of the 1996 Act by the corporate debtor or for that matter, any other proceeding by the corporate debtor against another party. At least there is no express exclusion of the jurisdiction of the Court or authorities to entertain any such proceeding at the hands of the corporate debtor.** However, we must not be oblivious to the other provisions as well. Under Section 17, the management of the affairs of the corporate debtor is taken over by the interim resolution professional. The powers of the Board of Directors or the partners of the corporate debtor shall stand suspended and it would be exercised by the interim resolution professional. ...Therefore, on the one hand, an application under Section 7, 9 or 10, does bring in a period which is intended to bring a corporate debtor back to life if possible, 'a period of calm', in the words of the respondent. But this is a period during which the management of the corporate debtor is displaced, ironically, a period of turbulent churning. While it may be true that proceedings by the corporate debtor through the resolution professional is contemplated, it is not impossible to contemplate that the resolution professional for whatever reason it may be, does not discharge his duties and conduct proceedings in all matters as he should. We are noting this as this can be the rationale for the Law Giver excluding the period of limitation in regard to suits or applications at the instance of the corporate debtor under Section 60(6).

25. As far as understanding the meaning of Section 60(6) is concerned, there cannot be a slightest doubt that the period of Moratorium is excluded even in the case of a suit or application brought by a corporate debtor, viz., in regard to the period of the moratorium. **It is true that on the one hand what is tabooed in Section 14 when a Moratorium is put into place is inter alia the institution of suits or continuance of pending suits or proceedings against the corporate debtor including proceeding in execution of inter alia, the decree or order of an arbitration panel.** So, also the provision prohibits any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002. Still further, the recovery of any property by an owner or lessor in the occupation of the corporate debtor is forbidden. **These provisions do not in any manner appear to stand in**



the way of the corporate debtor instituting or proceeding with a suit or a proceeding against others. Section 60(6) on the other hand excludes the period during which the Moratorium under Section 14 is in place in computing the period of limitation. An ambiguity is introduced, namely the need to exclude the period of limitation for a suit or an application, at the instance of the corporate debtor when a Moratorium ushered in by an order under Section 14 does not pose any bar against a suit or an application at the instance of the corporate debtor. The words for which an order of Moratorium has been made under this part is intended to be the point of reference or the premise for the exclusion of the time for the purpose of computing the period of limitation. Besides being the point of reference and being the sine qua non for applying Section 60(6), it also specifies the period of time which will be excluded in computing of the period of limitation. In other words, present an order of Moratorium under Section 14, the entire period of the Moratorium is liable to be excluded in computing the period of limitation even in a suit or an application by a corporate debtor.

(emphasis supplied)

- 22.8 In the present case, the appeal against the termination order dated 16.10.2018 passed by CEO, SRA was challenged before the Ld. AGRC, competent forum, by the Corporate Debtor itself. Admittedly, the Corporate Debtor was admitted to insolvency on 03.06.2018 during the pendency of the appeal. Pursuant to the takeover of the management and control of the Corporate Debtor, the RP has admittedly pursued the appeal. The RP has also placed on the written statement filed on behalf of the Corporate Debtor before the Ld. AGRC wherein the RP has stated about the CIRP of the Corporate Debtor. Thus, when the RP had himself pursued the appeal which was filed by the Corporate Debtor, he cannot now take the plea of the bar under section 14(1)(a) of the Code.
- 22.9 We are therefore of considered view that the order dated 25.03.2019 passed by the Ld. AGRC is not covered under moratorium under section 14(1)(a) of the Code.



23. **Applicability of Section 14(1)(b) and 14(1)(d) of the Code**

- 23.1 Section 14(1)(b) prohibits transferring, encumbering, alienating or disposing of any of its assets or any legal right or beneficial interest therein and section 14(1)(d) prohibits recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.
- 23.2 It is submitted on behalf of the RP that the order dated 25.09.2019 and the LoI dated 04.03.2021 has prejudicially affected the development rights of the Corporate Debtor and left the homebuyers remediless and would affect the value of the Corporate Debtor.
- 23.3 Per contra, the Respondents contend that section 14(1)(b) prohibits dealing with the assets of the Corporate Debtor, however, in the present case, the development rights of the Corporate Debtor had already ceased to be in force as on the date of CIRP, there is no stay on the termination order and therefore, the same is no longer an asset of the Corporate Debtor. Reference is made to the judgment of ***Municipal Corporation of Greater Mumbai vs. Abhilash & Ors. [Civil Appeal No. 6350 of 2019]***.
- 23.4 It is a settled legal position that the development rights of the Corporate Debtor would include an 'asset' of the Corporate Debtor as laid down in ***Victory Iron Works Limited vs. Jitendra Lohia & Anr. [2023 SCC OnLine SC 260]***. However, for development rights to constitute asset of the Corporate Debtor, it is essential that the development rights should be subsisting as on the date of the commencement of CIRP of the Corporate Debtor.
- 23.5 It is apropos to note that the appeal has been filed by the Corporate Debtor before Ld. AGRC against the order dated 16.10.2018 passed by CEO, SRA, under section 35 of the Slums



Act which explicitly states that mere filing of the appeal would not operate as a stay of an order. The section 35 of the Slums Act is quoted below:

“Section 35 – Appeals

xxx

(1A) Any person, -

...

(b) aggrieved by any notice, direction, circular, decision, order, permission or approval issued or given by the Chief Executive Officer of Slum Rehabilitation Authority or any Officer to whom the powers are delegated by the Chief Executive Officer, may file an appeal within thirty days of receipt of such notice, direction, circular, decision, order, permission or approval, before the Apex Grievance Redressal Committee.

(2) Every appeal under this Act shall be made by petition in writing accompanied by a copy of the notice, order or direction appealed against.

(3) Any appeal shall not operate as a stay order appealed from except so far as the Appellate Authority may grant by reasoned order, nor shall execution of any order be stayed by reason only of an appeal having been preferred from, but the Appellate Authority may for sufficient cause order stay of execution of such order and if the notice order or direction against which appeal is made and is set aside by Appellate Authority on an appeal disobedience thereto shall not be deemed to be an offence.”

- 23.6 It is clear that unless a stay is imposed by the AGRC, the operation or execution of an order of CEO, SRA could not be halted. In the present case, the appeal was preferred on 03.10.2018 against the termination order dated 16.10.2018. While the AGRC, on 04.12.2018, had directed to not take any further action on the basis of the termination order dated 16.10.2018, however, on 07.12.2018, the AGRC also held that the stay granted on 04.12.2018 shall not preclude the Society to appoint a new developer of their choice. Only the implementation of the appointment of new developer was directed to be stayed till the next date of hearing.



23.7 When the order dated 07.12.2018 passed by AGRC was challenged by the Corporate Debtor by way of Writ Petition (L) No. 138 of 2019, the Hon'ble Bombay High Court disposed of the said Petition vide order dated 17.01.2019 with following observations:

"5. We dispose of the petition by observing that in case the Committee of slum dwellers convene a General Body Meeting, the decision taken by the Committee would not be given effect to till the final outcome of the Application No. 215/18 filed by the petitioners herein pending consideration of the Apex Grievance Redressal Committee. This direction will continue for a period of ten days from the date of uploading of the order by the Committee if the order is adverse to the petitioner."

23.8 Thus, the Hon'ble Bombay High Court also did not stay the appointment of the new developer but merely stayed its effect till the outcome of the appeal. Subsequently, the eligible slum dwellers held a General Body Meeting on 22.01.2019 in the presence of the Assistant Registrar, Co-operative Societies/SRA, and appointed M/s Keystone Realtors Private Limited (**Respondent No. 5**) as the developer of the Scheme. The appointment was informed by the Assistant Registrar, Co-operative Societies/SRA to the AGRC on 06.02.2019.

23.9 The above sequence of events which had transpired before the commencement of CIRP of the Corporate Debtor clearly reveals that the Corporate Debtor had no subsisting development rights over the said property as on the date of commencement of CIRP on 03.06.2019.

23.10 At this juncture, we deem it appropriate to refer to the case of **A A Estates Private Limited through its RP Harshad Shamkant Deshpande & Anr vs. Kher Nagar Sukhsadan Co-operative Housing Society Limited & Ors. [SLP (C) No. 10758 of 2025]**. In this case, the Kher Nagar Sukhsadan Co-operative



Housing Society and the Maharashtra Housing & Area Development Authority (MHADA) had entered into a lease deed for a period of 99 years with effect from 01.04.1980. On 16.10.2005, the Society executed a development agreement with A A Estates Pvt. Ltd. for redevelopment of the property. However, AA Estates failed to complete the redevelopment within the stipulated time and consequently, the Society terminated the development agreement on 07.11.2021. AA Estates was admitted to CIRP on 06.12.2022. The Society executed a fresh development agreement on 10.12.2023 in favour of a new developer during the subsistence of moratorium of AA Estates.

23.11 The issues before Hon'ble Supreme Court were *inter alia*, (i) whether the termination of development agreement prior to CIRP was valid and (ii) whether the development agreement constitute assets or property of the Corporate Debtor.

23.12 The Hon'ble Supreme Court at para 15.4 observed, "*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.*"

23.13 The Hon'ble Supreme Court concluded that the defaults by AA Estate had occurred well before initiation of CIRP and the termination was based on legitimate grounds unrelated to insolvency and therefore, the termination was valid and effective in law.

23.14 As far as the second issue is concerned, it was observed:

"16.2. The object of Section 14 is to maintain the corporate debtor's estate as a going concern and to preserve its assets so as to facilitate resolution. The term "property" under Section 3(27) of the IBC is defined in the widest terms to include money, goods, actionable claims, land and every description of



movable or immovable, tangible or intangible property, and extends to deeds and instruments evidencing title or interest therein. However, for the purposes of Section 14, **only such property or assets which form part of the corporate debtor's estate as on the insolvency commencement date are protected. Mere expectant, contingent or uncrystallized contractual rights do not constitute "assets" within the meaning of the Code.**

...

16.4. The above exposition clarifies that whether a development agreement constitutes an "asset" of the corporate debtor depends on whether it creates a proprietary, possessory or enforceable right in its favour at the relevant time. Not every executory or conditional contract amounts to an asset. The protection of Section 14 is confined to existing, subsisting and enforceable rights as on the date of commencement of the CIRP.

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

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

...

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



commercial certainty and the sanctity of lawful termination under general law.”

(Emphasis provided)

- 23.15 With above observations, it was held by Hon’ble Supreme Court that the development agreement does not constitute asset or property of the Corporate Debtor within the meaning of section 14 of the Code.
- 23.16 In the present case, admittedly the development rights of the Corporate Debtor was terminated before the commencement of CIRP. Even though the AGRC had stayed further action on the basis of the termination order dated 16.10.2018, however, it also permitted the Society to convene a meeting and to pass a resolution appointing a new developer of their choice. Only the implementation of the resolution was stayed till the outcome of the appeal. This clearly demonstrates that the Corporate Debtor had no development rights over the property existing as on the insolvency commencement date.
- 23.17 The observations of Hon’ble Supreme Court in ***A A Estates*** (*supra*) are squarely applicable to the present case. Thus, when the Corporate Debtor had no existing development right as on the insolvency commencement date and in absence of any proof to show that the Property in question was occupied or in possession of the Corporate Debtor, the question of applicability of clauses (b) and (d) of section 14(1) of the Code would not arise.
24. In view of the above discussions, this Tribunal holds that the order dated 25.09.2019 passed by Ld. AGRC and the Letter of Intent dated 04.03.2021 issued by the SRA would not be covered under any of the clauses of section 14(1) of the Code.
25. It would also be relevant to refer to the observations of CEO, SRA while passing the termination order dated 16.10.2018 against the Corporate Debtor who was Party No. 2:



“... On the basis of Annexure II, the SRA has issued permissions to the Party No. 2. But Party No. 2 did not started further construction since last permission obtained from SRA on 21.03.2011. Therefore, on the ground of in-ordinate delay caused by the Party No. 2 while implementation of said SR Scheme, the present proceeding is initiated u/s 13(2) of the Maharashtra Slum Areas (I, C & R) Act, 1971.

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DISCUSSION AND CONCLUSION:

In the present case Suo-Moto cognizance was required to be taken as the scheme has not been completed till date, in which the LOI was issued in the year 1999 and revised thereafter. For the hearing party no. 1 Society was summoned. They have also made grievance for not completing the scheme inspite of passage of more than 20 years.

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Considering this factors, it will have to be observed that Developer has not shown any due diligence in completing the scheme, particularly the rehab component. On the other hand, the developer has indulgence to illegal and unwarranted financial games by construction of sale building and sale tenements therein.”

26. From the above quoted paragraphs, it is clear that the termination of the appointment of the Corporate Debtor was not related to or connected with the insolvency of the Corporate Debtor. The CEO, SRA in his order dated 16.10.2018 has observed that the Corporate Debtor failed to complete the Scheme inspite of passage of more than 20 years and further noted that the Corporate Debtor was also engaging in illegal acts. These parameters were the reason to terminate the appointment of the Corporate Debtor as developer of the Scheme.
27. Thus, the termination order dated 16.10.2018 being not connected to insolvency of the Corporate Debtor would fall beyond the jurisdiction of this Adjudicating Authority, as per the law laid down in ***Embassy Property Developments Private Limited vs. State of Karnataka & Ors.*** [(2020) 13 SCC 308] and ***Gujarat Urja Vikas Nigam Limited vs. Amit Gupta & Ors.*** [(2021) 7 SCC 209].
28. The Hon'ble Supreme Cour in ***A A Estates*** (*supra*) has reiterated the scope of jurisdiction of this Tribunal derived under the Code. The relevant observations are as follows:



“15.5. In Gujarat Urja Vikas Nigam Ltd v. Amit Gupta and others, 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.

... ..

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.”

29. We also agree with the submissions of the Respondent that the Slum Act is a special act and a beneficial legislation in the nature of social welfare legislation to provide certain statutory rights and obligations to the beneficiaries thereunder.
30. In **Rajan Garg vs. CEO, Slum Rehabilitation Authority [(2024) SCC OnLine Bom 1060]**, the Hon’ble Bombay High Court has made the following observations:

“16. The only two points are these. First, can it ever be suggested that the provisions of the IBC and specifically the pendency of a CIRP meant to protect the assets of a potentially insolvent corporate debtor can ever prevail over the considerations of a welfare statute and the concerns of individual citizens for whom that welfare statute is intended, such as the Slum Act? We note this because it is solemnly being suggested, if not in so many words, then by necessary implication, that until entire gamut of the CIRP process is completed, and whatever be the final outcome, the 4th Respondent’s members must continue to suffer. They will not receive transit rent. They will not see any construction activity on site. The statutory



promise of redeveloped premises will be denied to them and this will continue for an indefinite period of time. All this because the corporate debtor's 'asset' must be 'preserved'. At whose cost, we have to ask? And for what fault of the slum dwellers?

17. This is by no means the first time that we have had these submissions made. We have had this in at least two cases before and in exactly the same terms. We have unhesitatingly repelled this submission. We have held that the provisions of the IBC are not meant to defeat slum redevelopment and similar or allied statutes. To hold otherwise would simply be unthinkable. It would mean that a Writ Court would put a premium on corporate wrongdoing and that even a defaulting corporate debtor who had not complied with the terms of a LoI could now use the golden parachute of the IBC to secure through the RP a restraint against the welfare of slum dwellers.”

31. In view of the discussions made above, we are of the view that the RP has not made out a case for staying the order dated 25.09.2019 passed by Ld. AGRC and the Letter of Intent dated 04.03.2021 issued by the SRA.
32. In the result, the IAs 325/2021 and 1301/2021 are **dismissed**.

Sd/-

Hariharan Neelakanta Iyer
Member (Technical)

Uma

Sd/-

Lakshmi Gurung
Member (Judicial)