IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – V

IA 2111/2024 IN C.P. (I.B) No. 892/MB/2022

[An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016]

Aegis Resolution Service Private Limited,
Resolution Professional of Radius & Deserve Land Developers Private Limited,
having registered office at Deserve, CST Road Junction, Opposite University of Mumbai Premises, Kalina, Santacruz (East), Bandra Suburban, Mumbai - 400098.

…Applicant

Vs

1. **Slum Rehabilitation Authority (SRA),**
   having its address at Administrative Building, Anant Kanekar Marg, Bandra (E), Mumbai - 400051

   ... Respondent No. 1

2. **Mumbai Metropolitan Region Development Authority (MMRDA),**
   Having its office at: MMRDA New Administrative Building, E Block BKC, Bandra Kurla Complex, Bandra East, Mumbai - 400051.

   ... Respondent No. 2

3. **Government of Maharashtra,**

having its office of Land Record Department at DD Building, 1 st Floor, Old Jakat House, Shaheed Bhagat Singh Road, Fort, Mumbai - 400001.

... Respondent No. 3

In the matter of

IDBI Trusteeship Services Limited

…Financial Creditor

Vs

Radius & Deserve Land Developers Private Limited

…Corporate Debtor

Order Dated: 04.03.2025

Coram:

Ms. Reeta Kohli, Hon'ble Member (Judicial)

Ms. Madhu Sinha, Hon'ble Member (Technical)

Appearances:

For the Applicant: Adv. Karan Sangani (PH)

For the Respondent No. 2: Mr. Devansh Shah (VC)

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ORDER

Per: Reeta Kohli, Member (Judicial)

1. The present application has been preferred by the RP of Radius and Deserve Land Developers Private Limited against the Slum Rehabilitation Authority (SRA) and

Mumbai Metropolitan Region Development Authority (MMRDA) with the following prayers:

a. *Declare that the ownership and possession of the property of the Corporate Debtor cannot behanded over by the Applicant to the Respondent during CIRP of the Corporate Debtor on account of the moratorium imposed under Section 14 of the Insolvency and Bankruptcy Code, 2016.*

b. *Direct the Respondents to provide the information and document(s), as sought for in the letter dated February 16, 2024 issued by the Applicant.*

2. The case of the Applicant/RP is that the Respondents i.e. Slum Rehabilitation Authority and MMRDA have initiated steps for acquisition of the land for construction of four-lane tunnel road connecting Thane to Borivali and it is pursuant to the same, the Respondent No. 1 i.e. SRA (Slum Rehabilitation Authority) *vide* letter dated 08.02.2024 informed the Corporate Debtor that land bearing Survey Nos. 264 and 269 of the Project Property owned by Corporate Debtor are required to be handed over to MMRDA. SRA directed the Applicant /RP of the Corporate Debtor to make available the property for the said road project by submitting a 'No Objection Certificate' and also an affidavit to the effect of handing over the ownership rights of the acquisitioned property to Respondent No. 2 MMRDA.

3. The Applicant RP *vide* order 16.02.2024 informed the Respondent SRA that the Corporate Debtor has been admitted to CIRP *vide* order dated 03.05.2023 and also informed about the commencement of moratorium upon the assets of Corporate Debtor prohibiting any alienation or recovery of property of the Corporate Debtor during the period of CIRP.

4. Thereafter, the Government of Maharashtra issued a notice dated 05.03.2024 for getting the Survey conducted for the purpose of land acquisition on 20.03.2024 for the proposed acquisition of the property. The Applicant further submits that the Survey was conducted on 20.03.2024 and it is in this background, the Applicant has preferred the present petition in exercise of its statutory duties to protect the assets of the Corporate Debtor during the moratorium.

5. We have heard the Ld. Counsels of the parties.

6. In order to appreciate the case of the Applicant, wherein he is seeking directions against the Respondent authorities, and the prayer being made in the present IA, it is pertinent to appreciate that Section 14 of IBC, 2016 describes the 'Effect of Moratorium'. The purposes of Moratorium as envisaged in the Code is to safeguard the assets of the Corporate Debtor the corporate insolvency resolution process. The provision of Moratorium facilitates orderly completion of the CIRP of the Corporate Debtor processes, ensuring that the Corporate Debtor company continues as a going concern while the creditors deliberate on a resolution with respect to the said company. This also prevents simultaneous multifarious proceedings from taking place, helping obviate the possibility of potentially conflicting outcomes of related proceedings and ensuring that the resolution process remains collective in nature. Furthermore, the provision laid down in Section 14 specifically prohibits the institution or continuation of suits or any legal proceedings against the Corporate Debtor and transferring/disposing of the assets of the Corporate Debtor. The said prohibition on disposal of the Corporate Debtor's assets is enforced to prevent the Corporate Debtor

or its management from transferring its assets, thereby stripping the Corporate Debtor of value during the CIRP, thus, ensuring that there is no depletion of the Corporate Debtor's assets.

7. Further, it deserves to be appreciated that the Respondent No. 3, i.e., State of Maharashtra, is well within its rights to acquire any land for the larger public purpose/public interest by following the due process of law. In the present case, the land belonging to the Corporate Debtor is proposed to be acquired by the Government for the construction of a four-lane tunnel road connecting Thane to Borivali. The said project is stated to be carried by the Respondent No. 2, i.e., MMRDA, and the Developer of land, Respondent No. 1 (Slum Rehabilitation Authority), and the said land is stated to be necessary for the completion of the project.

8. It has further been stated that the land bearing Survey Nos. 264 and 269 is recorded to be owned by the Corporate Debtor and the said land is required to be handed over to the MMRDA (Respondent No. 2) for the construction of the four-lane tunnel road. It deserves to be appreciated that, firstly, the provision of moratorium with respect to the Corporate Debtor is to protect the Corporate Debtor from any further depletion of its assets. Secondly, in the present case, the proposed acquisition by the Respondents for a larger public cause / purpose can in no manner be said to be 'detrimental to the interest of the Corporate Debtor' or is going to deplete the assets of the Corporate Debtor in any manner. Against the acquisition of the said land, if any, the Respondent authorities are bound to pay adequate compensation to the Corporate Debtor. Otherwise also, the moratorium under Section 14 while protecting the interest of the

Corporate Debtor can, by no stretch of imagination, be extended against the larger public interest. Thus, keeping in view the larger public good as well as the Infrastructure Project for which the land is proposed to be surveyed for acquisition / acquired, the imposition of moratorium in no manner can be considered an impediment for the acquisition of Survey Nos. 264 and 269 owned by the Corporate Debtor. Therefore, keeping in view of the above stated facts and circumstances and also in view of the law laid down by the Hon'ble Apex Court in the case of '***Hon'ble Bombay High Court in CWP No. 1398 of 2024'***, wherein while dealing with the issue of staying the acquisition process under the SRA has been pleased to hold as under:

> ***"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. We can think of very little that is more unjust that this approach. In our judgments in Nagesh Madhava Suvarna and Ors v State of Maharashtra & Ors and in our interim order of 21st March 2024 in Writ Petition No. 1349 of 2024 in Tagore Nagar Shree Ganesh Krupa Co-operative Housing Society Ltd. Vs. State of Maharashtra & Ors, we rejected and repelled precisely these arguments. We reproduce paragraphs 5 to 10 of our order in Tagore Nagar:*
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> > ***"5. The second argument that militates against AA Estates is one that is purely in equity. What we have been told is that while AA Estates grinds its way through a CIRP, the result of which may be entirely uncertain and might well result in an order of liquidation rather than of a successful resolution plan, these society members cannot hope to see their redeveloped***

homes. They can receive no transit rent. They must remain where they are. The IBC, we are told, and the corporate fortunes or misfortunes of AA Estates must prevail over the basic and fundamental rights of society members. Because AA Estate is trying to revive itself, society members must be without shelter and forced either into penury or, at the very least, to pay from their own pockets that which AA Estates was bound to pay and failed to pay.

6. *As an even more absurd alternative, it is solemnly suggested that Truearth will continue paying transit rent but without any assurance that it will ever receive any benefits for the consideration that it is actually and financially bearing and paying.*

7. This, we are sorry to say, is by no means an isolated case. In a city like ours there is precisely this widespread perversion of every concept of justice, equity and law. It is solemnly being argued that a statutory provision meant to protect or meant to revive the fortunes of companies can come at the cost of residents of the city and of persons who have without homes, shelter and without financial means to acquire temporary alternate accommodation. We will not accept this under any circumstances. Corporate resuscitation will not be permitted at the cost of individual city residents' rights to have a redeveloped home and to receive transit rent.

8. The Government itself is alive to this situation. It has taken policy decisions in that regard. We need not visit those at this stage.

9. AA Estates itself is no stranger to this either. It has taken precisely this argument in an even more dramatic scenario, that of the collapse of an entire building called Govinda tower many decades ago in 1998. AA Estates was before us as a Respondent in Interim Application (L) No. 26072 of 2022 that we disposed of by our order and judgment dated 13th December 2023, reported as Nagesh Madhava Surana & Ors. V. State of Maharashtra & Ors. We dealt with precisely these submissions including the question of vested rights if any in AA Estates, Section 14 of the

> ***IBC and the consideration of justice and equity inter alia from paragraph 43 onwards. Even there it was argued that possession could not be resumed because of a particular judgment of the Supreme Court. We addressed that question as well.***
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> ***10.*** *This case is on an identical footing. There is no material distinction at all. The only perhaps difference there was that the Interim Application sought leave of this Court to appoint a developer because there AA Estates had been appointed pursuant to an order of a Court on certain consent terms. Otherwise, there is no material distinction."*
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> *(Emphasis added)*

19. Mr. Chinoy for the society however points out that is not what P Mohanraj held at all. It contained an exhaustive analysis of Section 14 of the IBC in full, and in particular an analysis of what it was precisely that Section 14(1)(a) and what the moratorium provision in Section 14 actually meant. The Supreme Court having set out Section 14(1)(a) then proceeded to consider Section 14(3) and the definition in Section 3(33) of the expression 'transaction'. Of course, the Supreme Court accepted the purpose and object of Section 14 of the IBC (paragraph 29) and nobody quarrels with that. Paragraph 35 of P Mohanraj puts it plainly and this would have to be read with paragraph 36. Both would need to be seen in the context of what is said earlier in paragraph 17 where Sub-section 3(a) was said to provide the answer, namely, that proceedings in Section 14 relate to transactions. In other words, as Mr. Chinoy puts it, anything that is transactional or related to a transaction is affected by a Section 14 moratorium. But, as he rightly points out, P Mohanraj does not suggest and it is inconceivable that it could ever suggest that the operation of a statute could be stayed by Section 14 of the IBC."

9. Therefore, keeping in view of the above stated facts and circumstances and in view of the law laid down, the said acquisition cannot be said to be a transaction prohibited under Section 14 of the IBC. Therefore, the present Application deserves to be dismissed as premature as there is nothing on record to show that the Corporate Debtor is being stripped of possession of his property or there are any attempts by any

Respondent authorities to dispossess the Corporate Debtor against the due process of law. **Hence, IA No. 2111 of 2024 stands dismissed.**

Sd/-
MADHU SINHA
Member (Technical)

Sd/-
REETA KOHLI
Member(Judicial)