



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

Intervention P28/2024

In

IB-317(ND)/2022

**IN THE MATTER OF IB-317(ND)/2022**

*Under Section 7 of the Insolvency & Bankruptcy Code, 2016.*

**Piramal Capital & Housing Finance Limited**

...Financial Creditor

VERSUS

**M/s. ANDES TOWN PLANNERS PRIVATE LIMITED**

...Corporate Debtor

**AND IN THE MATTER OF IA 3738 OF 2023:**

*Under Section 60(5) of the Insolvency & Bankruptcy Code, 2016.*

**Resolution Professional Of Andes Town Planners Private Limited, Ashok  
Kumar Gupta**

...Applicant

VERSUS

**M/s. Highness Infradevelopers Private Limited**

...Respondent

**AND IN THE MATTER OF INTERVENTION P28/2024 :**

**IFCI Limited**

...Intervener/Applicant

**Order Pronounced On: 16.01.2025**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

For the Intervener : Ms. Niharika Gupta, Mr. Raj Dev Singh, Adv.



## ORDER

### PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. The present Intervention Application ("Application") under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("IBC" or "Code") read with Rule 11 of National Company Law Tribunal Rules 2016, is being filed by the Intervener herein i.e., IFCI Limited ("Intervener") seeking the following reliefs:

*"a. Allow the instant Application, and;*

*b. Allow the Intervenor to be arrayed as a party to IA 3738 of 2023.*

*c. Direct the Applicant in IA No. 3738 of 2023 to implead the intervenor as a necessary Party to the captioned Application and to file amended memo of party, and/or*

*d. Direct the Developer/ Respondent to deposit entire proceeds of sale conducted without consent of Intervener and not to create any further interest by way of sale/leaves, transfer/mortgage/charges of the 7th, 8th, 9th floor in Rohtas Summit building situated at TCG 3/3 Vibhuti Khand, Gomti Nagar, Lucknow.*

*e. Pass any other such order(s) as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of the case in the interest of justice."*

2. In view of the order passed in IA-3738/2023 dated 16.01.2025 wherein this Adjudicating Authority dismissed the Application filed by the Resolution Professional under Section 60(5) read with Section 19(2) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016, the prayers in present Intervention Application, Intervention P.28/2024 do not survive. Accordingly, Intervention P.28/2024 stands **dismissed**.

**-Sd/-**

**ATUL CHATURVEDI  
MEMBER (TECHNICAL)**

**-Sd/-**

**BACHU VENKAT BALARAM DAS  
MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI, COURT-III**

IA 3738/2023

In

IB-317(ND)/2022

**IN THE MATTER OF IB-317(ND)/2022:**

*Under Section 7 of the Insolvency & Bankruptcy Code, 2016.*

**Piramal Capital & Housing Finance Limited**

...Financial Creditor

Versus

**M/s. Andes Town Planners Private Limited**

...Corporate Debtor

**AND IN THE MATTER OF IA 3738 OF 2023:**

*Under Section 60(5) of the Insolvency & Bankruptcy Code, 2016.*

**Mr. Ashok Kumar Gupta, Resolution Professional of Andes Town  
Planners Private Limited**

...Applicant

VERSUS

**M/s. Highness Infradevelopers Private Limited**

...Respondent

**Order Pronounced on 16.01.2025**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

For the Applicant : Adv. Gaurav Singh, Adv. Shwetank Sailakwal, Adv.  
Mayank.

For the RP : Mr. Anuj Kr. Pandey, Advocate. Mr. Utsav  
Mukherjee, Mr. Saksham Ahuja Mr. Mayukh Roy,



Advocates.

For the Intervener : Ms. Niharika Gupta, Mr. Raj Dev Singh.

For the Respondent : Mr. Ravi Sehgal, Advocate.

**ORDER**

**PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

1. The present Application is filed by Mr. Ashok Kumar, the Resolution Professional of Andes Town Planners Private Limited Gupta under Section 60(5) read with Section 19(2) of the Insolvency and Bankruptcy Code, 2016 (“Code”) read with Rule 11 of the NCLT Rules, 2016 seeking the following reliefs:

*“a. Allow the present application;*

*b. Direct the Respondent not to create any further interest by way of sale/lease/transfer/mortgage/charge of the Units in the Project named "ROHTAS SUMMIT" till the disposal of this application;*

*c. Direct the Respondent to handover all the records/details/bank accounts of the Project named "ROHTAS SUMMIT" to the RP for carrying out Corporate Insolvency Resolution Process;*

*d. Direct the Respondent to share all the details of the units sold/leased out in this project and the details and account of the revenue share of the Corporate Debtor as per the above referred MOU/ Consortium agreement;*

*e. Direct the respondent to hand over the share of the CD from the funds collected from the project to RP;*

*f. Pass such other further order / order(s) as may be deemed fit and proper in the facts and circumstances of the case.”*

**2. SUBMISSIONS OF THE APPLICANT:**

i.) The Applicant submitted that the Adjudicating Authority, has commenced Insolvency Resolution Process for M/s. Andes Town Planners Private Limited (Corporate Debtor), vide its order dated 02.03.2023 and given mandate to the Insolvency Professional, Mr. Ashok Kumar Gupta, to act as Interim Resolution Professional (“IRP”) under the provisions of the Code.



It was further submitted that the copy of order has been delivered/served to IRP on 10.03.2023.

- ii.)** The Applicant further submitted that the land admeasuring 73,018.74 square meters bearing Plot No. TCG-3/3 situated at Vibhuti Khand, Gomti Nagar, Lucknow ("Plumeria Project Land") was allotted by Lucknow Development Authority to M/s. U.P Township Private Limited ("UTPL"), vide sale deed dated 30.03.2006. Thereafter, M/s. UTPL transferred the Plumeria Project Land vide Transfer Deed dated 24.07.2008 in favour of the Corporate Debtor for development of residential-cum-commercial complex on the said plot of land.
- iii.)** Subsequently, the Corporate Debtor entered into an MOU/ Consortium Agreement dated 28.09.2011 with M/s. Highness Infradevelopers Private Limited ("Consortium Agreement") wherein the Respondent is the Lead member of the consortium and the Corporate Debtor being owner of the land was the Consortium Member no.1, for commencing construction of a multi storied commercial tower in the name and style of 'Rohtas Summit'.
- iv.)** It is the case of the Applicant that the subject matter of above referred MOU/Consortium agreement was related to commercial part of the free hold plot, situated at TCG-3/3 Vibhuti Khand, Gomti Nagar Scheme, Lucknow under the name and style of Rohtas Summit only and the permissible constructed area of the demised property is 36418.87 sq. mt. (Approx).
- v.)** The Applicant submitted that in consideration of and subject to the terms and conditions of the above referred MOU, the Respondent had to develop the said land by constructing a commercial part of complex thereon at their own cost and expenses.
- vi.)** The Applicant further submitted that as per the Consortium Agreement dated 28.09.2011, it was agreed that First Party and Second Party will share the area when constructed in the ratio of 45:55 respectively, except Ground floor and first floor which shall be shared on 50:50 basis and the division would be made on vertical and equitable advantageous basis. However, in case it is not possible to divide/ demarcate the share of the owner in any one building/block/floor then it shall be compensated in the



next block/building/floor. The said ratio shall also apply to all open areas, common area constructions, parking, basement or any other area of the demised premises.

- vii.)** The allocation of specific car parks in the basement shall be in the ratio of 46:54 in favour of the CD and the Respondent respectively.
- viii.)** The Applicant further submitted that the Corporate Debtor, M/s. Hydric Farm Inputs Limited and IFCI Limited entered into "Indenture of Mortgage" wherein the Corporate Debtor as Mortgagor for the loan taken by its group concern named M/s. Hydric Farm Inputs Ltd. ("Borrower"), mortgaged its property Situated at Rohtas Summit 7th 8th and 09th Floor TCG 3/3, Vibhuti Khand, Gomti Nagar, Lucknow to IFCI Ltd. on 08.10.2015.
- ix.)** It is submitted by the Applicant that IFCI Ltd. had filed its claim as Secured Financial Creditor before the Applicant/RP for its amount due against the Corporate Debtor as guarantor/mortgagor. The Applicant further submitted that some of the allottees in this project have already submitted the claim with the Resolution Professional.
- x.)** The RP had sent notice/letter dated 19.05.2023 through speed post to the Respondent and requested to provide information /documents and details of the bank account in which deposits of lease rent/share of CD from sale of property as per the MOU have been made and status of the 7th, 8th & 9th floor of the said towers which are mortgaged to the IFCI Ltd. Details asked by the RP are as follows:
  - a. Copies of Agreement and Registry with Andes town Planners Pvt. Ltd,
  - b. Copy of Blue print & MAP of SUMMIT (both old and updated)
  - c. List of occupants and tenants on said tower and rent details collected on behalf of Andes Town Planners Pvt. Ltd.
  - d. Details of joint bank account and ledger of Andes Town Planners Pvt Ltd. since signing of any agreement for creating of any kind of interest/consortium etc.
  - e. Any further information as requested by the undersigned.
- xi.)** The Applicant submitted that the Respondent has not handed over any document/details of the project till today and not ready to cooperate with



the RP.

- xii.)** It is the submission of the Applicant that as per Section 17, 18 of the Code, the duty casted upon the Applicant to take possession of all the assets & records of the CD, to preserve and protect the value of the assets of the Corporate Debtor and those assets which are subject to preferential, undervalued transactions or fraudulent transactions or transaction to defraud the creditors need to be unearthed and appropriate measures and directions need to be taken.
- xiii.)** The Applicant further submitted that the suspended directors and employees of the Corporate Debtor are not traceable and are not cooperating and till date no details and records of the CD are received from them and the non-cooperation application bearing IA no. 2405/2023 under section 19(2) of the Code is pending against them.
- xiv.)** It is the case of the Applicant that, since strict time lines are the essence of the Code, the Applicant herein is compelled to file the present Application seeking appropriate directions against the Respondent to handover all the required details/records/ documents /information of the project and funds collected on behalf of CD and to cooperate and provide all necessary information as sought by the Applicant so that maximization of the value of the Corporate Debtor can be made.

### **3. SUBMISSIONS OF THE RESPONDENT:**

- i.)** The Respondent has filed Reply dated 29.11.2023 denying the averments and contentions raised in the application.
- ii.)** At the outset, the Respondent contended that the Application is entirely misconceived since the Respondent's share in Rohtas Summit cannot form part of the insolvency proceedings and Corporate Debtor has already sold its share in Rohtas Summit to third parties much prior to initiation of the insolvency proceedings.
- iii.)** It is the case of the Respondent that the Corporate Debtor and the Respondent had entered into MOU/ Consortium Agreement dt. 28.09.2011 for the purposes of developing a commercial complex at Plot No. TCG-3/3, Vibhuti Khand, Gomti Nagar Scheme, Lucknow ("said plot of land") which, with the mutual consent of both the Respondent and Corporate Debtor, was



registered in the name and style of "Rohtas Summit" with the Uttar Pradesh Real Estate Regulatory Authority (U.P. RERA) in the name of Respondent as per the provisions of the RERA Act, 2016. The said MOU/Consortium Agreement dt. 28.09.2011 has already been placed on record by the Applicant/ Resolution Professional, which was provided to the Applicant/Resolution Professional by the Respondent when the same was sought for amongst other documents as a gesture of the Respondent in cooperating with the Applicant/Resolution Professional.

- iv.)** The Respondent emphasized that the said plot of land was owned by the Corporate Debtor and the design for the complex provided for multi-storied construction with commercial use in a certain part and residential use in another part but the Consortium Agreement was restricted to the area over which commercial part was constructed i.e. it was restricted to Rohtas Summit.
- v.)** The Respondent submitted that the Clause 5 of the Consortium Agreement clearly stipulates that the Corporate Debtor and the Respondent will share the constructed area in Rohtas Summit in the ratio of 45:55 respectively, excepting Ground Floor & First Floor which shall be shared between the two parties on 50:50 basis and the division would be made on vertical and equitable advantageous basis, and that both the parties to the Consortium Agreement will have the right to sell/transfer their respective shares to the potential purchasers and execute deeds/instruments in respect thereof.
- vi.)** It is also submitted that Clause 6 of the Consortium Agreement provided that the allocation of specific car parks in the basement shall be made by the Corporate Debtor in the ratio of 46:54 in favour of the Corporate Debtor and Respondent respectively.
- vii.)** Subsequently, the Corporate Debtor and the Respondent also executed Supplementary Agreement dt. 12.11.2018 ("Supplementary Agreement") to inter alia finalize and conclude the terms of the Consortium Agreement. In the said Supplementary Agreement, the parties also crystallized the final area division / distribution on different floors.
- viii.)** The Respondent submitted that in terms of the Supplementary Agreement, the Respondent was also responsible for maintenance of Rohtas Summit.



**ix.)** The Respondent further emphasized that the Supplementary Agreement also had to be executed in light of the various breaches of the Consortium Agreement by the Corporate Debtor, the various illegalities committed by it and the Corporate Debtor's liabilities towards the Respondent. The Respondent reserves its right to take appropriate legal remedies in respect of such dues of the Corporate Debtor arising under the Consortium Agreement/ Supplementary Agreement and due to the various illegalities committed by it (as detailed below) which remain outstanding.

**x.)** The Respondent in terms of its obligation under the Consortium Agreement constructed the commercial complex on the plot in question and upon completion of the construction of the commercial complex i.e. Rohtas Summit by the year 2019, the constructed units were divided amongst the Corporate Debtor and the Respondent in the ratio as set out in the Consortium Agreement/ Supplementary Agreement, and the Corporate Debtor and the Respondent became owners-in-possession of their respective shares in Rohtas Summit.

- a) The total saleable area in Rohtas Summit is approx. 3,17,827 sq. ft.
- b) The units belonging to the share of the Respondent under the Consortium Agreement/ Supplementary Agreement have long been transferred to the Respondent and thereafter most of the units have subsequently been transferred to third parties by way of registered sale deeds, much prior to the initiation of CIRP against the Corporate Debtor. None of the units under the Respondent's share, including the ones already alienated, have any relation whatsoever with the Corporate Debtor's insolvency.
- c) The Corporate Debtor has already sold its share in Rohtas Summit to third parties much prior to initiation of the insolvency proceedings.
- d) Moreover, the information which pertains to the Corporate Debtor as sought by the Applicant / Resolution Professional cannot be provided by the Respondent as the units at Rohtas Summit which at some point were in the ownership of the Corporate Debtor are now in the ownership of third parties as the ownership and title was transferred by the Corporate Debtor itself to the third parties by means of registered



instruments much prior to the commencement of the instant insolvency proceedings.

- xi.)** The Respondent submitted that the present Application is misconceived since the units falling within the share of the Respondent in Rohtas Summit have no concern with the Corporate Debtor and hence, the same have also got no bearing whatsoever on the insolvency proceedings as the same exclusively belong to the Respondent and do not form part of asset of the Corporate Debtor. Furthermore, substantial number of these units have already been sold to third parties by way of registered sale deeds much before the date of initiation of CIRP against the Corporate Debtor. Also, the Corporate Debtor has already sold its share in Rohtas Summit to third parties much prior to initiation of the insolvency proceedings.
- xii.)** It was further submitted by the Respondent that prayers sought by the Resolution Professional are not maintainable for the following reasons:
- a.) The Respondent cannot be restrained from creating third party rights qua its own assets which are admittedly not assets of the Corporate Debtor. Furthermore, third party purchasers who have purchased units at Rohtas Summit much prior to initiation of the CIRP cannot be restrained from dealing with their property in any manner whatsoever and any restriction put on the peaceful enjoyment and pursuit of the property will result in violation of the rights of purchasers as contained in Article 300A of the Constitution of India.
  - b.) The Respondent cannot be compelled to furnish information which does not pertain to the Corporate Debtor but rather solely pertains to the business transactions of the Respondent.
  - c.) There is no revenue sharing between the Corporate Debtor and Respondent and thus there is no question about sharing information/documents in that regard.
  - d.) No funds have been collected by the Respondent on behalf of the Corporate Debtor and there is nothing to be handed over by the Respondent to the Resolution Professional as sought by the latter.
  - e.) All relevant documents/details have already been furnished to the Resolution Professional.



- xiii.)** The Respondent further submitted that even though the abovesaid information would be available in the records of the Corporate Debtor, the Applicant/ Resolution Professional vide an email dated 11.07.2023 had sought information including inter alia (i) copy of the agreement and registry with the Corporate Debtor; (ii) copy of the layout plan/map of Rohtas Summit; (iii) list of occupants/tenants and details of rent collected by the Respondent on behalf of the Corporate Debtor; and (iv) detail of joint bank account of the Respondent with the Corporate Debtor.
- xiv.)** The Respondent submitted that the Respondent vide its email dated 18.07.2023 furnished information as was sought by the Applicant/ Resolution Professional vide email dated 11.07.2023. The Respondent vide its email dated 18.07.2023 provided a copy of the registered Consortium Agreement executed between the Respondent and the Corporate Debtor along with a copy of the final compounded map sanctioned by the Lucknow Development Authority, Lucknow on 11.01.2019 and the RERA Registration Certificate of Project. The Respondent vide its aforementioned email dated 18.07.2023 also very categorically informed the Applicant/ Resolution Professional that at Rohtas Summit, none of the units/spaces under the ownership of the Corporate Debtor are left for sale and that the Respondent is not collecting any rent whatsoever on behalf of the Corporate Debtor.
- xv.)** It is the case of the Respondent that despite the above, the Applicant/ Resolution Professional had sent another email dt. 14.08.2023 again seeking information from the Respondent regarding Rohtas Summit. The Respondent had issued a detailed reply dated 13.09.2023 to the email dated 14.08.2023 highlighting these facts and providing the relevant details to the Applicant/ Resolution Professional.
- xvi.)** The Respondent had fully cooperated with the Resolution Professional and provided all the information/ documents which are relevant to the CIRP proceedings. However, despite the same, the Resolution Professional is harassing the Respondent and subsequent purchasers seeking additional information/documents which do not pertain to the Corporate Debtor or its assets.
- xvii.)** The Respondent emphasized that the Applicant/ Resolution Professional has



without any basis sent multiple notices not only to the unit holders who are subsequent purchasers but also the tenants at Rohtas Summit, asking for documents for proof of ownership notwithstanding the fact that all such units fall squarely outside the ambit of 'assets of the Corporate Debtor' and the same has caused unrest amongst the Respondent's buyers and tenants. This in turn is damaging the Respondent's unblemished reputation in the real estate sector and is having adverse effects on the overall wellbeing of the Respondent.

**xviii.)** It was further submitted that the Applicant/ Resolution Professional had exceeded his powers by sending notices to individual unit holders and tenants seeking documents with respect to the title of the units despite being notified by the Respondent that the Corporate Debtor has sold his share.

**xix.)** The *mala fides* of the Resolution Professional are further evident from the notices issued by him in newspapers wherein it has been wrongly alleged that the management of the Rohtas Summit has been vested with the Resolution Professional.

**xx.)** It was also submitted that admittedly the Corporate Debtor had clandestinely and illegally taken loans from various financial institutions without the knowledge or consent of the Respondent and that while doing so, the Corporate Debtor had illegally mortgaged the share of the Respondent as well which was not only illegal but was also contrary to the provisions of the Consortium Agreement. In fact, it has been revealed that the Corporate Debtor had taken multiple mortgages out on the same property. The mortgages for the said loans including the loan taken from IFCI cannot extend to the share of the Respondent.

**xxi.)** In the aforesaid regard, it is also pertinent to mention that the loan taken from IFCI Limited was taken by M/s. Hydric Farms Input Pvt. Ltd. and not the Corporate Debtor and the Corporate Debtor had illegally mortgaged parts of Rohtas Summit which fell to the share of the Respondent herein. The Respondent was wholly kept in the dark regarding the same which is evident from the fact that even share of the Respondent in Rohtas Summit was mortgaged without seeking his consent. It was also submitted that notwithstanding the aforesaid, the Respondent had been taking steps to clear



the said illegally taken loans in the interest of the third party purchasers, without prejudice to the rights of the Respondent.

**xxii.)** It was submitted that even assuming without admitting that any claim has been filed against the Corporate Debtor by some allottees, that would not bring Rohtas Summit within the purview of the CIRP proceedings since the Corporate Debtor has already sold his share in Rohtas Summit to third parties and the share of the Respondent in Rohtas Summit cannot be utilized for any such settlement or discharge of liability of Corporate Debtor since the same is not the asset of the Corporate Debtor.

**xxiii.)** The Respondent further submitted that the Respondent has never received any letter dt. 19.05.2023. In fact, the tracking report annexed by the Resolution Professional / Applicant also shows that the same was never delivered. The Respondent had sent emails dt. 18.07.2023 and 13.09.2023 providing documents/ information as sought by the Resolution Professional/Applicant.

**xxiv.)** The Respondent had fully cooperated with the Resolution Professional/ Applicant. It was also emphasized that no funds have been collected by the Respondent on behalf of the Corporate Debtor and the Respondent is not in possession of any share of the Corporate Debtor from funds collected from Rohtas Summit.

**xxv.)** Thus, the present Application merits to be dismissed with costs and the status quo with respect to the Rohtas Summit merits to be vacated in the interest of justice.

#### **4. ANALYSIS AND FINDINGS:**

- i.)** We have heard the arguments advanced by both Counsel and have meticulously perused the records placed before us.
- ii.)** Admittedly, the present Application has been filed under Section 60(5) read with Section 19(2) of the Insolvency and Bankruptcy Code, 2016 (“Code”) read with Rule 11 of the NCLT Rules, 2016 seeking directions against the Respondent to handover all the required details/records/ documents /information of the project and funds collected on behalf of CD and to cooperate and provide all necessary information as sought by the Applicant.
- iii.)** The prayers sought by the Applicant are against the Respondent who is a



third party to the proceedings and not the suspended directors of the Corporate Debtor.

- iv.)** On 26.07.2024, after hearing the parties, this Bench passed the following order :-

*“Mr. Gaurav Mitra, Ld. Counsel appears on behalf of Resolution Professional. Mr. Anant Merathia, Ld. Counsel appearing for Respondent has stated that substantial information has already been provided to the Resolution Professional. He shall file an affidavit to that effect within one week and serve a copy to Mr. Gaurav Mitra, Ld. Counsel to enable him to take instructions from the Resolution Professional.”*

- v.)** In compliance with the above directions, the Respondent filed an Affidavit dated 03.09.2024, stating that no other document or information as sought by the Applicant in relation to the Corporate Debtor is in the Respondent's possession and whatever documents/information pertaining to the Corporate Debtor which was sought by the Applicant has been duly furnished to the Applicant on multiple occasions.

Thus the Respondent has been taking a consistent stand that the Respondent has been fully cooperating with the Applicant and has provided all information / document relating to the Corporate Debtor, that has been sought by the Applicant, which is in the Respondent's possession, even though the Respondent is a third party and is unconnected with the CIRP of the Corporate Debtor.

- vi.)** Further, it is an admitted case that both parties entered into an MOU/Consortium Agreement dated 28.09.2011 and the Supplementary Agreement dated 12.11.2018.

The Clause 5 and 6 of the Consortium Agreement make it amply clear that the Respondent's share in the project is clearly delineated as an independently owned asset under the terms of the MOU/Consortium Agreement dated 28.09.2011 and was further reaffirmed by the Supplementary Agreement dated 12.11.2018 entered into between the parties. The said Agreements establish that the Respondent's share constitutes its exclusive property and is not connected to the CD's estate.



The Clause 5 and 6 of the Consortium Agreement are reproduced herein below for the sake of convenience:

*“5. That it is agreed, that first party and second party will share the area when Constructed in the ratio of 45:55 respectively, excepting Ground floor & first floor which shall be shared between the two parties on 50:50 basis and the division would be made on vertical and equitable advantageous basis. However, in case it is not possible to divide / demarcate the share of the owner in any one building/block/floor then it shall be compensated in the next block/building / floor. The demarcation would be done on the scale drawings before the start of the construction. The said ratio shall also apply to all open areas, common areas constructions, parking, basement or any area of the demised premises.*

*6. The allocation of specific car parks in the basement shall be made by the First Party in the ratio of 46:54 in favor of First & Second party respectively and the second Party will be authorized to sell his car park spaces only after the distribution of car park spaces has been finalized by the First Party. The right to use drive ways in the basement, exit and entry ramps circulation area, shall rest with both the Parties and at no point of time neither of the Party will block these circulation areas or lay any claim to these circulation areas. Similarly the car park spaces on surface shall also be distributed by the first Party in the same ratio. However, a certain percentage of surface area car park shall be reserved as visitor parking.”*

**vii.)** Clause 5 specifically provides that constructed areas will be shared between the Corporate Debtor and the Respondent in the ratio of 45:55, except the ground and first floors (i.e. 50:50), with adjustments as needed. Clause 6 provides that Parking will be shared in the ratio of 46:54, with visitor parking reserved and circulation areas jointly accessible. The Respondent and the Corporate Debtor have sold units from their respective share.

**viii.)** Admittedly, the Agreements in question were executed prior to the Corporate Insolvency Resolution Process. Therefore, they cannot form part of the Asset Memorandum of the Corporate Debtor.

**ix.)** At this stage it is pertinent to refer to Section 19(2) of the Code which reads as under:

*“(2) Where any personnel of the corporate debtor, its promoter or any other person required to assist or cooperate with the interim resolution professional does not assist or cooperate, the interim resolution professional may make an application to the*



*Adjudicating Authority for necessary directions.”*

- x.)** Section 19(2) of the code obligates only personnel connected with the Corporate Debtor to cooperate with the Resolution Professional (RP) for providing necessary information. Therefore, an application under Section 19(2) of the Code is not maintainable against the present Respondent who is a third party.
- xi.)** In view of the above discussion, the Respondent’s assets do not fall under the purview of CIRP and cannot be subjected to scrutiny or information requested by the Applicant. Therefore, any application seeking information or relief in relation to the Respondent’s independent share is legally unsustainable and liable to be dismissed.
- xii.)** In view of the above, the Application bearing **IA 3738/2023** is accordingly **dismissed**.

No order as to costs.

**-Sd/-**  
**ATUL CHATURVEDI**  
**MEMBER (TECHNICAL)**

**-Sd/-**  
**BACHU VENKAT BALARAM DAS**  
**MEMBER (JUDICIAL)**