Reserved On : 24/02/2026
Pronounced On : 29/04/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 55 of 2026

In R/SPECIAL CIVIL APPLICATION/4937/2022
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In R/LETTERS PATENT APPEAL NO. 55 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL

and
HONOURABLE MR.JUSTICE D.N.RAY

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Approved for Reporting	Yes	No
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GUJARAT INDUSTRIAL DEVELOPMENT CORPORATION
Versus
GUJARAT HYDROCARBONS AND POWER SEZ LIMITED & ORS.

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MR SN SOPARKAR, SR. ADVOCATE WITH MR RD DAVE WITH MR ARJUN SHETH, WITH MR. RISHABH SHAH for the Appellant(s) No. 1
MR MIHIR JOSHI, SR. ADVOCATE with MR. KEYUR GANDHI WITH MR RAHEEL PATEL WITH MS. ISA HAKIM AND MR YASH DADHICH for GANDHI LAW ASSOCIATES(12275) for the Respondent(s) No. 1
MR SHALIN MEHTA, SR ADVOCATE with MR TIRTH NAYAK(8563) for the Respondent(s) No. 2
MR DHANESH DESAI with MR ISHAN JOSHI for SINGHI & CO(2725) for the Respondent(s) No. 3

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CORAM:**HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL**
and
HONOURABLE MR.JUSTICE D.N.RAY

CAV JUDGMENT
(PER : HONOURABLE THE CHIEF JUSTICE
MRS. JUSTICE SUNITA AGARWAL)

1. This intra court appeal has been filed by the Gujarat Industrial Development Corporation (in short as the "GIDC") to challenge the judgment and order dated 01.12.2025 passed by the learned Single Judge in allowing the writ petition, setting aside the orders dated 13.12.2021 terminating the lease deed dated 21.02.2008 as well as the order dated 10.03.2022 directing for eviction of the petitioner under Section 5 of the Gujarat Public Premises (Eviction of Unauthorized Occupants) Act, 1972 (in short as the "Public Premises Act' 1972" or PP Act' 1972).

2. Both the orders were subjected to challenge in the writ petition filed by the respondent no.1 herein viz. Gujarat Hydrocarbon Power SEZ Ltd. primarily on the ground that they were passed during the subsistence of the moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 (in short as "IBC' 2016"). It was argued before the writ court that in view of Section 14(1)(d) of the IBC' 2016, any recovery of any property by the lessor which in the possession of the Corporate debtor would be prohibited and hence, the order terminating of lease and eviction under the PP Act' 1972, cannot be sustained.

3. The learned Single Judge while adverting to the facts of the case, has framed the point of determination that :-

> "Whether the respondent No.1–GIDC being operational creditor is/was justified in passing the impugned orders

during the moratorium period under Section 14 of the IBC and also during the CIRP?".

4. To answer the said question, the writ court has deliberated on the statutory provisions incorporated in Sections 3(27), 14, 25, 31 and 238 of the IBC' 2016 to record that in view of the term "property" as defined in Section 3(27) of the Code, the property of the Corporate debtor viz. the respondent no.1 herein would necessarily include its lease hold rights over the land in question.

5. Referring to Section 14(1)(d) in conjunction with the Explanation attached thereto, it was held that the 'property' defined under Section 3(27) of IBC' 2016, viz. the land in question, which continues to remain in possession of the Corporate debtor pursuant to a lease deed, cannot be recovered by the respondent GIDC being the lessor, during the subsistence of the moratorium. It was opined by the learned Single Judge that :-

(i) The object and underlying rationale of clauses (a) to (d) of sub-section (1) of Section 14 are clearly to preserve the assets and maintain the value of the Corporate debtor as a going concern during the resolution process. A conjoint reading of these provisions with the Explanation to sub-section (1) makes it evident that the legislature, in its wisdom, sought to ensure that any licence, permit, registration, etc. conferred by any Government or statutory authority, shall not be suspended or terminated merely on the ground of insolvency, provided there is no default in respect of

current dues.

(ii) This legislative scheme, when read as a whole, demonstrates that while each clause of sub-section (1) of Section 14 operates independently, they are intended to function harmoniously to give full effect to the protective framework of the moratorium. The cumulative intention of the legislature is unmistakable to safeguard the property and business interests of the Corporate debtor, to preserve its value, and to ensure that the continuity of its operations is not jeopardized during the corporate insolvency resolution process.

(iii) The writ Court referring to Sections 25 and 31(1) of the IBC' 2016 has noted the duty of the Resolution Professional to preserve, protect and maintain the assets, books of accounts and records of Corporate debtor, so that upon approval of the resolution plan, the same may be seamlessly handed over to the successful resolution applicant in an orderly manner. With the approval of the resolution plan by the adjudicating authority, the same shall be binding on the Corporate debtor, its employees, members, creditors including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under the law for the time being in force as also the guarantors and other stakeholders involved in the resolution plan, the creditors include a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree holder. It was, thus,

observed that once the resolution plan has been approved, the same will be binding upon all those stakeholders involved in the resolution plan.

(iv) Referring to Section 238 of the IBC' 2016, it was noted that the said provision gives overriding effect over the Public Premises Act' 1972 and during the period of moratorium and/or if resolution plan is approved, the order passed under the Public Premises Act' 1972 is contrary to the aim and object of IBC' 2016, and as such, the provisions of IBC' 2016 shall prevail.

6. Coming to the facts of the instant case, it was noted by the Writ Court that :-

(i) The Corporate debtor is/was in the business of developing operating, and maintaining Special Economic Zones (SEZs), by leasing and sub-dividing lands to industrial undertakings. To carry out the said business, the Corporate debtor obtained lands in question on lease from GIDC. The leasehold interest/lands/plots allotted on lease by the GIDC are the only assets of the Corporate debtor.

(ii) The Corporate debtor was subjected to the insolvency proceedings under Section 7 of the IBC' 2016 upon filing of an application on 18.11.2020. On admitting the said application, moratorium under Section 14 of the IBC' 2016 was declared on 18.11.2020 itself.

(iii) During the moratorium period and Corporate Insolvency

Resolution Process (CIRP), the GIDC has passed the impugned orders terminating the lease deed dated 13.12.2021 and subsequent eviction order dated 10.03.2022 under the Public Premises Act, 1972 inter alia for non-payment of the past dues and breach of conditions of lease.

(iv) It was noted that the GIDC during the CIRP, lodged its claim in Form 'B'. The Committee of Creditors ('COC') approved the resolution plan submitted by the respondent applicant (respondent no.2 before the writ court), which included payment of Rs.6,14,48,685/- to the GIDC (respondent No.1 therein) in terms of the approved resolution plan.

7. It was ultimately held that the impugned orders of termination of lease deed and the order of eviction under the Public Premises Act' 1972 had been passed during the subsistence of the moratorium period and shall be *non est*, illegal and bad in law being contrary to Section 14 of the IBC' 2016. The conclusion drawn by the learned Single Judge on the submissions made on behalf of the GIDC, respondent no.1 therein/appellant herein are extracted hereinunder :-

> "12.2 Even otherwise, respondent No.1 – GIDC did lodge its claim in Form 'B' before the Resolution Professional and that there is already a provision for the dues of respondent No.1 and as per the approved Resolution Plan, respondent No.1 was entitled to Rs.06,14,48,685/- which the respondent No.2 – successful Resolution Applicant has in fact paid on approval of the Resolution Plan. The Resolution Plan was allowed by the Adjudicating

Authority after overruling the objections raised by the respondent No.1. Therefore, as per Section 31 read with Section 2(10) of the IBC, approved Resolution Plan shall be binding upon all the stakeholders involved in the Resolution Plan. Thus, respondent No.1 being an operational creditor is also bound by the approved Resolution Plan. The respondent No.1 being an operational creditor under the scheme of the IBC, cannot have higher rights than the financial creditors and cannot have priority over the dues of the financial creditors. Dues of an operational creditor are always subject to the provisions of such dues made in the Resolution Plan as per Section 30 of the IBC.

12.3 Looking to the scheme, object and purpose of the IBC, the impugned orders are not sustainable in the eye of law. I say so because the underlined object behind the aforesaid enactment is to provide effective legal framework for timely resolution of insolvency and bankruptcy to support development of credit markets and encourage entrepreneurship. So as to achieve the goal and object of the enactment, the Resolution Professional clothed with ample powers to ensure that the assets of the Corporate debtor are preserved, protected and ultimately realized to its optimum potential so as to secure maximum value for all the stakeholders within the framework without any delay. As per the law laid down by the Apex Court in catena of decisions, under the IBC, all efforts should be made to revive the company, rather than liquidation. Liquidation of the company/ Corporate debtor shall be the last resort when all the efforts to revive the company fail. In the present case, the Corporate debtor is in the business of developing, operating, and maintaining Special Economic Zones (SEZs), including leasing and sub-dividing land parcels to industrial undertakings. The plots in question are the only assets which can be termed as its capital. If the lands in question are taken over, in that case, there would be nothing left in the company which would result into death of the Corporate debtor,

therefore would be against the scheme of the IBC. As stated hereinabove, under the approved Resolution Plan, respondent No.2 – successful Resolution Applicant has already paid Rs.06,14,49,685/- taking into consideration the plots in question only. Except the lands in question, there remains nothing for to be paid. Therefore, if the impugned orders are not set aside, it would not only defeat the approved Resolution Plan but would also defeat the purpose and scheme of the IBC.

13. In the aforesaid backdrop, this Court would now proceed to examine the contentions advanced by learned Senior Advocate Mr.Soparkar for the respondent No.1 – GIDC.

13.1 So far as submissions on behalf of respondent No.1 that once the Resolution Plan is approved, CIRP ends and Resolution Professional ceases to hold the office as having become functuous officio and thereby Resolution Professional has no locus and/or authority to pursue the present proceedings is concerned, this Court is not impressed by the said submission. In the scheme of the IBC, role and responsibilities of the Resolution Professional are clearly delineated under Section 25. Therefore, when the present petition was filed, moratorium and the CIRP were pending. Accordingly, being Resolution Professional, it is the statutory duty casted upon him to protect the property of the Corporate debtor. Thus, harmonious reading of Section 25 with Section 3(27), once the Resolution Plan is approved, it is the statutory duty of the Resolution Professional to hand over peaceful and vacant possession of the property to the successful Resolution Applicant. Therefore, the contention of respondent No.1 is devoid of any merits and is hereby rejected.

13.2 With regard to the contention raised by making reliance on the explanation appended to Sections 14(1)(a) to (d) to state that the termination is barred only when it is occasioned by

reason of insolvency and not otherwise where the lease deed was terminated on account of repeated and continuing breaches of terms and conditions of the lease deed is concerned, the said contention, in my considered opinion, cannot be accepted.

A plain reading of clauses (a) to (d) of Section 14(1) clearly manifest the legislative intent that once the moratorium is declared upon commencement of CIRP, there shall be a prohibition against recovery of any property by the owner of lessor where such property is in possession or occupation of the Corporate debtor. The explanation appended to Section 14(1) cannot be construed to defeat the clauses (a) to (d) of Section 14(1). The explanation inserted by the legislature to clarify that a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, with a louder object that if the business of the Corporate debtor is depending upon any such licence, permit, registration etc. then the same shall not be cancelled or terminated on the grounds of insolvency. Therefore, it cannot be construed that the lease deed terminated by respondent No.1 – GIDC is permitted as the same was terminated on the ground of continuing breaches of terms and conditions of the lease agreement. If the interpretation of explanation appended to Sections 14(1)(a) to (d) is construed in a way sought to be perceived by respondent No.1, it would render the provisions of Section 14(1) nugatory.

13.3 So far as the contention that right to terminate lease and right to lodge a claim before learned NCLT are distinct and independent rights of the lessor is concerned, this Court finds such argument to be wholly inconsistent with the object and scheme of the IBC.

As observed hereinabove and it is not in dispute that respondent No.1 lodged its claim in Form 'B' before the CoC and in the approved Resolution Plan, there is a provision made in respect of the claim of the respondent No.1 and accordingly, a sum of Rs.06,14,49,685/- has already been paid by the respondent No.2 – successful Resolution Applicant. The very respondent No.1 has also challenged the order passed against the approval of the Resolution Plan against learned NCLAT and the said appeal is pending. Thus, if contention of the GIDC being an operational creditor allowed to simultaneously exercise its right to terminate the lease deed, would render the entire insolvency process otiose and would amount to granting an impermissible preferential position vis-à-vis financial creditor which would normally be contrary to the statutory hierarchy envisaged under the IBC. On the contrary, conduct on the part of GIDC to terminate the lease and to initiate the proceedings under the provisions of the Act, 1972 deserves serious consideration. It is to be noted that initially the respondent No.1 participated in the CIRP and lodged its claim before the CoC and Resolution Professional. However, having realized that in the scheme of IBC, position of it being an operational creditor would not allow to meet the expectation and thereby to defeat the CIRP, passed an order under the provisions of the Act, 1972. GIDC being statutory authority was even otherwise expected to act fairly and in accordance with law and certainly not in a manner contrary to the statutory framework of the IBC.

13.4 With regard to the contention that since the Corporate debtor was not an ongoing concern at the time of initiation of CIRP, the termination of lease deed would not be hit by the moratorium, this Court is unable to concur.

It is not a condition precedent under the Code that

CIRP can be initiated only in respect of a functioning or ongoing concern. The moratorium envisaged under Sections 14(1) (a)–(d) applies upon initiation of CIRP against any Corporate debtor, irrespective of its operational status.

The Explanation appended to Section 14(1) further fortifies this position by clarifying that even where the Corporate debtor is an ongoing concern, and its business depends upon statutory licences or permissions, such rights shall not be terminated merely because of the insolvency. Therefore, the distinction sought to be drawn between an ongoing and nonoperational concern is immaterial.

The essence of Section 14 lies in maintaining the status quo of the Corporate debtor's assets and preventing disruption during the CIRP so that the interests of creditors particularly the Financial Creditors are adequately protected. Consequently, this contention also stands rejected.

13.5 So far as submission of respondent No.1 that if the GIDC not permitted to recover its dues, then in that case, it would amount to loss to the public exchequer, has no substance. The said submission is as such contrary to the scheme and relevant provisions of the IBC. The concept of public exchequer cannot be selectively revoked by the one State entity to elevate its standing above other financial creditors. Therefore, GIDC cannot seek preferential treatment under the guise of protecting public revenue so as to displace the statutory priority accorded to the financial creditors under the IBC.

14. Even taking into consideration Section 238 of the IBC, the impugned order of eviction passed under the provisions of the Act, 1972 is not tenable in the eye of law and is unsustainable. As per Section 238 of the IBC, the provisions shall override other laws and the provisions of the IBC shall have the effect, notwithstanding anything

inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of such law. Therefore, IBC shall override the provisions of the Act, 1972. Thus, the impugned order of eviction deserves to be quashed and set aside.

14.1 At this stage, it would be relevant to take note of the decision of the Apex Court in the case of **Ghanshyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd. [(2021) 9 SCC 657]** held thus as under:

“102. In the result, we answer the questions framed by us as under:

102.1 That once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;

102.2 The 2019 amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which I&B Code has come into effect;

102.3 Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31

could be continued."

15. So far as the decisions relied on by learned Senior Advocate Mr.Soparkar for the respondent No.1 in case of **Tata Consultancy Services Ltd. (supra)** is concerned, the facts of the case is wholly converse to the case on hands. In the said case, the Corporate debtor was the lessor and was receiving services from the lessee. Whereas, in the present case, the Corporate debtor is the lessee and was enjoying leasehold rights under the lease agreement. Before the Apex Court, in **Tata Consultancy Services Ltd. (supra)**, it has been observed that the appellant therein is neither supplying any goods or services to the Corporate debtor in terms of Section 14(2) nor is it recovering any property that is in possession or occupation of the Corporate debtor as the owner or lessor of such property as envisaged under Section 14(1)(d). It is further observed that the appellant therein was availing services of the Corporate debtor and using the property that has been leased to it by the Corporate debtor and therefore, it would held that Section 14 is indeed not applicable to the case. Whereas, in the case on hand, as discussed, GIDC being the lessor has sought to recover the possession of the property of the Corporate debtor in capacity of owner or lessor. Thus, the facts are materially different and hence, the decision in case of Tata Consultancy Services Ltd. (supra) will not be applicable in the facts of the present case.

15.1 So far as decision in case of **Phatu Romchiram Mulchandani (supra)** is concerned, the said decision was rendered in the context of the provisions of the Companies Act, 1956 and not in the context of Section 14 of the IBC. The scope of Section 14 of the IBC and Section 537 of the Companies Act, 1956 are wholly different and thereby, in my considered opinion, the said decision would not come to any help to respondent No.1.

15.2 So far as decision in case of **Abhilash Lal (supra)** is concerned, in the said decision, development agreement executed between MCGM and the Corporate debtor whereby the Corporate debtor was required to construct a hospital with 1500 bed and after completion of the construction, a lease deed was to be executed. Since the construction was not completed, lease deed was never executed. In the said facts and the context, when Corporate debtor was admitted in the CIRP and MCGM terminated the development agreement, the Apex Court has held that protection of Section 14(1)(d) was not available to the Corporate debtor as the lease deed was not executed. However, in the instant case, admittedly, lease deed was executed in favour of the Corporate debtor and thereby leasehold rights would come within the sweep of Section 3(27) and thereby the rigors of Section 14 would come into play. Hence, the said decision is also of no help to the respondent No.1.

15.3 So far as decision of the coordinate Bench of this Court in case of Biotor Industries Limited (in liquidation) (supra) is concerned, the scope and the context in the said case was under Section 33(5) of the IBC. In the said case, liquidation proceedings against the Corporate debtor was going on and at that time termination was made on the ground that leased property would not be part of the liquidation estate as per Section 36(6)(iv). However, in the present case, leased ‘property’ is clearly included within Section 14(1)(d) wherein it takes its meaning from Section 3(27) and includes an interest in the property. Hence, the said case is also not of any help to the respondent No.1.

I answer the question accordingly.”

8. Considering the above, we may extract the opinion of the learned Single Judge as under :-

(i) The dues of the GIDC, being an operational creditor, have been made subject to the provisions of such dues in the resolution plan as per Section 30 of the IBC' 2016.

(ii) Upon approval of the resolution plan, the successful resolution application made payment to GIDC. The GIDC being an operational creditor is also bound by the approved resolution.

(iii) The objections taken by the learned Senior advocate appearing for the GIDC about the maintainability of the writ petition filed by the resolution professional, has been dealt with by noticing the statutory scheme under Section 25 with Section 3(27) of the IBC' 2016 to hold that once the resolution plan is approved, it is the statutory duty of the resolution professional to handover peaceful and vacant possession of the property to the successful resolution applicant.

(iv) As regards the submissions of the learned Senior counsel for the petitioner therein that in view of the Explanation appended to Section 14(1)(a) to (d), the termination of lease is barred only when it is occasioned by reason of insolvency and not otherwise when the lease deed was terminated on account of repeated and continuing breach of the terms and conditions of the lease deed, it was observed by the learned Single Judge that since the termination of the lease and eviction order under the Public Premises Act' 1972 had been passed during the subsistence of the moratorium as against the

legislative intent, GIDC is not permitted to argue the ground of continuing breaches of the terms and conditions of the lease agreement. The submission of the learned senior counsel based on the interpretation of Explanation appended to Section 14(1)(a) to (d) as construed, if accepted, it would render the provisions of Section 14(1) negatory.

(v) It was also noted by the learned Single Judge that the GIDC has also challenged the order passed by the NCLT for approval of the resolution plan before the NCLAT and its appeal is pending. Thus, being an operational creditor, the GIDC cannot be allowed to simultaneously exercise its right to terminate the lease deed invoking the conditions therein as it would render the entire insolvency process otiose and would amount to granting an impermissible preferential position vis-à-vis financial creditor which would normally be contrary to the statutory hierarchy envisaged under the IBC' 2016.

(vi) It was noted that the GIDC being statutory authority, was even otherwise expected to act fairly and in accordance with law and certainly not in a manner contrary to the statutory framework of the IBC.

(vii) With regard to the submission that since the Corporate debtor was not ongoing, it would not be hit by moratorium, it was concluded that the moratorium envisaged under Section 14(1)(a) to (d) applies upon initiation of CIRP against any Corporate debtor,

irrespective of its operational status.

9. The conclusion drawn by the learned Single Judge in allowing the writ petition filed by the Corporate debtor challenging the action of GIDC in terminating the lease deed and passing eviction order under the Public Premises Act' 1972 during the subsistence of moratorium, has been challenged herein by the GIDC essentially on the same grounds agitating the same submission as were raised before the learned Single Judge, whose decision we do not find to suffer from any error of law. However, for the sake of completeness of this judgement, we deal with the submission of Mr. Saurabh Soparkar, learned Senior counsel for the appellant GIDC before us, as under:-

I. The lease deed contained the power to terminate and the termination order has been passed invoking the 'Breach of Covenant' clause under the lease agreement. Section 14(1)(d) can be invoked only in case the explanation attached thereto is not attracted. Meaning thereby, the termination or cancellation of lease deed during moratorium period is prohibited, only if such termination is made on the ground of insolvency. The submission is that the explanation serves as an explanation to the main provision, to the extent that what has been prohibited in the main section is circumscribed or restricted by way of the explanation.

II. It was vehemently argued that the lease granted was for a specific purpose to provide for establishment, development and management of SEZ for promotion of exports and matters

connected or incidental thereto. The Corporate debtor had given an undertaking to utilise the land in question for the purposes as aforesaid, in accordance with the provisions of the Gujarat SEZ Act, the SEZ Rules made thereunder and further in terms and conditions of the Letters of approval.

III. The Development Tenure as per clause 3.5 of the lease deed was to implement the proposal for setting up the SEZ in the leased land within the time period as prescribed under the Gujarat SEZ Act, the SEZ Rules and the conditions of the Letters of approval including the extensions.

IV. The Land Use as provided in clause 3.8 of the lease deed is for establishment in the hydrocarbon, oil and gas, energy and petrochemical sector.

V. Under the scheme of the lease agreement, the Corporate debtor/lessee was engaged as a developer of SEZ and was entitled to make independent sub-leases with units within the SEZ, in accordance with SEZ Act and the Rules made thereunder.

VI. The submission is that it is no one’s case that the conditions of the lease deed were fulfilled. In absence of any action on the part of the Corporate debtor in the direction of development of SEZ, since after 21.02.2008, when the land in favour of the Corporate debtor was leased for a period of 99 years, at an annual rent of Rs. 3,768/-, no error can be attached to the order of termination of lease agreement. The submission is that the allotment was made at the concessional

rate of Rs. 165/- per sq. mtrs. as per the policy of the GIDC only in order to promote the development of SEZ.

VII. A show-cause notice issued for breach of conditions of the lease deed, inter alia, for non-use of the subject land had been issued by the GIDC on 19.03.2011. On 20.12.2018, another show-cause notice was issued for violation of clause 3.3 (Utilisation) of the lease deed. Third notice dated 04.02.2019 has been issued inter alia for non-payment of rent, which is violation of terms and conditions of the lease deed. The order dated 13.12.2021 for termination of lease deed has been passed in view of persistent defaults of the conditions of the lease agreement inspite of repeated opportunities being awarded to the respondents/lessee to remedy, by issuance of a show-cause notice calling upon the lessee to defend the actions that were to be taken under the provisions of the Public Premises Act' 1972 for eviction.

VIII. The attention of the Court is invited to the communication dated 23.07.2007 at page '586' of the paper book to submit that the land in question was offered with a clear stipulation therein that lessee shall submit a time bound programme/development schedule for utilisation of the land of SEZ within 6 months of allotment and seek approval of GIDC. The eviction notice dated 04.02.2019 was issued to the petitioner as per the terms of the allotment and policy of the Corporation. Clause 15.2 of the lease deed has been pressed into service to submit that in case of breach in terms of non-payment of annual rent, the lessor/appellant herein was entitled to initiate action under the Public Premises Act' 1972.

IX. Placing the eviction notice issued under Section 4(1) of the Public Premises Act, 1972, it was submitted that the same was issued as per the terms of the allotment and the policy of GIDC. The rent/installment/revenue charges amounting to Rs. 18 crores and odd has been outstanding and the GIDC is legally entitled to recover the said amount from the lessee, inasmuch as, the lessee had failed and neglected to pay inspite of expiry of a long time and affording sufficient opportunity.

X. Emphasis has also been laid on the statement in clause (d) of the said notice to the effect that the lessee has committed such acts of waste as are likely to diminish materially the value or impair substantially the utility of the leased land (premises). By entering into arrangements and understanding with the third parties and financial institutions by structuring deals on the basis of above mentioned property of the Corporation without taking the permission, clearing the dues of the Corporation or the consent of the Corporation, leading to a situation where the value of the public premises is compromised and complications are created.

XI. The submission is that the notice for eviction under the Public Premises Act, 1972 had been issued with a clear contemplation therein of the contravention of terms, express or implied, under which the lessee was authorised to occupy the leased premises for setting up SEZ. The submission, thus, is that the eviction order dated 10.03.2022 has been passed under the Public Premises Act, 1972 after providing due

opportunity of hearing to the lessee, viz the original petitioner in terms of the lease deed and no exception can be taken thereto.

10. At this juncture, we may note that the writ petition was filed on 28.02.2022 challenging the order dated 13.12.2021 passed by the GIDC terminating the lease deed dated 21.02.2008 with a further relief that no coercive steps in respect of the property may be taken against the petitioner. The eviction order under the Public Premises Act, 1972 dated 10.03.2022 was passed during the pendency of the writ petition.

11. We may also note, at this juncture, from the show-cause notice dated 04.02.2019 under Section 4(1) of the Public Premises Act, 1972, that there is a reference of a request made by the petitioner for change of usage of leased land from SEZ to industrial use, with respect to which it is stated therein that the change of use is governed by the policies and guidances of the Corporation and that the lessee had been allotted the land for SEZ purposes at a rate different than the normal rate. Moreover, the lessee had not submitted any proof of reversal of Government incentives taken by the Company, which is also a pre-condition in such case. Merely submitting a request without any compliance of procedure and non-submission of required documents are sufficient factors to reject the representation of the lessee in that regard.

12. By placing the above noted show-cause notices dated

19.03.2011, 20.12.2018 and 04.02.2019 at pages '99', '102' and '103' of the paper book, it was, thus, vehemently argued by the learned Senior counsel for the GIDC that the order of cancellation of lease deed and eviction of the lessee from the premises in question is saved by Explanation to Section 14(1), inasmuch as, the recovery of any property by the lessor which is in possession of the Corporate debtor (lessee) on the grounds of insolvency is impermissible, however, an exception is incorporated therein that in case of default in payment of current dues arising from the use, etc. during the moratorium period, the eviction was permissible.

13. Elaborating further, it was vehemently argued that the learned Single Judge has completely ignored the explanation to clause 14(1)(d) while holding that the expression of the Explanation given by the petitioner, if accepted, it would defeat clauses (a) to (d) of Section 14(1) and render the entire provisions of Section 14 (1) negatory when Section 14(1) clauses (a) to (c) are not attracted at all in the instant case, inasmuch as, the appellant GIDC only seeks to recover its property leased out to the respondent after termination of the lease on account of the breach of terms and conditions of the lease deed.

14. To substantiate the said submissions, reliance is placed on the decision of the Apex Court in **P. Mohanraj v. Shah Bros. Ispat (P) Ltd., [(2021) 6 SCC 258]** to submit that the expression "proceedings" occurring in Section 14(1)(a) would not cover the 'proceedings under the Public Premises Act', 1972, which are summary in nature and the proceedings as

contemplated therein which are barred during the moratorium would cover only civil proceedings. It was argued that clause (a) to sub-section (1) of Section 14 has been read and interpreted therein to notice that the expression "institution of the suits" has to be read as one category and the disjunctive "or" before the word "proceedings" would be a separate category. The width of the expression "proceedings" can be interpreted in light of "including execution of any judgement, decree or order any court of law, tribunal, arbitration panel or other authority", which means only civil proceedings. The submission is that the Estate Officer exercising statutory power under the Public Premises Act' 1972 would not fall within the meaning of any tribunal or authority, proceedings before whom including execution can be said to be prohibited or barred under clause (a) of sub-section (1) of Section 14. The submission is that however wider expression may be given to the word "proceedings", occurring in Section 14(1)(a), the same would not envelope the quasi-judicial proceedings under the Public Premises Act, 1972.

15. Placing the decision of the Apex Court in **Embassy Property Developments (P) Ltd. v. State of Karnataka, [(2020) 13 SCC 308],** it was argued that while dealing with the question before the Apex Court as to whether the dispute revolves around the decisions of statutory or quasi-judicial authorities can be subjected to challenge in the insolvency proceedings before the NCLT or NCLAT or the High Court can interfere under Article 226/227 of the Constitution of India. In the facts of the said case, while moratorium in terms of

Section 14 of IBC was declared by the NCLT, Chennai by admitting the application under Section 7 of the IBC' 2016, the proposal for deemed extension of the mining lease held by the Corporate debtor, which had expired during the moratorium was rejected by the Government of Karnataka on the ground that the Corporate debtor had contravened not only the terms and conditions of the lease deed but also the provisions of Rule 37 of the Minor Concession Rules, 1960 and Rule 24 of the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Rules, 2016.

16. Prior to inception of moratorium, a notice for premature termination of the lease deed had already been issued on the allegations of violation of the statutory rules and terms and conditions of the lease deed. However, no order of termination had been passed till the initiation of CIRP.

17. The Corporate debtor through the Resolution professional moved a miscellaneous application before the NCLT praying for setting aside of the order of the Government of Karnataka and seeking a declaration that the lease shall be deemed to be valid upto 31.03.2020 and a consequential direction to the Government to execute supplement lease deeds for the period upto 31.03.2020.

18. In these facts and circumstances of the case, the question arose before the Apex Court that :-

> "(*i*) Whether the High Court ought to interfere, under Articles 226/227 of the Constitution, with an order passed by the National Company Law Tribunal in a proceeding under the Insolvency and Bankruptcy Code,

2016, ignoring the availability of a statutory remedy of appeal to the National Company Law Appellate Tribunal and if so, under what circumstances; and

(*ii*) Whether questions of fraud can be inquired into by the NCLT/NCLAT in the proceedings initiated under the Insolvency and Bankruptcy Code, 2016"

19. The said questions have been answered by the Apex Court while concluding that :-

"Conclusion

53. The upshot of the above discussion is that though NCLT and NCLAT would have jurisdiction to enquire into questions of fraud, they would not have jurisdiction to adjudicate upon disputes such as those arising under the MMDR Act, 1957 and the Rules issued thereunder, especially when the disputes revolve around decisions of statutory or quasi-judicial authorities, which can be corrected only by way of judicial review of administrative action. Hence, the High Court was justified in entertaining the writ petition and we see no reason to interfere with the decision [*State of Karnataka* v. *Tiffins Barytes Asbestos & Paints Ltd.*, 2019 SCC OnLine Kar 2463] of the High Court. Therefore, the appeals are dismissed. There will be no order as to costs"

20. Based on the aforesaid reasoning of the Apex Court, it was vehemently submitted by Mr. Saurabh Soparkar, learned Senior counsel for the appellant that it is clear that in any dispute arising out of the decision of the statutory or quasi judicial authority, NCLT or NCLAT would have no jurisdiction to adjudicate. Viewed from this angle, in the instant case, when NCLT and NCLAT have no jurisdiction on the question of validity of the eviction order under Section 4(1) of the Public Premises Act, 1972, it cannot be argued that the said proceedings could have been made subject matter of the

insolvency proceedings. If a dispute cannot be covered or adjudicated by a statutory tribunal like NCLT or NCLAT exercising power under IBC' 2016, as in the instant case, it cannot be argued that the proceedings under the Public Premises Act are barred under IBC 2016, inasmuch as, they are not covered under Section 14(1)(a) of IBC' 2016.

21. Reliance is further placed on the decision of the Apex Court in **Municipal Corporation of Greather Mumbai (MCGM) vs. Abhilasb Lal & Ors.[(2020) 3 SCC 234]** and the decisions of this Court in the case of **Biotor Industries Ltd. vs. Gujarat Industrial Development Corporation in Letters Patent Appeal No. 259 of 2023** and in the case of **Biotor Industries Ltd. vs. Gujarat Industrial Development Corporation in Special Civil Application No.3688 of 2022** to substantiate the above submissions.

22. In rebuttal, Mr. Mihir Joshi, learned Senior counsel for the Corporate debtor, respondent no.1 herein would submit that both the orders of GIDC for termination of the lease deed and eviction under Section 5 of the Public Premises Act' 1972 were challenged before the writ court as a result of the prohibition under Section 14(1)(d) against recovery of any property by the lessor which is in the possession of the Corporate debtor.

23. The land in question was allotted to the Corporate debtor vide lease deed dated 21.02.2008 for a period of 99 years which was subsisting till moratorium had commenced on 18.11.2020. The lease was granted for development of a SEZ and by communication dated 04.01.2011, the GIDC

granted permission to the Corporate debtor to create a charge over the lands for availing credit facilities to the tune of Rs. 100 crores from the respondent no.3 financial institution.

24. On 19.03.2011, a show-cause notice was issued to the Corporate debtor for breach of lease deed inter alia for non-use of the subject land.

25. However, on 14.03.2013, GIDC introduced a policy for the denotification of SEZ lands by way of a circular. The Corporate debtor applied for transfer of the southern plot to the interested parties under the said policy, however, no decision was taken in that regard.

26. On 18.11.2020, the NCLT, New Delhi initiated CIRP against the Corporate debtor by admitting Company Petition (IB) No.571 of 2020 preferred by respondent no.3. Accordingly, a moratorium was declared as per Section 14 of the IBC 2016. In the meantime, GIDC issued two notices dated 20.12.2018 and 04.02.2019 alleging violation of clause 3.3(Utilisation) of the lease deed and non-payment of rent to the tune of Rs. 18,94,99,478/-; respectively.

27. In the insolvency proceeding, even GIDC filed its claim before the interim resolution professional on 10.03.2021 for an amount of Rs.180,62,53,182/-, which included non-utilisation penalty, conversion fees and revenue charges.

28. The respondent no.2 herein was selected as a successful resolution applicant who filed a revised resolution plan dated 23.08.2021 for the Corporate debtor, which has determined

the claims of the operational creditor, GIDC and also about the extension of lease for, GIDC land.

29. The COC approved the revised resolution plan on 12.09.2021. However, the GIDC preferred IA No.136/2022 before the NCLT, New Delhi on 08.01.2022 inter alia objecting to the approval of the resolution plan, which was later withdrawn on 13.09.2023. The NCLT, New Delhi approved the resolution plan on 19.09.2023. The writ petition out of which the appeal has arisen was filed on 03.03.2022 challenging the termination order dated 13.12.2021, which was passed during the subsistence of the moratorium. Notice was issued to GIDC on 09.03.2022 and eviction order under the Public Premises Act' 1972 was passed on the next day, i.e. 10.03.2022.

30. It is further submitted that during the pendency of the writ petition, the resolution plan was implemented and effected vis-a-vis GIDC, particularly when the payment of Rs.6,14,46,685/- was received by the GIDC. However, on the same day, the GIDC had issued a communication to the resolution applicant/respondent no.2 demanding additional payment as agreed under the lease deed.

31. Simultaneously, GIDC preferred Company Appeal (AT) (Ins) No. 1648 of 2023 before the NCLAT challenging the orders dated 13.09.2023 (of withdrawal of its objection) and 19.09.2023 (approval of resolution plan). The NCLAT had set aside the order dated 13.09.2023 in IA No. 136/2022 holding that the withdrawal by the counsel of the GIDC was not under the instructions of its client and IA No. 136 /2022 was

restored. Resultantly, the order dated 19.09.2023 approving the resolution plan was also set aside and the parties were directed to appear before the NCLT, New Delhi for fresh hearing of both the applications.

32. The Special Leave Petition (C) No. 8777-8778 of 2024 against the order of NCLAT dated 08.08.2024 has been dismissed on 20.08.2024. However, again vide order dated 19.02.2025, the objections filed by the GIDC in IA No.4585/2021 has been rejected, approving the resolution plan by the NCLT, New Delhi. The GIDC again preferred appeals against both the orders which are currently pending before the NCLAT.

33. While placing this factual situation, it is also submitted by the learned Senior counsel for the Corporate debtor that it emerges from the claim form filed by the GIDC in the CIRP that the lease lands were subsequently denotified by the GIDC and it filed a claim of Rs.81,84,41,910/- as conversion charges by relying on its circular.

34. The GIDC, therefore, cannot be permitted to take a u-turn to rely on clause 3.3 (Utilisation) of the lease deed on the premise of Breach of Covenant that the land in question has not been utilised for development of SEZ.

35. Mr. Shalin N. Mehta, learned Senior advocate appearing for the successful Resolution Applicant (‘SRA’) viz. the respondent no.2 herein, further invited attention of the Court to the copy of the resolution plan under IBC’ 2016 submitted by the SRA as approved by the NCLT, New Delhi, to

demonstrate that the resolution applicant undertook the necessary development activities, sub-division of plots in the demised premises into such size and design to suit the need of industries and bringing industrial units on the ground by offering them customised infrastructure suitable to their peculiar business requirements. The SRA undertook that it shall put the idle resources of the Corporate debtor to its optimum utilisation.

36. Inviting attention of the Court to the copy of the resolution plan at page '194' of the paper book, it was sought to be demonstrated that due to constraint of developing SEZ on account of radical changes in the taxing policies in the SEZ units etc., the Corporate debtor applied for the denotification of the SEZ for an area of 108 acres. The request of the Corporate debtor was approved in the meeting of the Board of Approvals held on 25.03.2011. Later in 2012, further denotification was applied for the remaining area 0f 139.90-46 hectares and the said proposal was placed in the meeting of Board of Approvals held on 18.01.2013 when after deliberations, it was approved. Based on the information available on the official website of the SEZ-INDIA pertaining to the SEZs which are notified and operating in the country and also pertaining to the list published for existing notified SEZ in the country, the name of the Corporate debtor is not appearing in the list. The Development Commissioner, SEZ has also not filed any claim for any of their dues pertaining to the Corporate debtor with the resolution professionals.

37. It was, thus, submitted that as declared in the resolution

plan, the resolution applicant had expressed good reasons to believe that SEZ denotification is approved and all the dues between the Corporate debtor and Development Commissioner, SEZ might have been settled at the time of denotification.

38. It was also mentioned therein that with the denotification, now the only business activity that may be carried out by the Corporate debtor is development of demised premises as per the use of the notified area by sub-leasing the industrial plots developed within the demised premises.

39. With these facts, the attention of the Court is further invited to the claim put forth by the GIDC before the interim resolution professional/resolution professional on 10.03.2021, wherein total claim of Rs. 18,06,253,182/- had been bifurcated into penalty as per the GIDC circular dated 21.07.2017; conversion charges as per the GIDC circular dated 14.03.2013; and revenue charges payable on 18.11.2020 with interest computed on monthly rent continuously.

40. The claim put forth by the GIDC for conversion charges in the CIRP against the Corporate debtor is stated to be proof of the fact of conversion of land by denotification of SEZ into development for industrial purposes/activities.

41. Further, placing reliance upon the decision of the Apex Court in **Embassy Property Developments Private Ltd. (supra)**, **Rajendra K. Bhutta vs. MHADA [(2020) 12 SCC 2080**, **GUVNL vs. Amit Gupta [(2021) 7 SCC 209]** and

Victory Iron Workd Ltd. vs. Jintendra Lohia [(2023) 7 SCC 227], it was argued that the termination of the lease deed dated 21.02.2008, after initiation of CIRP and during operation of moratorium in terms of Section 14 of IBC' 2016, is impermissible.

42. Considering the submissions of the learned counsels for the parties and perused the record, at the outset, we may set out Section 14 of the IBC' 2016, relevant for our purposes :-

> "**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 of 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.
>
> Explanation.—For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained

in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;

(2) The supply of essential goods or services to the Corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate debtor and manage the operations of such Corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified;

(3) The provisions of sub-section (1) shall not apply to—

(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a Corporate debtor.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

> Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of Corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."

43. The relevant paragraphs '31' and '32' of the order of the NCLT dated 18.11.2020 declaring moratorium, is to be noted as under:-

> "31. The moratorium is declared which shall have effect from the date of this Order till the completion of CIRP, for the purposes referred to in Section 14 of the IBC, 2016. It is ordered to prohibit 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 of by the Corporate debtor's 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.

> 32. The supply of essential goods or services of the Corporate debtor shall not be terminated, suspended, or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 of IBC, 2016 shall not apply to such transactions, as notified by the Central Government."

44. As noted hereinbefore, the learned Single Judge discussing the provisions of Section 14(a) to (d) had opined that a plain reading of the said provision clearly manifests the legislative intent that once the moratorium is declared upon commencement of the CIRP, there shall be a prohibition against recovery of any property by the owner or lessor where such property is in possession or occupation of the Corporate debtor. If the business of the Corporate debtor is dependent upon any license, permit, registration, etc. the same cannot be cancelled or terminated on the grounds of insolvency. The right to terminate lease allegedly in terms of the conditions of the lease deed on the plea of continuing breach thereof, was not available. From a perusal of the order of moratorium declared by the NCLT, it is evident that the language of Section 14(1)(a) to (d) has been incorporated therein to prohibit initiation of any suit or proceeding against the Corporate debtor including execution, transfer, alienating or encumbering asset of the Corporate debtor, the recovery of any property by the owner or lessor where such property is in occupation or possession of the Corporate debtor.

45. It is noteworthy that the IBC' 2016 has transformed the laws relating to reorganisations and insolvency resolution of corporate persons and has been enacted to conduct

proceedings in a manner that the value of assets of such persons, his partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues.

46. The Statement of Object and Reasons of the Code says that the aim is to improve ease of doing business and facilitate more business leading to higher economic growth and development.

47. Explanation to Section 14 was added by way of the Amendment Act of 2020 with effect from 28.12.2019. The aim and object of the Amendment Ordinance of 2019 was to fill the critical gaps in the corporate insolvency framework.

48. The relevant extract of Statement of Objects and Reasons of the Second Amendment Bill, 2019, reads that:-

> "A need was felt to give the highest priority in repayment to last mile funding to Corporate debtors to prevent insolvency, in case the company goes into corporate insolvency resolution process or liquidation, to prevent potential abuse of the Code by certain classes of financial creditors, to provide immunity against prosecution of the Corporate debtor and action against the property of the Corporate debtor and the successful resolution applicant subject to fulfilment of certain conditions, and in order to fill the critical gaps in the corporate insolvency framework, it has become necessary to amend certain provisions of the Insolvency and Bankruptcy Code, 2016."

49. Section 5(a) of the Amendment Act of 2020 reads as

under :-

> “5. In section 14 of the principal Act,-
>
> (a) in sub-section (1), the following Explanation shall be inserted, namely:-
>
> "Explanation. For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;

50. The submission of the learned Senior counsel for the appellant is that the Explanation to sub-section (1) of Section 18 added by way of amendment of 2020 is by way of exception to the main provision where prohibitions have been incorporated with the declaration of moratorium. The submission is that the learned Single Judge has committed an error in holding that the entire sub-section (1) of Section 14 providing for prohibition in different eventualities will be applicable in the facts of the present case. The submission is that only prohibition which may be attracted, in the instant case, is as incorporated in clause (d) of sub-section (1) of Section 14, which if read with the Explanation, the Explanation will exclude clause (d) in a case where termination of lease is only the ground of default in terms of

the lease and not on the ground of insolvency. The submission is that since the termination of lease, in the instant case, is on the ground of breach of conditions of the lease and default in payment of annual rent, prohibition clause (d) of sub-section (1) of Section 14 will not be attracted at all. Moreover, none of the other clauses of sub-section (1) of Section 14 can be applied in the facts of the present case.

51. Dealing with this submission of the learned Senior counsel, we may note from a careful reading of Section 14 of the IBC' 2016 where only exceptions to provisions of sub-section (1) are enumerated in sub-section (2) and (3), which contain two exceptions.

52. As has been noted by the Apex Court in **P. Mohanraj & Ors. (supra)**, the language employed in clause (a) to sub-section (1) of Section 14, makes it clear that the expression "institution of suits" or "continuation of pending suits"; is to b read as one category, and the disjunctive "or" before the word "proceedings" would make it clear that proceedings against the Corporate debtor would be a separate category. The words "including exclusion of any judgment, decree or order" and "any Court of law, Tribunal, arbitration panel or other authority" is indicative of the width of the provision being very wide and make it clear that the "proceedings" as enumerated in clause (d) cannot be interpreted to mean only civil or suit proceedings. The words "proceedings against the Corporate debtor" including "any other authority" must be given its widest meaning to hold that any proceedings against the Corporate debtor before any authority to include all bodies

created by the statute on which powers are conferred to carry out Government or quasi judicial functions, shall be prohibited during the moratorium.

53. It was held therein that the expression "proceedings" cannot be cut down to mean civil proceedings stricto sensu by the use of rules of interpretation such as *ejusdem generis* and *noscitur a sociis*. The Constitution Bench judgment in *Rajasthan SEB* v. *Mohan Lal*, (1967) 3 SCR 377, considering the meaning of "other authorities" in Article 12 of the Constitution of India, was noted in paragraph '23' therein as under :-

> "23. Likewise, in *Rajasthan SEB* v. *Mohan Lal* [*Rajasthan SEB* v. *Mohan Lal*, (1967) 3 SCR 377 : AIR 1967 SC 1857] , this Court had to decide whether the expression "other authorities" in Article 12 of the Constitution of India took its colour from the preceding expressions used in the said Article, making such authorities only those authorities who exercised governmental power. This was emphatically turned down by a Constitution Bench of this Court, stating : (SCR pp. 384-85 : AIR p. 1862, paras 4-5)
>
> "*4*. In our opinion, the High Courts fell into an error in applying the principle of ejusdem generis when interpreting the expression "other authorities" in Article 12 of the Constitution, as they overlooked the basic principle of interpretation that, to invoke the application of ejusdem generis rule, there must be a distinct genus or category running through the bodies already named. *Craies on Statute Law* summarises the principle as follows:
>
> > 'The ejusdem generis rule is one to be applied with caution and not pushed too far. ... To invoke the application of the ejusdem generis rule there must be a distinct genus or category. The specific words must apply not to different objects of a widely

> differing character but to something which can be called a class or kind of objects. Where this is lacking, the rule cannot apply, but the mention of a single species does not constitute a genus [*Craies on Statute Law*, 6th Edn., p. 18.] .'

Maxwell in his book on *Interpretation of Statutes* explained the principle by saying:'But the general word which follows particular and specific words of the same nature as itself takes its meaning from them, and is presumed to be restricted to the same genus as those words … Unless there is a genus or category, there is no room for the application of the ejusdem generis doctrine [*Maxwell on Interpretation of Statutes*, 11th Edn., pp. 326 & 327.] '. In *United Towns Electric Co. Ltd.* v. *Attorney General for Newfoundland* [*United Towns Electric Co. Ltd.* v. *Attorney General for Newfoundland*, (1939) 1 All ER 423 (PC)] , the Privy Council held that, in their opinion, there is no room for the application of the principle of ejusdem generis in the absence of any mention of a genus, since the mention of a single species—for example, water rates—does not constitute a genus. In Article 12 of the Constitution, the bodies specifically named are the Executive Governments of the Union and the State, the Legislatures of the Union and the States, and local authorities. We are unable to find any common genus running through these named bodies, nor can these bodies be placed in one single category on any rational basis. The doctrine of ejusdem generis could not, therefore, be applied to the interpretation of the expression "other authorities" in this article.

5. The meaning of the word "authority" given in *Webster's Third New International Dictionary*, which can be applicable, is 'a public administrative agency or corporation having quasi-governmental powers and authorised to administer a revenue-producing public enterprise'. This dictionary meaning of the word "authority" is clearly wide enough to include all bodies created by a statute on which powers are conferred to carry out governmental or quasi-governmental functions. The expression "other authorities" is wide enough to include within it every authority created by a statute and

> functioning within the territory of India, or under the control of the Government of India; and we do not see any reason to narrow down this meaning in the context in which the words "other authorities" are used in Article 12 of the Constitution."

54. The question before the Apex Court was as to whether the institution or continuation of a proceeding under Section 138/141 of the Negotiable Instruments Act can be said to be covered by the moratorium provisions under Section 14 of the IBC. It was argued before the Apex Court that criminal proceedings are outside the scope of the expression "proceedings" contained in Section 14(1) (a) of the IBC' 2016.

55. Taking note of the provisions of Section 14(1) as also the exceptions contained in sub-section (2) and sub-section (3), it was noted therein that on the insolvency commencement date, the adjudicating authority shall mandatorily declare a moratorium to prohibit clauses (a) to (d). Importantly, under sub-section (4), this order of moratorium does not continue indefinitely, but has effect only from the date of the order declaring moratorium till the completion of the CIRP, which is time bound either culminating in the order of the adjudicating authority approving resolution plan or in liquidation. Exceptions in sub-section (2) are for the benefit of the Corporate debtor wherein it is provided that the supply of essential goods or service to the Corporate debtor shall not be terminated or suspended or interpreted during the moratorium period. Two exceptions incorporated in sub-section (3) are applicable to the nature of transactions therein.

56. While interpreting the provisions of Section 14, considering its object, it was observed that having regard to the object sought to be achieved by the IBC' 2016 in imposing moratorium, a quasi judicial proceeding which would result in the assets of the Corporate debtor being depleted as a result of having to pay compensation which can amount to twice the amount of cheque that has bounced would directly impact the CIRP in the same manner as institution, continuation or execution of a decree in such suit in a civil court for the amount of debt or other liability. It was held that it is impossible to discern any difference between the impact of a suit and a Section 138 proceedings, insofar as, the Corporate debtor is concerned, inasmuch as, the objection of the moratorium is to provide necessary breathing space to the Corporate debtor to get back on its feet during the CIRP. It was, thus, held that the width of the expression "proceedings" in clause (a) of sub-section (1) of Section 14 should not be cut down so as to make such proceedings analogous to civil suits.

57. In the scheme of different clauses of Section 14, it was noted that while Section 14(1)(a) refers to monetary liability of the Corporate debtor, clause (b) thereof refers to Corporate debtor's estate and together these two clauses form a scheme, which shields the Corporate debtor from pecuniary attacks against it in the moratorium period so that the Corporate debtor gets breathing space, continue as a going concern in order to rehabilitate itself. Any crack in this shield is bound to have adverse consequence, given the object of Section 14 and cannot, by any process of interpretation, be allowed to occur.

58. Further, considering other provisions as to moratorium in Part III of IBC, in the context of individuals and firms occurring in Section 81 and Section 85, it was noted that the moratorium contained in Section 14 is not subject specific. The only light thrown on the subject is by the exception provision contained in Section 14(3) (a). Also the expression "proceedings" used by the legislature in Section 14(1) (a) is not trammelled by the word "legal" as a prefix that is contained in the moratorium provision qua individuals and firms in Part III of IBC.

59. It was further observed that even otherwise, the proceedings under Section 138 would be a legal proceeding in respect of a debt and given the object and context of Section 14, the expression "proceedings" cannot be cut down by any rule of construction and must be given a fair meaning consonant with the object and context. It was, however, noted that criminal proceedings which are not directly related to transactions evidencing debt or liability of the Corporate debtor, as conceded before the Court, would be outside the scope of this expression.

60. Mr. Mihir Joshi, learned Senior advocate appearing for the respondent no.1/Corporate debtor would argue that the purpose of moratorium under section 14 is to preserve the status quo and not to create a new right. The right under Section 14(1)(d) is not to be dispossessed. Referring to the decision of the Apex Court in **Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta, [(2021) 7 SCC 209],** it was submitted that in a challenge to the order of NCLT, staying termination

of Power Purchase Agreement of the Corporate debtor, based on the application moved by the resolution professional of the Corporate debtor under Section 60(5) of the IBC' 2016, it was held by the Apex Court that Section 14(1)(d) provides for protection of a 'property' defined in Section 3(27) of the IBC' 2016, which would include Power Purchase Agreement, which is an instrument falling in Section 238 of IBC. It was observed therein that IBC was a reform and institutional framework under IBC contemplated establishment of single forum to deal with matters of insolvency, which were distributed early across multiple fora.

61. It was held therein that for the success of an insolvency regime, it is necessary that insolvency proceedings are dealt with in a timely, effective and efficient manner. In the facts of the said case, it was held therein that Power Purchase Agreement was terminated solely on the ground of insolvency, since the event of default contemplated under the same was the commencing of insolvency proceedings against the Corporate debtor. The dispute pertaining to termination of agreement solely arises out of and relates to the insolvency of the Corporate debtor.

62. One of the questions considered by the Apex Court in **Gujarat Urja Vikas Nigam Ltd. (supra),** was the *ipso facto* clauses in the contract, which allows a party to terminate the contract with its counter party due to the occurrence of an "event of default". The question was in the context of insolvency law, in some of the *ipso facto* clauses, the event of default includes applying for insolvency, commencement of

insolvency proceedings, appointment of insolvency representation, etc. In the said context, the Apex Court has considered the amendments by the Insolvency and Bankruptcy Code (Amendment) Act, 2020, which inter alia introduced Explanation to Section 14(1), as noted hereinabove.

63. The Apex Court has noted therein that the legislative intent behind this amendment was discussed in the report of the Insolvency Law Committee dated 20.02.2020 and the report noted the importance of keeping the Corporate debtor as a going concern during the moratorium period imposed under Section 14 and how it was being affected by the termination of certain Government licenses, permits, etc. based on *ipso facto* clauses which allowed termination upon commencement of insolvency. Noting that the legislative intent underlying Section 14 would be to invalidate such terminations, the report recommended addition of the Explanation to Section 14(1) of IBC. The relevant portion of the report as noted by the Apex Court in para '14', reads as under :-

> "Prohibition on Termination on Grounds of Insolvency
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> ***
>
> 8.3. It was brought to the Committee that in some cases government authorities that have granted licences, permits and quotas, concessions, registrations, or other rights (collectively referred to as "grants") to the Corporate debtor attempt to terminate or suspend them even during CIRP period. This could be attempted in two ways : one, by relying on ipso facto clauses, by virtue of which these grants may be terminated on the advent of insolvency

proceedings themselves, and second, by initiating termination on account of non-payment of dues.

8.4. The Committee discussed that by and large, the grants that the Corporate debtor enjoys form the substratum of its business. Without these, the business of the Corporate debtor would lose its value and it would not be possible to keep the Corporate debtor running as a going concern during CIRP period, or to resolve the Corporate debtor as a going concern. Consequently, their termination during CIRP by relying on ipso facto clauses or on non-payment of dues would be contrary to the purpose of introducing the provision for moratorium itself. Thus, the Committee concluded that the legislative intent behind introducing the provision for moratorium was to bar such termination.

8.5. In this regard, the Committee noted that depending on the nature of rights conferred by them, these grants may constitute the "property" of the Corporate debtor. Section 3(27) of the Code provides an inclusive definition of property which includes "money, goods, actionable claims, land and every description of property situated in India or outside India and every description of interest including present or future or vested or contingent interest arising out of, or incidental to, property." This definition is substantially the same as the definition of "property" under Section 436 of the Insolvency Act, 1986 (UK), which has been considered the widest possible definition of property. In India too, it is accepted that certain licences and concessions can convey permission to use property, or may embody a lease, permit, etc. granting rights in the property. Thus, their termination in certain circumstances, could have been considered contrary to an order of moratorium barring actions under Section 14(1)(d) or preventing alienation of property by any person.

8.6. Similarly, in many circumstances, termination or suspension of grants, particularly registrations, would

> be through proceedings that follow due process of law. Such proceedings may be a form of enforcement that would deprive the Corporate debtor of its assets. In this regard, the Committee noted that Section 14(1)(a) prevents "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." This provision has been given an expansive reading by the appellate authority and the adjudicating authority, that had passed orders preventing recovery by stock exchanges and regulators, as well as the de-registration of aircrafts.
>
> 8.7. Relying on this, the Committee was of the view that termination or suspension of such grants during the moratorium period would be prevented by Section 14. However, to avoid any scope for ambiguity and in exercise of abundant caution, the Committee recommended that the legislative intent may be made explicit by introducing an Explanation by way of an amendment to Section 14(1).
>
> (emphasis in original and supplied)"

64. It was observed therein that the court's intervention would be guided by ascertaining the legislative intent from the provisions therein. Referring to the scheme of Section 14 of the IBC' 2016, it was concluded in paragraphs '165', '166', '169' as under :-

> "165**.** Section 14 of IBC lists the conditions under which a moratorium can be imposed by NCLT in terms of clauses (*a*) to (*d*) of sub-section (1). It further clarifies that a licence, permit, quota, concession, grant or right given by a government cannot be suspended or terminated on the grounds of insolvency, subject to certain exceptions. This clarification was added by way of an Explanation to Section 14(1) with effect from 28-12-2019. The Report of the Insolvency Law Committee dated 20-2-2020, as discussed above, noted that without

such government grants “the business of the Corporate debtor would lose its value and it would not be possible to keep the Corporate debtor running as a going concern during CIRP period, or to resolve the Corporate debtor as a going concern” [Para 8.4] . The Report further stated that the termination of such grants during CIRP on account of ipso facto clauses or non-payment of dues is in contravention of the purpose behind imposition of moratorium itself.

166. While recommending the inclusion of an explanation, the Report of the Insolvency Law Committee stated that while it was of the view that termination or suspension of such grants is prevented by Section 14, it recommended adding the Explanation “to avoid any scope for ambiguity and in exercise of abundant caution” [Para 8.7] , and to ensure that the legislative intent should be made explicit by introduction of the explanation by way of an amendment to Section 14(1). The Insolvency Law Committee (in its discussion in the February 2020 Report) took the position that Section 14 even in its unamended form, contained an interdict on the invalidation of government grants, though the language of Section 14 did not make this position explicit.”

“169. The inclusion of the Explanation to Section 14(1) and Section 14(2-A) indicates that Parliament has been amending IBC to ensure that the status of a Corporate debtor as a “going concern” is not hampered on account of varied situations, which may not have been in contemplation at the time of enacting IBC. It will be relevant to note that in a recent three-Judge Bench decision of this Court in *P. Mohanraj* v. *Shah Bros. Ispat (P) Ltd.* [*P. Mohanraj* v. *Shah Bros. Ispat (P) Ltd.*, (2021) 6 SCC 258] , Rohinton Fali Nariman, J. speaking for the Court, expounded upon the object of Section 14 in the following terms : (SCC p. 301, para 30)

> “*30*. … the object of a moratorium provision such as Section 14 is to see that there is no depletion of a Corporate debtor's assets during the insolvency resolution process so that *it can be kept running as a*

> *going concern* during this time, thus maximising value for all stakeholders. The idea is that it facilitates the continued operation of the business of the Corporate debtor to allow it breathing space to organise its affairs so that a new management may ultimately take over and bring the Corporate debtor out of financial sickness, thus benefitting all stakeholders, which would include workmen of the Corporate debtor."
>
> (emphasis supplied)"

65. It can, thus, be seen that the Apex Court has clarified therein that the Explanation to Section 14(1) with effect from 28.12.2019 was added by way of clarification that a licence, permit, quota, concession, clearances or right given by a Government, cannot be suspended or terminated on the grounds of insolvency, subject to certain exceptions. The report of the Insolvency Law Committee dated 20.02.2020, as discussed therein, noted that without such Government grants, "the business of the Corporate debtor would lose its value and it would not be possible to keep the Corporate debtor running as a going concern during CIRP period, or to resolve the Corporate debtor as a going concern"

66. It was noted from the report that the termination of such grants during CIRP on account of *ipso facto* clauses or non-payment of dues is in contravention to the purpose behind the imposition of moratorium itself. The inclusion of Explanation in light of the report of the Insolvency Law Committee was only to avoid any scope for ambiguity and in exercise of abundant caution. The Insolvency Law Committee, however, took the position that Section 14 even in its unamended form, contained an interdict on the invalidation of Government grants, though the language of Section 14 did not make this

position explicit. The Explanation to Section 14(1) is to ensure that the status of a Corporate debtor as a “going concern” is not hampered on account of varied situations, which may not have been in contemplation at the time of enacting IBC.

67. We may further refer to the decision of the Apex Court in **Rajendra K. Bhutta v. MHADA [(2020) 13 SCC 208],** placed by the learned Senior counsel for the respondent no.1 Corporate debtor wherein the question was as to the correct interpretation of Section 14(1) (d) of the IBC’ 2016. In the facts of the said case, after imposition of moratorium under Section 14 of the Code, the Maharashtra Housing and Area Development Authority (‘MHADA’) therein had issued a termination notice to the Corporate debtor stating that upon expiry of 30 days from the date of receipt of the notice, the Joint Development Agreement as modified would stand terminated. The Corporate debtor was directed to hand over possession to the Development Authority which would then enter upon the plot and take possession of the land including all structures thereon.

68. It was argued on behalf of the Development Authority that the various provisions of the Maharashtra Housing and Area Development Act, 1976, (‘MHADA Act’) particularly its preamble and certain Sections, and under the Joint Development Scheme the authorities concerned enter into with the builders, must first get the previous approval of the authority, and such schemes have to be executed under the supervision of the authority. That being the case, Section 14(1)(d) would not apply. The said provision does not cover

licenses to enter upon land in pursuance of Joint Development Agreements and such licenses being “personal” and no interest created in the property, there is no question of any possession or occupation being handed over, inasmuch as, the development authority had taken symbolic possession, though after imposition of moratorium period.

69. In the context of the said controversy, while reading the joint Development Agreement, it was noted that at the very least, a license is granted in favour of the developer to enter upon the land/property with a view to do all the things that are mentioned therein. There can be no gainsaying that after such entry, the property would be “occupied by” the developer. The termination notice further states that on the expiry 0f 30 days from the date of receipt of the notices, the developer will not be allowed to enter the property and that its authority/license to enter the property or remain thereupon is terminated. The MHADA thereupon will not allow the developer to do anything or in relation to the property and shall take possession of all the structures standing thereon.

70. On the issue as to whether any clash between the MHADA Act and Insolvency Code, it was held that on a plain reading of Section 238 of the Insolvency Code, the Code must prevail. This is for the very good reason that when a moratorium is spoken of by Section 14 of the Code, the idea is that, to alleviate corporate sickness, a statutory status quo is pronounced under Section 14 the moment a petition is admitted under Section 7 of the Code, so that the insolvency

resolution process may proceed unhindered by any of the obstacles that would otherwise be caused and that are dealt with by Section 14. The statutory freeze, thus, has been made for a limited period, expressly limited by Section 31(3) of the Code, to the date of admission of an insolvency petition upto the date of approval of resolution plan by adjudicating authority or Corporate debtor going in liquidation. It was, thus, observed that for this temporary period, at least, all the things referred to under Section 14 must be strictly observed so that the Corporate debtor is finally put back on its feet albeit with a new management.

71. Noticing the limited question before the Court therein as to whether Section 14(1)(d) of the Code will apply to statutorily freeze 'occupation' that may have been handed over under a Joint Development Agreement, it was held in paragraph '28' as under :-

> "28. ……it is clear that Section 14(1)(*d*) of the Insolvency and Bankruptcy Code, when it speaks about recovery of property "occupied", does not refer to rights or interests created in property but only actual physical occupation of the property….."

72. In light of the above legal principles, coming to the facts of the present case, it may be noted that the "demised premises or the leased plot" is the only property held by the Corporate debtor, which was initially leased for 99 years for the operation, maintenance, management and administration of SEZ in the State of Gujarat under the relevant provisions of the SEZ Act. The Corporate debtor being lessee of the property in occupation of the lease property and the lease is

subsisting.

73. The GIDC seeks recovery of the "property occupied by the Corporate debtor" as against Section 14(1)(d) of the IBC' 2016 with the contention that Explanation to Section 14(1) is an exception to clause (d) of sub-section (1) of Section 14, and it does not refer to any other clauses of sub-section (1) of Section 14 specifically clause (a) and as such, termination of the lease except on the ground of insolvency and recovery of property is permitted under the explanation.

74. This submission deserves to be rejected outrightly in view of the observation in **Gujarat Urja Vikas Nigam Ltd. (supra)** with reference to the Law Commission Report dated 20.02.2020, that the Explanation by way of clarification was added to Section 14(1) with effect from 28.12.2019, by way of abundant caution to avoid any scope for ambiguity and to ensure that the legislative intent of termination or suspension of Government grant prevented by Section 14(1) is made explicit by introduction of the Explanation. What is to be seen is that the *status quo* as on the date of admission of the application under Section 7 of IBC' 2016 is required to be maintained during the moratorium period, which shall have the limited effect to the date of the said order upto the completion of the insolvency resolution process in terms of sub-section (4) of Section 14 read with Section 31(3) of the IBC' 2016.

75. The Explanation to sub-section (1) of Section 14 being clarificatory, in any case, will not envelope the whole sub-section(1) of Section 14, the intent of which is to ensure that

the status of a Corporate debtor as a “Government concern”, is not hampered on account of the varied situations during the CIRP.

76. The submission of the learned Senior counsel that the Explanation to sub-section (1) of Section 14 should be read as an exception to clause (d) to sub-section (1) of Section 14 only, inasmuch as, it permits termination of contract by a statutory authority on any other ground during CIRP except on the ground during of insolvency. Suffice it to say that the Explanation in sub-section (1) of Section 14 has been brought to invalidate *ipso facto* clauses for some of the Government contract, clarifying that a Government or statutory contracts cannot be suspended or terminated on the grounds of insolvency, subject to certain exceptions, as an abundant caution. The main provision of Section 14, however, itself invalidates any such action. The Explanation cannot be construed as an enabling provision to permit such acts which would make the whole section nugatory.

77. Even otherwise, in the instant case, under the terms and conditions of the lease deed, there is no *ipso facto* clause giving rise to any right to the lessor to terminate the lease deed merely on the default in payment of annual rent.

78. The ground of cancellation of lease deed as stated in the impugned termination order dated 13.12.2021 is that in view of the persistent default of the conditions of the lease agreement, inspite of various opportunities being granted, when they are not remedied, GIDC is left with no other option but to terminate the lease deed and further proceed to initiate

action under the provisions of the Public Premises Act' 1972.

79. The averments in the termination order dated 13.12.2021 that "The admission of case at NCLT forum has added to the already created notion of impairment of asset under consideration" itself is sufficient to form the opinion that the termination of lease is triggered by the insolvency proceedings, resultantly, termination being on the ground of insolvency alone.

80. As regards the assertion in the previous notices about the defaults with regard to the terms and conditions of the lease deed, it may be noted that under clause (v) of 3.3 (Utilisation), the parties have agreed as under :-

> "(v) Notwithstanding the foregoing however, the Parties herewith agree that the Lessee may during the Term of this Lease seek a change of the nature of the use of the Demised Premises from an SEZ to any other industrial use duly sanctioned under the applicable statutory or regulatory provisions enacted in reference thereto with prior consent, approval or permission of the Lessor."

81. A bare reading of the said clause indicates that during the term of the lease, the lessee could seek a change of the nature to use of demised premises from SEZ to any other industrial which has to be duly sanctioned under the applicable statutory or regulatory provisions with the prior consent, approval or permission of the lessor.

82. Clause 3.9 of the lease deed permits the lessee to create any charge, mortgage, lien or encumbrances against the demised premises during the course of the term of the lease

and the Lessor is mandated to provide no objection certificate to the lessee or to a sub-lessee or any concerned party in that regard. Clause 3.9, thus, militates against the case of GIDC that it could terminate the lease deed solely on the ground of default in payment of annual rent.

83. Clause 15 is the only clause which pertains to 'Breach of covenant' and sub-clauses 15.1 and 15.2 contained therein read as under :-

> "15.1 In the specific event that the Annual Rent has not been paid and is, therefore, in arrears for a period of more than two months, whether the same has been legally demanded or not, the Lessor may seek re-entry in the Demised Premises and the Term of this Lease hereby granted and right to any renewal thereof shall absolutely cease. PROVIDED ALWAYS that the power of such re-entry herein before contained shall not be exercised unless and until the Lessor has given a ninety (90) days notice to the Lessee requiring it to remedy the breach in terms of payment of Annual Rent.
>
> 15.2 In the event that the said breach in terms of non-payment of the Annual Rent has not been remedied, the Lessor shall take action as per policy ad initiate action under the Gujarat Public Premises (eviction of unauthorised occupants) Act, 1972."

84. A bare reading of clause 15.1 indicates that it provides for suspension of right of the lessee during the tenure of lease in case of non-payment of annual rent for a period of more than two months and the lessors right to seek re-entry in the demised premises, however, the proviso therein would make such right of re-entry, subject to giving 90 days notice to the lessee requiring it to remedy the breach in terms of payment of annual rent. Further, in view of clause 15.2, the action may

be initiated under the Gujarat Public Premises Act' 1972 if the breach in terms of non-payment of the annual rent has not been remedied.

85. Thus, in accordance with the terms of the "Breach of covenant" contained in the lease deed, a previous 90 days notice is required to be given to the lessee asking for payment of rent and eviction action can be initiated under the Public Premises Act in case of persistent default.

86. However, both these actions should freeze during the period of moratorium, inasmuch as, re-entry in terms of the said terms and conditions of the lease deed, would not be permitted or stand prohibited in view of clause (d) of sub-section (1) of Section 14, inasmuch as, recovery to any property by the lessor which is in occupation or possession of the Corporate debtor, is impermissible.

87. Clause (a) of sub-section (1) of Section 14 further prohibits institution of any "proceedings" against the Corporate debtor which would result in depletion of asset of the Corporate debtor. The statutory freeze during the moratorium period is to ensure that the status of a Corporate debtor as a "going concern" is not hampered during the insolvency proceeding and any "proceeding" which would result in the assets of the Corporate debtor being depleted, which would directly impact the CIRP, may be arrested. As held by the Apex Court in **P. Mohanraj & Ors. (supra)**, Section 14(1) is a shield against any such attack under the moratorium period upon the Corporate debtor who is to get breathing space to continue as a going concern in order to

ultimately rehabilitate itself. Any crack in this shield which is bound to have adverse consequences, would be against the object of Section 14(1) of the IBC' 2016.

88. Given the object of Section 14(1) of the IBC' 2016, in the facts of the present case, neither the termination of the lease agreement in terms of the clause 15 (Breach of covenant) nor the eviction "proceedings" under the Gujarat Public Premises Act, were permissible during the moratorium period. The orders of termination of lease and eviction of the lessee, therefore, have been rightly quashed by the learned Single Judge.

89. Moreover, the resolution plan of the successful resolution applicant has been approved by the NCLT. The objections of GIDC to the approval of the Resolution plan has been rejected and the GIDC is in appeal before the NCLAT against the order of approval of the resolution plan.

90. We may also note that during the CIRP, the GIDC had also submitted its claim including conversion charges by relying on its circular which gives rise to an indication that the land was subsequently denotified or the conversion plan of the Corporate debtor was accepted. GIDC has also received a payment of Rs. 6 crores and odd in the proposed resolution plan and had filed withdrawal of its objection to the approval of the resolution plan approved by the NCLT, which was later objected.

91. Be that as it may, on the merits of the approval of resolution plan or any claim of GIDC, which fall within the

domain of the NCLAT, we do not need to comment. We clarify that the observations, if any, in that regard hereinabove will not come in the way of the parties.

92. With the above, the present appeal stands dismissed being devoid of merits. No order as to costs. Pending Civil Application, if any, would not survive and shall stand disposed of, accordingly.

(SUNITA AGARWAL, CJ)

(D.N.RAY,J)

FURTHER ORDER

After delivery of judgement in the open Court, the request made for stay of operation of this judgment cannot be accepted and hence, rejected.

(SUNITA AGARWAL, CJ)

(D.N.RAY,J)

BIJOY B. PILLAI