

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 2777 OF 2024**

IN

COMMERCIAL EXECUTION APPLICATION (LODGING) NO. 1599 OF 2018

1. Vistra ITCL (India) Limited

(formerly known as "IL&FS Trust Company Limited"), a company incorporated under the Companies Act, 1956 having its registered office at IL&FS Financial Centre, Plot No. C-22, G Block, Bandra (East), Mumbai – 400 051, being the trustee of the Infrastructure Leasing & Financial Services Realty Fund, a scheme of IL&FS Private Equity Trust, a SEBI Registered Venture Capital Fund, through its investment manager IL&FS Investment Managers Limited

2. IIRF Holdings III Limited,

a company incorporated in Mauritius, as a company limited by shares, having its registered office at Sanne House, Bank Street, 28, Cybercity, Ebene, Mauritius

...APPLICANTS

VERSUS

1. Sanjay Dattatreya Kakade,

Indian inhabitant, residing at Kakade Paradise, 55/11 A, Law College Road, Pune 411 004

2. Usha Sanjay Kakade,

Indian inhabitant, residing at Kakade Paradise, 55/11 A, Law College Road, Pune 411 004

3. Kakade Construction Company Private Limited,

a company incorporated under the Companies Act, 1956 having its registered office at Kakade Capital, 1205, Shirole Road, Pune – 411 005

...RESPONDENTS

Mr. Gaurav Joshi, Senior Advocate a/w. Adv. Jatin Pore, Adv. Gargi Patil, Adv. Vishal Mandal i/b. DSK Legal, for Applicants.

Dr. Janak Dwarkadas, Senior Advocate a/w. Adv. Karan Bhosale, Adv. Neha Bhosale, Adv. Laveena Tejawani, Adv. Harsh Sawant i/b. NDB Law, for Respondent Nos. 1 and 3.

Mr. Navroze Seervai, Senior Advocate a/w. Adv. Neha Bhosale, Adv. Laveena Tejawani and Adv. Prasad Mhamunkar, i/b. NDB Law, for Respondent No. 2.

Mr. Prathamesh Bhargude, a/w. Mr. Sumit Sonare, for Applicant in IAL/15284/2024.

Adv. Bharat H. Mehta a/w. Adv. Shruti Vyas, Adv. Devang Parmar for UOI.

Mr. Suraj Gupte, AGP for State of Maharashtra.

Mr. Sanjay Dattatreya Kakade, Respondent No.1 is present in person.

Mrs. Nandini Deshpande, 1st Assistant to Court Receiver

CORAM : RAJESH S. PATIL, J.

RESERVED ON : 17 APRIL 2026

PRONOUNCED ON : 6 OCTOBER 2026

JUDGMENT:

1. The present Interim Application has been filed by the Decree

Holder seeking following prayers -

(i) Directions for inclusion of the terms of sale in the public notice for the third round of auction of the 65% shareholding in Respondent No. 3 Company held by Respondent Nos.1 and 2 (for short “Kakdes”).

(ii) Permit Decree Holder to voluntarily offer its 35% shareholding in Respondent No. 3 Company to the successful bidder in the third round of auction, along with the 65% shareholding held by Respondent Nos. 1 and 2,

and to invite offers for the purchase of the entire 100% shareholding in Respondent No. 3 Company.

(iii) Also, the Decree Holder has further sought leave to participate in the third round of auction in terms of Order XXI Rule 72 of the Code of Civil Procedure, 1908.

2. I have heard Mr. Gaurav Joshi, learned Senior Counsel on behalf of the Applicant-Decree Holder, and in response Mr. Janak Dwarkadas, learned Senior Counsel on behalf of Respondent Nos.1 & 3 and Mr. Navroze Seervai, Senior Counsel on behalf of Respondent No.2.

3. Shareholders' Agreement dated 30 January 2007, was executed between Respondent Nos. 1 and 2 (for short "Kakades") with the Applicants (for short "Vistara"). Pursuant to which Vistara invested capital of Rs. 75 Crores in Respondent No.3-Kakade Construction Company Pvt. Ltd. (for short 'KCCPL') by subscription to equity shares and Class 'A' redeemable optional convertible cumulative preference shares.

4. In the year 2011, dispute arose between the parties. Hence, the matter was referred to Arbitral Tribunal consisting of three retired Supreme Court Judges. Before the Arbitral Tribunal, the parties amicably settled their dispute and filed Consent Terms,

pursuant to which 'Consent Award' was passed on 14 July 2014. Vistara agreed to accept a reduced claim amount of Rs.178 Crores together with interest from 30 September 2014 till the date of the payment. The reduced decretal amount was to be paid in tranches. The first of the said payment of Rs.10 Crores was paid on 25 July 2014. However, thereafter as there was default on the part of Kakades, Vistara filed Commercial Execution Application before this Court to enforce the "Consent Award".

5. In the Commercial Execution Application before the learned Single Judge of this Court, on 19 January 2018, an application under Order XXI, Rule 22 was allowed. So also, by a separate order dated 19 January 2018, in paragraph No. 8, it was recorded in clause No. 7(c)(2) that as per the Consent Award with regard to land admeasuring 22.95 acres at Kothrud, Pune District, the provision that without the consent of the Decree Holder-Vistara, the Kakades would not be able to develop, mortgage or create third party right including, but not limited to development rights of KCCPL in the said land. The learned Single Judge thereafter appointed Receiver in execution of the said land admeasuring 22.95 acres.

6. As the Execution Application proceeded further, the parties again entered into a settlement, pursuant to which “Consent Terms” were drawn and were signed and executed by the parties on 22 February 2018. The said Consent Terms were taken on record by an order passed on the same day, i.e. on 22 February 2018. As per the said Consent Terms, the Respondents undertook to pay agreed amount in tranches. The first of the said payment of Rs.5 Crores was paid by the Respondents on 21 March 2018.

7. Clause No. 8 of the said Consent Terms read as under:

“8. The Respondents further undertake as under:

i) Not to, directly and/or indirectly, obstruct either the Court Receiver from taking possession or selling the properties in the aforesaid terms;

ii) Not to, directly and/or indirectly, obstruct the execution of the Consent Award in case of any default;

iii) In case of any default, to obtain from Indiabulls Housing Finance Limited NOC for sale of 2.71 Hectares/ 27,150 sq. mtrs of land purportedly mortgaged to it and for cancelling the Mortgage Deed dated April 24, 2017; and

iv) Not to ask for any further extensions of time.”

[Emphasis supplied]

8. Hence, the Respondents had specifically undertaken that they

will not obstruct the Court Receiver from taking possession or selling the properties and will also not obstruct the execution of the Consent Award.

9. However, thereafter the Respondents preferred two Special Leave Petitions challenging the Judgment dated 22 February 2018: One SLP preferred by Kakades and another by KCCPL.

10. By the Consent Terms executed in the Execution Application before the Bombay High Court on 22 February 2018, Clause 1 specifically recorded that the Respondents confirmed the Consent Award dated 14 July 2014 and withdrew all their challenges raised in Chamber Summons (L) No.160 of 2018 and Chamber Summons (L) No.161 of 2018, both Chamber Summonses filed in Judge's Order No.74 of 2017, thereby all their objections raised violation of FDI policies and FEMA regulations, as raised by the Respondents, were withdrawn.

11. So also, Court Receiver was appointed with regard to land admeasuring 18.90 acres situated at Village Hingwane and land admeasuring 10.18 acres at Village Hingwane. So also, all the three Respondents (Sanjay Kakade, Usha Kakade and KCCPL) undertook that in default of making payments, they will be jointly and severally

be liable to pay the entire balance amount under the Consent Award and they will not obstruct the Court Receiver in taking possession or selling the properties.

12. The SLP preferred by Respondent No.3-KCCPL was withdrawn on 7 October 2025. The SLP preferred by Respondent Nos.1 and 2 (Sanjay Kakade and Usha Kakade) was heard on merits, and by an order dated 24 February 2026, the said SLP was rejected. Paragraph Nos.41, 42, 43, 44, 45 and 46 of the said order dated 24 February 2026 read as under (emphasis supplied):

“41. We decline to interfere with the impugned orders taking the view that this is not a case where we should exercise our jurisdiction under Article 136 of the Constitution of India, more particularly, keeping in mind the gross facts of this case.

42. We are taking this view, more particularly, keeping in mind the undertaking given by the petitioners before the High Court dated 22.02.2018 which reads thus:-

“CONSENT TERMS IN EXECUTION

1. The Respondents hereby confirm the Consent Award dated July 14, 2014 (“Consent Award”) and do hereby withdraw all challenges to the same, including the challenges raised in Chamber Summons (CD) (L) No.160 of 2018 in JO No. 74 of 2017 and Chamber Summons (CD) (L) No.161 of 2018 in JO No, 74 of 2017.

2. The Respondents, by themselves and on behalf of board

of Respondent No.3, further undertake not to challenge the Consent Award dated July 14, 2014 and present Order, on any ground whatsoever including the grounds in the Affidavit in Reply dated July 31, 2017 filed In the present execution proceedings and the Chamber Summons (CD) (L) Nos. 160 and 161 of 2018 in JO No. 74 of 2017.

3. Respondent Nos. 1 and 2, for themselves and on behalf of Respondent No.3, jointly and severally undertake to make payment under the Consent Award subject to what is set out hereunder. The pending Arbitral proceedings, other than the Application under Section 27 (5) of the Arbitration and Conciliation Act, 1996, between the Applicants and Respondent Nos. 1 & 2 shall come to an end on these terms and the present Order shall be executable as a decree against Respondent Nos. 1 and 2, also.

4. The Court Receiver, High Court Bombay is appointed as Court Receiver in respect of 18. 90 Acres of land described at **Schedule 1** hereto and in respect of 10.18 Acres of land described at **Schedule 2** hereto as per letter dated February 21, 2018 addressed by the Advocate for the Respondents to the Advocates for the Applicants before the Hon'ble Court, with all powers under Order 40 Rule 1 under the Code of Civil Procedure, 1908. The Court Receiver shall forthwith proceed to take possession of the said properties and shall thereafter proceed to sell the same for recovery of amounts under the Consent Award in case of any default in making payment of amounts mentioned hereunder, without any further orders from this Hon'ble Court.

5. The Respondents undertake to pay amounts in the following manner:

i) An amount of Rs.5,00,00,000/- (Rupees Five Crores only) on or by March 21, 2018;

ii) An amount of Rs.55,00,00,000/- (Rupees Fifty Five Crores only) on or by June 21, 2018;

iii) An amount of Rs.100,00,00,000/- (Rupees One Hundred Crores only) on or by November 21, 2018; and

iv) An amount of Rs.100,00,00,000/- (Rupees One Hundred Crores only) on or by February 21, 2019.

6. In case all the amounts mentioned hereinabove are paid on or before their respective due dates, the Consent Award shall be marked as fully satisfied and the pending proceedings under Section 27 (5) before the Arbitral Tribunal/Court shall stand withdrawn.

7. In case there is any default in making payment of any amount under these terms, the concessions shall stand revoked and the Respondents, jointly and severally, will be liable to pay the entire balance amount under the Consent Award.

8. The Respondents further undertake as under:

i) Not to, directly and/or indirectly, obstruct either the Court Receiver from taking possession or selling the properties in the aforesaid terms;

ii) Not to, directly and/or indirectly, obstruct the execution of the Consent Award in case of any default;

iii) In case of any default, to obtain from India bulls Housing Finance Limited NOC for sale of 2.71 Hectares/27,150 sq. mtrs of land purportedly mortgaged to it and for cancelling the Mortgage Deed dated April 24,

2017; and

iv) Not to ask for any further extensions of time.

9. The Respondent Nos.1 to 3 shall, within a period of 2 (two) weeks, disclose on Affidavit details of all their assets.

10. It is also made clear that in case of default, the Applicants shall be entitled to execute the Consent Award against any .of the assets of the Respondents.

11. Pending payment of the amounts mentioned herein, or sale by the Court Receiver, the Interim order elated July 6, 2013 and Consent Award passed by the Hon'ble Arbitral Tribunal, and the orders dated July 5, 2017 and January 19, 2018 of the Hon'ble Bombay High Court shall continue.

12. Respondents shall be entitled to approach this Hon'ble Court for mortgage/ sale of aforesaid properties, in respect of which Court Receiver is appointed, for making payment of the Decretal claim/aforesaid amount and for no other purpose.

Dated this 22nd day of February, 2018

Respondent No.1
Mr. Sanjay Dattatreya Kakade

Respondent No.2
Mrs. Usha Sanjay Kakade

Respondent No.3
Authorised Signatory
Kakade Construction Company Private Limited

For Applicants Nos. 1 and 2
Authorised Signatory”

43. The consent terms also records that in the event of any default in making payment of any amount under the terms, the concessions would stand revoked and the petitioners and the respondent no.3 herein jointly and severally would be liable to pay the entire balance amount under the consent award.

44. Before closing this matter, we once again enquired with the learned senior counsel appearing for the petitioners whether their clients are ready and willing to pay the principal amount, i.e., Rs.178 crore. We were informed that it is not possible for the petitioners to pay this amount, however, both the learned senior counsel made a request that let the receiver, who has taken over all the assets of the company put the assets to auction/sale, recover the amount and pay the same to the respondent nos.1 and 2, respectively.

45. We do not say anything in the aforesaid regard. It is for the receiver now to proceed further, in accordance with law.

46. With the aforesaid, both the Special Leave Petitions are dismissed.”

[Emphasis supplied]

13. Before the Supreme Court, as the Respondents were not ready and willing to pay even the principal amount of Rs.178 Crores, the statement of counsel appearing for the Respondents was recorded that the Court Receiver, who had taken over the assets of Respondent No.3 Company, will put the assets to auction/sale and the amount recovered would be paid to the Decree Holder-Vistara.

The Court Receiver was directed to proceed further in accordance with law.

14. In execution twice attempts were made by the Court Receiver to auction the attached properties. However, since no bidders came forward, the auction failed. Hence, the Court Receiver filed its report being Court Receiver's Report No. 378 of 2023, for further directions. In pursuant thereto, the present Interim Application has been filed.

15. The Senior Counsel for Respondent No.3-KCCPL has raised objections as regards to violation of FEMA regulations while the Consent Terms were filed. It is pertinent to note that this argument was also raised before the Supreme Court in SLP No. 29597 of 2025, and the said point has been rejected by the Supreme Court. Though Respondent No.3-KCCPL, raised similar kind of issue in its SLP No. 14245 of 2025, they chose to withdraw their SLP, and by an order dated 7 October 2025 their SLP was disposed of as withdrawn. Hence, in my view, Respondents cannot raise the same issue again before this Court.

16. It was also submitted before me by the learned Senior Counsel, Mr. Joshi, appearing for the Decree Holder that as regards the

Criminal PIL filed by the project-affected people of the land in question, the said Criminal PIL was rejected by the Division Bench of this Court by an order dated 12 March 2026. Hence, in present Interim Application filed in Execution Application, intervenors can't raise any objection.

17. The Supreme Court had specifically inquired with the Judgment Debtors whether they are ready to deposit the principal amount. The Judgment Debtors had informed the Supreme Court, which was recorded in order dated 24 February 2026, that it was not possible for them and the matter can be proceeded further in execution.

18. On behalf of the Respondents, following Judgments were cited viz.

- i) *Jotun India P Ltd. Vs. PSL Ltd.*¹
- ii) *Dilip B. Jiwarajka Vs. Union of India and Ors*²
- iii) *Sant Lal Gupta & Ors Vs. Modern Cooperative Group Housing Society Limited & Ors.*³
- iv) *Jamia Hamdard Deemed to be University Vs. Asad Mueed and Ors*⁴.

¹ (2018) 1 Bom CR 524

² (2024) 5 SCC 435

³ (2010) 13 SCC 336

⁴ 2025 SCC OnLine Del 9203

19. Supreme Court in the judgment of *Dilip Jiwrajka (supra)* held that the purpose of the interim moratorium is to restrain the initiation or continuation of a legal action or proceeding against the debt. To the present proceeding, the ratio laid down in the said judgment is not applicable because in the present proceedings the argument is restricted by the decree holder today only with regards to Respondent No.3.

20. In the judgment of *Sant Lal Gupta (supra)*, the appellants before the Supreme Court were members of a cooperative housing society. The society had proposed expulsion of the appellants along with few other members. The proposal of the society was rejected by the Registrar, so also in a Revision before the Financial Commissioner. This was challenged by the society before the High Court via a writ petition, which was allowed, hence the appellants, who were the members of the cooperative society were expelled as members of the society. Therefore, Appellants challenged the said order by way of SLP. Supreme Court while allowing the appeal of the appellants held that not only administrative but also judicial orders must be supported by recording reasons. While deciding an issue, the court is bound to give reasons for its conclusion and it was a

duty and obligation on the part of the court to record reasons while disposing of its case. The view taken by the Supreme Court in this judgment will not support by any way to the respondents in the present proceedings.

21. Division Bench of Delhi High Court in the judgment of ***Jamia Hamdard (supra)*** was dealing with an issue wherein by the impugned order, the executing court directed a third party in an arbitration proceedings to issue the consent of affiliation required for 150 MBBS seats at the Hamdard Institute of Medical Sciences and Research for the academic year 2025-2026. The Division Bench held that the executing court can't travel beyond the scope of ambit of Order passed under Section 17 of the Arbitration Act, thereby directing a party who is not a party before the Arbitral Tribunal and nor a party to the arbitration agreement, hence dismissed the application preferred under the provisions of Order XXI Rule 32 of CPC.

22. The Single Judge of this Court in the judgment of ***Jotun India Private Limited (supra)*** was dealing with the issue of the distinction between the provisions of Companies Act and the IBC. The learned Judge held that under the Companies Act, winding up would be a

matter for the Court alone to decide, whereas under the IBC, there is a paradigm shift inasmuch as it displaces the management of the company and an IRP is appointed and the Committee of Creditors is left to decide the fate of the company.

22.1 Again, here the issue was whether the Company Court has jurisdiction to stay proceedings filed by Corporate Debtor before the National Company Law Tribunal. The view taken by the learned Single Judge was in the facts of the said case, and since the facts in the present proceedings are quite different, where this Court is only dealing with Respondent No.3 as of now, therefore, the view taken in Jotun India Private Limited (supra) will not be applicable to the present proceedings.

23. The law as laid down in the above-mentioned judgments would not help the present Respondents-Judgment Debtors. Here is a case where, in the arbitration proceedings, Consent Award was passed. There was a default on the part of the Judgment Debtors; hence, Execution Application was filed. In the Execution Application again, Consent Terms were entered into between the parties and there was an undertaking given by the Judgment Debtors. They have violated that undertaking. Hence, the commercial execution

proceedings proceeded further. The Consent Terms which were taken on record by a Single Judge of this Court, even that order was challenged before the Supreme Court. The Supreme Court has rejected the said SLP filed by Respondent Nos.1 and 2 on merits. Respondent No.3 themselves (KCCPL) chose to withdraw their SLP. Hence, in my view the present Interim Application needs to be allowed.

24. Interim Application stands allowed in terms of prayer clauses (i)(a), (i)(b) and (ii).

(RAJESH S. PATIL, J.)