

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.3168 OF 2017
WITH
CHAMBER SUMMONS (L) NO.433 OF 2017
WITH
CHAMBER SUMMONS (L) NO.434 OF 2017

Om Project Consultants and Engineers Limited ...Petitioner
vs.

Orbit Corporation Limited and Others ...Respondents

Mr. Diniar Madan, Senior Advocate a/w. Ms. Navpreet Ahluwalia
i/b. Khaitan & Khaitan, for the Petitioner

Mr. Ankit Lohia a/w. Mr. Ashish Parwani, Mr. Dikshat Mehra, Mr.
Archan Shah i/b. Rajani Associates, for Respondent No. 1

Mr. Virag Tulzapurkar, Senior Counsel a/w. Mr. Bhalchandra Palav,
Ms. Shreya Jha i/b. Cyril Amarchand Mangaldas, for the
Respondent No. 2.

Mr. Rohit Gupta i/b. Mr. G.N. Pandit, for the Respondent No. 3.

Mr. Pravin Samdani, Senior Advocate a/w. Mr. N.V. Vaishnawa, for
the Applicant-Intervener.

**CORAM : SHANTANU KEMKAR &
G.S. KULKARNI, JJ.**

DATE : NOVEMBER 21, 2017

P.C.:

. By filing this Petition under Article 226 of the
Constitution of India, the Petitioner is seeking following reliefs:

*“(a) That this Court be pleased to pass a writ of certiorari or
any other appropriate writ in the nature of certiorari or any
other appropriate writ, order and/or direction under Article
226 of the Constitution of India quashing and setting aside
the impugned action by Respondent No. 3.*

(b) That this Court be pleased to pass a writ of mandamus or any other appropriate writ in the nature of mandamus or any other appropriate writ, order and/or direction under Article 226 of the Constitution of India directing the Respondent 4 and 5 to insert suitable provisions in Section 52 and Section 53 of the IBC 2016 to declare home buyers such as the Petitioner herein as primary secured creditors in terms of the suggestions rendered by Respondent No. 4.

(c) That this Court be pleased to pass a writ of mandamus or any other appropriate writ in the nature of mandamus or any other appropriate writ, order and/or direction under Article 226 of the Constitution of India directing the learned National Company Law Tribunal (Mumbai Bench) to keep the project where the Petitioner has invested i.e. 'Orbit Haven' being situated at Darabshaw Lane, Nepeansea Road, Mumbai 36 out of the purview of insolvency proceedings against the Respondent No. 1.

(d) That this Court by way of an ad-interim order be pleased to stay the impugned action till the disposal of this Writ Petition.”

2. As regards the prayer clause (b), we find that such prayer cannot be granted by this Court.

3. As regards the other prayers, in our considered view, the Petitioner has remedy under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 which the Petitioner has already invoked by filing an Application seeking intervention in the matter. Apart from that, the Petitioner has also filed a Civil Suit seeking specific performance of the contract against the Respondent Nos. 1 and 2.

4. Though a statement has been made by the learned

counsel for the Petitioner that he would be withdrawing the Application for Intervention but we allow the Petitioner to press the said Application inspite of the statement made by it in paragraph 36 of the Petition.

5. Thus, in view of the Section 60(5) of the Insolvency and Bankruptcy Code, 2016 the Petitioner is having alternate and efficacious remedy available against the impugned action. In the circumstances, we decline to interfere in the matter.

6. All contentions of the parties in regard to the said Intervention Application are kept open.

7. The Petition is dismissed.

8. As a result the Chamber Summons are also disposed of.

(G.S. KULKARNI, J.)

(SHANTANU KEMKAR, J.)