

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

INTERIM APPLICATION NO. 1319 OF 2024
WITH
INTERIM APPLICATION NO.431 OF 2024
IN
COMMERCIAL SUIT NO. 178 OF 2023

Edelweiss Asset Reconstruction
Company Limited

...Petitioner

Versus

Meeti Developers Private Limited

...Respondent

Mr. Gaurav Joshi, Senior Counsel a/w Mr. Ankit Lohia and Mr. Varun Nathani, Ms. Suchitra Valjee, Ms. Riya Vasa i/by Manilal Kher Ambalal and Co. for Applicant/plaintiff in COMS/178/2023. And Applicant in IA/1319/2024 and IA/1431/2024.

Mr. Ayush Rajani a/w Khushboo Shah i/by AKR Legal for Defendant No.1.

Mr. Zal Andhyarujina Senior Counsel, Mr. Karan Bhide, Mrs. Rati Patni, Mrs. Kathleen Lobo and Mr. Vikrant Dere i/by Wadia Ghandy and Co. for Respondent No.5 and 7.

Mr. Sachin Mhatre a/w Rochelle Fernandes i/by Mhatre Law Associates for Defendant No.6.

CORAM : N. J. JAMADAR, J.
DATE : 3rd SEPTEMBER 2024

ORDER

1. Heard the learned Counsel for the parties.
2. This is an application for amendment of the plaint under order I Rule 10 and order VI Rule 17 of the Code of Civil Procedure, 1908 (The Code) to implead Ajmera Luxe Realty Pvt. Ltd.(R7) as a party Defendant No.7 and make certain averments and seek additional reliefs.

3. Meeti Developers Pvt. Ltd. (Meeti), the Defendant No.1 entered into a Development Agreement dated 27th December 2006 with New Kamal Kunj Co-Operative Housing Society Limited (The Society), the Defendant No.6, to redevelop the society premises. Under the terms of the development agreement, Meeti Developers Pvt. Ltd. (D1) was required to construct the rehab units for the existing members of the Society (D6) and had right to utilize and deal with the balance available FSI quantified at 74,226 square feet in such manner as Meeti (D1) may deem fit. Addendum Agreements were executed in furtherance of the development agreement, on 31st October 2015 and 18th March 2017. Under the terms of these agreements, Meeti(D1) was authorized to create security interest or encumbrance on the developer's share and the society (D6) agreed that it shall not raise any objection or withhold necessary consent to create such security interest.

4. Thus, to finance redevelopment, Meeti (D1) approached the ECL Finance Limited ("ECL"), the predecessor in interest of the plaintiff, to advance a loan of Rs.55 crores. The Society (D6) granted its unconditional consent to Meeti (D1) to mortgage and create charge over free sale area of 74,226 square feet against the facility approved by ECL. The Financial Assistance was in the form of Non-Convertible Debentures (NCD's) issued by Meeti (D1).

Catalyst Trusteeship Limited (“Catalyst”) came to be appointed as Debenture Trustee on 3rd November 2016. Meeti (D1) and Catalyst executed Debenture Trust Deed recording the terms and conditions for grant of facility of Rs. 55 crores to Meeti (D1). The issuance of the NCDs was secured *inter alia* by a charge/security/mortgage over the free sale area of 74,226 square feet in the redevelopment project of the society (D6). Defendant Nos. 2 to 4 are the legal representatives of late Paresh Bhuta, the personal guarantor of Meeti (D1).

5. Meeti(D1) committed several defaults under the Debenture Trust Deed. The plaintiff initially filed C.P. No.783 of 2020 under the Insolvency and Bankruptcy Code, 2016, (IBC) against Meeti (D1) before the National Company Law Tribunal Mumbai (“NCLT”). The said Petition was admitted by an order dated 5th March 2021.

6. In the meanwhile, Ajmera Realty & Infra India Limited (Ajmera Realty) Defendant No.5, evinced interest in the redevelopment project. On 8th July 2022, the plaintiff and Ajmera Realty (D5) executed a Transfer Agreement and Financial Undertaking whereunder the Defendant No.5 agreed to purchase the NCDs from the Plaintiff for a consideration of Rs. 31,66,00,000/-. Believing the representations of Meeti (D1) and

Ajmera Realty (D5), the plaintiff withdrew C.P. No.783 of 2020 before the NCLT.

7. The Society (D6) terminated the development agreement with Meeti (D1). That led to filing of Commercial Arbitration Petition before this Court. By a Judgment and Order dated 12th September 2023, the Commercial Arbitration Petition (L) No.12837 of 2023 filed by the Society (D6) was allowed while Commercial Arbitration Petition (L) No.6410 of 2023 filed by Meeti (D1) came to be dismissed.

8. The plaintiff instituted the instant Suit on 2nd November 2023 asserting its rights under the Debenture Trust Deed *inter alia* seeking a monetary decree against Defendant Nos.1 to 4 for failure to repay NCDs and to enforce its mortgage and protect and preserve the security created by Meeti (D1) in favour of the plaintiff with the consent of Society (D6). The plaintiff also filed Interim Application No. 431 of 2024 seeking ad-interim and interim reliefs.

9. In the said Interim Application, an affidavit-in-reply came to be filed on behalf of Defendant No.5 contending that the Society (D6) executed a development agreement on 21st October 2023 with Ajmera Luxe Realty Pvt. Ltd. (Ajmera Luxe), Respondent No.7.

10. The plaintiff thus asserts the alleged transaction sought to be entered into by Defendant Nos.5 and 6 and Respondent No.7 is prejudicial to the rights of the plaintiff. It has transpired that Ajmera Luxe (R7) is an associate/subsidiary company of Ajmera Realty (D5). These subsequent events have, according to the plaintiff, necessitated the amendment in the plaint. The plaintiff is thus constrained to amend the plaint so as to make averments regarding the collusion between the Defendant Nos.5 and 6 and Respondent No.7 and bring the subsequent developments on the record of the Court.

11. The plaintiff avers that the proposed amendment neither changes the nature of the Suit nor the cause of action is altered. The proposed amendment does not cause any prejudice to the defendants. In fact, the impleadment of Ajmera Luxe (R7) as a party Defendant is necessary for a complete and effectual adjudication of the dispute. The proposed amendment would also avoid multiplicity of the proceedings as all the real question in controversy between the parties can be adjudicated in the Suit. Hence, this application.

12. An affidavit-in-reply is filed on behalf of the Society (D6). At the outset, the Society (D6) contends that application for amendment is completely misconceived. There is no privity of

contract between the plaintiff and the Society (D6). The reliance on the consent given by the Society (D6) to Meeti (D1), the erstwhile developer, was stated to be misplaced as the agreement between the Society (D6) and Meeti (D1) clearly provided that no encumbrance or charge would be created on the property of the Society (D6).

13. The Society (D6) contends that it was constrained to terminate the development agreement with Meeti (D1) on account of gross breaches committed by Meeti (D1). The said termination has been upheld by this Court in Commercial Arbitration Petition (L) No.12837 of 2023 by a Judgment and Order dated 12th September 2023 and the Society (D6) has been permitted to enter into a fresh agreement with another developer for redevelopment.

14. Without assailing the said judgment, the plaintiff is trying to indirectly restrain the Society (D6) from proceeding with redevelopment of the society's property pursuant to the development agreement executed with Respondent No.7, by seeking to amend the plaint. The society (D6) further contends that, since the development agreement with Meeti (D1) came to be lawfully terminated and challenge thereto, at the instance of Meeti (D1), has failed, the plaintiff cannot claim any right, title or interest in the free sale area, over which encumbrance was

created by Meeti (D1), the erstwhile developer.

15. Lastly, the Society (D6) contends that, if the proposed amendment is allowed and the development agreement executed between the Society (D6) and Ajmera Luxe (R7) is made a subject matter of the dispute in the instant Suit, the members of the society, who have been out of their own homes since the year 2017, would suffer irreparable loss. Thus, the application for amendment be rejected.

16. Ajmera Luxe (R7) has also resisted the application by filing an affidavit in reply. The tenability of the application to implead Ajmera Luxe (R7) is assailed on multiple counts. First it is contended that Ajmera Luxe (R7) has no nexus to the dispute at hand and is ex facie neither a necessary nor a proper party to the instant suit. Second, the instant suit has been instituted by the applicant for recovery of money from defendant Nos. 1 to 4 and it is not concerned with the right of redevelopment of the subject property, which has been granted by the society (D6) in favour of Ajmera Luxe (R7). Third, the development agreement dated 21st October, 2023 which is sought to be assailed by the plaintiff has been executed pursuant to an express permission granted by this Court by an order dated 12th September, 2023 in Arbitration Petition (L) No. 6410 of 2023. Since the said order has attained

finality, plaintiff cannot be permitted to put further hindrances in much delayed redevelopment project of the society (D6).

17. Referring to the Company Petition, being IB No. 624 of 2023, instituted by the plaintiff against Meeti (D1) and the order dated 5th April, 2024 admitting the petition and, consequently, imposing the moratorium as envisaged by section 14 of the IBC, Ajmera Luxe (R7) contends that the plaintiff is not entitled to proceed with the instant suit itself and, therefore, an application for amendment therein is wholly misconceived. Since the reliefs in the instant suit are primarily against Meeti (D1), in the face of statutory moratorium, the present suit cannot be proceeded with.

18. It is further contended the proposed amendment which calls in question the development agreement executed by the society (D6) in favour of Ajmera Luxe (R7), substantially alters the cause of action and/or introduces a fresh cause of action and/or changes the nature of the suit and, therefore, on this count also the application deserves to be rejected. Lastly, it is contended that the plaintiff has resorted to multiple proceedings despite having not succeeded in the previous attempts to stall the redevelopment of the society (D6). There are no equities in favour of the plaintiff. Thus, the application deserves to be rejected.

19. In the backdrop of the aforesaid pleadings, I have heard Mr. Gaurav Joshi, learned Senior Advocate for the Plaintiff, Mr. Ayush

Rajani, learned counsel for defendant No. 1, Mr. Zal Andhyarujina, learned senior counsel for defendant Nos. 5 and Respondent No.7 and Mr. Sachin Mhatre, learned counsel for defendant No. 6. The learned counsel took the Court through the pleadings and documents on record.

20. Mr. Joshi, learned senior advocate for the plaintiff, submitted that the resistance to the proposed amendment and impleadment of Ajmera Luxe (R7) does not merit countenance either on facts or in law. The grounds of objection, namely, the bar to the continuation of the proceedings under section 14 of the IBC in view of the order passed by NCLT and the change in cause of action and nature of the suit claim, are both unsustainable. These grounds have been raised with an oblique motive to defeat the legitimate claim of the plaintiff emanating from the Debentures Trust Deed and the instruments executed by Meeti (D1) to secure the financial facility extended by the plaintiff. As the proposed amendment is at a pre-trial stage and the facts which necessitate the proposed amendment have emerged subsequently, the amendment deserves to be allowed.

21. Amplifying the submission, Mr. Joshi strenuously submitted that the relief by way of proposed amendment is primarily against Ajmera Realty (D5), the Society (D6) and Ajmera Luxe (R7). The character of Ajmera Realty (D5) and Ajmera Luxe (R7) is that of

third parties to CIRP. It is beyond the stretch of imagination that the third parties can be permitted to take benefit of the moratorium under section 14 of the IBC and defeat legitimate rights of the financial creditor by dealing with the assets of the corporate debtor, with impunity. Mr. Joshi urged with a degree of vehemence that by the proposed amendment and the reliefs which the plaintiff proposes to seek, the plaintiff is not at all endangering or touching the property of the corporate debtor. Laying emphasis on the object of the moratorium envisaged by section 14 of the IBC, Mr. Joshi would urge that the legal position has been crystallized by a catena of decisions that even the promoters and directors of the corporate debtor cannot claim immunity from the proceedings by invoking section 14 of the IBC much less the third parties like defendant Nos. 5 and 6 and respondent No. 7 herein.

22. To buttress these submissions, Mr. Joshi placed reliance on the decisions of the Supreme Court in the cases of **P. Mohanraj and Ors. vs. Shah Brothers Ispat Private Limited¹**; **Anjali Rathi and Ors. vs. Today Homes & Infrastructure Pvt. Ltd. And Ors.²**; **Ansal Crown Heights Flat Buyers Association(Regd.) vs. Ansal Crown Infrabuild P. Ltd and Ors.³**; a decision of the Delhi High Court in the case of **SSMP Industries Limited vs. Perkan Food Processors**

¹ (2021) 6 SCC 258.

² 2021 SCC OnLine SC 729.

³ 2024 SCC OnLine SC 64.

Private Limited⁴; and a decision of Allahabad High Court in the case of **Trading Engineers (International) Limited vs. Uttar Pradesh Power Transmission Corporation Limited**⁵.

23. Refuting the contentions on behalf of defendant Nos. 6 and 7 that the proposed amendment alters the nature of the suit and/or introduces a new cause of action. Mr. Joshi submitted that the cause of action to call in question the development agreement dated 21st October, 2023 executed by the Society (D6) in favour of Ajmera Luxe (R7) flows from the very rights which have been created in favour of the plaintiff under the Debenture Trust Deed (DTD). The action of termination of development agreement executed by Society (D6) in favour of Meeti (D1) had already been assailed by the plaintiff. The challenge to the subsequent development agreement between the Society (D6) and respondent No. 7 is in continuation of the assertion of the plaintiffs rights under DTD. To buttress the submission that the amendments which are necessary to determine the real question in controversy and are necessitated by the subsequent events are required to be liberally allowed, Mr. Joshi placed reliance on the decisions of the Supreme Court in the cases of **Prem Bakshi and Ors. Vs. Dharam Dev and Ors.**⁶ and **Om Prakash Gupta Vs. Ranbir B. Goyal.**⁷

⁴ 2019 SCC OnLine Del 9339

⁵ Sp.L.P.(C) No. 17427/2022 Dt.20/10/2022

⁶ (2002) 2 SCC 2

⁷ (2022) 2 SCC 256

24. Mr. Ayush Rajani, the learned counsel for for IRP appointed in respect of Meeti(D1), supported the application for amendment.

25. Mr. Zal Andhyarujina, learned Senior Advocate for respondent No. 7, countered the submissions of Mr. Joshi. Inviting the attention of the Court to the prayers in the plaint and the additional prayer sought to be introduced by way of amendment, Mr. Andhyarujina urged with tenacity that the suit as it stands as well as the case sought to be introduced by way of proposed amendment, cannot proceed any further. Mr. Andhyarujina mounted a two-fold challenge to the continuation of the suit. First, in view of the provisions contained in section 14(1)(a), the suit cannot proceed against Meeti (D1), the corporate debtor as it is essentially for recovery of the debt purportedly owed by the corporate debtor to the plaintiff. Second, the interdict contained in clause (c) of sub section (1) of section 14 of IBC, according to Mr. Andhyarujina, operates with full rigor as “any action to foreclose, recover or enforce any security interest” created by the corporate debtor in respect of its property is completely barred till the moratorium remains in force. The substratum of the plaintiff’s claim, by way of proposed amendment, is the security interest allegedly created by the corporate debtor in its favour. Therefore, no action to enforce such security interest can continue. Resultantly, the application does not deserve to be entertained.

26. Mr. Andhyarujina joined the issue of the protection under Section 14 of IBC being claimed by third parties, by canvassing a submission that resistance of defendant Nos. 5 and 6 and respondent No. 7 does not proceed on the premise that during the currency of moratorium no action can be initiated against them, but on a statutory ground that ‘any action to enforce the security interest created by the corporate debtor’ which, the plaintiff proposes to resort to, cannot be permitted. Mr. Andhyarujina would urge that the key words in clause (c) of sub section (1) of section 14 are “any action” and “in respect of its property”. The word “any” expands the scope of the prohibition and is not restricted to a proceeding against the corporate debtor which is covered by clause (a) of sub section (1) of section 14. Irrespective of the parties to the proceedings, be it corporate debtor or the third parties, if the action is to enforce any security interest created by corporate debtor in respect of its property, the interdict contained in clause (c) of section 14(1) of IBC comes into play, urged Mr. Andhyarujina. Reliance was placed on a decision of the Supreme Court in the case of **Shri Balaganesan Metals v/s. M.N. Shanmugham Chetty and Ors.**⁸ wherein the wide amplitude of the word “any” was expounded.

27. It was submitted that the import of the prohibition against

⁸ (1987) 2 SCC 707

the proceedings during the currency of the moratorium is required to be appreciated in the light of the object of section 14 of IBC. To lend support to this submission, Mr. Andhyarujina placed reliance on the decisions of the Supreme Court in the cases of **Alchemist Asset Reconstruction Company Limited vs. Hotel Gaudavan Private Limited and Others**⁹ and **Indian Overseas Bank vs. M/s. Ram Infrastructure Limited and Anr.**¹⁰. Mr. Andhyarujina further urged that the submissions on behalf of the plaintiff that the plaintiff would be left in the lurch if the plaintiff is not permitted to amend the plaint and proceed against Ajmera Luxe (R7) is wholly unfounded. It was submitted that the plaintiff has an efficacious remedy under section 60(5) of the IBC, before the NCLT. Therefore, the plaintiff can approach the NCLT in the pending Company Petition which has been instituted by the plaintiff himself.

28. Mr. Andhyarujina further urged that there is a complete change in the cause of action. The suit, as originally instituted, primarily represents an action for recovery of the debt. By the proposed amendment, the plaintiff seeks to challenge the development agreement executed by Society (D6) in favour of Ajmera Luxe (R7), purportedly in an action for enforcement of a mortgage over a non-existent property. The free sale component,

⁹ (2018) 16 SCC 94.

¹⁰ Civil Appeal No.4750/2021 Dt.18/05/2022

over which the security interest was created, does not exist. The development agreement between the Society (D6) and Meeti (D1) has been lawfully terminated. Therefore, the reliefs sought to be claimed, by the proposed amendment, fundamentally alter the character of the suit. Such an amendment is not permissible in law, submitted Mr. Andhyarujina. To this end, reliance was placed on a decision of the Supreme Court in the case of **Asian Hotels (North) Limited vs. Alok Kumar Lodha and Others**¹¹.

29. Mr. Sachin Mhatre, learned counsel for defendant No. 6 supplemented the submissions of Mr. Andhyarujina.

30. Mr. Joshi, learned senior counsel for the plaintiff, submitted that the contention on behalf of respondent No. 7 that the plaintiff has an efficacious remedy under section 60(5) of IBC is a part of a litigative strategy to defeat the rights of the plaintiff. The NCLT has no jurisdiction over the matters *de hors* the insolvency proceedings. Had the plaintiff approached NCLT against the defendants other than the corporate debtor, and respondent No. 7, the jurisdiction of NCLT would have been promptly questioned on that count alone. Mr. Joshi submitted that the decision of the Supreme Court in the case of **Gujarat Urja Vikas Nigam Limited vs. Amit Gupta and Others**¹² elucidates the nature of the residuary jurisdiction exercised by NCLT under section 60(5)(c) of IBC, and

¹¹ (2022) 8 Supreme Court Cases 145.

¹² (2021) 7 SCC 209.

affords an answer to the contention raised on behalf of R7. Therefore, the application cannot be resisted on the count that the plaintiff can approach NCLT.

31. I have carefully considered the material on record and the rival submissions canvassed across the bar.

32. To begin with, it is necessary to keep in view general principles which govern the determination of an application for amendment of plaint. The overarching principles, which govern the decision to permit a party to amend the pleadings are that, the proposed amendment is necessary for the determination of the real question in controversy between the parties, and the potentiality of prejudice and injustice which is likely to be caused to the other side in the event the amendment is allowed. All the amendments which are necessary for the determination of real question in controversy between the parties are required to be allowed. Whether the proposed amendment has the propensity to fundamentally change the nature and character of the suit and whether a fresh suit on the amended claim would be barred by limitation or any other statutory provision, are the other considerations which weigh with the Court in considering the prayer for amendment. Ordinarily the amendments at a pre-trial stage, where the interdict contained in the proviso to Order VI Rule 17 of the Code has no application, are liberally allowed.

33. In the case at hand, the suit is at a pre-trial nay at a nascent stage. The prayer for amendment of the plaint is contested on two counts. One, the bar under section 14 of IBC to the institution and continuation of the suit or proceedings or initiating of an action to enforce the security interest. Two, that the proposed amendment fundamentally changes the nature and character of the suit.

34. Section 14(1) of the Insolvency and Bankruptcy Code, 2016 reads as under:-

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 -

35. Before construing the nature of the bar envisaged by clauses (a) and (c) of sub section (1), it is necessary to note the object of IBC and especially the mechanism of moratorium under

section 14. The avowed object of IBC is to ensure revival and continuation of the corporate debtor, by protecting the corporate debtor from its own management and from a corporate death by liquidation. IBC is not envisaged as a mere recovery legislation for creditors but its primary focus is revival of the corporate debtor as a going concern and to put the corporate debtor back on its feet. The moratorium imposed by section 14 is in the interest of corporate debtor itself, thereby preserving the assets of corporate debtor during the resolution process for a successful insolvency resolution.

36. The Report of Insolvency Law Committee of February, 2020 reads, inter alia, as under:-

“8.2 The moratorium under section 14 is intended to keep ‘the corporate debtor’s assets together during the insolvency resolution process and facilitating orderly completion of the process envisaged during the insolvency resolution process and ensuring that the Company may continue as a going concern while the creditors take a view on resolution of default.

Referring to the aforesaid report, in the case of **P. Mohanraj** (supra), the object of section 14 of IBC was expounded, inter alia, as under:-

30.However, paragraph 8.2 is important in that 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 maximizing 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 organize its affairs so that a new management may ultimately take over and bring the corporate debtor out of financial sickness, thus benefiting all stakeholders, which would include workmen of the corporate debtor.

37. It would be contextually relevant to note, in the case of **P. Mohanraj** (supra) the Supreme Court enunciated in clear and explicit terms that the moratorium contained in section 14 of IBC would apply to corporate debtor and not the natural persons who are liable to be prosecuted by invoking section 141 of the NI Act, 1881. The observations of the Supreme Court in paragraph 102 in the case of **P. Mohanraj** (supra) are instructive and hence extracted below.

102 Since the corporate debtor would be covered by the moratorium provision contained in Section 14 of the IBC, by which continuation of Section 138/141 proceedings against the corporate debtor and initiation of Section 138/141 proceedings against the said debtor during the corporate insolvency resolution process are interdicted, what is stated in paragraphs 51 and 59 in [Aneeta Hada](#) (supra) would then become applicable. The legal impediment contained in Section 14 of the IBC would make it impossible for such proceeding to continue or be instituted against the corporate debtor. Thus, for the period of moratorium, since no Section 138/141 proceeding can continue or be initiated against the corporate debtor because of a statutory bar, such proceedings can be initiated or continued against the persons mentioned in Section 141(1) and (2) of the Negotiable Instruments Act. This being the case, it is clear that the moratorium provision contained in Section 14 of the IBC would apply only to the corporate debtor, the natural persons mentioned in Section 141 continuing to be statutorily liable under Chapter XVII of the Negotiable Instruments Act.

(emphasis supplied)

38. In the case of **Anjali Rathi** (supra) following the aforesaid

decision in the case of **P. Mohanraj** (supra), the Supreme Court ruled that the petitioners therein, would not be prevented by the moratorium under section 14 of IBC from initiating the proceedings against the promoters of corporate debtor. The observations in paragraphs 17 and 18 read as under:-

17] At this juncture, we must however clarify the right of the petitioners to move against the promoters of the first respondent Corporate Debtor, even though a moratorium has been declared under Section 14 of the IBC. In the judgment in **P. Mohanraj v. Shah Bros. Ispat (P) Ltd.**, a three judge Bench of this Court held that proceedings under Section 138 and 141 of the Negotiable Instruments Act 1881 against the Corporate Debtor would be covered by the moratorium provision under Section 14 of the IBC. However, it clarified that the moratorium was only in relation to the Corporate Debtor (as highlighted above) and not in respect of the directors/management of the Corporate Debtor, against whom proceedings could continue.

18] We thus clarify that the petitioners would not be prevented by the moratorium under Section 14 of the IBC from initiating proceedings against the promoters of the first respondent Corporate Debtor in relation to honoring the settlements reached before this Court. However, as indicated earlier, this Court cannot issue such a direction relying on a Resolution Plan which is still pending approval before an Adjudicating Authority.

(emphasis supplied)

39. In the case of **Ansal Crown Heights** (supra), the Supreme Court referred to the decisions in the cases of **P. Mohanraj** (supra) and **Anjali Rathi** (supra) and reiterated that the protection of moratorium would not be available to the Directors/ Officers of the company.

40. It is in the light of the aforesaid object of IBC, in general, and

section 14, in particular, the import of the bar envisaged by clauses (a) and (c) of sub section 14(1) of IBC deserves to be appreciated. From the text of section 14(1)(1)(a) it becomes evident that the institution of the suits or continuation of pending suits or proceedings against corporate debtor, is barred once the adjudicating authority orders the moratorium upon admission of insolvency resolution Petition. The bar contained in clause (c) of sub section (1) of section 14 is, however, against the action to foreclose, recover or enforce any security interest created by the corporate debtor. If the provisions of clauses (a) and (c) of sub-section (1) of section 14 (extracted above) are compared and contrasted, the following position emerges:

First, the bar under clause (a) is to the institution of suits or continuation of suits or proceedings against the corporate debtor.

Second, the bar is envisaged to insulate the corporate debtor from suits or proceedings, so as to ensure that the assets of the corporate debtor are preserved for successful insolvency resolution.

Third, the prohibition under clause (c), on the other hand, is against any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property.

Fourth, the bar under clause (a) is for proceeding against the corporate debtor whereas under clause (c), it is against

enforcement of security interest created by the corporate debtor.

Fifth, the focus under clause (a) is on the suit or proceedings against the corporate debtor but under clause (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor over its property is prohibited.

Sixth, though there is an element of continuity and action against the corporate debtor may fall both under clause (a) and (c), a situation, governed by clause (c), is not inconceivable where the corporate debtor may not be necessarily involved as a party.

Seventh, the prohibition contained in clause (c) appears to be of wide amplitude than the bar to the suit or proceedings against the corporate debtor under clause (a).

41. Keeping in view, the aforesaid construct of the provisions contained in clauses (a) and (c) of sub section (1) of section 14 of IBC, reverting to the facts of the case, it is pertinent to note that there is not much controversy over the fact that under the development agreement executed by the Society (D6) in favour of Meeti (D1), the latter was empowered to create charge or encumbrance on the free sale component only. The agreement clearly stipulated that Meeti (D1) had no authority to create any charge or encumbrance on the property of the Society (D6).

42. Mr. Joshi, learned senior Advocate for the plaintiff,

submitted that once it is conceded that the Meeti (D1) was empowered to create security interest over the free sale component and Society (D6) had given its consent for the creation of the mortgage and first charge, the rights of the plaintiff as a mortgagee cannot be defeated by a unilateral termination of the development agreement by the Society (D6). Once a mortgage always a mortgage, until the mortgage is lawfully redeemed, submitted Mr. Joshi.

43. An endeavour was also made to urge that the amount which was advanced by the plaintiff was utilized for the purposes envisaged under the development agreement between the Society (D6) and Meeti (D1).

44. On the aforesaid premise, Mr. Joshi made strenuous effort to draw home the point that the proposed amendment is not in the nature of jeopardizing the property of the corporate debtor. Therefore, the interdict contained in section 14 would not operate. A very strong reliance was placed by Mr. Joshi on the decision of the Delhi High Court in the case of **SSMP Industries Limited** (supra).

45. In the aforesaid case, Delhi High Court, was confronted with the question as to whether the adjudication of the counter claim would be liable to be stayed in view of section 14 of IBC as the plaintiff who had instituted the suit was under Insolvency

Resolution Process. After advertent to its another judgment in the case of **Power Grid Corporation of India vs. Jyoti Structures Limited**¹³, the Delhi High Court held that until and unless the proceeding has the effect of endangering, diminishing, dissipating or adversely impacting the assets of corporate debtor, it would not be prohibited under Section 14(1)(a) of the Code. In the facts of the said case, the Delhi High Court, found that the counter claim did not deserve to be stayed under section 14 of the IBC and both the suits and counter claim ought to proceed to trial.

46. Reliance was also placed on a decision of the Allahabad High Court in the case of **Trading Engineers** (supra) wherein the aforesaid decision of the Delhi High Court in the case of **Power Grid** (supra), was followed with approval.

47. I have carefully considered the aforesaid decisions. I find substance in the submission of Mr. Andhyarujina that the aforesaid decisions primarily deal with the prohibition contained in clause (a) of section 14(1) of the IBC. These decisions did not deal with a situation covered by clause (c) of section 14(1).

48. In the facts of the instant case, the pivotal question that wrenches to the fore is, whether the proposed amendment falls within the dragnet of the prohibition contained in clause (c). If the proposed amendment takes the character of enforcement security

¹³ (2018) 246 DLT 485.

interest created by the corporate debtor over its property, it can not be allowed till the moratorium operates.

49. I am afraid to accede to the submission of Mr. Joshi that the proposed amendment to the extent the plaintiff proposes to restrain the defendants from selling, transferring, encumbering, alienating or disposing, creating third party rights and dealing in any manner whatsoever with the free sale area of 74226 sq.ft. in the redevelopment project of the Society (D6), it does not pertain to the security interest created by Meeti (D1) in favour of the plaintiff, in respect of Meeti (D1)'s property. In fact, the very foundation of the plaintiff's claim is that Meeti (D1) had created the first charge and mortgage in favour of the plaintiff to secure the advance of Rs. 55 Crores under the DTD. Otherwise, there is no privity of contract between the plaintiff and the Society (D6).

50. If the averments in the schedule of proposed amendment are considered on the touchstone as to whether they are in the nature of enforcing the security interest created by the corporate debtor over its aforesaid property i.e. the free sale area of 74226 sq.ft in the redevelopment project, to which Meeti (D1) was entitled to, under the development agreement between the Society (D6) and Meeti (D1), then, in my considered view, to the extent the plaintiff proposes to enforce the security interest, the bar under clause (c) of section 14(1) operates with full force.

51. Indisputably, by way of proposed amendment, the plaintiff seeks to incorporate averments regarding collusion between the defendant Nos. 1 and 5 to 7 and assail the execution of the subsequent development agreement between the Society (D6) and Ajmera Luxe (R7) which is stated to be a wholly owned subsidiary of Ajmera Realty (D5). Those averments and the relief founded thereon may not strictly fall within the ambit of enforcement of security interest. Therefore, the principle of severability would be required to be applied. Such part of the proposed amendment which does not fall within the ambit of the prohibition under clause (c) of section 14(1) of IBC can be permitted to be incorporated.

52. At this juncture, the challenge on the ground that the proposed amendment changes the nature and character of the suit fundamentally, deserves consideration. It is true the plaintiff has prayed for a decree against the defendant Nos. 1 to 4 in the sum of Rs.197,82,83,441/- and, in the event of default, a direction for sale of assets secured and mortgaged in favour of the plaintiff and the adjustment of proceeds of the sale towards the debt owed by defendant Nos. 1 to 4 to the plaintiff. It could be urged that, primarily the suit is for recovery of debt under the DTD. At the same time, it is necessary to note that, the plaintiff has claimed a declaration that the plaintiff has a subsisting and valid mortgage

on the assets over which the first charge and mortgage has been created by Meeti (D1) and that the resolution dated 23rd February, 2023 passed by the Society (D6), as recorded in the letter dated 13th October, 2023, is invalid, illegal and not binding on the plaintiff.

53. Viewed through aforesaid prism, the additional prayer sought to be made by way of the proposed amendment, seeking a further declaration that the development agreement dated 21st October, 2023 entered between the Society (D6) and Ajmera Luxe (R7), is illegal, unlawful, bad in law, non est and in any event not binding upon the plaintiff, is but a facet of assertion of rights which form the cause of action in the suit. The additional relief under prayer clause (B-1) sought to be added by way of amendment appears to be in continuation of the relief claimed in original prayer clause (B) in the plaint.

54. I am unable to persuade myself to agree with the submission of Mr. Andhyarujina that the proposed amendment to the extent it seeks to assail the transaction between the Society (D6) and Ajmera Luxe (R7) constitutionally alters the nature and character of the suit. Reliance placed by Mr. Andhyarujina on the decision of the Supreme Court, in the case of **Asian Hotels** (supra) does not advance the cause of the submission on behalf of Ajmera Luxe (R7). In that suit, the licensees had sought to amend the plaint so

as to assail the mortgages executed by the licensor in respect of the entire hotel premises, while the licenses were granted for individual shops. In that context, the Supreme Court held that by permitting plaintiffs to amend the plaint to incorporate a prayer clause to declare the charges/ mortgages on the entire premises as *void-ab-initio*, the nature of the suit would be completely changed.

55. The aforesaid decision does not govern the facts of the case at hand, even remotely. As noted above, the challenge to the subsequent development agreement flows from the rights asserted by the plaintiff on the strength of the security created by Meeti (D1) in accordance with the development agreement executed by the Society (D6) with Meeti (D1), the erstwhile developer. It is an altogether different matter, whether the plaintiff will ultimately succeed in such a challenge.

56. It is trite law that, at the stage of considering the prayer for amendment in the pleadings, the merits of the case, sought to be incorporated by way of amendment, are not required to be delved into. Yet, by way of abundant caution, it is clarified that this Court may not be construed to have delved into the merits of the claim of the plaintiff that it is entitled to seek a declaration as to the validity of the subsequent development agreement by the Society (D6) in favour of Ajmera Luxe (R7).

57. The conspectus of the aforesaid consideration is that the

application deserves to be partly allowed. The proposed amendment to the extent it partakes the character of enforcement the security interest created by Meeti (D1) in favour of the plaintiff, cannot be allowed. The amendment to incorporate the rest of the averments in the schedule of amendment (Exh.A), can be permitted.

Hence, the following order.

ORDER

- 1] The application stands partly allowed.
- 2] The plaintiff is permitted to amend the plaint and interim application so as to incorporate the contents in Clauses I, II, III, IV, V (excluding contents marked X i.e. part of paragraph 59A, 59B, 59C part and 59D), VI, VII (excluding the contents marked X i.e. part of paragraph 55A, 55B, 55C part, 55D) and VIII only.
- 3] The prayer to amend the plaint so as to incorporate the contents at Clauses IX, X and part of clauses V and VII excluded and marked X above, stands rejected.
- 4] Necessary amendment be carried out within a period of three weeks.
- 5] Amended copy of the plaint and interim application be served on defendant Nos. 1 to 6 and newly impleaded

defendant No. 7 within a period of three weeks thereafter.

6] Costs in cause.

(N. J. JAMADAR, J.)