IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION PETITION (L) NO. 12886 OF 2025

A A Estates Pvt. Ltd., through its Resolution Professional Mr. Harshad Deshpande ...Petitioner

Versus

Govind Niwas Co-operative Housing Society Ltd. ...Respondent

RUTUJA RAJENDRA BORSE
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Mr. Shadab Jan, *a/w Mr. Kartik Irabatti i/b Chinmay Bhojane for the Petitioner.*

Mr. Naushad Engineer, *a/w Mr. Rashmin Khandekar, Mr. Y. Limathwalla, Mr. Amit T., Ms. Fleur D'souza i/b Asahi Legal for the Respondent.*

CORAM: SOMASEKHAR SUNDARESAN, J.
RESERVED ON: OCTOBER 19, 2026
PRONOUNCED ON: OCTOBER 26, 2026

JUDGEMENT:

Context and Factual Background:

1. This is an appeal under Section 37(2)(b) of the Arbitration and

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Conciliation Act, 1996 ("***the Act***"), by which A A Estates Pvt. Ltd. ("***AA Estates***"), which is undergoing a Corporate Insolvency Resolution Process ("***CIRP***") under the Insolvency and Bankruptcy Code, 2016 ("***IBC***"), questions the very jurisdiction of a Learned Arbitral Tribunal to entertain proceedings under Section 17 of the Act.

2. AA Estates acting through its Resolution Professional ("***RP***") questions the grant of relief to the Respondent, Govind Niwas Co-operative Housing Society Ltd. ("***Society***"), with which it has a Development Agreement dated April 16, 2010 ("***DA***"). A Learned Arbitral Tribunal passed an order dated January 16, 2025 ("***Impugned Order***"), vacating an earlier *status quo* order dated May 2, 2018, holding that the Society is at liberty to appoint a new developer to redevelop its property.

3. AA Estates' challenge is jurisdictional – it is founded on Section 14 of the IBC, under which a moratorium prohibits the institution and continuation of proceedings[1] against a corporate debtor once the moratorium is declared; and also prohibits the recovery of any property by an owner or lessor where the property is in the possession of the corporate debtor[2].

4. Pursuant to the DA, the Society's members vacated their flats in 2010 and 2011. Except for excavation and piling, AA Estates did no redevelopment work between 2011 and 2016. This led to the Society purporting to terminate

1 *Section 14(1)(a) of the IBC*
2 *Section 14(1)(d) of the IBC*

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the DA. AA Estates' stand is that it was in possession of the property and is covered by the protection under Section 14 of the IBC. The following sequence of events is noteworthy:

A] On *October 10, 2016*, the Society wrote to AA Estates recording that there was no progress in the redevelopment. It stated that transit rent had not been paid to its members since January 2016;

B] On *October 12, 2017*, the General Body of the Society resolved to terminate the DA on account of persistent defaults by AA Estates

C] On *December 7, 2017*, the Society issued a notice calling upon AA Estates not to act upon the DA. The Society describes it as the notice of termination. It states that the DA stood terminated and that all powers granted to AA Estates stood revoked with immediate effect;

D] On *January 10, 2018*, AA Estates replied, contending that the termination was illegal and bad in law

E] On *April 27, 2018*, an order appointing the Learned Sole Arbitrator to decide the disputes arising under the DA was passed converting a Section 9 Petition by the Society into an application under Section 17 of the Act ("***First Interim Application***");

F] On *May 2, 2018*, the Learned Sole Arbitrator disposed of the First Interim Application in terms of the statements made by both parties to maintain *status quo* ("***Status Quo Order***"), which was evidently a *pro*

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tem measure, without going into merits, as volunteered by the parties. The Status Quo Order is extracted below:

> *"1. The Hon'ble High Court has in its Order directed that the Section 9 Application be heard as a Section 17 Application.* ***The Respondent has also stated that they wish to file a counterclaim and file Section 17 therein.***
>
> *2. Given the said facts,* ***both parties on instruction of their clients undertake that status quo is to be maintained by both of them in respect of the "said property" as described in Exhibit 'A'*** *in Arbitration Petition No.468 of 2018. The* ***Claimant's advocates on instructions state that they have not created any third party rights after the termination on 7th December, 2017. The Respondent's advocate on instructions states that equally they have not created any third party rights or assigned their rights after the termination on 7th December, 2017****.*
>
> *3. The Section 17 application is disposed of in these terms."*
>
> ***[Emphasis Supplied]***

G] On *June 21, 2018*, the Society filed its Statement of Claim, seeking, among others, relief of a declaration that the DA stood cancelled and terminated;

H] On *August 23, 2018*, AA Estates filed its Counter Claim, seeking, among others, a declaration setting aside the termination and to grant specific performance of the DA;

I] On *October 4, 2018*, the Learned Sole Arbitrator framed issues. Issues (i), (ii), (iii), (vi) and (vii) are claimed by AA Estates to be intertwined with the final reliefs sought by both parties. Issues (viii) to

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(xi) are said to be monetary reliefs for which, AA Estates contends, a claim ought to have been filed in the CIRP.

J] On *November 14, 2019*, the Adjudicating Authority under the IBC admitted AA Estates to CIRP ("***First CIRP Order***");

K] On *March 9, 2020*, the Section 29A Court refused to extend the mandate of the Tribunal in view of the moratorium visited by Section 14 of the IBC;

L] On *June 12, 2020*, the First CIRP Order was set aside under Section 12A of the IBC;

M] On *September 27, 2021*, the Section 29A Court extended the mandate of the Learned Arbitral Tribunal for a year i.e. until *September 27, 2022*;

N] On *December 6, 2022*, AA Estates was admitted to another CIRP ("***Second CIRP Order***"), which is still pending. The Society has filed its claim before the RP;

O] On *January 17, 2024*, the Section 29A Court passed an order extending the mandate of the Learned Arbitral Tribunal by one year ("***Section 29A Order***") on the premise that the moratorium did not come in the way of proceedings initiated *by* the corporate debtor and it only affected proceedings *against* the corporate debtor – the Counter Claim being proceedings initiated by the corporate debtor, it was held that the

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mandate of the Learned Arbitral Tribunal could be extended for pursuit of the Counter Claim;

P] On *May 17, 2024*, the Society filed an Interim Application under Section 17 of the Act ("***Second Interim Application***") seeking to vacate the Status Quo Order of May 2, 2018 and to enable appointment of a new developer;

Q] On *September 16, 2024*, AA Estates submitted to the Learned Arbitral Tribunal that the IBC bars the filing of the Second Interim Application;

R] On *January 16, 2025*, the Learned Sole Arbitrator passed the Impugned Order allowing the Second Interim Application;

S] On *April 24, 2025*, this Section 37 Petition was filed and on *April 30, 2025*, the arbitral proceedings were stayed. On *July 1, 2025*, the petition was briefly heard and it was stated by the Society that no further steps would be taken towards the appointment of a new developer.

Impugned Order:

5. In the Impugned Order, the Learned Sole Arbitrator framed three questions: (i) whether the Tribunal could relieve the Society of its statement recorded in the Status Quo Order[3]; (ii) whether the Second Interim

3 This very issue is also repeated as the fourth issue by the Learned Arbitral Tribunal

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Application could be heard, considering the CIRP and the resultant moratorium; and (iii) whether the relief could be granted considering Section 14(1)(d) of the IBC.

6. The Learned Sole Arbitrator held that the Learned Arbitral Tribunal had the power to relieve the Society of the statement recorded in the Status Quo Order[4]. The Learned Arbitral Tribunal held that there was no impediment to continuing with the proceedings, particularly in view of the findings in the Section 29A Order[5]. Section 14(1)(d) of the IBC was held not to be attracted[6], because AA Estates had abandoned the site and was not in physical possession at the time proximate to the CIRP.

7. It was found that there had been two CIRPs, facts had changed and only excavation work had been done, indicating that there was no readiness and willingness to perform the DA, and that the residents had been without homes for six years[7]. The Learned Sole Arbitrator found that the Society need not remain bound by the Status Quo Order and that it could move on.

Section 29A Order:

8. The reliance by the Learned Arbitral Tribunal on the Section 29A Order makes it necessary to engage with it. The Society had applied for an extension

4 Paragraphs 13 to 17 of the Impugned Order
5 Paragraph 18 of the Impugned Order
6 Paragraphs 19 to 36 of the Impugned Order
7 Paragraphs 37 to 45 of the Impugned Order

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of the mandate of the Learned Arbitral Tribunal under Section 29A of the Act, which was allowed on the following line of reasoning:

A] The Learned Arbitral Tribunal had recorded in minutes dated October 4, 2023 that AA Estates had filed a Counter-Claim, to which the moratorium would not apply. Evidence in the Claim and Counter-Claim were to be taken together and that the matter must be proceeded with;

B] The Learned Arbitral Tribunal received a first extension of six months by consent. After the First CIRP Order, an extension was refused on March 9, 2020 because of the moratorium. After AA Estates came out of the First CIRP, the mandate was extended until September 27, 2022. The Second CIRP followed and on October 4, 2023, the Learned Arbitral Tribunal allowed an application for continuation and directed the parties to seek an extension;

C] Relying on decisions to the effect that Section 14(1)(a) is intended to prohibit debt recovery action against the assets of a corporate debtor, the Section 29A Court extended the mandate by one year holding as follows:

> *"Since the counter claim is filed by the Corporate debtor, the Arbitrator has rightly concluded that the moratorium shall not come in its way, though the claim of the claimant against the corporate debtor will have to await the outcome of the proceedings under the Insolvency Bankruptcy Code.*
>
> *In the wake of the above, I deem it appropriate to extend the mandate*

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of the Arbitral Tribunal by a period of one year from today.

Petition is allowed in the aforesaid terms."

[Emphasis Supplied]

9. This led to the Second Interim Application being filed by the Society. Paragraph 7 of the Second Interim Application reads thus:

> *"7. The Claimant states that it is well aware that the Respondent has undergone CIRP for the second time on 6th December, 2022 and as per section 14 of the Insolvency and Bankruptcy Code, 2016, the Respondent has been safeguarded by an implicit moratorium from continuing with any proceedings being initiated or continued but as per the order of the Hon'ble High Court passed on 17th January, 2024 in Commercial Arbitration No. 35451 of 2023, the Arbitration Proceedings has been reinstated on the basis of the Counter Claim filed by the Respondent. For the sake of brevity, the Counter-Claim of the Respondent inter alia seeks: (i) a declaration that termination of the DA is null and void; (ii) seeking specific performance of the DA and the alleged supplementary DA; (iii) in the alternative, payment of the entire alleged investment amounts made by the Respondent for redevelopment and (iv) payment of alleged damages and loss."*
>
> ***[Emphasis Supplied]***

Analysis and Findings:

10. Against this backdrop, I have heard Mr. Shadab Jan, Learned Advocate for AA Estates, and Mr. Naushad Engineer, assisted by Mr. Rashmin Khandekar, Learned Advocates for the Society. I have perused the record, the notes filed by AA Estates, the written submissions filed by the Society and the judgements placed before me. Due to efflux of time since the matter was last

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heard, with the consent of the parties, the matter was fixed for a short refresher hearing on October 19, 2026.

11. The core issue cutting across the points for determination is whether the Learned Arbitral Tribunal had jurisdiction to consider the Second Interim Application and pass the Impugned Order.

12. In a nutshell, the contention of AA Estates is that the Second Interim Application was filed on May 17, 2024, when the CIRP was admittedly pending. The moratorium under Section 14 of the IBC was in force. AA Estates would submit that the reliefs sought in the Second Interim Application are in aid of the reliefs sought in the Statement of Claim, and therefore, the continuation of proceedings against AA Estates is explicitly prohibited under Section 14(1)(a) of the IBC. Placing reliance on ***Alchemist***[8], it is contended that the bar in Section 14(1)(a) being absolute, a step taken in breach is *non est* and *void ab initio*, necessitating intervention of the Section 37 Court.

13. That apart, the contention is that the only forum with jurisdiction to examine any facet of the matter was the Adjudicating Authority under the IBC by virtue of an ouster provision in Section 63 of the IBC and the positive jurisdictional provision in Section 60(5)(c) of the IBC.

14. In sharp contrast, the Society would contend that Section 14(1)(a) of the IBC only prohibits proceedings *against* the corporate debtor and not proceedings *by* the corporate debtor. The undertaking of the Society resulting

8 *Alchemist Asset Reconstruction Co. Ltd. v. Hotel Gaudavan (P) Ltd.*, **(2018) 16 SCC 94**.

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in the Status Quo Order is a protection given to AA Estates in aid of the Counter Claim. The Second Interim Application only sought to be relieved of that statement in the course of pursuit of the Counter Claim. Therefore, nothing in the bar set out in Section 14(1)(a) was attracted. The Section 29A Order, not having been challenged, has attained finality on the ability to continue with the Counter Claim. That apart, the termination of the DA preceded both the triggers of the moratorium under the two CIRPs, and therefore, in reliance on the law declared in ***Kher Nagar***[9], it is submitted that a terminated DA cannot constitute an asset of AA Estates for purposes of Section 14(1)(d) of the IBC.

15. Relying on ***Tata Consultancy***[10], the Society would submit that as a matter of declared law, Section 60(5)(c) would have no role to play as an all-consuming jurisdiction to deal with anything where a corporate debtor undergoing CIRP is involved.

Points for Determination:

16. Having heard the parties and having examined the record with their assistance, the following points arise for determination:

A] Whether the Learned Sole Arbitrator had jurisdiction to pass the

9 *A.A. Estates (P) Ltd. v. Kher Nagar Sukhsadan Co-operative Housing Society Ltd.,* ***(2026) 263 Comp Cas 417 : 2025 SCC OnLine SC 2579***.

10 *Tata Consultancy Services Ltd. v. Vishal Ghisulal Jain, Resolution Professional, SK Wheels (P) Ltd.,* ***(2022) 2 SCC 583***.

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Impugned Order modifying the Status Quo Order, with the CIRP of AA Estates admittedly being pending. Put differently, whether the Second Interim Application and the proceedings initiated by it could at all have been filed and continued during the CIRP, having regard to: (i) Section 14(1)(a) of the IBC; Section 14(1)(d) of the IBC; and (ii) the pending Counter Claim filed by AA Estates;

B] Whether the only forum with jurisdiction was the Adjudicating Authority under the IBC, particularly in view of Section 60(5)(c) read with Section 63 of the IBC; and

C] Whether the Impugned Order misreads the Section 29A Order and whether the mischaracterisation renders the Impugned Order invalid and liable to be set aside.

Statutory and Contractual Provisions:

17. At the threshold, the provisions of Section 14(1), Section 60(5)(c) and Section 63 of the IBC must be noted. They are extracted below:

Section 14(1) of IBC:

"14. Moratorium

(1) Subject to provisions of sub-sections (2), (2A) 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

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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."

[Emphasis Supplied]

Section 60(5)(c) of IBC:

"Section 60 - Adjudicating Authority for corporate persons

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code."

[Emphasis Supplied]

Section 63 of IBC:

"63. Civil court not to have jurisdiction. –

No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code."

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[Emphasis Supplied]

18. A plain reading of the foregoing would indicate that the moratorium imposed under Section 14 of the IBC is unequivocal and absolute. Under Section 14(1)(a) of the IBC, the institution and continuation of proceedings against the corporate debtor is prohibited while under Section 14(1)(d), the recovery of any property in the possession of the corporate debtor, by the owner, is prohibited.

19. Under Section 60(5)(c) of the IBC, the Adjudicating Authority has been positively conferred with jurisdiction to answer all questions of law relating to the CIRP while Section 63 makes provision for ouster of jurisdiction of all civil courts and authorities where the Adjudicating Authority has jurisdiction under the IBC.

20. Having noticed the statutory provisions, it would be fruitful to examine the provisions of the DA to get a sense of what they entailed for AA Estates. Clauses 36, 38 and 43 of the DA are extracted below:

> *"36. The consideration of the Developer for agreeing to construct the new building and their Agreement to incur the cost and expenditure in relation thereto in the right to develop and construct and retain and sell and appropriate sell proceed of the balance area remaining after accommodating Society and the members herein as per the terms and conditions of these presents."*

[Emphasis Supplied]

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"38. In consideration of the Developer having agreed to carry out, execute and complete the said construction work free of cost, Society and the members herein grants to the Developer irrevocable development rights, permission and authority to carry out the work of construction hereby envisaged by using balance FSI and TDR as permissible and approved by MCGM and to allot the said area available for sell, reaming after providing permanent alternate accommodation to Society and the Members herein that the society and its members agree and undertake to admit the proposed new flat purchasers/allottees as the member of the society after receiving letter of intimation from the Developer herein. The Developer is authorized to enter into Agreement/ with the proposed buyers of the premises hereby envisaged. It is expressly clarified that such right of Developer to allot the flats in the additional construction thus proposed on the said plot of land shall also include right to mortgage and/or give consent for mortgaging, creating lien and dispose of any of such premises in favour of any financial Institution/s as the Developer in his absolute discretion may deem fit. However the land shall not be mortgaged to any financial institution."

[Emphasis Supplied]

"43. It is agreed, declared and confirmed that on execution of this Agreement Society and the Members herein shall put the Developer in possession of the said plot of land and premises only after developer shall get the building plans duly approved and sanctioned and obtain IOD in respect of the re-development of the said property at their own costs, charges and expenses to enable him to carry out, execute and complete the construction work hereby contemplated in accordance with the terms and conditions contained herein."

[Emphasis Supplied]

21. These provisions document the consideration and the reciprocal promises of the parties. Under the DA, AA Estates agreed to redevelop the property of the Society at no further cost to the Society's members. In return,

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AA Estates received the right to develop, construct, retain and sell the redeveloped area after accommodating the Society and its members at its will. AA Estates obtained irrevocable development rights, permission and authority to build using balance Floor Space Index and Transferable Development Rights, which it may allot and sell to third parties for sale, after providing permanent alternate accommodation to the Society's members. Such premises to be created may be mortgaged but not the land belonging to the Society. Under Clause 43, possession was to be put in the hands of AA Estates only after it got the building plans duly approved and sanctioned and obtained the IOD for the redevelopment, at its own costs, charges and expenses.

Section 14 of the IBC and its Implications:

22. Whether such rights obtained by AA Estates constitute an asset of the corporate debtor or whether the possession by AA Estates of the Society's property can be taken back by the Society without falling foul of Section 14(1)(d) of the IBC is a question that arises. That apart, quite simply, whether the Second Interim Application could have at all been pursued without falling foul of Section 14(1)(a) of the IBC also must be answered.

23. The law declared in ***Alchemist*** is clear. The Supreme Court (*R.F. Nariman and Sanjay Kishan Kaul, JJ.*) held way back in October 2017 that when an insolvency petition was admitted, the moratorium under Section 14

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took effect. Arbitration was initiated after that event and an arbitrator came to be appointed. The moratorium under Section 14(1)(a) interdicts the institution or continuation of pending suits or proceedings against corporate debtors, and therefore proceedings instituted after the moratorium are *non est* in law. Paragraphs 4 and 5, on which Mr. Jan relies, read thus:

> *"4. The mandate of the new Insolvency Code is that* ***the moment an insolvency petition is admitted, the moratorium that comes into effect under Section 14(1)(a) expressly interdicts institution or continuation of pending suits or proceedings against corporate debtors****.*
>
> *5. This being the case,* ***we are surprised that an arbitration proceeding has been purported to be started after the imposition of the said moratorium and appeals under Section 37 of the Arbitration Act are being entertained****. Therefore, we set aside the order of the District Judge dated 6-7-2017 and* ***further state that the effect of Section 14(1)(a) is that the arbitration that has been instituted after the aforesaid moratorium is non est in law****."*
>
> ***[Emphasis Supplied]***

24. There can be no quarrel with the aforesaid proposition. However, the jurisdictional facts in the case in hand are a bit more nuanced. In the instant case, when the arbitration commenced, no CIRP was underway. However, the CIRP indeed commenced later and indeed the first extension of mandate sought under Section 29A had also been repelled by reason of the CIRP having commenced. The Section 29A Order came to be passed on the premise that the Counter Claim was capable of legitimate pursuit by AA Estates, which was

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happy with being able to pursue the Counter Claim even while the Society's Statement of Claim remained barred. The Section 29A Order was not challenged by either party. In the course of adjudication of the Counter Claim, the Impugned Order was passed.

25. At this juncture it is worth noting that the Learned Arbitral Tribunal stated that the pursuit of both the Statement of Claim and the Counter Claim had been approved in the Section 29A Order. This is erroneous. The Impugned Order characterises the Section 29A Order twice (Paragraph 7 and Paragraph 18) as having permitted the pursuit of both the Society's Statement of Claim and AA Estates' Counter Claim. This appears to have been driven by the Society's contention to that effect (as recorded in Para 10(i) of the Impugned Order).

26. These characterisations, whether by the Society or by the Learned Arbitral Tribunal, are clearly erroneous. An independent reading of the Section 29A Order would indicate that the Counter Claim was permitted to be pursued as being proceedings not filed *against* the corporate debtor. Whether this error is fatal to the jurisdiction of the Learned Arbitral Tribunal is what I have to consider in exercise of jurisdiction under Section 37 of the Act.

27. It is also noteworthy that the Section 29A Order has attained finality without challenge. Therefore, the Learned Arbitral Tribunal had the jurisdiction to hear the parties. It is not for this Court, with jurisdiction under

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Section 37 of the Act to second-guess the declarations made by a coordinate Bench in the Section 29A Order, and that too when AA Estates did not challenge it. When this scope of jurisdiction was available to the Learned Arbitral Tribunal, the necessary corollary would be that even while being restricted to consideration of the Counter Claim, what appropriate interlocutory measures should continue, would be a field available to the Learned Arbitral Tribunal.

28. On the premise that Section 14(1)(a) of the IBC interdicts pursuit of proceedings *against* the corporate debtor and not proceedings initiated *by* the corporate debtor, it would be difficult to hold that the Learned Arbitral Tribunal was totally devoid of jurisdiction when it had clearly been declared that the Counter Claim could be pursued. ***Alchemist*** is not a declaration of the law on a situation where a claim by the corporate debtor was being pursued – by all accounts from the order, it appears it was purely a case of making a claim against the corporate debtor and harassment of the resolution professional with criminal prosecution, which the Supreme Court was pleased to quash.

29. It would also be difficult to attribute the Second Interim Application to just the Statement of Claim and not to the Counter Claim. Mr. Jan's submission that the bundle of facts underlying the Claim and the Counter Claim being interlinked is indeed appealing and true. However, by no stretch

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is that logic being used to pursue the Claim against AA Estates. Mr. Jan would submit that continuing the Counter Claim without adjudicating the issues in the Claim is impractical and impossible. This too is true, and yet, even if the Counter Claim is permitted to be proceeded with (while holding up the Claim), it can never follow that the adjudication could lead to any new liability being imposed on the corporate debtor.

30. I am not inclined to take a view that Section 14(1)(a) of the IBC must be read to mean that a claim by the corporate debtor should be barred if it were a counter to a claim against the corporate debtor. Neither side has indicated any authority differentiating between claims made by the corporate debtor in this manner. It would be unreasonable to make this distinction in the absence of a legislative stipulation.

31. The principles underlying the relevance of Section 14 have been well summarised by the Supreme Court in ***Mohanraj***[11] in Paragraphs 29 to 32 to clearly indicate that the object of Section 14 is to prevent depletion of the corporate debtor's assets and keep it running as a going concern (Paragraph 30). Section 14(1)(a) deals with monetary liabilities and Section 14(1)(b) with assets. Together they "*shield the corporate debtor from pecuniary attacks against it*" (Paragraph 32). The test is the impact on the corporate debtor's estate. A proceeding that can result in payment *by* the corporate debtor falls within the bar (Paragraph 31).

11 *P. Mohanraj & Ors. v. Shah Brothers Ispat (P) Ltd.*, ***(2021) 6 SCC 258***.

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32. A counter claim by the corporate debtor if allowed, would add to its estate rather than depleting it. A counter claim by the corporate debtor, if disallowed, would have no pecuniary attack on the estate. Indeed, one could argue that a cause of action is an asset and disallowing it could lead to a depletion of the cause of action and thereby a firm adverse outcome in the counter claim would erode the assets, but this would need a legislative stipulation rather than to let Courts make such stipulation, and that too in the light of the law already declared. Moreover, at this juncture, it would be appropriate to consider the articulation by the Supreme Court about terminated development agreements and that too in the case of none other than AA Estates.

Section 60(6) of IBC and its Implications:

33. There is one other element to be borne in mind. Section 60(6) of the IBC provides as follows:

> *(6)* ***Notwithstanding anything contained in the Limitation Act, 1963 or in any other law*** *for the time being in force,* ***in computing the period of limitation specified*** *for* ***any suit or application*** ***by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded.***
>
> ***[Emphasis Supplied]***

34. Mr. Jan would submit that the aforesaid provision is a pointer to how

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even the Counter Claim is indeed inextricably linked to the Claim and both are barred. He would submit that if the Counter Claim could proceed without the Claim, there would be no reason to provide for the suspension of limitation in respect of claims made by the corporate debtor. While this is attractive at first blush, I am not persuaded to take a view that the expression "*by or against a corporate debtor*" positively used in Section 60(6) of the IBC can be used to judicially insert the words "***by or***" into the expression "*suits or proceedings against the corporate debtor*" used in Section 14(1)(a) of the IBC.

35. This view is somewhat fortified by the observations made by the Supreme Court (*K.M. Joseph and Hrishikesh Roy, JJ.*) in ***New Delhi Municipal Council***[12] when it dealt with a corporate debtor filing an application under Section 11 of the Act when a moratorium was pending. The Supreme Court held that the RP would conduct proceedings in all matters pursued by the corporate debtor as he should and what is "tabooed" is only proceedings initiated against the corporate debtor. The reason for suspending limitation period is to adjust for the management of the corporate debtor being displaced, the Supreme Court ruled, noting that it is not impossible to contemplate that the RP may end up not doing this timely. Therefore, the Supreme Court ruled, holding that the wisdom of the lawmaker cannot be questioned. The following extracts are noteworthy:

12 *New Delhi Municipal Council v. Minosha India Ltd.*, ***(2022) 8 SCC 384***.

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"31. Under the IBC, by virtue of the order admitting the application, be it under Sections 7, 9 or 10, and imposing moratorium, proceedings as are contemplated in Section 14 would be tabooed. This undoubtedly does not include an application under Section 11(6) of the 1996 Act by the corporate debtor or for that matter, any other proceeding by the corporate debtor against another party. At least there is no express exclusion of the jurisdiction of the Court or authorities to entertain any such proceeding at the hands of the corporate debtor.

[…] However, we must not be oblivious to the other provisions as well. Under Section 17, the management of the affairs of the corporate debtor is taken over by the interim resolution professional. […] Therefore, on the one hand, an application under Sections 7, 9 or 10, does bring in a period which is intended to bring a corporate debtor back to life if possible, "a period of calm", in the words of the respondent. But this is a period during which the management of the corporate debtor is displaced, ironically, a period of turbulent churning. While it may be true that proceedings by the corporate debtor through the resolution professional are contemplated, it is not impossible to contemplate that the resolution professional for whatever reason it may be, does not discharge his duties and conduct proceedings in all matters as he should. We are noting this as this can be the rationale for the law giver excluding the period of limitation in regard to suits or applications at the instance of the corporate debtor under Section 60(6).

34. In other words, notwithstanding the period of limitation under the Limitation Act, the law giver has thought it fit to provide that in respect of a corporate debtor if there has been an order of moratorium made in Part II, the period during which such moratorium was in place shall be excluded. "For which an order of moratorium" cannot bear the interpretation which is sought to be placed by the appellant. The interpretation placed by the appellant is clearly against the plain meaning of the words which have been used. We have already undertaken the task of understanding the purport of the Code and the context in which Section 60(6) has been put in place. This Court cannot possibly sit in judgment over the wisdom of the law giver. The period of

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> ***limitation is provided under the Limitation Act. The law giver has contemplated that when a moratorium has been put in place, the said period must be excluded. We cannot overlook also the employment of words "any suit or application". This is apart, no doubt, from the words "by a corporate debtor"****. Interpreting the statute in the manner which the appellant seeks would result in our denying the benefit of extending the period of limitation to the corporate debtor, a result, which we think, would not be warranted by the clear words used in the statute."*
>
> ***[Emphasis Supplied]***

36. While this may not directly address the nuance pursued by Mr. Jan, ***New Delhi Municipal Council*** clearly points to the fact that only proceedings against the corporate debtor are barred. The suspension of limitation even for proceedings initiated by the corporate debtor is related to adjusting for displacement of the management and nothing else. If the intention of the legislature was to also bar proceedings that may be pursued by the corporate debtor as a counter claim to claims against the corporate debtor, the legislature could have used the same formulation of "by or against" in Section 14(1)(a) of the IBC, in much the same manner it used it in Section 60(6) of the IBC. I am not inclined to read into Section 14(1)(a) a bar on prosecution of proceedings that may be pursued by the corporate debtor, in reliance on Section 60(6) of the IBC. Such an approach can have far-reaching and unintended repercussions, and if at all this element will need a legislative amendment and not a judicial expansion in interpretation.

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Kher Nagar and Implications:

37. In ***Kher Nagar***, the Supreme Court (*J.B. Pardiwala and R. Mahadevan, JJ.*) dealt with an appeal by AA Estates under the RP's watch, where AA Estates had executed a development agreement in 2005 with supplemental agreements in 2005 and later in 2014. The society involved terminated them for alleged defaults by a resolution of June 2019 and notices sent in December 2019 and November 2021. The very same CIRP proceedings were involved – the first one between November 14, 2019 and June 12, 2020 and the second one on December 6, 2022. The society entered into a fresh development agreement with another developer on December 10, 2023 and when its agreement was not being recognised by the municipal and planning authorities, it filed a writ petition seeking a mandamus to process the applications made pursuant to the new development agreement, which was allowed by the High Court.

38. While, purely as a technical matter, there was no specific prayer sought against AA Estates or the RP (it was a writ petition aimed at statutory action being triggered), the adjudication of the writ petition had to squarely deal with the interests of the estate of AA Estates. Allowing the authorities to process applications under the new development agreement would necessarily mean holding that the development was not an asset of the corporate debtor and adjudication of the writ petition in this manner would necessarily mean AA

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Estates had to be heard – in fact, it was AA Estates that was the appellant in the Supreme Court.

39. On Section 14 of the IBC, the Supreme Court held that only property forming part of the corporate debtor's estate on the insolvency commencement date is protected. Mere expectant, contingent or uncrystallised contractual rights (such as those flowing from a development agreement that had been terminated before commencement of CIRP) are not "assets" forming part of the estate of the corporate debtor. Indeed, the Supreme Court held that the provisions of the development agreement have to be considered to see if their terms convey any interest in the land.

40. The following extracts are noteworthy:

> *"16.2. The object of section 14 is to maintain the corporate debtor's estate as a going concern and to preserve its assets so as to facilitate resolution. The term "property" under section 3(27) of the Insolvency and Bankruptcy Code is defined in the widest terms to include money, goods, actionable claims, land and every description of movable or immovable, tangible or intangible property, and extends to deeds and instruments evidencing title or interest therein. However, for the purposes of section 14, only such property or assets which form part of the corporate debtor's estate as on the insolvency commencement date are protected. Mere expectant, contingent or uncrystallized contractual rights do not constitute "assets" within the meaning of the Code.*
>
> *16.6. Similarly, in Tata Consultancy Services Ltd. v. Vishal Ghisulal Jain, Resolution Professional, S.K. Wheels P. Ltd., this court held that the resolution professional cannot compel continuation of a contract that was validly terminated prior to initiation of the corporate insolvency resolution process. Once a contract*

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stands lawfully terminated, it ceases to exist and cannot be treated as an "asset" or "property" of the corporate debtor. The moratorium under section 14 does not have the effect of reviving or re-creating contractual rights that have been extinguished before insolvency.

16.7. As already stated, in the present case, it is evident that the development agreement dated October 16, 2005 and the supplementary agreements dated December 23, 2005 and April 9, 2014 stood terminated by respondent No. 1-Society on account of persistent default and failure of the developer to commence or complete the project. The termination was duly communicated through letters dated June 9, 2019, December 2, 2019 and November 6, 2021—each preceding the initiation of the second corporate insolvency resolution process on December 6, 2022. No subsisting challenge to such termination was pending when the corporate insolvency resolution process commenced. Upon such termination, the corporate debtor was left, at best, with a claim for damages, which is a mere unsecured monetary claim and not a proprietary right capable of protection under section 14.

16.9. The record further reveals that possession of the property at all times remained with respondent No. 1-Society. No actual, constructive, or juridical possession was ever transferred to appellant No. 1. The developer never commenced demolition, construction, or payment of rent and compensation as required under the agreement. In absence of possession or any incident of ownership, section 14(1)(d) has no application.

16.10. Reliance on Victory Iron Works Ltd. v. Jitendra Lohia is misconceived and inapplicable to the present case. In that case, the corporate debtor had a demonstrable proprietary and financial interest in the project property, having advanced funds and obtained development rights. Whereas, the present case is materially different; the agreements here were purely executory, conditional upon performance, and never resulted in any proprietary or possessory right being created in favour of the developer.

16.11. It is well settled that the moratorium under section 14 does not revive

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terminated contracts or protect rights that have ceased to exist prior to insolvency. The protection is intended to preserve the existing value of the corporate debtor's estate, not to resurrect lapsed or extinguished interests. Extending moratorium to such non-existent rights would defeat commercial certainty and the sanctity of lawful termination under general law."

[Emphasis Supplied]

41. In the instant case, the possession was to move only after plans were sanctioned. The record does not show any plans being sanctioned and the Learned Arbitral Tribunal has recorded that even a Commencement Certificate had not been obtained. Therefore, when seen through the lens of Clause 43 of the DA (extracted above), arguably the milestones necessary for possession had not been met.

42. Mr. Jan submits that in ***Kher Nagar*** there had been no subsisting challenge to the termination of the development agreement when the CIRP commenced. The Supreme Court also discussed how a writ petition directed against public authorities would not encroach upon Section 14 of the IBC. These distinctions are relied upon to indicate that the ruling can be distinguished.

43. However, to my mind, these are distinctions without a difference, simply because at the heart of the law declared by the Supreme Court is whether a terminated development agreement could lead to a substitute

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developer being appointed. In fact, ***Kher Nagar*** notices that AA Estates invoked arbitration in October 2021. If AA Estates had not been aggrieved by the termination, there would have been no case for the litigation even for damages. It was AA Estates that filed the appeal in the Supreme Court.

44. In the matter in hand, it was the Society that took the initiative to litigate with a view to getting such a declaration. AA Estates followed suit with the Counter Claim seeking such a declaration in the converse i.e. that the DA had not been validly terminated. AA Estates also sought an alternative prayer for damages. These constituted the Counter Claim. The pursuit of the Counter Claim not being barred, as explained above, and the Learned Arbitral Tribunal being within jurisdiction to decide what the appropriate interim relief would be, it cannot be held that the Learned Arbitral Tribunal was without jurisdiction or that it fell foul of Section 14(1)(a) of the IBC.

45. ***Kher Nagar*** is also a pointer (as extracted above) to how the terminated DA is not an asset of AA Estates. Indeed, in this case, the Status Quo Order had granted protection to AA Estates. A plain reading of the Status Quo Order would show that it was purely a *pro tem* measure volunteered by the parties and not a reasoned judgement of an interlocutory measure. That *pro tem* arrangement without going into merits was arrived at voluntarily by the parties when the Claim and the Counter Claim were both in play. The First Interim Application was disposed of by the Status Quo Order. When the

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position changed with only the Counter Claim being capable of moving forward, it was open to the parties to engage with the Learned Arbitral Tribunal about what appropriate interlocutory measure would best preserve the subject matter of the arbitration agreement under Section 17 of the Act. This is the subject matter of adjudication under the Second Interim Application, which is referable to the Counter Claim. Therefore, it was open to the Learned Arbitral Tribunal to revisit the interlocutory arrangement and make appropriate arrangements.

46. For completeness, I must say that the interlocutory arrangements may well have also been referable to the Claim as well but that would not mean that the Counter Claim must proceed without any interlocutory arrangement. An interlocutory arrangement that would otherwise be appropriate for the Counter Claim that can run its course without being prohibited by Section 14(1)(a) of the IBC, would not cease to be appropriate merely because of the Claim having become prohibited by that provision.

Section 60(5)(c) and Section 63 of IBC:

47. This takes me to the next issue as to whether the right forum to deal with this issue is the Adjudicating Authority under Section 60(5)(c) read with Section 63 of the IBC.

48. On this facet of the law too, the Supreme Court has provided guidance in

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Kher Nagar since this was clearly raised as an issue by AA Estates. In Paragraphs 15.1 to 15.14, the Supreme Court considered the limits of the jurisdiction of the Adjudicating Authority under Section 60(5)(c) of the IBC, relying on ***Gujarat Urja***[13] and ***Tata Consultancy***. The power to restrain or set aside a termination is confined to cases where the termination is solely on account of insolvency, such as under an *ipso facto* clause, and where the termination would result in the corporate death of the corporate debtor by depriving it of a sole or central contract essential to the success of the CIRP. The jurisdiction cannot be invoked where the termination arises from grounds unrelated to the insolvency of the corporate debtor.

49. Applying these principles, in ***Kher Nagar*** the Supreme Court held that the termination of the development agreement was occasioned by persistent non-performance and not by insolvency, the defaults having occurred well before the CIRP. The development agreement was not the sole or life-sustaining contract of AA Estates, which was engaged in multiple projects. The termination was held to be valid, lawful and effective, and the Adjudicating Authority was held to lack jurisdiction under Section 60(5)(c) of the IBC to interfere with it (Paragraphs 15.7 to 15.14).

50. The jurisdiction under Section 60(5)(c) of the IBC has been held to be a limited residuary jurisdiction. To my mind this would cover issues arising in the course of implementing the CIRP but cannot be expanded to mean that

13 *Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta,* ***[(2021) 7 SCC 209]***

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any and every cause of action including those pursued by the corporate debtor against the world at large would have to be pursued before the Adjudicating Authority under the IBC. In ***Tata Consultancy***, the Supreme Court (*Dr. D.Y. Chandrachud and A.S. Bopanna, JJ.*) was presented with the exercise of jurisdiction by the Adjudicating Authority under the IBC in connection with termination of a contract with the corporate debtor, effected by a counterparty. Two concurrent decisions, in the first instance and in appeal held that termination of a contract by a counterparty can be stayed by the Adjudicating Authority under the IBC.

51. The Supreme Court held that Section 60(5)(c) is a residuary jurisdiction over any question of law or fact arising out of or in relation to the insolvency resolution of the corporate debtor. While an arbitration clause does not oust this jurisdiction (Paragraph 21), it was held that such residuary jurisdiction extended only to disputes that arise solely from or relate to the insolvency of the corporate debtor. The nexus with the insolvency must exist as a necessary jurisdictional fact, without which the jurisdiction cannot be invoked, particularly if the termination was based on grounds unrelated to the insolvency (Paragraph 26).

52. On facts, the termination had followed alleged deficiency in service that the counterparty had communicated before commencement of the CIRP. The Supreme Court held that the jurisdiction under the IBC was not attracted and

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dismissed the proceedings for want of jurisdiction. The Supreme Court held that a party could be restrained from terminating a contract only if the contract was central to the success of the CIRP. The following extracts are noteworthy:

> *"27. It is evident that* ***the appellant had time and again informed the Corporate Debtor that its services were deficient, and it was falling foul of its contractual obligations. There is nothing to indicate that the termination of the Facilities Agreement was motivated by the insolvency of the Corporate Debtor****. The trajectory of events makes it clear that* ***the alleged breaches noted in the termination notice dated 10 June 2019 were not a smokescreen to terminate the agreement because of the insolvency of the Corporate Debtor****. Thus, we are of the view that* ***the NCLT does not have any residuary jurisdiction to entertain the present contractual dispute which has arisen dehors the insolvency of the Corporate Debtor****. In the absence of jurisdiction over the dispute, the NCLT could not have imposed an ad-interim stay on the termination notice. The NCLAT has incorrectly upheld the interim order of the NCLT.*
>
> *28. While in the present case, the second issue formulated by this Court has no bearing,* ***we would like to issue a note of caution to the NCLT and NCLAT regarding interference with a party's contractual right to terminate a contract. Even if the contractual dispute arises in relation to the insolvency, a party can be restrained from terminating the contract only if it is central to the success of the CIRP****. Crucially, the termination of the contract should result in the corporate death of the Corporate Debtor."*
>
> ***[Emphasis Supplied]***

53. Applying the aforesaid principles to the facts of this case, it is clear that here too, the notices of default from the Society preceded the CIRP. The

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issuance of the termination notice was indeed prior to the CIRP. The termination was not connected to the CIRP and the deficiencies alleged did not arise because of the insolvency but had arisen well prior to the CIRP. Applying the very same principles articulated above, I have no hesitation in rejecting the submission that Section 60(5)(c) of the IBC is the jurisdictional provision. The ouster in Section 63 would arise only if jurisdiction under Section 60(5)(c) is found to exist. Therefore, on this count too, I have to hold against the contention made on behalf of AA Estates.

54. I must mention that Mr. Engineer would press into service multiple judgements including ***Ghatalia***, ***Tagore Nagar*** and ***Ranjan Garg***, all passed in the course of fashioning interlocutory measures, and indeed on the point of counter claims by the corporate debtor not being barred. Some of these have also been noticed in the Impugned Order and in the Section 29A Order. However, for the reasons already expressed by me on the basis of the case law referred to above, and bearing in mind the core ground pressed by AA Estates being that of jurisdiction, I do not find it necessary to lengthen this judgement further by dealing with every judgement sought to be pressed into service in defence of the Impugned Order.

55. Finally, I must also mention that Mr. Jan has responsibly pressed only the jurisdictional issue for my consideration. Therefore, purely for completeness, I must mention that I am not getting into the merits of the

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factual position as dealt with in the Impugned Order. Suffice it to say, the Learned Arbitral Tribunal is the best judge of what is an appropriate interlocutory measure for the best preservation of the subject matter of the arbitration agreement. It is not for the Section 37 Court to substitute the Learned Arbitral Tribunal's view with its own view merely because another view can be taken. So long as the views expressed by the Learned Arbitral Tribunal on facts and on the protective measures adopted, are reasonable, the Section 37 Court although being an appellate court cannot be interventionist merely because the power to interfere exists.

Summary of Conclusions:

56. Therefore, I summarise my conclusions thus:

A] Section 14(1)(a) of the IBC interdicts the institution and continuation of proceedings *against* the corporate debtor. It does not bar proceedings initiated *by* the corporate debtor, including a Counter Claim;

B] ***Alchemist*** does not address a claim pursued by the corporate debtor. ***Mohanraj*** and ***New Delhi Municipal Council*** indicate that only proceedings *against* the corporate debtor are tabooed. The words "*by or*" used in Section 60(6) of the IBC cannot be imported by Courts into Section 14(1)(a) of the IBC;

C] The Section 29A Order has attained finality. The Impugned

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Order erroneously states that the Section 29A Order permitted pursuit of both the Claim and the Counter Claim. However, that error is not fatal, since the Second Interim Application is referable to the Counter Claim, which could be pursued;

D] The terminated DA is not an asset of AA Estates. The termination preceded both CIRPs. In light of ***Kher Nagar***, Section 14(1)(d) of the IBC is not attracted;

E] The Status Quo Order was a *pro tem* arrangement volunteered by the parties. It was open to the Learned Arbitral Tribunal to revisit it in aid of the best-balanced preservation measure appropriate pending adjudication of the Counter Claim;

F] Section 60(5)(c) of the IBC confers a limited residuary jurisdiction. As held in ***Tata Consultancy*** and ***Kher Nagar***, it is not attracted where the termination is unrelated to insolvency. The termination here preceded the CIRP. Therefore, the ouster in Section 63 of the IBC does not arise;

G] The Section 37 Court must not interfere with reasonable views of the Learned Arbitral Tribunal on interlocutory measures. However, since only the jurisdictional issue was pressed and has been rejected, the merits on appropriateness of the measures need not be pronounced upon.

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57. For the aforesaid reasons, the Petition, in my view, deserves to be ***finally disposed of without any interference***. The stay on the arbitration proceedings imposed on April 30, 2025 is hereby vacated. The parties are directed to appear before the Learned Arbitral Tribunal within two weeks of the upload of this Judgement on the Court's website. The Learned Arbitral Tribunal shall give directions on how to proceed further, taking care to fix the next steps in the proceedings for any date after six weeks from the upload of this Judgement on the Court's website.

58. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN J.]

Rutuja Borse

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