

against the promoter can be a reason for the Competent Authority not to exercise jurisdiction under Section 11(3) of Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (**MOFA**) and whether Section 14 of the IBC creates a bar for the Competent Authority to grant deemed conveyance in favour of organization of flat purchasers.

2) By this petition, Petitioner-Society challenges Order dated 4 September 2025 passed by the District Deputy Registrar, Co-operative Societies, Mumbai City (4) and Competent Authority (**Competent Authority**) rejecting Application No. 87 of 2025 seeking deemed conveyance of land and building under Section 11 of MOFA with liberty to file fresh application upon conclusion of Corporate Insolvency Resolution Proceedings (**CIRP**) pending against Respondent No.4.

3) Petitioner is a cooperative housing society formed and registered under the provisions of Maharashtra Co-operative Societies Act, 1960 (**MCS Act**). The Society is formed by purchasers of flats in building constructed at Final Plot No. 746 of T.P.S. III (Old Plot No.723), Opp. Soniwadi Banquets, P.G.S. Kanji Swami Marg, Off. Shimpoli Road, Borivali (West), Mumbai-400 092 (**said property**). M/s. Gautam Builders (India) was the original owner of the said property who had executed Development Agreement (**DA**) with M/s. Darshan Enterprises (Respondent No.3) on 25 August 1983. In pursuance of the DA, Respondent No.3 got plans sanctioned for construction of building on the said property vide Intimation of Disapproval (**IOD**) dated 9 November 1985. Respondent No.3 constructed building on the said

property and sold flats therein to various purchasers. Respondent No.3 executed Agreements under Section 4 of MOFA with the flat purchasers. Occupancy Certificate in respect of the building was issued on 3 August 2001. Under the Agreements executed with the flat purchasers, Respondent No.3-Promoter agreed to execute a formal Indenture of Conveyance through the original land owner-M/s. Gautam Builders (India) by joining as confirming parties to the Indenture.

4) Petitioner-Society received a communication from Respondent No.4 (M/s. Vas Infrastructure Ltd) claiming that it had acquired some of the adjoining properties and wanted to consume the TDR in respect of the said property and sought NOC from the Petitioner-Society. Petitioner learnt that Respondent No.4 had secured conveyance in respect of the said property from Respondent Nos.2 and 3. Petitioner accordingly filed L.C. Suit No.1425 of 2011 against Respondent Nos.2 to 4, *inter-alia* challenging the said conveyance. In its Suit, Petitioner also sought conveyance of the said property. However, during pendency of the Suit, Petitioner sought deletion of prayer for conveyance from the Suit. The Court has allowed the application for amendment of Plaint and has permitted deletion of prayer for conveyance vide order dated 4 April 2025.

5) Petitioner thereafter filed Application No. 87 of 2025 before the Competent Authority seeking deemed conveyance of the said property and the building.

6) Canara Bank (Financial Creditor) filed application under Section 7 of IBC for initiation of CIRP against Respondent No.4 and by order dated 11 March 2024, the Petition is admitted and Interim Resolution Professional (**IRP**) is appointed in respect of Respondent No.4. Accordingly, IRP (Respondent No.5) appeared on behalf of Respondent No.4 in Application No. 87 of 2025 and opposed the same. By order dated 4 September 2025, the Competent Authority has accepted the objection raised by Respondent No.5 and has rejected Petitioner's application for deemed conveyance holding that the same cannot be adjudicated in the light of initiation of CIRP against Respondent No.4. The Competent Authority has accordingly granted liberty to the Petitioner-Society to file fresh application for deemed conveyance upon conclusion of CIRP against Respondent No.4 or upon express leave granted by the National Company Law Tribunal (**NCLT**). Petitioner-Society is aggrieved by order dated 4 September 2025 and has accordingly filed the present petition.

7) Ms. Bhatia, the learned counsel appearing for the Petitioner submits that the Competent Authority has erred in not adjudicating Petitioner's application for deemed conveyance. That mere pendency of CIRP against Respondent No.4 cannot be a reason for the Competent Authority not to exercise jurisdiction under Section 11(3) of the MOFA. That Respondent No.4 is not the developer/promoter and that Petitioner is entitled to get conveyance of land from Respondent No.3, who has the statutory duty to execute conveyance under Section 11 of MOFA. That conveyance in favour of Respondent No.4 is itself void and challenge to the conveyance is pending before the City Civil Court. That

the case does not involve layout development and that therefore there is no question of any additional construction being put up on the land. That therefore Respondent No.4 has not secured any semblance of rights in the said property through the so called indenture of conveyance.

8) Ms. Bhatia further submits that IBC merely provides for a recovery mechanism and therefore provisions of the said statute cannot affect the statutory duty created on the Promoter to convey the land and building in favour of the Society. That Respondent No.4 is a mere trustee with obligation to convey the land and building. That the Competent Authority exercising jurisdiction under Section 11 of MOFA is performing the act which the promoter is required to perform. That therefore provisions of Section 14 of the IBC cannot come in the way of the Competent Authority performing the statutory functions. That MOFA is a welfare legislation and the objective behind enacting Section 11 cannot be frustrated by denying conveyance merely on initiation of CIRP against the Promoter. Ms. Bhatia prays for setting aside the impugned order and for issuance of certificate of unilateral deemed conveyance of the entire property along with the building.

9) Mr. Khandeparkar, the learned counsel appearing for Respondent No.5 (IRP) opposes the petition submitting that Respondent No.4 has stepped into the shoes of the promoter vide conveyance dated 24 September 2007. That there is express bar under Section 14 of the IBC on institution of any proceedings and on transfer of any property of the corporate debtor. That therefore there is a

statutory prohibition under Section 14 of the IBC on transfer of title in respect of the land or building belonging to Respondent No.4. That Competent Authority cannot direct conveyance in contravention of provisions of Section 14 of IBC and has rightly rejected Society's application. He submits that provisions of IBC prevail over the State Legislation in the form of MOFA. He relies on provisions of Section 238 of IBC in support of his contention of supremacy of IBC over MOFA. In support of his contention that proceedings for deemed conveyance cannot lie against corporate debtor during pendency of CIRP, Mr. Khandeparkar relies on judgment of the Apex Court in the case of **Alchemist Asset Reconstruction Co. Ltd. Versus. Hotel Gaudavan P. Ltd. & Ors.**¹

10) Alternatively, Mr. Khandeparkar submits that the Petitioner has remedy under Section 60(5) of the IBC for securing an order for deletion of the said property from the ambit of CIRP. That a specific leave is granted to the Petitioner by the Competent Authority to apply for deletion of said property from CIRP. In support of the contention that Petitioner has alternate remedy of securing deletion under Section 60(5) of the IBC, Mr. Khandeparkar relies on judgment of the Apex Court in **Tata Consultancy Services Limited Versus. SK Wheels Private Limited Resolution Professional, Vishal Ghisulal Jain**².

11) Mr. Khandeparkar submits that conveying the land and building is one of the contractual obligations of the promoter, which the incoming management must be aware of. That property rights are

¹ 2017 SCC Online SC 1362

² (2022) 2 SCC 583

also protected by moratorium imposed under Section 14 of the IBC. That the intention behind IBC is to preserve the assets of the corporate debtor. That the Moratorium has been imposed on 11 March 2024 whereas application for deemed conveyance was filed on 15 April 2025. That therefore application for deemed conveyance cannot be adjudicated till conclusion of CIRP. Petitioner is not remediless and can always file fresh application against the new management of Respondent No.4 after conclusion of CIRP. Mr. Khandeparkar, however fairly invites the attention of this Court to the judgment of this Court in **Santoshkumar Motilal Bhansali Versus. Competent Authority and District Deputy Registrar, Co-operative Societies & Ors.**³. He however submits that the said judgment is delivered by referring to the judgment in **Anudan Properties Private Limited Versus. Mumbai Metropolitan Region, Slum Rehabilitation Authority**⁴ which is a judgment in the context of termination of a developer under Section 13(2) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (Slum Act). That therefore neither the judgment in **Anudan Properties Private Limited** (supra) nor the judgment in **Santoshkumar Motilal Bhansali** (supra) can have any remote application to the present case. Mr. Khandeparkar accordingly prays for dismissal of the petition.

12) Rival contentions urged on behalf of the parties now falls for my consideration.

³ 2026 SCC Online Bom 552

⁴ 2025 SCC Online Bom 692

13) As observed above, the issue that arises for consideration is whether initiation of CIRP against Respondent No.4 can be a reason for the Competent Authority not to exercise jurisdiction under Section 11 of MOFA for grant of deemed conveyance in Petitioner's favour.

14) In the present case, Respondent No.4 is not the original developer, who had undertaken construction of the building or had sold the flats by executing agreements with the purchasers.

15) The original developer is Respondent No.3, who had secured development rights in respect of the said property from land owner/Respondent No.2. The development permission was secured by Respondent No.3 and the entire construction has been carried out by Respondent No.3. The flat purchase Agreements under Section 4 of MOFA were also executed by Respondent No.3. Under Clause-33 of the MOFA Agreements, it is Respondent No.3 who has undertaken obligation to convey the land and the building in favour of the organization formed by the flat purchasers. Clause-33 of MOFA Agreement reads thus:

33. After the building is complete and ready and fit for occupation and after the Society or Limited Company is incorporated and registered and only after all the flats/shops/garages in the said building have been sold and disposed off by the Developers and after the Developers shall have received all dues payable to them under the terms of the Agreement with various purchaser thereof the Developers shall procure in favour of the said Society or Limited Company a formal Indenture of Conveyance from the said M/s. GAUTAM BUILDERS (INDIA) and the Developers shall join as Confirming Parties,

16) Section 11 of MOFA puts a statutory obligation on the promoter to perfect his title in respect of the land and to convey his right, title and interest in the land and the building in favour of the organization formed by the flat purchasers. Rule 9 of Maharashtra Ownership Flats (Regulations of the Promotion of Construction, Sale, Management and Transfer) Rules, 1964 prescribes the period for execution of conveyance as four months from the date of formation of cooperative society or company or association of apartments. Section 11 of MOFA provides thus:

11. Promoter to convey title, etc., and execute documents, according to agreement.—

(1) A promoter shall take all necessary steps to complete his title and convey to the organisation of persons, who take flats, which is registered either as a co-operative society or as a company as aforesaid or to an association of flat takers 5 [or apartment owners], his right, title and interest in the land and building, and execute all relevant documents therefor in accordance with the agreement executed under section 4 and if no period for the execution of the conveyance is agreed upon, he shall execute the conveyance within the prescribed period and also deliver all documents of title relating to the property which may be in his possession or power.

(2) It shall be the duty of the promoter to file with the Competent Authority, within the prescribed period, a copy of the conveyance executed by him under sub-section (1).

(3) If the promoter fails to execute the conveyance in favour of the Co-operative society formed under section 10 or, as the case may be, the Company or the association of apartment owners, as provided by sub-section (1), within the prescribed period, the members of such Co-operative society or, as the case may be, the Company or the association of apartment owners may, make an application, in writing, to the concerned Competent Authority accompanied by the true copies of the registered agreements for sale, executed with the promoter by each individual member of the society or the Company or the association, who have purchased the flats and all other relevant documents (including the occupation certificate, if any), for issuing a certificate that such society, or as the case may be, Company or

association, is entitled to have an unilateral deemed conveyance, executed in their favour and to have it registered.

(4) The Competent Authority, on receiving such application, within reasonable time and in any case not later than six months, after making such enquiry as deemed necessary and after verifying the authenticity of the documents submitted and after giving the promoter a reasonable opportunity of being heard, on being satisfied that it is a fit case for issuing such certificate, shall issue a certificate to the Sub-Registrar or any other appropriate Registration Officer under the Registration Act, 1908 (16 of 1908), certifying that it is a fit case for enforcing unilateral execution, of conveyance deed conveying the right, title and interest of the promoter in the land and building in favour of the applicant, as deemed conveyance.

(5) On submission by such society or as the case may be, the Company or the association of apartment owners, to the Sub-Registrar or the concerned appropriate Registration Officer appointed under the Registration Act, 1908 (16 of 1908), the certificate issued by the Competent Authority alongwith the unilateral instrument of conveyance, the Sub-Registrar or the concerned appropriate registration Officer shall, notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), issue summons to the promoter to show cause why, such unilateral instrument should not be registered as 'deemed conveyance' and after giving the promoter and the applicants a reasonable opportunity of being heard, may on being satisfied that it was fit case for unilateral conveyance, register that instrument as, 'deemed conveyance'.

17) Sub-sections (2) to (5) were inserted in Section 11 of MOFA by Maharashtra Amendment Act 4 of 2008 w.e.f. 25 February 2008 under which a provision is made for deemed conveyance of the land and the building when promoter fails to carry out statutory duty under sub-section (1). Thus, where the promoter fails to convey land and building within the time stipulated under Rule 9 and as per Section 11(1), the society/company/association can file an application to the Competent Authority, who can make an enquiry and issue a certificate to the Sub-Registrar certifying that the case is fit for enforcing unilateral execution of conveyance deed conveying right, tittle and interest of the promoter

in the land and the building in favour of the society/company/association as deemed conveyance. The Certificate so issued by the Competent Authority along with unilateral instrument of conveyance can be registered under Section 11(5) of MOFA.

18) In the present case, the statutory obligation under Section 11(1) of MOFA to convey land and building was on Respondent No.3. It was both contractual obligation under clause 33 of Agreement for Sale, as well as statutory duty under Section 11(1) of MOFA. The Occupancy Certificate in respect of the building was issued on 3 August 2001. The Petitioner was formed and registered as a cooperative housing society, under Section 10 of MOFA read with the provisions of the MCS Act, on 10 December 1991. However, Respondent No.3 failed in its statutory duty and did not convey his right, title and interest in the land and the building in favour of the Petitioner-Society both in accordance with clause-33 of the Agreement for Sale, as well as, under Section 11(1) of MOFA.

19) Respondent No.4 has parachuted on the scene and claims to have secured conveyance in respect of the said property from Respondent Nos. 2 and 3 and accordingly claims title in respect of the said property. The main reason for doing so apparently is because Respondent No.4 has purchased adjoining properties and believes that some TDR is available in the said property which Respondent No.4 apparently intends to utilize for carrying out construction in the adjoining properties. At this juncture, exact plans of Respondent No.4 are unknown. Whether it wants to carry out additional construction

within the said property or whether he merely wants to utilize TDR arising out of the said property and load the same in construction proposed on adjoining properties is not known as this juncture. Be that as it may. However, it would suffice to observe that sanctioned plans indicate that the total FSI permissible in respect of the said property admeasuring 1794.20 sq.mtrs was 1814.20 sq.mtrs and the FSI utilised in construction of the building of Petitioner society is 1802.44 sq.mtrs. Thus, only built-up area admeasuring 11.76 sq.mtrs remained unutilized. Thus, virtually the entire development potential, as per the sanctioned plan, has already been utilized by Respondent No.3. As observed above, Respondent No.3 had contractual obligations, as well as statutory duty to convey the entire land and building in favour of the Petitioner-Society. Therefore, it is highly questionable as to what was left in the land to be purchased by Respondent No.4.

20) *Prima-facie* therefore it appears that what is purchased by Respondent No.4 is merely an obligation to convey the land and building in accordance with Section 11(1) of MOFA. This Court does not appreciate action on the part of Respondent No.3 in selling land in favour of a third developer when the title therein was statutorily required to be transferred in favour of the Petitioner-Society. Thus, what is done in the present case is purchase of land by Respondent No.4 which is statutorily meant to be conveyed to the Petitioner-Society. This is apparently done with the aim of exploiting additional development rights either through TDR or out of change in FSI regime due to introduction of Development Control Regulations. However, this Court is not proposing to delve deeper into this aspect since

adjudication of Petitioner-Society's application for deemed conveyance is yet to be made by the Competent Authority. The only reason why these observations are made even before adjudication of Petitioner's obligation for deemed conveyance is because Respondent No.4 is opposing the application for deemed conveyance by claiming that he is now the promoter and its IRP has taken a stand that pendency of CIRP against Respondent No. 4 suspends right of the Petitioner to seek conveyance of land.

21) Coming back to the core issue involved in the present case, in my view, provisions of Section 14 of the IBC cannot come in the way of Competent Authority exercising statutory duty imposed on the promoter under Section 11(1) of MOFA. In the present case, Respondent No.4 is not the original promoter. He is merely a subsequently purchaser of land, which is meant to be conveyed statutorily in favour of the Petitioner-Society. Respondent No.4 is subjected to CIRP and the NCLT has passed order dated 11 March 2024 admitting the petition filed by Canara Bank, a financial creditor, appointing IRP and imposing a moratorium under Section 14 of IBC. The operative part of order dated 11 March 2024 passed in CP(IB) No. 314/NB/MAH/2023 reads thus:

(a) The petition bearing CP(IB)-314/MB/2023 filed by CANARA BANK, the Financial Creditor, under Section 7 of the IBC, 2016 read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor M/s. VAS INFRASTRUCTURE LIMITED [CIN: L65100MH1994PLC076538] is hereby admitted;

(b) Mr. Ashok Kumar Golechha, an Insolvency Professional having registration No.IBBI/IPA-002/IP-N000932/akgolecha9@gmail.com),

having his address at: B-703/704, River Park CHS Ltd, Dattani Park Road, Thakur Village, Kandivali East, Mumbai-400 092; is hereby appointed as Interim Resolution Professional to carry out the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/

(c) The Financial Creditor shall deposit a sum of ₹ 5,00,000/- (Rupees Five Lakhs only) with the IRP towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

(d) There shall be a moratorium under Section 14 of the IBC, in regard to the following:

(i) 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;

(ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

(iii) 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;

(iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(e) Notwithstanding the above, during the period of moratorium-

i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

(f) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution

plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

(g) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(h) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

(i) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

(j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.

22) Thus, by virtue of the moratorium imposed under Section 14 of IBC, there is a prohibition from institution or continuation of suits or proceedings against Respondent No.4 and from transferring any of the assets of Respondent No.4 and from recovery of any property in possession of Respondent No.4. The issue for consideration is whether grant of deemed conveyance under Section 11(3) and (4) of MOFA by the Competent Authority would amount to transfer or alienation of property/asset of the corporate debtor within the meaning of Section 14 of the IBC. The issue is no more *res-integra* and is covered by direct judgment of this Court in **Santoshkumar Motilal Bhansali** (supra), in which it is held in paras-8 to 10 as under:

8. The judgment of this court in *Anudan Properties Private Limited vs Mumbai Metropolitan Region, Slum Rehabilitation Authority and Others* 2025 SCC OnLine Bom 692 explains how to deal with conflicts between IBC proceedings and statutory obligations under a welfare statute. It draws a clear distinction between monetary claims that get frozen under a resolution plan and statutory obligations that continue despite insolvency. It also holds that Section 14 of the IBC does not bar statutory authorities from discharging statutory functions.

9. Applying that reasoning to the present facts, two points become relevant. First, the petitioner's reliance on Section 14 of the IBC to restrain the Competent Authority from exercising powers under Section 11 of the MOFA Act cannot succeed. The Competent Authority performs a statutory function. It confers a statutory benefit upon flat purchasers. This function is not in the nature of a recovery action. It is not a claim enforcement mechanism. It is an exercise of statutory power to perfect title in favour of an organization of purchasers. Under the logic of *Anudan Properties*, statutory rights of third parties and statutory duties of authorities continue despite insolvency or moratorium.

10. Second, the argument that the moratorium or the resolution plan extinguishes factual defaults or immunizes the promoter from consequences cannot be accepted. *Anudan Properties* holds that a resolution plan may extinguish monetary claims but it does not erase past defaults. It does not prevent statutory regulators from acting in public interest. The MOFA framework creates statutory contracts under Section 4. The obligation to convey title is part of that statutory framework. Proceedings for deemed conveyance enforce performance of a statutory obligation in specie. They do not seek money. They do not constitute debt recovery. Therefore, they fall outside the bar of Section 14.

23) In *Santoshkumar Motilal Bhansali* this Court has relied upon the judgment in *Anudan Properties Private Limited* (supra) in which the issue for consideration was whether an order terminating appointment of developer under Section 13(2) of Slum Act can be passed during pendency of CIRP against such developer. This Court analysed the statutory scheme under Section 14 and 238 of the IBC. One of the issues for consideration before this Court was whether approval of resolution plan by NCLT under Section 31 of IBC would

override or nullify developer's obligations and liabilities arising under the Slum Act and whether the SRA was barred or restricted by IBC from taking action under Section 13(2) of the Slum Act due to binding effect of the resolution plan. This Court considered the interplay between the provisions of IBC and the Slum Act and held that the two legislations are enacted with distinct purposes. It is held that IBC is an economic and fiscal legislation with object of facilitating timely resolution of corporate insolvency in a manner that maximizes the value of assets and facilitates the revival of a failing company. On the other hand, the Slum Act is a social welfare legislation which is intended at rehabilitating slum dwellers, promoting, improving and redeveloping the slum areas and securing basic housing and dignity for those who live in slums. This Court also took into consideration provisions of Section 238 of the IBC which seeks to give overriding effect over inconsistent provisions of other laws. This Court however held that the provisions of the Slum Act are not inconsistent with the objectives of the IBC. This Court further held that certain non-monetary consequences which arise under welfare legislation/Slum Act cannot be lightly brushed aside merely because insolvency proceedings under the IBC have commenced or concluded. The Court held that developer's removal under Section 13(2) of the Slum Act is a non-monetary regulatory action flowing directly out of breach of obligation by a developer which cannot be treated as a 'claim' or 'debt' as contemplated under IBC. This Court held in paras-37, 38, 40, 47 and 48 as under:

37. At the outset, it is necessary to recognize that the IBC and the Slum Act are legislations enacted with distinct purposes. The IBC is an economic and fiscal legislation. Its object is to facilitate timely

resolution of corporate insolvency in a manner that maximizes the value of assets, balances the interests of all stakeholders, and allows for the revival of a failing company. On the other hand, the Slum Act is a social welfare legislation. It is intended to rehabilitate slum dwellers, promote improvement and redevelopment of slum areas, and secure basic housing and dignity for those who live in slums. Although these two statutes operate in separate fields, in certain cases, their objectives may intersect. In fact, in the present case, the two objectives are not in conflict, but rather aligned. The revival of the corporate debtor would necessarily involve the successful implementation of the slum redevelopment scheme undertaken by it. The company, being a developer under the slum scheme, is expected to complete the rehabilitation component, and only then can it access the free-sale portion of the land, which is likely its sole source of revenue. Therefore, completion of the project is not only in the interest of the slum dwellers but also crucial for the financial revival of the corporate debtor. The IBC does not provide that once a resolution plan is approved, the corporate debtor becomes immune from all statutory or regulatory obligations. What the IBC prohibits is the institution or continuation of proceedings for recovery of past dues after the resolution plan is approved. It does not extinguish statutory duties, especially where public interest or regulatory compliance is involved.

38. In light of this, the key question that arises is whether the SRA's action of invoking Section 13(2) of the Slum Act after the approval of the resolution plan amounts to enforcing a claim that stands extinguished under the IBC, or whether it is an independent regulatory action which survives the insolvency process. Section 238 of the IBC provides a non-obstante clause, stating that "the provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force." However, this clause comes into play only if there is an actual inconsistency between the two statutes. It is wellsettled that courts must first examine whether a conflict truly exists, and whether it is impossible to give effect to both laws simultaneously. Not every action under the Slum Act that impacts a company undergoing resolution under IBC can be said to be inconsistent with the Code. If both laws can be applied harmoniously, such an interpretation must be preferred. The nonobstante clause under Section 238 does not operate in a vacuum. It only overrides those provisions of other laws which are irreconcilably inconsistent with the IBC. Therefore, the Court must interpret both the IBC and the Slum Act in a manner that gives effect to their respective objects, unless such an interpretation is legally untenable.

40. Undoubtedly, Section 238 of the IBC gives it overriding effect over inconsistent provisions of other laws. But in the present scenario, the Slum Act's mandate of ensuring timely rehabilitation of slum dwellers is not inconsistent with the objectives of the IBC. Rather, it furthers the very aim of keeping the corporate debtor as a going concern by facilitating the completion of the project that forms the basis of the company's revival. It must be noted that the IBC is not merely a tool for liquidation or asset-stripping, but a mechanism for holistic revival of viable companies. In a slum redevelopment project, the success and viability of the corporate debtor hinges on cooperation from slum dwellers and compliance with SRA guidelines. If the developer fails to honour its obligations – such as payment of transit rent or timely completion of rehabilitation buildings – the project collapses not only financially but also socially. In such a situation, the SRA stepping in to rescue the project is a necessary regulatory response and a sovereign function exercised in public interest. The principle of public interest penetrates insolvency law. Certain actions, even if taken post-approval of the resolution plan, may be allowed if they serve broader public purposes – such as environmental protection, safety norms, or statutory compliance. Similarly, the SRA's action in replacing a defaulting developer to protect the interests of slum dwellers is not a private remedy for monetary loss, but a regulatory measure in the public interest. Therefore, such an action cannot be said to violate or be inconsistent with the IBC. It operates in a separate domain, and both legislations can be applied in a manner that furthers their respective objectives without conflict.

47. It is, therefore, clear that certain non-monetary consequences which arise under welfare legislations like the Slum Act cannot be lightly brushed aside merely because insolvency proceedings under the IBC have commenced or concluded. The removal of a developer under Section 13(2) of the Slum Act is one such consequence. Another example arising in the present case is the proposed acquisition of the project land by the SRA. As per the Slum Act, once a developer is removed due to non-performance, the SRA has the power to acquire the land belonging to the outgoing developer, so that the same land can be handed over to the incoming developer for completing the rehabilitation scheme. The Resolution Professional (RP) has contended that such acquisition would adversely affect the corporate debtor and its creditors, as it would transfer a valuable asset out of the company. However, this argument fails to take into account a crucial fact – that the said land was already encumbered. It was never an unburdened or free asset in the hands of the corporate debtor. The land was subject to slum dwellers' occupation, and its value was inherently tied to the successful execution of the rehabilitation scheme. If the scheme itself is terminated due to the developer's failure, then the land – in its encumbered condition – holds little

standalone market value. Its true worth arises only if the development scheme is implemented. Therefore, if the project is taken away due to breach, the associated land no longer holds the same developmental value for the corporate debtor. Moreover, the acquisition of land in this context is for a public purpose — namely, to ensure that the slum rehabilitation project is completed and the rights of slum dwellers are protected. As per law, compensation would be payable to the outgoing developer, and such compensation would become part of the insolvency estate. Thus, the corporate debtor is not being dispossessed without remedy; rather, it is being divested of an asset which it was unable to utilise for the public good, and that too, in accordance with legal process.

48. The legal consequence of the developer's removal — which is a non-monetary regulatory action — is that the corporate debtor loses its role in the project and the chance to earn profits from the free-sale component. However, this consequence flows directly from the breach of obligations by the developer. This is not in the nature of a "claim" or "debt" as contemplated under the IBC. Instead, it is a regulatory forfeiture, which arises when a statutory authority determines that the developer has failed to fulfil its public obligations. The IBC does not grant immunity to a corporate debtor from such regulatory actions unless they are shown to be mala fide or merely intended to recover money — which is clearly not the case here. To allow a defaulting developer to benefit from insolvency proceedings by continuing with the project despite having failed to discharge its duties would be to permit a party to take advantage of its own wrong. This would defeat not only the object of the Slum Act but also broader principles of fairness and public interest. A party cannot walk away from its promises to slum dwellers, undergo resolution under the IBC to restructure its finances, and then return to claim the project or the land which it failed to develop. Such an approach would undermine the integrity of both statutory frameworks.

24) The Special Leave Petition filed against the judgment of this Court in **Anudan Properties Private Limited** is dismissed by the Hon'ble Supreme Court on 7 April 2025.

25) Though the judgment in **Anudan Properties Private Limited** is rendered in the context of interplay between the provisions of IBC and Slum Act, the subsequent judgment in **Santoshkumar**

Motilal Bhansali takes into account the interplay between the provisions of Section 14 of IBC and Section 11 of MOFA. The judgment in **Santoshkumar Motilal Bhansali** provides a complete answer to the issue at hand. In that case, this Court has borrowed the analogy of distinction between freezing of monetary claims under resolution plan and statutory obligations which continue despite insolvency in the context of adjudication of application for deemed conveyance. This Court has held that the Competent Authority performs a statutory function and confers a statutory benefit upon flat purchasers which function is not in the nature of a recovery action. It is not a claim enforcement mechanism. It is an exercise of statutory power to perfect title in favour of an organization of purchasers. Therefore, it is held that statutory rights of third parties and statutory duties of authorities continue despite insolvency or moratorium.

26) The ratio of the judgment in **Santoshkumar Motilal Bhansali** binds me. I would like to further build upon the ratio of that judgment by observing that an action initiated by a financial creditor against a corporate debtor under Section 7 of IBC and a moratorium imposed under Section 14 while admitting the application of that financial creditor cannot negate or even suspend the statutory duty of the Competent Authority under Section 11(3) and (4) of MOFA. One must bear in mind the objective behind amending the provisions of Section 11 by 2008 amendment by incorporating a provision for deemed conveyance. The concept of deemed conveyance is introduced after noticing a large-scale failure on the part of the developers in transferring title in the land and after noticing a trend followed by

almost all developers in deliberately delaying conveyance of land with a view to endlessly milk the additional development rights created in the land with passage of time. The developers in cities like Mumbai, Pune etc. were deliberately not conveying land in favour of societies so as to exploit further development potential created in the land due to sanction of additional FSI/TDR etc. The Legislature took note of the ground reality that the provisions of Section 11, as it stood prior to amendment, were not sufficient and it was taking unduly long time for decision of suits for conveyance as there was large scale failure on the part of the developers to perform statutory duty imposed under Section 11. It is with a view to provide a swift mechanism for the societies to secure title in respect of the land and the building that special provision for granting unilateral deemed conveyance was introduced in the form of sub-sections (2) to (5) in Section 11 of MOFA. This statutory objective cannot be permitted to be defeated merely on account of provisions of Section 14 of IBC.

27) What is sought to be done in the present case is an attempt on the part of Respondent No.4 to circumvent the provisions of Section 11 of MOFA by taking aid of CIRP initiated by an altogether unconnected entity (Canara Bank). In many cases, the developers are corporate entities who undertake numerous projects over the period of time. If such developer-company fails to convey land in contravention of Section 11(1) of MOFA in respect of a building which is constructed a quarter of century ago but attracts CIRP from an unconnected financial creditor, the same would not suspend the statutory obligation under Section 11(1) imposed on such developer. Otherwise, errant developers

would misuse the moratorium imposed on them under Section 14 of IBC to indefinitely delay conveyance under Section 11(1) of MOFA. The Courts must be alive to the ground reality that several buildings in cities like Mumbai, Pune etc are in the need of redevelopment. The normal life of a building in Mumbai Metropolitan Region is statutorily recognised as 30 years, after which it is incumbent for the owner of the building to a secure structural audit report certifying its stability. This is on account of peculiar weather conditions in MMR areas. Thus, several buildings in MMR areas are in need of redevelopment since the buildings have crossed their lifespans. The Society whose building becomes dangerous or dilapidated, but does not have a title in the land or building for undertaking redevelopment, uses the route under Section 11(3) of MOFA to secure conveyance in a swifter manner. However, if provisions of Section 14 of IBC are interpreted to mean that proceedings for deemed conveyance cannot be adjudicated by Competent Authority till resolution plan is approved by NCLT, the same would put Society's building, as well as lives of occupants therein, in danger. In a case where Society's building is in eminent need of redevelopment, but Society is unable to undertake redevelopment because of absence of conveyance and where deemed conveyance is denied on account of initiation of CIRP against the developer, the same would put the lives of occupants of the building in danger.

28) What must also be borne in mind is the fact that in most of the cases, there is virtual loss of right of the promoter in the land and building due to combined effect of provisions of Section 4 and Section 11 of MOFA. With sale of each flat in the building, there is dilution of

title of the developer in the land. The moment all the flats in the building are sold, the developer is virtually divested of title in the land. While things may look slightly complicated in respect of multistory towers, one may take into consideration a simple illustration of a developer undertaking construction of four flats on a plot of land. When all four flats in the building are constructed and sold, the four flat purchasers acquire 25% right each in the land and the developer loses its title in the land. In a similar manner, when all flats in a multistorey tower are sold and a cooperative society/company of flat purchasers is formed, the promoter's title in the land gets divested and such society/company becomes entitled to own the land on which the building is constructed. The things may also get slightly complicated in a layout development. However, even *qua* layout development, similar analogy would apply and the developer loses proportionate title in the land to the extent of completed buildings in the layout. It cannot be that the developer exploits development potential in the land, constructs flats and sells them to the purchasers, but still retains ownership in the land. This concept is unknown to law. On the other hand, provisions of Sections 4 and 11 of MOFA ensure that the developer is divested of his right, title and interest in the land and the building which is statutorily required to be transferred/conveyed to the organisation of flat purchasers. Thus what is conveyed by the Competent Authority need not necessarily be the 'asset' of the promoter on account of operation of concept of divesting.

29) Ordinarily only an owner of the immovable property can execute conveyance thereof. However, a unique concept of 'deemed

conveyance' is introduced in MOFA for reasons discussed above. The concept of deemed conveyance envisages transfer of title of land owner without his consent and in absence of his signature on the instrument of conveyance. The transaction of deemed conveyance is effected through registration of a certificate issued by the Component Authority. This concept of deemed conveyance envisaging transfer of title of a landowner against his desire is thus based on the principle of divesting of title. Once the development potential as per the sanctioned plan is exploited, buildings are constructed, flats are sold and an organization of flat purchasers is formed, the developer loses title in the land and the building. The law enjoins a duty on him to transfer the title in the land and the building in favour of the organization of flat purchasers [Section 11(1) of MOFA]. However, if the developer fails in performance of statutory duty by not transferring the title, the Competent Authority steps into developer's shoes and issues a certificate of unilateral deemed conveyance. The law thus presumes loss of title of the developer once failure occurs on his part to perform the duty under Section 11(1) of MOFA. This presumption is however rebuttable. Even after the certificate of unilateral deemed conveyance is issued and registered, the developer can still institute a suit and demonstrate that the title in the land or in portion thereof still vests in him. Thus, the statutory scheme of Section 11 of MOFA is such that there is presumption of loss of title in the land and the building and it is on this presumption that a certificate of unilateral deemed conveyance is issued by the Component Authority. Till the developer secures a declaration from a Court to the contrary through a decree, the instrument of deemed conveyance based on such presumption

continues to remain valid for all purposes. Considering this peculiar statutory scheme of Section 11 of MOFA, it is difficult to hold that the deliberate act of the developer in not transferring the title in the land in violation of statutory duty under Section 11(1) results into holding of any 'asset' by him within the meaning of Section 14 of IBC, which cannot be transferred on account of imposition of a moratorium. What is effected by the Competent Authority is, not transfer of property of the corporate debtor in real sense, but mere certification that the title in the land and building has now vested in the organization of flat purchasers by reason of failure to perform statutory duty by the developer. In my view therefore, provisions of Section 14 of IBC do not come in the way of Competent Authority exercising powers under Section 11 of MOFA.

30) Applying the above analogy to the present case, Respondent No.3 is virtually divested of right, title and interest in the land by exploitation of almost the entire development potential in the land. There is a statutory duty on Respondent No.3 to convey his right, title and interest in the land and building in favour of the Petitioner-Society. All that remained was performance of a formal act of execution of conveyance. Section 11(3) of MOFA ensures that failure to perform that formal act by the developer does not come in the way of the society acquiring title in the land by applying for deemed conveyance. In such circumstances, if Respondent No.4 has still chosen to secure Respondent No.3's rights and obligations in the land, by way of the alleged conveyance, Respondent No.4 has stepped into the shoes of Respondent No.3 and the statutory duty under Section 11(1) of MOFA

would get transferred to Respondent No.4. What needs to be done by Respondent No.4 is to perform that formal act, which Respondent No. 3 failed to perform. Section 11(3) and (4) of MOFA ensures that the Competent Authority performs duty which the Respondent Nos. 3/4 are supposed to discharge under Section 11(1) of MOFA. Therefore, if this statutory scheme of MOFA is understood in the correct perspective, it is difficult to hold that grant of deemed conveyance by the Competent Authority under Section 11 of MOFA would be a transfer or alienation of asset of Respondent No. 4 within the meaning of Section 14 of IBC.

31) Also, the Respondent No. 4 or its new management is not rendered remediless. Apart from the IRP opposing the application for deemed conveyance by demonstrating that some rights of Respondent No. 4 continue to subsist in the land which cannot be conveyed to the Petitioner, the new management of Respondent No. 4 can also institute a suit challenging the certificate of unilateral deemed conveyance. It is well settled that the certificate of deemed conveyance is not a final determination of rights and entitlements of parties qua the conveyed land. The aggrieved party is not precluded from filing a suit and from establishing title in the conveyed land. This principle is recognised in the judgment of the Apex Court in **Arunkumar H. Shah HUF Vs. Avon Arcade Premises CHSL**⁵. This is yet another reason why grant of certificate of deemed conveyance cannot be treated as final alienation of asset of the promoter who is in CIRP. Since the promoter in CIRP has the remedy of filing a suit through IRP or through the new management, the legislative object behind Section 11 of MOFA must be

⁵ (2025) 7 SCC 249

permitted to operate with full force rather than impeding the same by mechanically applying the provisions of Section 14 of IBC.

32) Reliance by Mr. Khandeparkar on provisions of Section 238 of IBC is misplaced. Section 238 of IBC provides thus:

238. Provisions of this Code to override other laws.

The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

The effect of provisions of Section 238 has already been discussed by this Court in *Anudan Properties Private Limited* in which it is held that provisions of Slum Act are not inconsistent with the provisions of IBC. The analogy of the judgment in *Anudan Properties Private Limited* is borrowed by this Court and is applied even in relation to Section 11 of MOFA in *Santoshkumar Motilal Bhansali*. In that view of the matter and also in view of the discussions made above, it is difficult to hold that the provisions of Section 11 of MOFA empowering Competent Authority to grant unilateral deemed convenience of land and the building upon failure of promoter to perform statutory duty is inconsistent with the provisions of IBC.

33) Mr. Khandeparkar has relied upon provisions of Section 60(5) of the IBC in support of his contention that Petitioner can exercise a remedy of filing an application for securing deletion of the said property from the ambit of CIRP and in support he has relied upon judgment of the Apex Court in *Tata Consultancy Services Limited*

(supra). However, since this Court has taken a view that initiation of CIRP does not prevent Competent Authority from exercising statutory powers under Section 11(3) of MOFA, there is no need to refer to the provisions of Section 60(5) of IBC. Since application for unilateral deemed conveyance under Section 11 of MOFA can be decided by Competent Authority despite pendency of CIRP, there is no necessity of filing an application to NCLT by the Petitioner under Section 60(5) of the IBC.

34) Mr. Khandeparkar has relied upon the judgment of the Apex Court in the case of *Alchemist Asset Reconstruction Ltd.* (supra) in which the issue was about permissibility to conduct arbitration against corporate debtor contrary to the provisions of Section 14(1)(a) of IBC. Performance of statutory duty by Competent Authority under Section 11(3) cannot be treated as institution of suit or proceedings within the meaning of Section 14(1)(a) of IBC. As observed above, the application under Section 11 (3) of MOFA is for enforcing statutory duty imposed on the Component Authority. Just because the Promoter gets an opportunity of hearing while deciding the proceedings, it does not mean that those proceedings are filed for enforcing any obligation against the developer. The statutory scheme of Section 11 of MOFA is such that upon failure by the promoter to convey title within the period prescribed, the conveyance can be sought from the Competent Authority. Therefore, filing of application under Section 11(3) of MOFA is not akin to institution of suit for conveyance against the promoter. In fact, a Suit seeking declaration of title can always be filed even after issuance and registration of Certificate of unilateral deemed

conveyance. The judgment therefore has no application to the issue involved in the present case.

35) In my view, therefore mere initiation of CIRP against Respondent No.4 cannot be a reason for Competent Authority not to exercise powers under Section 11(3) of MOFA. The Competent Authority has erred in not adjudicating the application of the Petitioner-Society on merits. The impugned order dated 4 September 2025 is indefensible and liable to be set aside.

36) The Petition accordingly succeeds, and I proceed to pass the following order:

- (i) Order dated 4 September 2025 passed by the Competent Authority rejecting Application No. 87 of 2025 is set aside.
- (ii) Application No. 87 of 2025 is restored on the file of the Competent Authority, which shall proceed to decide the same on its own merits in an expeditious manner.
- (iii) Parties shall appear before the Competent Authority on 1 July 2026 alongwith copy of the present order downloaded from the website of this Court and secure further directions for fixation of date(s) of hearing in the Application.

(iv) All rights and contentions of the parties on merits of the Application are expressly kept open to be decided by the Competent Authority.

37) With the above directions, the Writ Petition is allowed.
There shall be no order as to costs.

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[SANDEEP V. MARNE, J.]