

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH - I

IA NO. 5460 OF 2025

IN

CP (IB) NO. 2205 OF 2019

In the matter of:

***Section 60(5) of the Insolvency and Bankruptcy Code, 2016
(Code”) and Rule 11 of The National Company Law Tribunal
Rules 2016***

**Jet Airways (India) Limited, Through Mr. Satish Kumar
Gupta, Liquidator, Jet Airways (India) Limited**

... Applicant

Versus

Maharashtra Industrial Development Corporation

...Respondent

In the matter of:

State Bank of India

...Financial Creditor

Versus

Jet Airways (India) Ltd.

...Corporate Debtor

Order pronounced on 08.07.2026

Coram:

Sh. Prabhat Kumar

Sh. Sushil Mahadeorao Kochey

Member (Technical)

Member (Judicial)

Appearances:

For the Applicant

: Adv. Malhar Zatakia, a/w Adv.

Nishant Upadhayay,

For Respondent

: Ms. Shraddha Dube patil

BRIEF FACTS:

1. The present Interlocutory Application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('IBC') read with Rule 11 of the National Company Law Tribunal Rules, 2016 for seeking following reliefs:
 - a) *Set aside, and declare void, the Termination Notices, issued by MIDC to the Corporate Debtor in respect of the of Plot No. EL236 and Plot No. OS-12/1, in TTC Industrial Area, MIDC, Mahape, Navi Mumbai;*
 - b) *Allow the Liquidator to perform his duty to carry out the liquidation process and deal with the Plot No. EL-236 and Plot No. OS-12/1, in TTC Industrial Area, MIDC, Mahape, Navi Mumbai as per the Code;*
 - c) *Direct MIDC to promptly execute the agreement to lease with the Corporate Debtor in respect to the Plot No. EL-236 and Plot No. OS-12/1, in TTC Industrial Area, MIDC, Mahape, Navi Mumbai;*
 - d) *Restrain MIDC from initiating any proceedings against the Corporate Debtor for recovering possession of the Plot No. EL236 and Plot No. OS-12/1, in TTC Industrial Area, MIDC, Mahape, Navi Mumbai;*
 - e) *In ad-interim, without prejudice to the above, restrain MIDC from interfering with the Corporate Debtor s possession of the Plot No. EL-236 and Plot No. OS-12/1, in TTC Industrial Area, MIDC, Mahape, Navi Mumbai, and from entering into any transaction creating any third-party rights/ interests over the Plot No. EL-236 and Plot No. OS-12/1, in TTC Industrial Area, MIDC, Mahape, Navi Mumbai; and*

f) Pass any such order it deems just and equitable in the present facts and circumstances.

2. The Applicant is the Liquidator of Jet Airways (India) Limited (“Corporate Debtor”), appointed by this Tribunal vide Order dated 26.11.2024. Prior to this, the Corporate Insolvency Resolution Process (“CIRP”) under IBC commenced on 20.06.2019, and the Corporate Debtor was resolved in terms of Resolution Plan approved by CoC on 17.10.2020 followed by approval of this Tribunal vide order dated 22.6.2021. However, upon the failure to implement the failure to implement approved resolution plan, on 7.11.2024, the Hon’ble Supreme Court directed the Corporate Debtor to be liquidated, and this Tribunal passed order for liquidation on 26.11.2024.
3. The Respondent is a Maharashtra Industrial Development Corporation (**MIDC**), an Investment Promotion agency under the Government of Maharashtra which provides businesses with infrastructure such as land, roads, water supply, drainage facilities and street lights etc. and had allotted two plots, namely i) plot no. EL-236, admeasuring 7,645 sq meters situated at TT.C Industrial Area, MIDC, Mahape, Navi Mumbai (“Mahape Land I”) and (ii) plot no. OS-12/1, admeasuring 805 sq meters situated at TT.C Industrial Area, MIDC, Mahape, Navi Mumbai (“Mahape Land II”) (collectively referred to as the “Mahape Lands”) to the Corporate Debtor in terms of allotment letter(s) dated 4.1.2018 and 12.12.2017 respectively.
4. It is undisputed that the requisite lease premium for the aforesaid allotment(s) amounting to Rs. 15,86,33,750/- and Rs. 16,170/- were paid by the Corporate Debtor within stipulated time i.e. by 31.01.2018. These plots were allotted for (i) undertaking activity

- i.e. "IT Enables Services i.e. Flight Simulation, Technology based Training TBT and Animation & Graphics" as per details contained in the application, and (ii) for Tree Plantation / Decoration Purpose.
5. The terms of allotment, inter-alia, vide clause 4(a) thereof required the Corporate Debtor to *enter into an agreement to lease in the form prescribed by the Corporation & on performance of the condition will be entitled to lease for term of ninety five (95) years to be computed from the date of execution of the Agreement to lease and renewable for one further term of 95 years on payment of premium and on such terms and condition as may be determined by the corporation at the time of renewal.*
 6. The possession of these plots were given to the Corporate Debtor on 25.09.2020, subject to execution of Agreement to Lease within 60 days from the date of possession, pursuant to request made by Erstwhile Resolution Professional vide his letter dated 6.8.2019, and a draft of the Agreement to Lease proposed to be executed with Corporate Debtor in respect of the Mhape 1 Plot was provided vide letter dated 19.10.2020 with a request to return the draft duly approved and signed in token of Corporate Debtor's approval.
 7. Since, the lease deed was not executed, the Respondent issued Letter(s) dated 12.09.2025 cancelling the allotment of both the Plots vide separate letter of even date. The Respondent has also forfeited the premium money paid by the Corporate Debtor in consequent to such cancellation.
 8. The Applicant has impugned the cancellation of allotment of Mhape Lands on the following grounds:
 - a. The said action of the Respondent is barred by Section 33(5) of IBC as such act constitute fresh legal proceeding;
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- b. There was complete lack of action on part of MIDC between January 31, 2018 (when the entire premium amount was deposited with the Respondent) to September 23, 2020, despite being in receipt of the entire amount of earnest money deposit by the Corporate Debtor, hence, the non-execution of the lease deed(s) is attributable to their conduct.
 - c. No illegal activity is being carried by the Corporate Debtor at Mahape 1 Land.
9. The Respondent has cancelled the allotment of these flats stating that (i) the Corporate Debtor failed to take the necessary steps for the execution of the agreement to lease as mandated by the allotment orders dated December 12, 2017 and January 4, 2018, for the Mahape Lands, and (ii) the survey conducted by the Respondent on May 15, 2025 revealed that the said Mahape Lands were encroached by a third party and was allegedly being utilized by one M/s Ashwin.
10. It is also contended by the Respondent in the reply that the said Mahape Lands would not form part of the liquidation estate of the Corporate Debtor as the same are owned by a third party, i.e., the Respondent under Section 36(4)(a)(iv) of the Insolvency and Bankruptcy Code, 2016 (“Code”) as these lands are owned by Respondent and were given for use only.
11. Heard the Learned Counsel and perused the material on record.
12. It is contended by the Respondent that the said Plots do not form of liquidation estate of the Corporate Debtor, as those plots were owned by them and the corporate debtor had only right to use.
13. It is noted that the corporate debtor was vested right to use these Plots for a period of 95 years from the date of execution of lease agreement against the consideration which has already been paid to

the Respondent upfront. Indubitably, the lease agreement is yet to be executed, but the Corporate Debtor is in possession of said Plots since 25.09.2020, and the payments in full were made to the Respondent prior to commencement of CIRP. The consideration for period, which is yet to expire, has also been paid.

14. The exploitation or usage rights of corporate debtor in these plots were of enduring nature and the payment for whole of initial term of 95 years was made upfront. These rights constitute assets of the corporate debtor, as these rights are valuable rights having been acquired on payment of consideration. Section 36(4) of IBC excludes certain assets from the 'Liquidation Estate', and one of such excluded asset is "*Assets owned by third party, which are in possession of corporate debtor under contractual arrangements which do not stipulate transfer of title but only use of assets*". An immovable property generally has two rights i.e. (i) ownership right, and (ii) right to enjoy the use and advantages of such property short of its destruction or waste in substance. Indubitably, the Corporate Debtor had acquired indefeasible right to enjoy the said plots, having paid the full consideration for the period of its enjoyment and also obtained possession thereof, which placed the corporate debtor as tenant of such property. These rights were transferable subject to prior consent of Respondent, which the Respondent may refuse also, and conditions to be imposed by it, however, the refusal cannot be arbitrary.

15. In our considered view the contention of the Respondent that the right to use a property under lease agreement falls within Section 36(4)(a)(iv) is bereft of any merit because the said clause does not include properties leased to a person for enjoyment for period exceeding 6 years, and such right of such person remains part of

liquidation estate. In our considered view, such interpretation would exclude all the properties enjoyed by a corporate debtor under long term lease arrangement from liquidation estate, which is not a correct interpretation of the words “*contractual arrangements which do not stipulate transfer of title but only use of assets*”. Accordingly, these rights vested in corporate debtor do not fall within scope of section 36(4)(a)(iv).

16. The Applicant has emphasised that the said cancellation, having been done in liquidation proceedings, is barred by section 33(5) of IBC, which reads as under, as it was at the relevant time, :

“33. (5) — Subject to Section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the adjudicating authority.”

17. Indubitably, the Respondent has not instituted any suit against the Corporate Debtor, however, the Respondent has certainly instituted a fresh proceeding against the Corporate Debtor during the period of its Liquidation, accordingly, the question is whether the act of Respondent in cancelling the allotment of Mhape Plots falls within the scope of words “*other legal proceeding*”.

18. It is contended by the Applicant that the issuance of the Termination Notices on behalf of MIDC, inter alia constitutes a fresh legal proceeding being instituted against the Corporate Debtor, as such Termination Notices directly impact the right / interest of not just the Corporate Debtor but also the stakeholders / creditors of the Corporate Debtor, which is contrary to the scheme

of Section 33(5) as the objective behind the imposition of such a moratorium is to (i) preserve and maximize the value of the assets of the corporate debtor for the interest of the stakeholders, (ii) curtail parallel proceedings and reduce the possibility of conflicting outcomes during the liquidation process, and (iii) ensure that the liquidation process is carried out effectively.

19. Per contra, the Respondent has been silent on this aspect, and neither its reply nor written submissions deal with this aspect.

20. In the case of ***General Officer Commanding, Rashtriya Rifles v. Central Bureau of Investigation and another 2012 (6) SCC 228***, the Division Bench of Hon'ble Supreme Court had occasion to consider the scope of word "*other legal proceedings*" used in Armed Forces (Special Powers) Act, 1958 and Armed Forces (Jammu and Kashmir) Special Powers Act, 1990. It held as follows:

.....The phrase 'legal proceeding' connotes a term which means the proceedings in a court of justice to get a remedy which the law permits to the person aggrieved. It includes any formal steps or measures employed therein. It is not synonymous with the 'judicial proceedings'. Every judicial proceeding is a legal proceeding but not vice-versa, for the reason that there may be a 'legal proceeding' which may not be judicial at all, e.g. statutory remedies like assessment under [Income Tax Act](#), [Sales Tax Act](#), arbitration proceedings etc. So, the ambit of expression 'legal proceedings' is much wider than 'judicial proceedings'. The expression 'legal proceeding' is to be construed in its ordinary meaning but it is quite distinguishable from the departmental and administrative proceedings, e.g.

proceedings for registration of trade marks etc. The terms used in [Section 7](#) i.e. suit, prosecution and legal proceedings are not inter-changeable or convey the same meaning. The phrase 'legal proceedings' is to be understood in the context of the statutory provision applicable in a particular case, and considering the preceding words used therein. In [Assistant Collector of Central Excise, Guntur v. Ramdev Tobacco Company](#), AIR 1991 SC 506, this Court explained the meaning of the phrase "other legal proceedings" contained in [Section 40\(2\)](#) of the Central Excises and Salt Act, 1944, wherein these words have been used after suit and prosecution. The Court held that these words must be read as ejusdem generis with the preceding words i.e. suit and prosecution, as they constitute a genus. Therefore, issuance of a notice calling upon the dealer to show cause why duty should not be demanded under the Rules and why penalty should not be imposed for infraction of the statutory rules and enjoin of consequential adjudication proceedings by the appellate authority would not fall within the expression "other legal proceedings" as in the context of the said statute. 'Legal proceedings' do not include the administrative proceedings.

21. The Hon'ble Supreme Court in case of Rashtriya Rifles (Supra) also observed that in ***Maharashtra Tubes Ltd. v. State Industrial & Investment Corporation of Maharashtra Ltd. & Anr., (1993) 2 SCC 144***, this Court dealt with the expressions 'proceedings' and 'legal proceedings' and placed reliance upon the dictionary

meaning of expression ‘legal proceedings’ as found in Black Law Dictionary (Fourth Edition) which read as under:

“Any proceedings in court of justice ... by which property of debtor is seized and diverted from his general creditors This term includes all proceedings authorised or sanctioned by law, and brought or instituted in a court of justice or legal tribunal, for the acquiring of a right or the enforcement of a remedy.” The Court came to the conclusion that proceedings before statutory authorities under the provisions of the Act do not amount to legal proceedings.

‘Legal proceedings’ means proceedings regulated or prescribed by law in which a judicial decision may be given; it means proceedings in a court of justice by which a party pursues a remedy which a law provides, but does not include administrative and departmental proceedings. (See also: S. V. Kondaskar, Official Liquidator v. V.M. Deshpande, I.T.O. & Anr., AIR 1972 SC 878; Babulal v. M/s. Hajari Lal Kishori Lal & Ors., AIR 1982 SC 818; and Binod Mills Co. Ltd., Ujjain v. Shri. Suresh Chandra Mahaveer Prasad Mantri, Bombay, AIR 1987 SC 1739).

22. The above judicial proposition clearly lays down that the word “other legal proceedings” shall not include proceedings before statutory or administrative authorities, even if such proceedings arise from the powers vested therein pursuant to legal provisions.

23. In case of ***The Governor-General in Council v. Shiromani Sugar Mills Ltd. (In Liquidation) (1946) 48 BOM LR 483***, the Hon’ble Bombay High Court considered whether the forwarding the requisite certificate under [Section 46\(2\)](#) to the Collector by the revenue authorities under [Section 46](#) of the Income-tax Act before

require any prior leave of the Court under [Section 171](#) of the Indian Companies Act, 1913, , which also contained the words “no suit or other legal proceeding”, after commencement of winding up. The Hon’ble Court held that

“... In our judgment, it need not, and therefore should not, be confined to "original proceedings in a Court of first instance, analogous to a suit, initiated by means of a petition similar to a plaint." Section 171 must, in our judgment, be construed with reference to other sections of the Act and the general scheme of administration of the assets of a company in liquidation laid down by the Act. In particular, we would refer to Section 232. Section 232 appears to us to be supplementary to Section 171 by providing that any creditor (other than Government) who goes ahead, notwithstanding a winding up order or in ignorance of it, with any attachment, distress, execution or sale, without the previous leave of the Court, will find that such steps are void. The reference to 'distress' indicates that leave of the Court is required for more than the initiation; of original proceedings in the nature of a suit in an ordinary Court of law. Moreover, the scheme of the application of the company's property in the parri passu satisfaction of its liabilities, envisaged in Section 211 and other sections of the Act, cannot be made to work in co-ordination, unless all creditors (except such secured creditors as are " outside the winding up " in the sense indicated by Lord Wrenbury in his speech in Flood Controller v. Cork at page 671), are subjected as to their actions against the property of the company to the control of the Court. Accordingly, in our

judgment, no narrow construction should be placed upon the words "or other legal proceeding" in Section 171. In our judgment, the words can and should be held to cover distress and execution proceedings in the ordinary Courts. In our view, such proceedings are other legal proceedings against the company, as contrasted with ordinary suits against the company. (emphasis supplied)

24. The decision in *Shiromoni Sugar Mills Ltd.* (Supra) was observed in the case of ***S.V. Kandekar v. V.M. Deshpande and another (1972) 1 SCC 438*** and it is held that “.....The argument that the proceedings for assessment or reassessment of a company which is being wound up can only be started or continued with the leave of the liquidation court is also, on the scheme both of the [Act and of the Income-tax Act](#), unacceptable. We have not been shown any principle on which the liquidation court should be vested with the power to stop assessment proceedings for determining the amount of tax payable by the company which is being wound up. The liquidation court would have full power to scrutinise the claim of the revenue after income-tax has been determined and its payment demanded from the liquidator. It would be open to the liquidation court then to decide how far under the law, the amount of Income-tax determined by the department should be accepted as a lawful liability on the funds of the company in liquidation.

25. It is noted that the decision in case of *Shiromani Sugar Mills Ltd.* (Supra) dealt with challenge to issuance of recovery certificate during winding up proceedings, accordingly, it was held that those recovery proceedings shall result into attachment of assets by collector for execution thereof, hence, such proceedings would fall within the scope of “other legal proceedings” as such proceedings

have the effect of putting the assets of corporate debtor in distress. However, the power to assess liability under Income Tax law was held not to be falling within the scope of “other legal proceedings” on the ground that “*It would lead to anomalous consequences if the winding up court were to be held empowered to transfer the assessment proceedings to itself and assess the company to income-tax*”.

26. In the present case, the said allotment cancellation notice(s) deals with the assets of corporate debtor, in which it is vested right to use the same for a period of 95 years from the date of execution of lease agreement against the consideration which has already been paid to the Respondent upfront. The action of the Respondent directly deals with the assets of the Corporate Debtor having the effect of depletion thereof, which were otherwise available as on liquidation commencement date, and the proceeds therefrom were to be used for settlement of claims of the creditors. Accordingly, these cancellation notice(s) deplete the assets of the corporate debtor, which is held by the Liquidator as a fiduciary for the benefit of all the creditors in terms of Section 36(2) of IBC. Hence, we are of considered view that, the proceedings initiated by the Respondent by issuance of cancellation notice fall within the scope of “other legal proceedings”.

27. Nonetheless, it is also pertinent to note that Section 53A of the Transfer of Property Act, 1882 also protects the rights of a transferee where (i) the terms necessary to constitute the transfer can be ascertained with reasonable certainty from a contract to transfer for consideration any immovable property by writing, (ii) the transferee has, in part performance of the contract, has taken possession of the property, (iii) the transferee has performed or is

willing to perform his part of the contract, and (iv) the contract, though required to be registered, has not been registered.

28. In the present case, it is undisputed fact that the Respondent had allotted these plots to the corporate debtor for consideration, which has been paid, and the Corporate Debtor is in possession of said plots since 25.09.2020. As regards willingness of the corporate debtor to execute the lease agreement, it is noted that the Respondent, after follow up by the erstwhile resolution professional from February 2018 until February, 2019 requiring Respondent to handover the said plots and details of next steps to be followed in this relation, handed over the possession on 25.09.2020 and shared a copy of draft lease agreement on 19.10.2020 requiring the Corporate Debtor to execute the said agreement. It is also pertinent to note that the resolution plan in case of Corporate Debtor was approved by CoC on 17.10.2020, and thereafter by this Tribunal on 22.6.2021. Further, the Corporate Debtor came to be liquidated on 26.11.2024 after failure in implementation of the Resolution Plan. These dates of event demonstrate that failure of Corporate Debtor to execute the lease agreement, in these peculiar facts of the case, cannot be attributed to the unwillingness of Corporate Debtor. Even, otherwise these notices take away substantial rights of the Corporate Debtor, the principles of natural justice were required to be adhered to prior to cancellation of allotment of these plots.

29. Further, Clause 4(a) of the Allotment Letter does not contemplate for feature of lease premium paid by the allottee for such procedural/technical breach.

30. Further, it is to be noted that the notice cancelling the plot had provided post facto opportunity without their being any prior

communication after 19.10.2020 and prior to issuance of these notices by the Respondent. Also, the Respondent had not provide any evidence of usage of said plots by third party under the permission of Corporate Debtor, hence, such unauthorized usage, even if any, could not have been attributed to the Corporate Debtor.

31. In view of the aforesaid discussion, we are of considered view that allotment cancellation notices are in nature of 'other legal proceedings' having the effect of depletion in the assets of the Corporate Debtor as on liquidation commencement date, are barred by moratorium in term of Section 33(5) of IBC, hence, are liable to be set-aside.

32. In view of the aforesaid, the Termination Notices, issued by MIDC to the Corporate Debtor in respect of the of Plot No. EL236 and Plot No. OS-12/1, in TTC Industrial Area, MIDC, Mahape, Navi Mumbai are held to be nonest as being barred by Section 33(5) of the IBC. Consequently, MIDC shall promptly execute the agreement to lease with the Corporate Debtor in respect to the Plot No. EL-236 and Plot No. OS-12/1, in TTC Industrial Area, MIDC, Mahape, Navi Mumbai.

33. In terms of the above IA (IBC) 5460 of 2025 is allowed and disposed of.

Sd/-

Prabhat Kumar
Member (Technical)

Vipul Ghate

Sd/-

Sushil Mahadeorao Kochey
Member (Judicial)