



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I**

**I.A. NO. 4789 OF 2025 IN
C.P. (IB) NO. 1180 (MB) 2022**

Under section 7 of the Insolvency and
Bankruptcy Code, 2016 read with Rule
4 of the Insolvency and Bankruptcy
(Application to Adjudicating
Authority) Rules, 2016

In the matter of

**OMKARA ASSET
RECONSTRUCTION PRIVATE
LIMITED**

....Financial Creditor

VERSUS

**GIGEO CONSTRUCTION
COMPANY PRIVATE LIMITED**

....Corporate Debtor

AND

In the matter of

BSEL ALGO LIMITED

....Applicant

VERSUS

MR. PANKAJ BHATTAD



**RESOLUTION PROFESSIONAL
OF GIGEO CONSTRUCTION CO.
PVT. LTD.**

....Respondent

Order Pronounced on 07.01.2026

Coram:

Sh. Prabhat Kumar

Hon'ble Member (Technical)

Sh. Sushil Mahadeorao Kochey

Hon'ble Member (Judicial)

Appearances:

For the Applicant

: Adv. Rohit Gupta, Ms. Somya

For the Resolution Professional

: Adv. Saksham Ahuja, Adv. Mayukh Roy
and Adv. Shivam Mehra, Mr. Utsav
Mukherjee

ORDER

Brief facts of the case:

1. This Interlocutory Application being **I.A. No. 4789 of 2025** has been filed by **BSEL Algo Limited, formerly known as BSEL Infrastructure Private Limited** (hereinafter referred to as "*the Applicant*") in the Corporate Insolvency Resolution Process ('CIRP') of **Gigeo Construction Company Private Limited** (hereinafter referred to as "*the Corporate Debtor*") against **Mr. Pankaj Bhattad** (hereinafter referred to as "the resolution professional of the Corporate Debtor"), which was admitted by this Adjudicating Authority vide order dated **04.06.2024** in **C.P. (IB)-1180 (MB)/2022** on an application filed by **Omkara Asset Reconstruction Private Limited**, a Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("the Code").



2. Pursuant to the admission of the Corporate Debtor into CIRP, Mr. Ritesh R. Mahajan was initially appointed as the Interim Resolution Professional, and Mr. Pankaj Bhattad, the Respondent herein, as the Resolution Professional of the Corporate Debtor in the 1st Meeting of the Committee of Creditors held on 01.07.2024, and confirmed by this Tribunal vide order dated 02.08.2024. The applicant has sought the following reliefs:
 - a. *Quash and set aside impugned decision dated 21/05/2025 of Resolution Professional declining the Applicant's claim dated 24/01/2025.*
 - b. *Direct the Resolution Professional of Corporate Debtor to accept the Applicant's claim dated 24/01/2025 and act accordingly.*
 - c. *Pending the hearing and final disposal of the above Interlocutory Application, effect, operation and execution of the impugned decision dated 21/05/2025 be stayed.*
 - d. *Pending the hearing and final disposal of the above Interlocutory Application further proceeding in CIRP may kindly be kept in abeyance and or made subject to the outcome of present Interlocutory Application.*
 - e. *For ad interim and interim relief in terms of prayers (c) to (d) above.*
 - f. *For costs.*
3. BSEL Algo Limited (formerly known as BSEL Infrastructure Realty [L99999MH1995PLC094498], a company incorporated under the Companies Act, 1956) having Registered Office at 737, 7th Floor, The Bombay Oil Seeds & Oils Exchange Premises Co-operative Society Limited, the Commodity Exchange, Plot Nos.2, 3 & 4, Sector 19, Vashi, Navi Mumbai-400 705. The Applicant is a Secured Creditor of Corporate Debtor under a registered mortgage deed dated 25.04.2014.



4. The Applicant had filed a claim for Rs. 22,94,33,060/-, consisting of principal amount of Rs. 11,65,00,000/- and interest thereon up to 24.06.2024 amounting to Rs. 11,29,33,060/-, in claim Form C dated 24.01.2025. The claim of the applicant was rejected by the Respondent Resolution Professional vide email dated 21.05.2025 on ground of limitation in terms of Article 137 of the Limitation Act stating that the period of limitation cannot be extended beyond 06.06.2018 by way of the said balance confirmation dated 06.06.2015.
5. Brief facts leading to the claim of the applicant are as follows :
 - a. The Corporate Debtor had undertaken redevelopment of land bearing CTS Nos.3110 and 3111 (part), 3112, Khasra No.317, village: Sitabuldi, Taluka and District: Nagpur admeasuring about 2587.25 sq. mts. owned by Mr. Sudhir Jaiwant son of Ganpatrao Buty ("the owner"). The owner had granted development rights to Gigeo Construction Company Private Limited ("Corporate Debtor") to redevelop the above property pursuant to development agreement dated 23rd November 1998 (modified by Supplementary Agreement dated 17th December 2004).
 - b. The Applicant had agreed to advance financial assistance to the Corporate Debtor pursuant to a Tripartite Agreement dated 23.06.2006, entered into between (i) the Corporate Debtor as Developer, (ii) the owners of the land situated at Sitabuldi, Nagpur, and (iii) the Applicant. The applicant had paid Rs. 5,00,00,000/- on signing of said agreement, and further sums of Rs. 13,00,00,000/- were required to be paid on construction milestones and the remaining Rs. 2,00,00,000/- was to be paid on completion of the Applicant's Area and execution of title documents in its or its nominee's favor. Clause 13 of the said agreement contemplates allocation of constructed 28,000 sq.ft saleable area (i.e. sq.ft carpet area) each on ground floor & first floor (i.e. 2/3rd Area each of Ground Floor & First

Floor) and 35 car parking spaces in the Lower basement in the said project to the Applicant. The amounts were paid by the Applicant from time to time on achievement of milestones against specific unit no. as evidenced by the receipts issued by the Corporate Debtor against payments received from the applicant.

- c. The Tripartite agreement requires the Corporate Debtor to carry out entire development work. Clause 14 of said agreement further provides that *“the Corporate Debtor has the right to buy back the BSEL Area within nine months (Time being the essence) from the date hereof, by making full payment to BSEL at the average rate of Rs.8,000/- (Rupees Eight Thousand only) per square feet for total 28000 sq.ft. saleable area on the ground floor and the average rate of Rs.6,375/- (Rupees Six Thousand Three Hundred & Seventy-Five only) per square feet for total 28000 sft. Saleable area on the first floor. If the Developer fails to buy back and/or make full payment as per the rates mentioned herein, within nine months from the date hereof, BSEL will be free to sell or assign the said BSEL Area to any third party.”*
- d. Clause 9 of the said agreement provides that *“The Owners & the Developer shall, simultaneously with the execution of this Agreement, execute Irrevocable General Power of Attorney and mortgage deed in favor of BSEL or nominee/s of BSEL in respect of the said property...”* Pursuant thereto, a NoC was issued by the owners and deed of mortgage was executed on 23.06.2006 for Rs. 14,50,00,000/- in respect of 55% of total undivided, Ownership rights in the property together with the building to be constructed using the FSI of CTS 3111 (Part), 3112 and Khasra 317, and on 28.06.2006 for Rs. 5,50,00,000/- in respect of 55% of total undivided, Ownership rights in the property together with the building to be constructed using the FSI of CTS 3110, 3111 (Part) and Khasra 317. The said mortgage deed(s) were executed by the owner of the plot of land and Corporate Debtor as

confirming party as developer granting, conveying, assigning, assuring and transferring unto the Applicant the rights as aforesaid. In terms of clause 3 of these deed(s), the owner of land as well Corporate Debtor covenanted to comply with the terms and conditions of the Agreement and to pay the amounts due and payable in accordance with terms of the Agreement dated 23.6.2006. Both these mortgage deed(s) were released vide Deed Of Release dated 25.04.2014 executed in relation to each of mortgage deed, pursuant to the settlement arrived at amongst the parties here to with respect to the outstanding dues and creating fresh mortgage on shops thereon.

- e. Accordingly, the Corporate Debtor executed fresh mortgage deed dated 25.04.2014 in favour of applicant to secure the outstanding of Rs. 18,60,00,000/- whereby 51 shops in Fortune Mall, Sitabuldi. Clause 2 of said deed provides that the mortgagor (Corporate Debtor) *shall repay, release or pay the Secured Debt within one year from the date of execution and registration of this Deed*. Further, the applicant was handed over the possession of these shops as well as provided in clause 7.2.2, however, the Corporate Debtor remained the owner thereof as provided in clause 7.2.1.
- f. The Corporate Debtor repaid aggregate sum of Rs. 6,95,00,000/- from 14.6.2014 till 5.11.2018. On occurrence of default, the applicant had right to enforce its security interest, however, no such action was taken till the commencement of CIRP.
- g. The last financial statements drawn by the Corporate Debtor pertains to the year 2017-18.

- 6. Heard the learned counsel and perused the material on record.
- 7. The Applicant has sought quashing of decision dated 21.05.2025 whereby the Resolution Professional rejected the Applicant's claim on ground of limitation stating that the acknowledgment of the Corporate Debtor by way of its letter dated 06.06.2015 extends the period of limitation till



06.06.2018, and the payments made by the Corporate Debtor on 05.11.2018 lies beyond the period of limitation, hence it is of no relevance to the present claim. Per contra, the Applicant has claimed that the period of limitation is 12 years in case of mortgage debt in terms of Article 62 of the Limitation Act, hence its claim is well within the period of limitation.

8. Indubitably, there is no acknowledgement of debt by the Corporate Debtor, except in terms of letter dated 06.06.2015, and the Corporate Debtor has not drawn its financial statements after the year 2017-18. It is noted that a sum of Rs. 11,78,00,000/- is shown payable to the applicant as on 31.3.2018 and an aggregate amount of Rs. 67,00,000/- was paid by the Corporate Debtor to the applicant during financial year 2017-18. This amount matches with the amount stated as repayment of unsecured borrowings in the audited cash flow statement for the year ended on 31.3.2018 placed on record by the Resolution Professional. Accordingly, it can be concluded that the amount owed to the Applicant is acknowledged as unsecured loan in the books of the corporate debtor as on 31.3.2018 and is reflecting under the total amount of unsecured loans due to other parties as stated in Note 4 of said financial statements. Further, the applicant has claimed that it received further sums of Rs. 10,00,000/- and Rs. 3,00,000/- on 18.4.2018 and 5.11.2018. We do not find any merit in the contention of the Resolution Professional that *the ledger of the Corporate Debtor does not reflect the reason behind such payment and whether the same was for repayment of the assistance so rendered*, as the payments made by the Corporate Debtor were debited to the loan account of the applicant and stood appropriated therefrom. Further, the repayment of said amount as loan is corroborated from the cash flow as well. Accordingly, we are of considered view that the limitation shall run from 6.11.2018 in relation to the debt claimed to be owed from the Corporate Debtor in the present case.

9. The Applicant has submitted that limitation period is 12 years in terms of Article 62 of Limitation Act, which provides limitation period “*To enforce*



payment of money secured by a mortgage or otherwise charged immovable property” as 12 years when the money sued for becomes due. Article 62 is placed under Part V. Suits Relating To Immovable Property. It is noted further that Article 19 under Part II Suits Relating To Contracts provides limitation period as 3 years when the loan is made *For money payable for money lent*. Indubitably, the Applicant has the right to enforce mortgage within 12 years, however, the filing of claims by the creditors in CIRP is not an act enforcing mortgage, but to claim the amounts due from the corporate debtor under CIRP for the money payable which were lent earlier. This is further reinforced from the specific bar under Section 14 of the IBC restricting the enforcement of security enforcement on proclamation of moratorium. Accordingly, we are of considered view that the limitation period under Article 62 is not applicable to the claims filed in CIRP of a Corporate Debtor even if such claim is secured by mortgage, as filing of the claims is not in nature of the enforcement of mortgage.

10. It is also pertinent to note the decision of Hon’ble NCLAT in case of ***Ome Prakash Verma vs. Amit Jain & Ors Company Appeal (AT) (Insolvency) No. 827 of 2020***, wherein it was held that “17. *When an Application under Section 7 cannot be entertained for a debt, which is barred by time and is liable to be rejected, any addition in the claim which may fall into the category of time barred debt, also cannot be entertained.....*” Though the said decision has not considered the effect of Article 19, but the views expressed by Hon’ble NCLAT fortifies the interpretation that period of limitation prescribed under Article 62 of the Limitation Act is not applicable to the filing of claims in CIRP by mortgagee and such mortgagee is liable to file its claim within 3 years in terms of Article 19 of Limitation Act.
11. Accordingly, the limitation period shall expire on 5.11.2021. The Hon’ble Supreme Court, in ***Suo Motu Writ Petition (Civil) No. 3 of 2020, read with M/s Arif Azim Co. Ltd. v. M/s Aptech Ltd., (2004) 3 SCR 73 : 2004***



INSC 155, has categorically held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for the purpose of computation of limitation, in view of the disruption caused by the COVID-19 pandemic. Further, it was clarified that the balance limitation available as on 15.03.2020 would recommence from 01.03.2022, thereby extending the limitation period accordingly. Hence, the period from 15.3.2020 to 5.11.2021 shall be available from 1.3.2022, accordingly, limitation in the present case would expire on 22.10.2023. The claim in the present case has been filed on 24.1.2025 is well beyond the prescribed limitation period, hence we do not find any infirmity in the decision of the Resolution Professional in rejecting the claim of the applicant. It is clarified that this not prejudice the right of the applicant to enforce its mortgage, as and when permissible, as such right shall be enforceable in terms of Article 62 of the Limitation Act.

12. Though the other contention as regards interest, security interest and nature of debt becomes redundant in view of the applicant's claim found beyond the limitation period. Nonetheless, it would be appropriate for us to deal with these contentions as well.
13. The Applicant has sought directions for admission of its claim as secured financial debt. The claim of the applicant as secured debt is supported by the registered mortgage deed, even though the same is disclosed as unsecured debt by the corporate debtor as well as by the applicant in their audited financial statements. Simply because, the same has been disclosed as unsecured by applicant as well as corporate debtor, a registered mortgage deed cannot be given go by unless said registered deed is set aside by a competent court. The incorrect disclosure of the transaction in the financial statements cannot take away the substantive rights of the parties vested in them in terms of legally enforceable registered documents.



14. The applicant has also claimed interest on the debt due as per books of corporate debtor, however, neither the applicant has referred any clause in the Tripartite Agreement or the Mortgage Deed stipulating payment of interest, nor could we find any clause obligating the corporate debtor to pay the interest. Hence, we do not find any merit in claim of the interest on the principal amounts due, which are held to be barred on ground of limitation.
15. In terms of the above, **IA 4789 of 2025 in C.P. (IB) NO. 1180 (MB) 2022** is **dismissed** and **disposed of** accordingly.

Sd/-

Prabhat Kumar

Member (Technical)

/VB/

Sd/-

Sushil Mahadeorao Kochey

Member (Judicial)