

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
[UNDER SECTION 62 OF THE INSOLVENCY AND
BANKRUPTCY CODE, 2016]
CIVIL APPEAL NO. OF 2025

(Arising out of the Impugned Judgment and order dated 12.12.2024 passed by the Hon'ble National Company Law Appellate Tribunal, New Delhi in Interlocutory Application No.6557 of 2024 in Comp. App. (AT) (Ins.) No.406 of 2022)

IN THE MATTER OF:-

NBCC (I) Ltd. ...Appellant

Versus

Ram Kishor Arora

Suspended Director of Supertech Ltd.& Ors. ...Respondents

IA No. /2025 : Application on behalf of the appellant
seeking exemption from filing certified copy of
Impugned order

PAPER – BOOK

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ADVOCATE FOR THE APPELLANT : MANISHA AMBWANI

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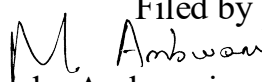
PROFORMA FOR FIRST LISTING**SECTION:****The case pertains to (Please tick/check the correct box):**

- Central Act: (Title)
- Section:
- Central Rule: (Title) **N.A.**
- Rule No(s): **N.A.**
- State Act: (Title) **N/A**
- Section: **N.A.**
- State Rule: (Title) **N.A.**
- Rule No(s): **N.A.**
- Impugned Interim Order: (Date) **N/A**
- Impugned Final Order/Decree: (12.12.2024)
- High Court: (Name) : **NA**
- Names of Judges: Mr. Justice Ashok Bhushan & Mr.
Barun Mitra, Member (Technical)
- Tribunal/Authority: National Company Law Appellate Tribunal, New Delhi

1. Nature of matter: Yes **Civil**
2. (a) Petitioner/Appellant No.1: **NBCC (I) Ltd.**
 (b) e-mail ID: **N/A**
 (c) Mobile phone number: **N/A**
3. (a) Respondent No.1: **Ram Kishor Arora, Suspended Director of Supertech Ltd.**
 (b) e-mail ID: **N/A**
 (c) Mobile phone number: **N/A**

4. (a) Main Category classification: 1010
(b) Sub-classification : 10
5. Not to be listed before : N/A
6. (a) Similar disposed of matter
with citation if any /Pending matter: **No similar disposed of matter**
(b) similar pending matter with details: **No similar matter pending**
7. **Criminal Matters: NA**
(a) Whether accused/convict has surrendered: [] Yes [] No
(b) FIR No.
(c) Police Station:
(d) Sentence Awarded: -
(e) Sentence Undergone: -
8. **Land Acquisition Matters:**
(a) Date of Section 4 notification: N/A
(b) Date of Section 6 notification: N/A
(c) Date of Section 17 notification: N/A
9. **Tax Matters:** State the tax effect: N/A
10. Special Category (first petitioner/appellant only):
[x] Senior citizen > 65 years [x] SC/ST [x] Woman/child [x] Disabled [x] Legal Aid case [x] In custody
11. Vehicle Number (in case of Motor Accident Claim matters): N/A

Date: _02.02.2025

Filed by


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B

SYNOPSIS & LIST OF DATES

The present appeal has been filed under Section 62 of the Insolvency and Bankruptcy Code, 2016 [in short referred to as “said Act”] by the Appellant, impugning the order dated 12.12.2024 (hereinafter referred to as the “impugned order”) passed by the Hon’ble National Company Law Appellate Tribunal, New Delhi, in Interlocutory Application No.6557 of 2024 in Comp. App. (AT) (Ins.) o.406 of 2022 2024, whereby the Hon’ble NCLAT allowed Interlocutory Application No.6557 of 2024 (hereinafter referred to as “IA filed by the Appellant”), whereby the Appellant filed its broad Terms of Reference (hereinafter referred to as “TOR”), as modified by revised proposal dated 11.11.2024 (both based on Amrapali tried & tested pattern being undertaken by the Appellant under the supervision of this Hon’ble Court) as well as Written Submissions in the matter on 02.12.2024, for the approval of the Hon’ble NCLAT, so as to enable it to undertake the pending projects of M/s Supertech Ltd., so as to construct & deliver the dream homes of approximately 50,000 home-buyers, on similar successful pattern as the works being undertaken by the Appellant in erst-while Amrapali group situated in Noida & G. Noida. Further, the Interim Resolution professional (hereinafter referred to as ‘IRP of Supertech’) also placed certain suggestions before the Hon’ble NCLAT for its approval under various heads.

It is pertinent to submit here that, while allowing the IA preferred by the Appellant, the Hon’ble NCLAT although allowed the Appellant to undertake 16 stalled projects of M/s Supertech Ltd. by approving the ToR as modified by revised proposal dated 11.11.2024 however, the Hon’ble NCLAT subjected the ToR & revised proposal, to certain directions & modifications, as contained in the impugned order. In this

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regard, it is of pertinence to state here that the Amrapali model undertaken by the Appellant under the supervision of this Hon'ble Court, is one of the rare project/case, wherein the dream of approximately 37,000 distressed home-buyers to receive their homes has been achieved by the Appellant to a near completion. That the Hon'ble NCLAT failed to appreciate that the ToR and revised proposal submitted by the Appellant, was based on the Amrapali pattern and previous experiences faced by the Appellant in its implementation, and being a successful workable model, any departure and/or change thereto, may not achieve the projected completion & quick results. The Hon'ble NCLAT ought to have approved the ToR and revised proposal submitted by the Appellant without any modifications or alterations, for maximal & quicker output towards the successful completion of the 16 projects.

That vide the impugned order, the Hon'ble NCLAT modified and issued certain directions in departure to the ToR and modified proposal submitted by the Appellant, which needs to be set-aside and necessary orders are required to be passed, so as to enable the Appellant to work in line with the Amrapali pattern and its ToR. The modifications by the Hon'ble NCLAT, in departure from the Amrapali patterns, are as under:-

A. The Hon'ble NCLAT answered Issue No. IV *{Whether NBCC's proposal to grant waiver from compliance of statutory provisions like building regulations and the Uttar Pradesh Real Estate Regulatory Authority 2016 as proposed in 'Terms of Reference' be waived?}*, against the Appellant, only for the reason that there was a specific prayer made before the Hon'ble NCLAT that for seeking exemption from various statutory provisions and their applicability upon the Appellant, including that of provisions under the RERA Act, 2006, an

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appropriate application would be filed by the Appellant before this Hon'ble Court, so as to facilitate orders that are required to be passed under Article 142 of the Constitution of India to implement and execute the orders passed by the Hon'ble NCLAT, looking into the limited scope/jurisdiction of Hon'ble NCLAT in passing certain orders/directions. The same was duly noted by the Hon'ble NCLAT in Para 71 of the impugned order. Further, the said factum, of needing to pass orders under Article 142 of the Constitution of India to implement and execute the orders passed by the Hon'ble NCLAT, was also noted by this Hon'ble Court vide order dated 01.10.2024 passed in Civil Appeal No. 1925/2023 titled *Indiabulls Asset Reconstruction Company Limited Vs. Ram Kishor Arora &Ors.* It would not be out of place to mention here that this Hon'ble Court, in the case of *Civil Appeal No(s).10856/2016* titled '*Bhupinder Singh Vs. Unitech Ltd. &Ors.*', vide its order dated 16.01.2025, in the interest of justice was pleased to grant, in all the ongoing projects of Unitech, exemption from the provisions of the provisions of the RERA Act, 2006, till further orders.

- B. The Hon'ble NCLAT directed constitution of one Apex Committee and separate & distinct committee for each of the 16 projects, as noted in paragraph 78 of the impugned order. However the operative directions at paragraph 85 has created ambiguity as Sl no. 8 empowers the Apex Committee to take decision for transferring surplus amount from one project to other project after obtaining necessary details from concerned Project-wise Court Committee while at Sl no. 9 it has been directed that Project wise account can only be debited with the approval of Project-wise Court Committee /Apex Court Committee. In this regard, it is submitted that it is essential that the Apex Court Committee have veto powers over any Project-wise Court Committee as constitution of separate project committees with one nominee each of

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Financial Creditor, Home-Buyers, Land Authority, Expert from Real Estate industry, IRP and NBCC rather than 1 single Committee (as recommended by the Appellant) may create undue delay in decision making for the purposes of effective & quick completion of the projects. That since the project wise committee has nominees of that project itself, the priority for funds allocation and its distribution, construction priority & planning, etc. may be hampered with and there can be substantial delay in reaching at a quick final conclusion/decision. It would not be out of place to repeat here that one of the major hindrances faced by NBCC in Amrapali projects was delay in payment to contractors against their bills, due to irregular fund flow. Hence, any delay/denial by the project committee, may take substantial time and any such delay would ultimately result in delay of completion of projects within the stipulated time-lines as well as may result into other bottle-necks/problems. Further, the Hon'ble NCLAT, although did not grant NBCC exemption from the provisions of RERA Act, 2006 yet it empowered the Apex Committee to take decisions for transferring surplus amount from one project to other project, after obtaining necessary details from concerned project-wise Court Committee.

- C. The proposal of NBCC for the distribution of surplus as contained in paragraph 9 (x) of the Supplementary Application as well as suggestions for distribution of funds strictly from amounts receivable from already sold inventories (approx. 40k units), as and when received on quarterly basis as specifically contained in Para 3 (F) of its written submissions has not been approved. The Hon'ble NCLAT directed repayment of land authorities, banks and financial institutions simultaneously as per the date & manner decided by the Apex Committee, without considering that the primary issue in delivering homes to homebuyers and completion of projects is the acute shortage

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of funds and that even in the Amrapali matter, no directions were issued to pay dues of the Authorities immediately.

- D. The Hon'ble NCLAT has not considered Appellants submissions in TOR pertaining to the fact that in case of already expired requisite NOC's/Approval/any other document, the same shall be deemed to be renewed for the time taken to complete the projects by Appellant and further that the concerned planning and approving Government authorities to render necessary assistance to the Court Committee/Appellant/the relevant contractors and consultants for obtaining the applicable permits/NOCs/Approvals etc within 30 days of any such application and or request for the successful completion of the projects.
- E. The Hon'ble NCLAT has not considered Appellants submissions in its TOR pertaining to the funds which are required for the completion of the project. That the Appellant vide its TOR in clause 1.3 (q) has clearly stated that *"NBCC shall not contribute funds, sponsor or otherwise make any investment for the completion of the Project(s)"*. Further, with regard to Rs. 100 Crores initial funds infusion, the Hon'ble NCLAT misinterpreted the terms submitted by the Appellant and vide direction at Sl. No. 11 of the impugned judgment, directed the Appellant to obtain necessary finance of Rs.100 crores which has to be deposited in the designated account to be spent as per decision of Apex Court Committee for carrying out the Project. In this regard, the Appellant vide its TOR in clause 1.3 (ii) (a) has stated that *"Basis the preliminary study, NBCC shall carry out a detailed due diligence. An advance of Rs. 100.00 crore will be deposited into the designated account for this purpose by the Court Committee/IRP. This amount shall be kept as a deposit by NBCC and shall be adjusted in final expenditure/Utilization certificate after completion of projects"*. That

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the Appellant, as PMC, proposed to only facilitate the Court appointed Committee for the generation of initial Rs. 100 Crores and has at no point of time, conveyed that it would generate the initial fund of Rs. 100 crores. The said interpretation is against the TOR submitted by the Appellant.

- F. The Hon'ble NCLAT included the proposed marketing fee of 1% in the 8% PMC Fee of the Appellant for undertaking the stalled projects and no separate marketing fee has been permitted, without appreciating that the PMC services and Marketing services are two distinct works to be undertaken by the Appellant which would have to be calculated on the actual cost of work (for PMC) and sale value of the project (for marketing fee) respectively. Further that the Hon'ble NCLAT failed to appreciate that the PMC and Marketing Fee mentioned in the Appellants TOR was based on the Amrapali model which was earlier allowed by this Hon'ble Court vide order(s) dated 23.07.2019, 29.10.2020 & 02.11.2020 in WP (Civil) 940 of 2017 titled *Bikram Chatterjee Vs UOI & Ors.*
- G. The Hon'ble NCLAT also allowed the suggestions placed on record by the IRP however, in the operative part of the order, the Hon'ble NCLAT failed to clearly specify the directions issued by it, thereby leaving the interpretation of its definite directions open ended. The Hon'ble NCLAT while addressing the issue of expired NOC's/approvals /any other documents required for completion and successful handing over of the project as stipulated in Clause 1.4 (e) of NBCC's ToR, has not considered the same and instead directed in para 83 that NBCC is to apply for requisite permits/approvals from statutory bodies in the name of Supertech Ltd for expired approvals and the authorities to renew the same within 30 days failing which such approvals would be deemed to be approved for already launched phases

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of the project. However, in para 85 of the impugned judgment, the Hon'ble NCLAT has directed that statutory authorities to consider and communicate their decisions within 30 days of making requisite applications by IRP, which may also include rejection of applications thereby delaying the construction of projects.

Background:

1. That the Appellant is a publicsectorNavaratna Engineering and Construction Company with rich and varied experience. Thatvide the hearing conducted before the Hon'ble NCLAT on 08.07.2024 in Comp. App. (AT) (Ins.) No. 406 of 2022 titled '*Ram Kishor Arora, Suspended Director of Supertech Ltd. Vs. Union Bank of India &Anr.*', it was submitted before the Hon'ble NCLAT that the Appellant is interested in undertaking the pending projects of M/s Supertech Ltd. (hereinafter referred to as 'Supertech'), subject to due diligence. It was further recorded by the Hon'ble NCLAT that the lenders of the Supertech are also not averse to the said proposal and accordingly, directed the Appellant to make an appropriate request to the IRP regarding the same.

2. It was also submitted before the Hon'ble NCLAT that,the Appellant was earlier appointed as Project Management Consultant ("PMC") by this Hon'ble Court in WP (Civil) No. 940 of 2017 titled '*Bikram Chatterji&Ors Vs. UOI &Ors*', to complete the balance/left-out works of Amrapali Projects in Noida & Greater Noida and further to sell the unsold inventories of the aforesaid projects as well as their attached properties and unused FAR, under the supervision of the Ld. Court

Receiver appointed by this Hon'ble Court, for the successful & timely completion of those projects.

3. That vide order dated 09.08.2024, the Hon'ble NCLAT was pleased to observe that "*Wethus are of the view that NBCC has to complete its due diligence with the data which has been shared by the IRP and has to submit its detailed project report and projects it proposes to construct and other terms and conditions which reports should be filed on or before 06.09.2024*".

4. That in the interregnum, since the appellant's proposal / terms of reference, for the feasible Supertech projects, would be based on similar terms as was submitted before this Hon'ble Court in the *Amrapali projects* i.e., in the case of *W.P. (C) No. 940/2017 titled Bikram Chatterji vs. Union of India &Ors.*, the Appellant preferred an Intervention application bearing I.A. No. 199233/2024 before this Hon'ble Court in Civil Appeal No. 5941/2022 (which was filed by Union bank of India challenging the order dated 10.06.2022 passed by the Hon'ble NCLAT in Comp. App. (AT) (Ins.) No. 406 of 2022 titled '*Ram Kishor Arora, Suspended Director of Supertech Ltd. Vs. Union Bank of India &Anr.*', modifying its earlier interim order dated 12.04.2022). That vide order dated 01.10.2024, this Hon'ble Court issued notice on the IA filed by the appellant, with certain observations.

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5. That pursuant to the orders dated 08.07.2024, 15.07.2024 and 09.08.2024 passed by the Hon'ble NCLAT, the Appellant carried out the due diligence of the projects related to Supertech, based on the data provided by the IRP, and found certain projects feasible which can be undertaken by it, in a similar successful pattern as the Amrapali model, being undertaken by the Appellant under the supervision of this Hon'ble Court. It was placed on record that, taking heart from its previous experiences, the Appellant has prepared a broad ToR, for acting as an Project Management Consultant to deliver the dream homes of approximately 50,000 home-buyers, for the perusal & approval of the Hon'ble NCLAT and filed the same by way of IA No.6557 of 2024 on 06.09.2024, and sought directions & necessary orders from the Hon'ble NCLAT to allow the Appellant to undertake the pending projects of Supertech, in terms of ToR filed by it. That further, in compliance to the directions passed by the Hon'ble NCLAT vide order dated 21.10.2024, the Appellant also filed a further application which included composite project wise proposal with regard to all the Supertech projects, with timelines and all other relevant aspects of the matter along with its IA No.6557 of 2024 and its comments to various objections raised by several stake-holders including but not limited to Lenders, Land Authorities, Home-buyers,

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etc (“Supplementary Application”) and further filed its Written Submissions in the matter on 02.12.2024 (“Written Submissions”).

6. That vide its ToR and Supplementary Application, which is based on the Amrapali successful tried & tested pattern, the Appellant sought various directions from the Hon’ble NCLAT, some of the relevant terms are reproduced hereunder for the ready reference of this Hon’ble Court:

- A. The Appellant showed its interest to undertake 17 projects of the Supertech, basis the information provided by IRP. That out of the 17 projects, one project i.e., DoonSquare, has been separated, as per the settlement arrived between the parties. Thus, there are 16 projects which are now left and proposed to be completed by NBCC.
- B. NBCC, as in the case of Amrapali pattern, will, either by itself or through its wholly owned subsidiary, act as a ‘Project Management Consultant (PMC)’ for completion of balance works.
- C. The construction of all 16 projects may be taken up in phases or simultaneously, subject however to availability/arrangement of funds. Tentative time period for completion of various projects shall vary from 12 to 36 months from “Day Zero”.
- D. Obtaining requisite statutory approvals is imperative for the timely completion of the Projects. Clause 1.4 (D)(III) of TOR specifically seeks exemption from various provisions of RERA Act, 2006 (including Section 4 (2) (l) (D) of RERA Act, 2006 in relation to maintenance of a separate account in a Scheduled Bank and deposit of 70% (Seventy percent) of the amounts realised from the allottees with respect to the relevant Project into the separate account, Section

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14 (2) relating to the approvals required from the allottee/ allottees, etc, and Section 15 relating to the requirement of prior consent of allottees for transfer or assignment of majority rights and liabilities of a promoter) and in addition, clause 1.4 (H)(IV) & CLAUSE 1.7 (D) of TOR are also relevant in order to ensure smooth completion of projects. It was placed on record before the NCLAT to showcase as to why these exemptions are required. That just as one of an example, it was pointed out that, at the initial stage of construction of project by Supertech, there were different applicable rules and regulations/specifications in construction norms to be followed and currently there are different rules and regulations / specifications to be followed. Hence for the already constructed part of the construction, if the current regulations differ from earlier regulations, then it should not be an impediment to not grant/renew earlier permissions. Hence, in view of the same, certain exemptions were sought by NBCC from the Hon'ble NCLAT, for undertaking the stalled projects of Supertech.

- E. That with the objective of bringing accountability and transparency in relation to completion of the Projects and utilization of funds by NBCC in relation thereto, in the same way as was there in Amrapali case and to protect & safeguard the interests of the stake holders of the Projects, the Appellant sought orders from the Hon'ble NCLAT to consider appointment of an Committee, constituting of representatives from NBCC, 1-2 members from Financial Institutions, an expert from the construction industry (retired Senior Officer, CPWD) and IRP, to take all the decisions for smooth operation of the projects, collection of receivables from allottees, sale of unsold inventories, payment of lenders and statutory authorities and all actions to complete the projects. It was further

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placed on record that the Authorities and homebuyers are not part of the committee in Amrapali projects as well. Further, the progress of work will regularly be updated on web-site on monthly basis, which shall be accessible to all stakeholders and as the primary objective of the home buyers is receipt of their dream homes, as such homebuyers representative on the committee may not serve much purpose.

- F. NBCC through the Court Committee to obtain all requisite statutory approvals including building plans, permits, consents, registrations as may be necessary for execution of work and completion of the Projects. In case of expiry of any requisite NOC's/Approval/any other document, the same shall be deemed to be renewed for the time taken to complete the projects by NBCC. Further the concerned planning and approving Government authorities to render necessary assistance to the Court Committee/Appellant/the relevant contractors and consultants for obtaining the applicable permits/NOCs/Approvals etc within 30 days of any such application and or request for the successful completion of the projects.
- G. Further, the Appellant proposed to form a Special Purpose Vehicle (SPV) U/s 8 of the Companies Act, 2013 or any other suitable entity as per provisions of law, to be managed and maintained by the Court Committee and the funds infused would come into the dedicated bank account of the SPV company (such as ASPIRE in Amrapali matter) and as per requirements and request of NBCC, the amounts could be released by the Court Committee.
- H. For completion of the projects, as in the case of Amrapali case, NBCC shall be paid a fee calculated at the rate of 8% (Eight percent) on the "Actual Cost of Work" ("PMC Fee") for rendering the project management consultancy services. The PMC Fee shall form part of

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the Project cost and shall be exclusive of any goods and service tax, surcharges, cess, levy, duty or any other taxes.

- I. NBCC, as in the case of Amrapali case, shall be paid a fee at the rate of 1% on the sale value of the project. The Marketing Fee shall form part of the Project cost and shall be exclusive of any goods and service tax, surcharges, cess, levy, duty or any other taxes. However, the fee of channel partner engaged by the NBCC, if required, shall be paid separately which will be in addition to 1% of the Marketing fee of NBCC.
- J. The Appellant submitted before the Hon'ble NCLAT that it is not feasible to pay to the authorities/lenders simultaneously from the initial stage, due to below challenges:
 - i.) Initial infusion of construction funding (from new lenders) also has repayment obligations to them as well as payment to newly appointed contractors and hence payment to authorities/existing lenders from the get go, would not be feasible.
 - ii.) Only Rs 1890.33 crores is receivable from sold inventory and unsold inventory receivable comes around Rs 14197.22 crores as per data provided by IRP. The receivables from unsold inventory will only come in phases after start of construction.
 - iii.) Risk to reputation - Failure to meet completion targets/deadlines could damage the credibility of NBCC and the Hon'ble NCLAT.

It is pertinent to state here that through its ToR, the Appellant stated that as per Projected Cash Flows to be submitted by NBCC to the court committee, any surplus amount remaining after the completion of construction for all the projects, may be made available for the repayment of dues to various authorities, financial institutions and other relevant agencies. This surplus fund, once the construction phase is concluded and all project-related expenses have been met,

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may be utilized to settle outstanding financial obligations. However, during the course of hearing before the Hon'ble NCLAT, the Appellant proposed that 25-30% of amount receivable from already sold inventories (approx. 40000 units), can be paid as and when received on quarterly basis or in the manner as decided by the Hon'ble NCLAT/Court Committee. It was brought on record that as per orders passed by this Hon'ble Court order in Amrapali matter, no directions were issued to pay dues of the Authorities immediately. This was specifically brought out in its Written Submissions filed in the matter on 02.12.2024 ("Written Submissions") and was suggested keeping in view the long pending dream of home-buyers receiving their homes and also to keep up with the time-lines suggested by the Appellant.

7. That further, the IRP of Supertech also placed on record 'process note' for the consideration and approval of the Hon'ble NCLAT. That although the IRP of Supertech was *ad idem* with most of the terms contained in the Appellant's ToR and revised proposal, he expressed his divergent views on certain aspects of the ToR including but not limited to exemption from the applicability of provisions of RERA Act, 2006, formation of Single Committee to take decisions for the speedy completion of project, etc.

8. That vide the impugned order, while allowing the IA preferred by the Appellant, the Hon'ble NCLAT although allowed the Appellant to undertake 16 stalled projects of M/s Supertech Ltd. by approving the

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ToR as modified by revised proposal dated 11.11.2024 however, the Hon'ble NCLAT subjected the ToR& revised proposal, which was based on the Amrapali pattern and previous experiences faced by the Appellant in its implementation, and being a successful workable model, any departure and/or change thereto, may not achieve the projected completion & quick results. The Hon'ble NCLAT ought to have approved the ToR and revised proposal submitted by the Appellant without any modifications or alterations, for maximal & quicker output towards the successful completion of the 16 projects.

9. Further, the Hon'ble NCLAT also allowed the suggestions placed on record by the IRP however, in the operative part of the order, the Hon'ble NCLAT failed to clearly specify the directions issued by it, thereby leaving the interpretation of its definite directions open ended.

Thus, in view of the above said directions/modifications issued by the Hon'ble NCLAT, which are in departure from the Amrapali pattern being undertaken by the Appellant under the supervision of this Hon'ble Court, and also the ToR suggested by NBCC, the Appellant seeks the kind indulgence of this Hon'ble Court by way of the instant appeal, to aid in the successful and time bound completion of the projects.

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LIST OF DATES

DATE	EVENT
08.07.2024	<p>That the Appellant is a public sector Navaratna Engineering and Construction Company with rich and varied experience. That vide the hearing conducted before the Hon'ble NCLAT on 08.07.2024 in Comp. App. (AT) (Ins.) No. 406 of 2022 titled '<i>Ram Kishor Arora, Suspended Director of Supertech Ltd. Vs. Union Bank of India &Anr.</i>', it was submitted before the Hon'ble NCLAT that the Appellant is interested in undertaking the pending projects of M/s Supertech Ltd. (hereinafter referred to as 'Supertech'), subject to due diligence. It was further recorded by the Hon'ble NCLAT that the lenders of the Supertech are also not averse to the said proposal and accordingly, directed the Appellant to make an appropriate request to the IRP regarding the same.</p> <p>It was submitted before the Hon'ble NCLAT</p>

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	<p>that vide various order(s), the Appellant was earlier appointed as Project Management Consultant (“PMC”) by this Hon’ble Court in WP (Civil) No. 940 of 2017 titled ‘<i>Bikram Chatterji&Ors Vs. UOI &Ors</i>’, to complete the balance/left-out works of Amrapali Projects in Noida & Greater Noida and further to sell the unsold inventories of the aforesaid projects as well as their attached properties and unused FAR, under the supervision of the Ld. Court Receiver appointed by this Hon’ble Court, for the successful & timely completion of those projects.</p>
09.08.2024	<p>That vide order dated 09.08.2024, the Hon’ble NCLAT was pleased to direct the Appellant to complete its due diligence with the data which has been shared by the IRP and submit its detailed project report and projects it proposes to construct and other terms and conditions which reports should be filed on or before 06.09.2024.</p>

01.10.2024	<p>That in the interregnum, since the appellant's proposal / terms of reference, for the feasible Supertech projects, would be based on similar terms as was submitted before this Hon'ble Court in the <i>Amrapali projects</i> i.e., in the case of <i>W.P. (C) No. 940/2017 titled Bikram Chatterji vs. Union of India & Ors.</i>, the Appellant preferred an Intervention application bearing I.A. No. 199233/2024 before this Hon'ble Court in Civil Appeal No. 5941/2022 (which was filed by Union bank of India challenging the order dated 10.06.2022 passed by the Hon'ble NCLAT in Comp. App. (AT) (Ins.) No. 406 of 2022 titled '<i>Ram Kishor Arora, Suspended Director of Supertech Ltd. Vs. Union Bank of India & Anr.</i>', modifying its earlier interim order dated 12.04.2022).</p>
06.09.2024	<p>That pursuant to the orders dated 08.07.2024, 15.07.2024 and 09.08.2024 passed by the Hon'ble NCLAT, the Appellant carried out the due diligence of the projects related to</p>

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	<p>Supertech, based on the data provided by the IRP, and found certain projects feasible which can be undertaken by it, in a similar successful pattern as the Amrapali model, being undertaken by the Appellant under the supervision of this Hon'ble Court. It was placed on record that, taking heart from its previous experiences, the Appellant has prepared a broad ToR, for acting as an Project Management Consultant to deliver the dream homes of approximately 50,000 home-buyers, for the perusal & approval of the Hon'ble NCLAT and filed the same by way of IA No.6557 of 2024 on 06.09.2024, and sought directions & necessary orders from the Hon'ble NCLAT to allow the Appellant to undertake the pending projects of Supertech, in terms of ToR filed by it.</p>
21.10.2024	<p>That further, in compliance to the directions passed by the Hon'ble NCLAT vide order dated 21.10.2024, the Appellant also filed a</p>

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	<p>further application which included composite project wise proposal with regard to all the Supertech projects, with timelines and all other relevant aspects of the matter alongwith its IA No.6557 of 2024 and its comments to various objections raised by several stake-holders including but not limited to Lenders, Land Authorities, Home-buyers, etc (“Supplementary Application”) and further filed its Written Submissions in the matter on 02.12.2024 (“Written Submissions”).</p>
	<p>That further, the IRP of Supertech also placed on record ‘process note’ for the consideration and approval of the Hon’ble NCLAT. That although the IRP of Supertech was <i>ad idem</i> with most of the terms contained in the Appellant’s ToR and revised proposal, he expressed his divergent views on certain aspects of the ToR including but not limited to exemption from the applicability of provisions of RERA Act, 2006, formation of Single</p>

	Committee to take decisions for the speedy completion of project, etc.
12.12.2024	<p>That vide the impugned order, while allowing the IA preferred by the Appellant, the Hon'ble NCLAT although allowed the Appellant to undertake 16 stalled projects of M/s SupertechLtd. by approving the ToR as modified by revised proposal dated 11.11.2024 however, the Hon'ble NCLAT subjected the ToR& revised proposal, to certain directions & modifications, as contained in the impugned order. In this regard, it is of pertinence to state here that the Amrapali model undertaken by the Appellant under the supervision of this Hon'ble Court, is one of the rare project/case, wherein the dream of approximately 37,000 distressed home-buyers to receive their homes has been achieved by the Appellant to a near completion. That the Hon'ble NCLAT failed to appreciate that the ToR and revised proposal submitted by the</p>

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	<p>Appellant, was based on the Amrapali pattern and previous experiences faced by the Appellant in its implementation, and being a successful workable model, any departure and/or change thereto, may not achieve the projected completion & quick results. The Hon'ble NCLAT ought to have approved the ToR and revised proposal submitted by the Appellant without any modifications or alterations, for maximal & quicker output towards the successful completion of the 16 projects.</p>
	<p>Thus, in view of the above said directions/modifications issued by the Hon'ble NCLAT, which are in departure from the Amrapali pattern being undertaken by the Appellant under the supervision of this Hon'ble Court, and also the ToR suggested by NBCC, the Appellant seeks the kind indulgence of this Hon'ble Court by way of the instant appeal, to aid in the successful and time bound completion of the projects. Hence, this appeal.</p>

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
[UNDER SECTION 62 OF THE INSOLVENCY AND
BANKRUPTCY CODE, 2016]

CIVIL APPEAL NO. _____ OF 2025

(Arising out of the Impugned Judgment and order dated 12.12.2024 passed by the Hon'ble National Company Law Appellate Tribunal, New Delhi in Interlocutory Application No.6557 of 2024 in Comp. App. (AT) (Ins.) No. 406 of 2022)

BETWEEN

POSITION OF PARTIES

	In the Hon'ble National Company Law Tribunal, Delhi	In the Hon'ble National Company Law Appellate Tribunal, New Delhi	In this Hon'ble Court
NBCC (I) LTD. NBCC BHAWAN, LODHI ROAD, NEW DELHI- 11003		Applicant in I.A. No. 6557/2024	Appellant
VERSUS			

1.	MR. RAM KISHOR ARORA, SUSPENDED DIRECTOR OF M/S SUPERTECH LTD. C-10, SECTOR-36, NOIDA, UTTAR PRADESH-201301		Respondent No. 2 in I.A. No. 6557/2024	Contesting Respondent No.1
2.	UNION BANK OF INDIA M-93, CONNAUGHT PLACE, NEW DELHI-110001		Respondent No. 1 in I.A. No. 6557/2024	Contesting Respondent No.2
3.	MR. HITESH GOEL INTERIM RESOLUTION PROFESSIONAL, M/S. SUPERTECH LIMITED BUILDING NO, 10, TOWER-C. 8 TH FLOOR, DLF CYBER CITY, PHASE-III, GURUGRAM, HARYANA-1220 02		Respondent No. 3 in I.A. No. 6557/2024	Contesting Respondent No.3

APPEAL UNDER SECTION 62 OF INSOLVENCY AND BANKRUPTCY CODE, 2016 BY THE APPELLANT AGAINST ORDER DATED 12.12.2024 PASSED BY THE HON'BLE NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI IN COMP. APP. (AT) (INS.) NO. 406 OF 2022 & INTERLOCUTORY APPLICATION NO.6557 OF 2024

TO,
HON'BLE THE CHIEF JUSTICE OF INDIA
AND HIS OTHER COMPANION JUDGES
OF THE HON'BLE SUPREME COURT OF INDIA

THE HUMBLE APPEAL OF THE
APPELLANT ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. The present appeal has been filed under Section 62 of the Insolvency and Bankruptcy Code, 2016 [in short referred to as "said Act"] by the Appellant challenging the order dated 12.12.2024 (hereinafter referred to as the "impugned order") passed by the Hon'ble National Company Law Appellate Tribunal, New Delhi in Comp. App. (AT) (Ins.) No. 406 of 2022 & Interlocutory Application No.6557 of 2024.

BRIEF FACTS

2. That the Appellant is a public sector Navaratna Engineering and Construction Company with rich and varied experience. That vide the hearing conducted before the Hon'ble NCLAT on 08.07.2024 in Comp. App. (AT) (Ins.) No. 406 of 2022 titled '*Ram Kishor Arora, Suspended Director of Supertech Ltd. Vs. Union Bank of India & Anr.*', it was submitted before the Hon'ble NCLAT that the

Appellant is interested in undertaking the pending projects of M/s Supertech Ltd. (hereinafter referred to as 'Supertech'), subject to due diligence. It was further recorded by the Hon'ble NCLAT that the lenders of the Supertech are also not averse to the said proposal and accordingly, directed the Appellant to make an appropriate request to the IRP regarding the same. The copy of order dated 08.07.2024 passed in Comp. App. (AT) (Ins.) No. 406 of 2022 titled 'Ram Kishor Arora, Suspended Director of Supertech Ltd. Vs. Union Bank of India & Anr.' by the Hon'ble NCLAT is annexed herewith and marked as **Annexure-A-1**. [101-108]

3. It was submitted before the Hon'ble NCLAT that vide various order(s), the Appellant was earlier appointed as Project Management Consultant ("PMC") by this Hon'ble Court in WP (Civil) No. 940 of 2017 titled '*Bikram Chatterji & Ors Vs. UOI & Ors*', to complete the balance/left-out works of Amrapali Projects in Noida & Greater Noida and further to sell the unsold inventories of the aforesaid projects as well as their attached properties and unused FAR, under the supervision of the Ld. Court Receiver appointed by this Hon'ble Court, for the successful & timely completion of those projects.

4. That vide order dated 09.08.2024, the Hon'ble NCLAT was pleased to direct the Appellant to complete its due diligence with the data which has been shared by the IRP and submit its detailed project report and projects it proposes to construct and other terms and conditions which reports should be filed on or before 06.09.2024. The copy of order dated 09.08.2024 passed in Comp. App. (AT) (Ins.) No. 406 of 2022 titled 'Ram Kishor Arora, Suspended Director of Supertech Ltd. Vs. Union Bank of India & Anr.' by the Hon'ble NCLAT is annexed herewith and marked as **Annexure-A-2. [page no...109 .to.....116....]**

5. That in the interregnum, since the appellant's proposal / terms of reference, for the feasible Supertech projects, would be based on similar terms as was submitted before this Hon'ble Court in the *Amrapali projects* i.e., in the case of *W.P. (C) No. 940/2017 titled Bikram Chatterji vs. Union of India & Ors.*, the Appellant preferred an Intervention application bearing I.A. No. 199233/2024 before this Hon'ble Court in Civil Appeal No. 5941/2022 (which was filed by Union bank of India challenging the order dated 10.06.2022 passed by the Hon'ble NCLAT in Comp. App. (AT) (Ins.) No. 406 of 2022 titled '*Ram Kishor Arora, Suspended Director of Supertech Ltd. Vs. Union Bank of India & Anr.*'),

modifying its earlier interim order dated 12.04.2022). That vide order dated 01.10.2024, this Hon'ble Court issued notice on the IA filed by the appellant, with certain observations. The copy of order dated 01.10.2024 passed by this Hon'ble Court in Civil Appeal No. 1925/2023 is annexed herewith and marked as **Annexure-A-3.**[page no...117 ..to.....121....]

6. That pursuant to the orders dated 08.07.2024, 15.07.2024 and 09.08.2024 passed by the Hon'ble NCLAT, the Appellant carried out the due diligence of the projects related to Supertech, based on the data provided by the IRP, and found certain projects feasible which can be undertaken by it, in a similar successful pattern as the Amrapali model, being undertaken by the Appellant under the supervision of this Hon'ble Court. It was placed on record that, taking heart from its previous experiences, the Appellant has prepared a broad ToR, for acting as an Project Management Consultant to deliver the dream homes of approximately 50,000 home-buyers, for the perusal & approval of the Hon'ble NCLAT and filed the same by way of IA No.6557 of 2024 on 06.09.2024, and sought directions & necessary orders from the Hon'ble NCLAT to allow the Appellant to undertake the pending projects of Supertech, in terms of ToR filed by it. That further, in

compliance to the directions passed by the Hon'ble NCLAT vide order dated 21.10.2024, the Appellant also filed a further application which included composite project wise proposal with regard to all the Supertech projects, with timelines and all other relevant aspects of the matter alongwith its IA No.6557 of 2024 and its comments to various objections raised by several stakeholders including but not limited to Lenders, Land Authorities, Home-buyers, etc ("Supplementary Application") and further filed its Written Submissions in the matter on 02.12.2024 ("Written Submissions"). The copy of IA No.6557 of 2024 filed on 06.09.2024 is annexed herewith and marked as **Annexure-A-4** . [page no...122..to...178.] .

The copy of the proposal dated 11.11.2024 filed by the Appellantis annexed herewith and marked as **Annexure-A-5**. [page no...179.....to...320....]

The copy of the Written Submissions dated 02.12.2024 filed by the Appellantis annexed herewith and marked as **Annexure-A-6**. [page no...321.....to...327....]

The various orders passed by this Hon'ble Court in WP (Civil) No. 940 of 2017 titled '*Bikram Chatterji & Ors Vs. UOI & Ors*' are annexed herewith and marked as **Annexure-A-7** . [page no...328.....to...789.....]

7. That vide its ToR and revised proposal, which is based on the Amrapali successful tried & tested pattern, the Appellant sought various directions from the Hon'ble NCLAT, some of the relevant terms are reproduced hereunder for the ready reference of this Hon'ble Court:

- i.) The Appellant showed its interest to undertake 17 projects of the Supertech, basis the information provided by IRP. That out of the 17 projects, one project i.e., DoonSquare, has been separated, as per the settlement arrived between the parties. Thus, there are 16 projects which are now left and proposed to be completed by NBCC.
- ii.) NBCC, as in the case of Amrapali pattern, will, either by itself or through its wholly owned subsidiary, act as a 'Project Management Consultant (PMC)' for completion of balance works.
- iii.) The construction of all 16 projects may be taken up in phases or simultaneously, subject however to availability/arrangement of funds. Tentative time period for completion of various projects shall vary from 12 to 36 months from "Day Zero".

iv.) Obtaining requisite statutory approvals is imperative for the timely completion of the Projects. Clause 1.4 (D)(III) of TOR specifically seeks exemption from various provisions of RERA Act, 2006 (including Section 4 (2) (1) (D) of RERA in relation to maintenance of a separate account in a Scheduled Bank and deposit of 70% (Seventy percent) of the amounts realised from the allottees with respect to the relevant Project into the separate account, Section 14 (2) relating to the approvals required from the allottee/ allottees, etc, and Section 15 relating to the requirement of prior consent of allottees for transfer or assignment of majority rights and liabilities of a promoter) and in addition, clause 1.4 (H)(IV) & CLAUSE 1.7 (D) of TOR are also relevant in order to ensure smooth completion of projects. It was placed on record before the NCLAT to showcase as to why these exemptions are required, just as an example at the initial stage of construction of project by Supertech, there were different applicable rules and regulations/specifications in construction norms to be followed and currently there are different rules and regulations / specifications to be followed. Hence for the already constructed part of the construction, if the current regulations differ from earlier

regulations, then it should not be an impediment to not grant/renew earlier permissions. Hence, in view of the same, certain exemptions were sought by NBCC from the Hon'ble NCLAT.

- v.) That with the objective of bringing accountability and transparency in relation to completion of the Projects and utilization of funds by NBCC in relation thereto, in the same way as was there in Amrapali case and to protect & safeguard the interests of the stake holders of the Projects, the Appellant sought orders from the Hon'ble NCLAT to consider appointment of a Committee, constituting of representatives from NBCC, 1-2 members from Financial Institutions, an expert from the construction industry (retired Senior Officer, CPWD) and IRP, to take all the decisions for smooth operation of the projects, collection of receivables from allottees, sale of unsold inventories, payment of lenders and statutory authorities and all actions to complete the projects. It was further placed on record that the Authorities and homebuyers are not part of the committee in Amrapali projects as well. Further, the progress of work will regularly be updated on web-site on monthly basis, which shall be accessible to all stakeholders and as the primary objective of

the home buyers is receipt of their dream homes, as such home-buyers representative on the committee may not serve much purpose.

- vi.) NBCC through the Court Committee to obtain all requisite statutory approvals including building plans, permits, consents, registrations as may be necessary for execution of work and completion of the Projects. In case of expiry of any requisite NOC's/Approval/any other document, the same shall be deemed to be renewed for the time taken to complete the projects by NBCC. Further the concerned planning and approving Government authorities to render necessary assistance to the Court Committee/Appellant/the relevant contractors and consultants for obtaining the applicable permits/NOCs/Approvals etc within 30 days of any such application and or request for the successful completion of the projects.
- vii.) Further, the Appellant proposed to form a Special Purpose Vehicle (SPV) U/s 8 of the Companies Act, 2013 or any other suitable entity as per provisions of law (managed and maintained by the Court Committee) and the funds infused would come into the dedicated bank account of the SPV company (such as ASPIRE in amrapali matter) and as per

requirements and request of NBCC, the amounts could be released by the Court Committee.

- viii.) For completion of the projects, as in the case of Amrapali case, NBCC shall be paid a fee calculated at the rate of 8% (Eight percent) on the "Actual Cost of Work" ("PMC Fee") for rendering the project management consultancy services. The PMC Fee shall form part of the Project cost and shall be exclusive of any goods and service tax, surcharges, cess, levy, duty or any other taxes.
- ix.) NBCC, as in the case of Amrapali case, shall be paid a fee at the rate of 1% on the sale value of the project. The Marketing Fee shall form part of the Project cost and shall be exclusive of any goods and service tax, surcharges, cess, levy, duty or any other taxes. However, the fee of channel partner engaged by the NBCC, if required, shall be paid separately which will be in addition to 1% of the Marketing fee of NBCC.
- x.) The Appellant submitted before the Hon'ble NCLAT that it is not feasible to pay to the authorities/lenders simultaneously from the initial stage, due to below challenges:

- a.) Initial infusion of construction funding (from new lenders) also has repayment obligations to them as well as payment to newly appointed contractors and hence payment to authorities/existing lenders from the get go, would not be feasible.
- b.) Only Rs 1890.33 crores is receivable from sold inventory and unsold inventory receivable comes around Rs 14197.22 crores as per data provided by IRP. The receivables from unsold inventory will only come in phases after start of construction.
- c.) Risk to reputation - Failure to meet completion targets/deadlines could damage the credibility of NBCC and the Hon'ble NCLAT

It is pertinent to state here that through its ToR, the Appellant stated that as per Projected Cash Flows to be submitted by NBCC to the court committee, any surplus amount remaining after the completion of construction for all the projects, may be made available for the repayment of dues to various authorities, financial institutions and other relevant agencies. This surplus fund, once the construction phase is concluded and all project-related expenses have been met, may be utilized to settle outstanding financial

obligations. However, during the course of hearing before the Hon'ble NCLAT, the Appellant proposed that 25-30% of amount receivable from already sold inventories (approx. 40000 units), can be paid as and when received on quarterly basis or in the manner as decided by the Hon'ble NCLAT/Court Committee. It was brought on record that as per orders passed by this Hon'ble Court order in Amrapali matter, no directions were issued to pay dues of the Authorities immediately. This was specifically brought out in its Written Submissions filed in the matter on 02.12.2024 ("Written Submissions") and was also suggested keeping in view the long pending dream of home-buyers receiving their homes and also to keep up with the time-lines suggested by the Appellant.

8. That further, the IRP of Supertech also placed on record 'process note' for the consideration and approval of the Hon'ble NCLAT. That although the IRP of Supertech was *ad idem* with most of the terms contained in the Appellant's ToR and revised proposal, he expressed his divergent views on certain aspects of the ToR including but not limited to exemption from the applicability of

provisions of RERA Act, 2006, formation of Single Committee to take decisions for the speedy completion of project, etc.

9. That vide the impugned order, while allowing the IA preferred by the Appellant, the Hon'ble NCLAT although allowed the Appellant to undertake 16 stalled projects of M/s Supertech Ltd. by approving the ToR as modified by revised proposal dated 11.11.2024 however, the Hon'ble NCLAT subjected the ToR& revised proposal, to certain directions & modifications, as contained in the impugned order. In this regard, it is of pertinence to state here that the Amrapali model undertaken by the Appellant under the supervision of this Hon'ble Court, is one of the rare project/case, wherein the dream of approximately 37,000 distressed home-buyers to receive their homes has been achieved by the Appellant to a near completion. That the Hon'ble NCLAT failed to appreciate that the ToR and revised proposal submitted by the Appellant, was based on the Amrapali pattern and previous experiences faced by the Appellant in its implementation, and being a successful workable model, any departure and/or change thereto, may not achieve the projected completion & quick results. The Hon'ble NCLAT ought to have approved the ToR and revised proposal submitted by the Appellant without any modifications or altercations, for maximal &

quicker output towards the successful completion of the 16 projects.

10. That vide the impugned order, the Hon'ble NCLAT modified and issued certain directions in departure to the ToR and modified proposal submitted by the Appellant, which needs to be set-aside and necessary orders are required to be passed, so as to enable the Appellant to work in line with the Amrapali pattern and its ToR. The modifications by the Hon'ble NCLAT, in departure from the Amrapali patterns, are as under:

- a.) The Hon'ble NCLAT answered Issue No. IV {*Whether NBCC's proposal to grant waiver from compliance of statutory provisions like building regulations and the UttarPradesh Real Estate Regulatory Authority 2016 as proposed in 'Terms of Reference' be waived?*}, against the Appellant, only for the reason that there was a specific prayer made before the Hon'ble NCLAT that for seeking exemption from various statutory provisions and their applicability upon the Appellant, including that of provisions under the RERA Act, 2006, an appropriate application would be filed by the Appellant before this Hon'ble Court, so as to facilitate orders that are required to

be passed under Article 142 of the Constitution of India to implement and execute the orders passed by the Hon'ble NCLAT, looking into the limited scope/jurisdiction of Hon'ble NCLAT in passing certain orders/directions. The same was duly noted by the Hon'ble NCLAT in Para 71 of the impugned order. Further, the said factum, of needing to pass orders under Article 142 of the Constitution of India to implement and execute the orders passed by the Hon'ble NCLAT, was also noted by this Hon'ble Court vide order dated 01.10.2024 passed in Civil Appeal No. 1925/2023 titled *Indiabulls Asset Reconstruction Company Limited Vs. Ram Kishor Arora & Ors.* It would not be out of place to mention here that this Hon'ble Court, in the case of *Civil Appeal No(s).10856/2016* titled '*Bhupinder Singh Vs. Unitech Ltd. & Ors.*', vide its order dated 16.01.2025, in the interest of justice was pleased to grant, in all the ongoing projects of Unitech, exemption from the provisions of the provisions of the RERA Act, 2006, till further orders.

- b.) The Hon'ble NCLAT directed constitution of one Apex Committee and separate & distinct committee for each of the 16 projects, as noted in paragraph 78 of the impugned order. However the operative directions at paragraph 85 has

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created ambiguity as Sl no. 8 empowers the Apex Committee to take decision for transferring surplus amount from one project to other project after obtaining necessary details from concerned Project-wise Court Committee while at Sl no. 9 it has been directed that Project wise account can only be debited with the approval of Project-wise Court Committee /Apex Court Committee. In this regard, it is submitted that it is essential that the Apex Court Committee have veto powers over any Project-wise Court Committee as constitution of separate project committees with one nominee each of Financial Creditor, Home-Buyers, Land Authority, Expert from Real Estate industry, IRP and NBCC rather than 1 single Committee (as recommended by the Appellant) may create undue delay in decision making for the purposes of effective & quick completion of the projects. That since the project wise committee has nominees of that project itself, the priority for funds allocation and its distribution, construction priority & planning, etc. may be hampered with and there can be substantial delay in reaching at a quick final conclusion/decision. It would not be out of place to repeat here that one of the major hindrances faced by NBCC in Amrapali projects was delay

in payment to contractors against their bills, due to irregular fund flow. Hence, any delay/denial by the project committee, may take substantial time and any such delay would ultimately result in delay of completion of projects within the stipulated time-lines as well as may result into other bottle-necks/problems. Further, the Hon'ble NCLAT, although did not grant NBCC exemption from the provisions of RERA Act, 2006 yet it empowered the Apex Committee to take decisions for transferring surplus amount from one project to other project, after obtaining necessary details from concerned project-wise Court Committee.

- c.) The proposal of NBCC for the distribution of surplus as contained in paragraph 9 (x) of the Supplementary Application as well as suggestions for distribution of funds strictly from amounts receivable from already sold inventories (approx. 40k units), as and when received on quarterly basis as specifically contained in Para 3 (F) of its written submissions has not been approved. The Hon'ble NCLAT directed repayment of land authorities, banks and financial institutions simultaneously as per the date & manner decided by the Apex Committee, without considering that the primary issue in delivering homes to

homebuyers and completion of projects is the acute shortage of funds and that even in the Amrapali matter, no directions were issued to pay dues of the Authorities immediately.

- d.) The Hon'ble NCLAT has not considered Appellants submissions in TOR pertaining to the fact that in case of already expired requisite NOC's/Approval/any other document, the same shall be deemed to be renewed for the time taken to complete the projects by Appellant and further that the concerned planning and approving Government authorities to render necessary assistance to the Court Committee/Appellant/the relevant contractors and consultants for obtaining the applicable permits/NOCs/Approvals etc within 30 days of any such application and or request for the successful completion of the projects.
- e.) The Hon'ble NCLAT has not considered Appellants submissions in its TOR pertaining to the funds which are required for the completion of the project. That the Appellant vide its TOR in clause 1.3 (q) has clearly stated that "*NBCC shall not contribute funds, sponsor or otherwise make any investment for the completion of the Project(s)*". Further, with regard to Rs. 100 Crores initial funds infusion,

the Hon'ble NCLAT misinterpreted the terms submitted by the Appellant and vide direction at Sl. No. 11 of the impugned judgment, directed the Appellant to obtain necessary finance of Rs.100 crores which has to be deposited in the designated account to be spent as per decision of Apex Court Committee for carrying out the Project. In this regard, the Appellant vide its TOR in clause 1.3 (ii) (a) has stated that *“Basis the preliminary study, NBCC shall carry out a detailed due diligence. An advance of Rs. 100.00 crore will be deposited into the designated account for this purpose by the Court Committee/IRP. This amount shall be kept as a deposit by NBCC and shall be adjusted in final expenditure/Utilization certificate after completion of projects”*. That the Appellant, as PMC, proposed to only facilitate the Court appointed Committee for the generation of initial Rs. 100 Crores and has at no point of time, conveyed that it would generate the initial fund of Rs. 100 crores. The said interpretation is against the TOR submitted by the Appellant.

- f.) The Hon'ble NCLAT included the proposed marketing fee of 1% in the 8% PMC Fee of the Appellant for undertaking the stalled projects and no separate marketing fee has been

permitted, without appreciating that the PMC services and Marketing services are two distinct works to be undertaken by the Appellant which would have to be calculated on the actual cost of work (for PMC) and sale value of the project (for marketing fee) respectively. Further that the Hon'ble NCLAT failed to appreciate that the PMC and Marketing Fee mentioned in the Appellants TOR was based on the Amrapali model which was earlier allowed by this Hon'ble Court vide order(s) dated 23.07.2019, 29.10.2020 & 02.11.2020 in WP (Civil) 940 of 2017 titled *Bikram Chatterjee Vs UOI & Ors.*

- g.) The Hon'ble NCLAT also allowed the suggestions placed on record by the IRP however, in the operative part of the order, the Hon'ble NCLAT failed to clearly specify the directions issued by it, thereby leaving the interpretation of its definite directions open ended. The Hon'ble NCLAT while addressing the issue of expired NOC's/approvals /any other documents required for completion and successful handing over of the project as stipulated in Clause 1.4 (e) of NBCC's ToR, has not considered the same and instead directed in para 83 that NBCC is to apply for requisite permits/approvals from statutory bodies in the name of

Supertech Ltd for expired approvals and the authorities to renew the same within 30 days failing which such approvals would be deemed to be approved for already launched phases of the project. However, in para 85 of the impugned judgment, the Hon'ble NCLAT has directed that statutory authorities to consider and communicate their decisions within 30 days of making requisite applications by IRP, which may also include rejection of applications thereby delaying the construction of projects.

11. Thus, in view of the above said directions/modifications issued by the Hon'ble NCLAT, which are in departure from the Amrapali pattern being undertaken by the Appellant under the supervision of this Hon'ble Court, and also the ToR suggested by NBCC, the Appellant seeks the kind indulgence of this Hon'ble Court by way of the instant appeal, to aid in the successful and time bound completion of the projects.

12. That Section 62 of the IBC provides that any person aggrieved by the order passed by the National Company Law Appellate Tribunal may file an appeal to the Supreme Court on a question of law arising out of such order under the Insolvency and Bankruptcy Code, 2016 within a period of 45 days from the date of receipt of

such order. It is submitted that the Impugned Order was passed on 12.12.2024 and accordingly, there is a small delay in filing the present appeal and a separate application seeking condonation of delay in filing the appeal is being filed by the Appellant for the kind consideration of this Hon'ble Court.

13. The Appellants submit that they have not filed any other or similar appeal before this Hon'ble Court or any other court / tribunal against the Impugned Order passed by the Hon'ble National Company Law Appellate Tribunal.

GROUND S:

Being aggrieved by the impugned order dated 12.12.2024 passed by the Hon'ble National Company Law Appellate Tribunal, New Delhi, the Appellant is filing the present appeal against the said order on the following amongst other grounds:

- A. FOR THAT the Hon'ble National Company Law Appellate Tribunal, New Delhi has respectfully erred in not considering the Appellant's submissions while passing the impugned order.
- B. FOR THAT the Amrapali model undertaken by the Appellant under the supervision of this Hon'ble Court, is one of the rare project/case, wherein the dream of approximately

37,000 distressed home-buyers to receive their homes has been achieved by the Appellant to a near completion and the Hon'ble NCLAT failed to appreciate that the ToR and revised proposal submitted by the Appellant, was based on the Amrapali pattern and previous experiences faced by the Appellant in its implementation, and being a successful workable model, any departure and/or change thereto, may not achieve the projected completion & quick results.

C. FOR THAT the Hon'ble NCLAT ought to have approved the ToR and revised proposal submitted by the Appellant without any modifications or alterations, for maximal & quicker output towards the successful completion of the 16 projects.

D. FOR THAT the Hon'ble NCLAT failed to appreciate that the Appellant expressed its interest to complete the projects of Supertech only as a Project Management Consultant (PMC) and not as a Resolution Applicant, and as such the Hon'ble NCLAT exceeded its jurisdiction by modifying and issuing certain directions in departure to the ToR and modified proposal submitted by the Appellant.

E. FOR THAT vide the impugned order, the Hon'ble NCLAT modified and issued certain directions in departure to the ToR

and modified proposal submitted by the Appellant, which needs to be set-aside and necessary orders are required to be passed, so as to enable the Appellant to work in line with the Amrapali pattern and its ToR.

F. FOR THAT the Appellant was not granted exemption from the applicability of various provisions of the RERA Act, 2016.

G. FOR THAT the Hon'ble NCLAT answered Issue No. IV *{Whether NBCC's proposal to grant waiver from compliance of statutory provisions like building regulations and the UttarPradesh Real Estate Regulatory Authority 2016 as proposed in 'Terms of Reference' be waived?}*, against the Appellant, only for the reason that there was a specific prayer made before the Hon'ble NCLAT that for seeking exemption from various statutory provisions and their applicability upon the Appellant, including that of provisions under the RERA Act, 2006, an appropriate application would be filed by the Appellant before this Hon'ble Court, so as to facilitate orders that are required to be passed under Article 142 of the Constitution of India to implement and execute the orders passed by the Hon'ble NCLAT, looking into the limited

scope/jurisdiction of Hon'ble NCLAT in passing certain orders/directions.

- H. FOR THAT the said factum of needing to pass orders under Article 142 of the Constitution of India to implement and execute the orders passed by the Hon'ble NCLAT, was also noted by this Hon'ble Court vide order dated 01.10.2024 passed in Civil Appeal No. 1925/2023 titled *Indiabulls Asset Reconstruction Company Limited Vs. Ram Kishor Arora & Ors.*
- I. FOR THAT this Hon'ble Court, in the case of *Civil Appeal No(s).10856/2016* titled '*Bhupinder Singh Vs. Unitech Ltd. & Ors.*', vide its order dated 16.01.2025, in the interest of justice was pleased to grant, in all the ongoing projects of Unitech, exemption from the provisions of the provisions of the RERA Act, 2006, till further orders.
- J. FOR THAT the Hon'ble NCLAT directed constitution of one Apex Committee and separate & distinct committee for each of the 16 projects, as noted in paragraph 78 of the impugned order. However the operative directions at paragraph 85 has created ambiguity as Sl no. 8 empowers the Apex Committee to take decision for transferring surplus amount from one project to

other project after obtaining necessary details from concerned Project-wise Court Committee while at Sl no. 9 it has been directed that Project wise account can only be debited with the approval of Project-wise Court Committee /Apex Court Committee.

K. FOR THAT the it is essential that the Apex Court Committee have veto powers over any Project-wise Court Committee as constitution of separate project committees with one nominee each of Financial Creditor, Home-Buyers, Land Authority, Expert from Real Estate industry, IRP and NBCC rather than 1 single Committee (as recommended by the Appellant) may create undue delay in decision making for the purposes of effective & quick completion of the projects.

L. FOR THAT the project wise committee has nominees of that project itself, the priority for funds allocation and its distribution, construction priority & planning, etc. may be hampered with and there can be substantial delay in reaching at a quick final conclusion/decision.

M. FOR THAT the proposal of NBCC for the distribution of surplus as contained in paragraph 9 (x) of the Supplementary

Application as well as suggestions for distribution of funds strictly from amounts receivable from already sold inventories (approx. 40k units), as and when received on quarterly basis as specifically contained in Para 3 (F) of its written submissions has not been approved by the Hon'ble NCLAT.

N. FOR THAT the Hon'ble NCLAT directed repayment of land authorities, banks and financial institutions simultaneously as per the date & manner decided by the Apex Committee, without considering that the primary issue in delivering homes to homebuyers and completion of projects is the acute shortage of funds and that even in the Amrapali matter, no directions were issued to pay dues of the Authorities immediately.

O. FOR THAT the Hon'ble NCLAT has not considered Appellants submissions in TOR pertaining to the fact that in case of already expired requisite NOC's/Approval/any other document, the same shall be deemed to be renewed for the time taken to complete the projects by Appellant and further that the concerned planning and approving Government authorities to render necessary assistance to the Court Committee/Appellant/the relevant contractors and consultants for obtaining the applicable permits/NOCs/Approvals etc within 30 days of any such

application and or request for the successful completion of the projects.

P. FOR THAT the Hon'ble NCLAT failed to appreciate that obtaining requisite statutory approvals is imperative for the timely completion of the Projects and the Hon'ble NCLAT erred in not granting orders in so far as in cases of expiry of any requisite NOC's/Approval/any other document, the same shall be deemed to be renewed for the time taken to complete the projects by NBCC.

Q. FOR THAT the Hon'ble NCLAT has not considered Appellants submissions in its TOR pertaining to the funds which are required for the completion of the project. That the Appellant vide its TOR in clause 1.3 (q) has clearly stated that "*NBCC shall not contribute funds, sponsor or otherwise make any investment for the completion of the Project(s)*".

R. FOR THAT with regard to Rs. 100 Crores initial funds infusion, the Hon'ble NCLAT misinterpreted the terms submitted by the Appellant and vide direction at Sl. No. 11 of the impugned judgment, directed the Appellant to obtain necessary finance of Rs.100 crores which has to be deposited in the designated

account to be spent as per decision of Apex Court Committee for carrying out the Project.

- S. FOR THAT the Appellant vide its TOR in clause 1.3 (ii) (a) has stated that *“Basis the preliminary study, NBCC shall carry out a detailed due diligence. An advance of Rs. 100.00 crore will be deposited into the designated account for this purpose by the Court Committee/IRP. This amount shall be kept as a deposit by NBCC and shall be adjusted in final expenditure/Utilization certificate after completion of projects”*. Thus, the Appellant, as PMC, proposed to only facilitate the Court appointed Committee for the generation of initial Rs. 100 Crores and has at no point of time, conveyed that it would generate the initial fund of Rs. 100 crores. The said interpretation is against the TOR submitted by the Appellant.
- T. FOR THAT the Hon’ble NCLAT included the proposed marketing fee of 1% in the 8% PMC Fee of the Appellant for undertaking the stalled projects and no separate marketing fee has been permitted, without appreciating that the PMC services and Marketing services are two distinct works to be undertaken by the Appellant which would have to be calculated on the actual cost of work (for PMC) and sale value of the project (for marketing fee) respectively.

U. FOR THAT the Hon'ble NCLAT failed to appreciate that the PMC and Marketing Fee mentioned in the Appellants TOR was based on the Amrapali model which was earlier allowed by this Hon'ble Court vide order(s) dated 23.07.2019, 29.10.2020 & 02.11.2020 in WP (Civil) 940 of 2017 titled *Bikram Chatterjee Vs UOI & Ors.*

V. FOR THAT the Hon'ble NCLAT also allowed the suggestions placed on record by the IRP however, in the operative part of the order, the Hon'ble NCLAT failed to clearly specify the directions issued by it, thereby leaving the interpretation of its definite directions open ended.

W. FOR THAT the Hon'ble NCLAT while addressing the issue of expired NOC's/approvals /any other documents required for completion and successful handing over of the project as stipulated in Clause 1.4 (e) of NBCC's ToR, has not considered the same and instead directed in para 83 that NBCC is to apply for requisite permits/approvals from statutory bodies in the name of Supertech Ltd for expired approvals and the authorities to renew the same within 30 days failing which such approvals would be deemed to be approved for already launched phases of the project. However, in para 85 of the impugned judgment, the Hon'ble NCLAT has directed that statutory authorities to

consider and communicate their decisions within 30 days of making requisite applications by IRP, which may also include rejection of applications thereby delaying the construction of projects.

X. FOR THAT if the said ambiguity in interpretation is not made clear, the same may result in delays/rejection of funds allocation and its distribution and any such delay would ultimately result in delay of completion of projects within the stipulated time-lines as well as may result into other bottle-necks/problems.

Y. FOR THAT in view of the directions/modifications issued by the Hon'ble NCLAT, which are in departure from the Amrapali pattern being undertaken by the Appellant under the supervision of this Hon'ble Court, and also the ToR suggested by NBCC, the Appellant seeks the kind indulgence of this Hon'ble Court to aid in the successful and time bound completion of the projects.

14. That the Appellant Company humbly craves leave of this Hon'ble Court to agitate any other grounds, if not taken herein, at the time of argument.

PRAYER:

It is therefore most respectfully prayed that this Hon'ble Court may graciously be pleased to :

- a. Admit and allow the Appeal & set aside the Impugned Order dated 12.12.2024 of the Hon'ble National Company Law Appellate Tribunal, New Delhi; in Interlocutory Application No.6557 of 2024 in Comp. App. (AT) (Ins.) No. 406 of 2022.
- b. Pass any other Order or direction as this Hon'ble Court may deem fit in the fact & Circumstances of the case and in the interest of Justice.

AND FOR THIS ACT OF KINDNESS, THE APPELLANT AS IN DUTY BOUND SHALL EVER PRAY.

FILED BY
M. Ambwani

MANISHA AMBWANI
ADVOCATE FOR THE APPELLANT

DRAWN ON: 31.01.2024

FILED ON: 01.02.2025

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. OF 2025

IN THE MATTER OF:-

NBCC (I) Ltd.

...Appellant

Versus

Ram Kishor Arora

Suspended Director of Supertech Ltd.& Ors. ...Respondents

CERTIFICATE

Certified that the Civil Appeal is confined only to the pleadings before the Court/tribunal whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the Civil Appeal. It is further certified that the copies of the documents/annexures attached to the Civil Appeal are necessary to the answer the question of the law raised in the petition or to make out grounds urged in the Civil Appeal for consideration of this Hon'ble Court. This certificate is given on the basis of the instructions given by the Appellant/ person authorized by the Appellant whose affidavit is filed in support of the Civil Appeal ”.

FILED BY


(MANISHA AMBWANI)

Filed on: 01/02/2025

ADVOCATE FOR THE APPELLANT

Place : New Delhi

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
[UNDER SECTION 62 OF THE INSOLVENCY AND
BANKRUPTCY CODE, 2016]**

CIVIL APPEAL NO. OF 2025

(Arising out of the Impugned Judgment and order dated 12.12.2024 passed by the Hon'ble National Company Law Appellate Tribunal, New Delhi in Comp. App. (AT) (Ins.) No. 406 of 2022 in Interlocutory Application No.6557 of 2024)

IN THE MATTER OF:-

NBCC (I) Ltd. ...Appellant

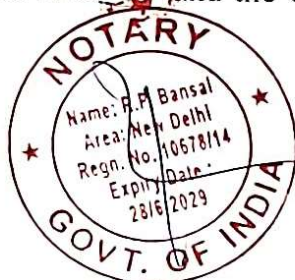
Versus

Ram Kishor Arora
Suspended Director of Supertech Ltd. & Ors. ...Respondents

AFFIDAVIT

I, Dr. Vijay Kumar Choudhary, aged about 50 Years, S/o Sh. Mukti Lal Choudhary, presently working as Executive Director (Finance) at NBCC (I) Ltd. having its registered office at NBCC Bhawan, Lodhi Road, New Delhi-110023, and presently at GPRA Complex, New Moti Bagh, New Delhi-110023 do hereby solemnly affirm and declare on oath as under: -

1. That I am the Authorised Representative of the Petitioner Company named above, and as such am well conversant with the facts and circumstances of the case and thereby competent to swear this affidavit.
2. I state that I have read and understood the contents of the Synopsis & List of Dates from pages B to W and the Civil Appeal from pages 64 to



97 and Para 1 to 8, Questions of Law from L to Y and the accompanying I.A.(s), which have been drafted under my instruction, the contents have been explained to me in my vernacular and I state that the facts stated therein are true to the best of my knowledge and belief.

3. I state that the Annexures P1 to P 7 annexed to the Civil Appeal are true copies of their respective originals and form part of the record of the Courts below.

[Handwritten Signature]

एन बी सी सी (इंडिया) लिमिटेड / NBCC (INDIA) LIMITED
 (भारत सरकार का उद्यम/A Government of India Enterprise)
 Formerly: National Buildings Construction Corporation Ltd.
 एन.बी.सी.सी. भवन, लोधी रोड़, नई दिल्ली-110003
 N.B.C.C. Bhawan, Lodhi Road, New Delhi-110003

VERIFICATION:

Verified at New Delhi on this the 4 day FEB 2025, 2025. I, the above-named deponent, do hereby verify that the contents of the above affidavit are true and correct. No part of it is false and nothing material has been concealed therefrom.

IDENTIFIED BY

[Handwritten Signature]
DEPONENT



ATTESTED
[Handwritten Signature]
 Notary Public, Delhi
 (As Prescribed)

एन बी सी सी (इंडिया) लिमिटेड / NBCC (INDIA) LIMITED
 (भारत सरकार का उद्यम/A Government of India Enterprise)
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4 FEB 2025