

INVITATION FOR EXPRESSION OF INTEREST

in the matter of

SUPERTECH LIMITED - PROJECT ECO VILLAGE-II

**Invitation for Expression of Interest to submit Resolution Plan pursuant to
Regulation 36A of the Insolvency and Bankruptcy Board of India
(Insolvency Resolution Process for Corporate Persons) Regulations, 2016**

For Supertech Limited – Project Eco Village II



Hitesh Goel

Resolution Professional of Supertech Limited – Project Eco Village II

Insolvency Professional Registration no.: IBBI/IPA-001/IP-P01405/2018-2019/12224

AFA Certificate Number: AA1/12224/02/080224/105446 (Valid till 8 February 2024)

Registered Address: -

C4/1002 The Legend Apartments,

Sector 57, Gurgaon,

Haryana ,122011

E-mail: iphiteshgoel@gmail.com

Correspondence Address:

Supertech Limited

21st-25th Floor, E-Square, Plot No. C2,

Sector - 96, Noida, Gautam Buddha Nagar,

Uttar Pradesh – 201303

E-mail: cirpsupertech@gmail.com

Date : 28.07.2023

Place : Noida

DISCLAIMER

This Invitation for Expression of Interest to submit Resolution Plan is issued by Hitesh Goel, Insolvency Professional, having Registration No: IBBI/IPA-001/IP-P01405/2018-2019/12224, appointed as the Resolution Professional (RP) of Supertech Limited - Project Eco Village II (“**Corporate Debtor**” or “**CD**”), acting on the instructions of Committee of Creditors (“**CoC**”) of the Corporate Debtor for general information purposes only, without regard to any specific objective, suitability, financial situations and needs of any particular person. This document does not constitute or form part of and should not be construed as an offer or invitation for the sale or purchase of securities or any of the businesses or assets described in it or as a prospectus, offering circular or offering memorandum or an offer to sell or issue or the solicitation of an offer to buy or acquire securities or assets of the Corporate Debtor or any of its subsidiaries or affiliates in any jurisdiction or as an inducement to enter into investment activity. No part of this Invitation, nor the fact of its distribution, should form the basis of, or be relied on in connection with, any contract or commitment or investment decision whatsoever. Nothing in this document is intended by the RP to be construed as legal, accounting, financial, regulatory or tax advice. It is clarified that if any resolution plan or the terms thereof, which is received by the RP is not pursuant to or in accordance with the provisions of this Invitation and / or such plan is not in accordance with the terms and conditions set out in this Invitation, then such resolution plan may not be considered eligible for evaluation by the CoC. By accepting this Invitation, the recipient acknowledges and agrees to the terms set out in this Invitation. This document is specific to each applicant and does not constitute an offer or invitation or solicitation of an offer to the public or to any other person within or outside India.

This document is neither an agreement nor an offer by the Resolution Professional or the members of CoC to the resolution applicant(s) or any other person. The purpose of this document is to provide interested parties with information that may be useful to them in submission of Expression of Interest (“**EOI**”) to submit the resolution plan with respect to the Corporate Debtor.

Recipients of the data / information are suggested to exercise their own judgement and verify facts and information before taking any decision, without any recourse to the RP or any of the professionals engaged by the RP. The RP is not in a position to evaluate the reliability or completeness of the information obtained. Accordingly, the RP cannot express any opinion or any other form of assurance to the recipient of this Memorandum on the historical or prospective financial statements, management representations or other data of the Corporate Debtor included in or underlying the accompanying information.

No statement, fact, information (whether current or historical) or opinion contained herein or as part of the inviting and accepting Expression of Interest should be construed as a representation or warranty, express or implied, of the Resolution Professional or the Corporate Debtor or the members of CoC (or their advisors); and none of the Resolution Professional, Corporate Debtor, the members of the CoC (including their advisors) or any other person(s)/ entities shall be held liable for the authenticity, correctness or completeness of such statements, facts or opinions and any such liability is expressly disclaimed. This document has not been approved and will or may not be filed, registered or reviewed or approved by any statutory or regulatory authority in India.

This document may not be all inclusive and may not contain all of the information that the recipient may consider material. The recipient acknowledges that it will be solely responsible for its own assessment of the market and the market position of the Corporate Debtor and that it will conduct its own analysis and be solely responsible for forming its own view of the potential future performance of the business of the Corporate Debtor.

The recipient must not use any information disclosed to it as part of this Invitation or otherwise to cause an undue gain or undue loss to itself or any other person. The recipient must comply with its confidentiality obligations as outlined here and insider trading laws, if applicable, and agrees to protect all intellectual property of the Corporate Debtor, whether registered or otherwise, it may have access to and will not share or disclose any confidential information with third parties.

By accepting this document, the recipient accepts the terms of this disclaimer notice, which forms an integral part of this document and the terms of this document. Further, no person shall be entitled under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise to make any claim for any loss, damage, cost or expense which may arise from or be incurred or suffered on account of anything contained in this document, the documents / information provided otherwise, including the accuracy, adequacy, authenticity, correctness, completeness or reliability of the information or opinions, as contained in this document and as stated above and any assessment, assumption, statement or information contained therein or deemed to form part of this document. The Resolution Professional, the Corporate Debtor, members of CoC and their advisors, affiliates, directors, employees, agents and other representatives do not claim any responsibility or liability for any such information or opinion(s) and therefore, any liability or responsibility in that regard is expressly disclaimed.

The issue of this document does not imply that the RP or the members of CoC are bound to select an applicant as a “successful/shortlisted prospective resolution applicant” post submission of Expression

of Interest. This document is neither assignable nor transferable by a resolution applicant. Each applicant shall bear its own costs associated with or relating to the preparation and submission of its Expression of Interest, including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstration or presentation which may be required by Resolution Professional or CoC or any other cost incurred in connection with or relating to its Expression of Interest.

This document and information contained herein or disclosed pursuant to the terms of this document, or any part of such information do not constitute or purport to constitute any advice or information in publicly accessible media and should not be printed, reproduced, transmitted, sold, distributed or published by the recipient without prior written approval from the Resolution Professional.

A. Key Details of the Corporate Debtor

| | | |
|----|---|---|
| 1. | Name of the Company | Supertech Limited |
| 2. | Date of incorporation of the Company | December 07 th , 1995 |
| 3. | Authority under which company is incorporated / registered | Registrar of Companies (Delhi) |
| 4. | Corporate identity number / limited liability identification number of the company | U74899DL199PLC074422 |
| 5. | Address of the registered office (R/o) and principal office (if any) of the company | 1114 Hamkund Chambers, 11 Floor 89, Nehru Place New Delhi DL 110019 |
| | Address other than R/o where all or any books of account and papers are maintained | E Square Plot No. C2, 21 st to 25 th Floor, Sector 96, Noida, Uttar Pradesh- 201303 |
| 6. | Business Description of Project Under CIRP | Development of Residential Housing Project named as “Eco Village II” situated at GH-01 & GH-01A, Sector-16B, Greater Noida West |
| 7. | Name of the real estate project under CIRP | Project Eco Village II |
| 8. | Location of Project | GH-01 & GH-01A, Sector-16B, Greater Noida West |
| 9. | Land Area | 150,133.82 sq. mtr. |

B. CIRP Process

An application being *Union Bank of India vs Supertech Limited [CP(IB) No. 204/ND/2021]* was filed by Union Bank of India under Section 7 of the Insolvency & Bankruptcy Code, 2016 (“**Code**” or “**IBC**”) for initiation of Corporate Insolvency Process (“**CIRP**”) against Supertech Limited. Accordingly, the Hon’ble National Company Law Tribunal, New Delhi, Bench VI (“**NCLT**”) vide its order dated March 25th, 2022 (“**Insolvency Commencement Date**”), initiated CIRP of the Supertech Limited and appointed Mr. Hitesh Goel as the Interim Resolution Professional (“**IRP**”).

Subsequently, an appeal against the order of the Hon’ble NCLT, dated March 25th, 2022, being *Ram Kishor Arora vs. Union Bank of India [Company Appeal (AT)(INS) No. 406 of 2022]*, was filed with Hon’ble National Company Law Appellate Tribunal, New Delhi (“**NCLAT**”) by the promoter and suspended director of Supertech Limited. Pursuant to the said appeal, Hon’ble NCLAT vide an order dated April 12th, 2022 (“**Stay Order**”), granted 60 days of stay on formation of committee of creditors for Supertech Limited. Thereafter, Hon’ble NCLAT vide an order dated June 10th, 2022 (“**Modification Order**”), modified the stay on the constitution of the CoC of Supertech Limited to the extent that IRP

may constitute the CoC only in relation to the Project Eco Village II (“**Project EV-II**”) of the Supertech Limited.

Pursuant to the meeting of the Committee of Creditors (“**CoC**”) of Project EV-II held on July 13th, 2022, the members of CoC resolved, with the requisite majority required under the Code to confirm the IRP Mr. Hitesh Goel as the Resolution Professional for Project EV-II in accordance with Section 22(2) of the Code.

The Modification order inter alia stated that after constitution of CoC of Project EV-II, the IRP shall proceed to complete the construction of the project with the assistance of ex-management, its employees, and workmen. Further, with respect to Project EV-II, the IRP was directed by Hon’ble NCLAT to proceed with the completion of the project, resolution, prepare Information Memorandum, Issue Form-G and invite Resolution Plans with the caveat that no resolution plan is to be put for voting without the leave of the Hon’ble NCLAT. (Copy of order dated 10th June 2022 is enclosed herewith as **Annexure A1**) Accordingly, as approved by the CoC of Project EV-II, the RP published the first form G on 23rd August 2022. Thereafter, as directed by the CoC, the Form G was reissued and published on 30th September 2022 by the RP. As per the Form G dated 30th September 2022, the last date of submission of resolution plan for Project EV-II, as extended from time to time, was 31st January 2023. The process of invitation of resolution plans pursuant to the Form G dated 30th September 2022, was unsuccessful.

Further, on 11th May 2023, Hon’ble Supreme Court passed an order stating inter alia that “*in relation to Eco Village-II project, since CoC was ordered to be constituted by the Appellate Tribunal in the impugned order dated 10th June 2022, we are not interfering with those directions too but, in our view, any process beyond voting on resolution plan should not be undertaken without specific orders of this court*” (Copy of order dated 11th May 2023 is enclosed herewith as Annexure **A2**).

Furthermore, the CoC has on 18th July 2023, directed the RP to republish the Form G for invitation of fresh resolution plans, subject to approval being granted by the Hon’ble NCLT, New Delhi Bench towards extension/exclusion of CIRP period for re-issuance of Form G, towards which an application bearing IA no.3844/2023 (“**Extension Application**”) has been filed by the RP in the matter of *Union Bank of India vs Supertech Limited [CP(IB) No. 204/ND/2021]*. The Extension Application is pending adjudication before the Hon’ble NCLT, New Delhi Bench. Hence, as per the provisions of the IBC and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”), Prospective Resolution Applicants (“**PRAs**”) are invited to submit expressions of interest for submission of resolution plan only for the Project EV-II of the Corporate Debtor.

The Prospective Resolution Applicants are requested to note that current process which is being undertaken in furtherance of Form G issued on 28th July 2023 for inviting fresh resolution plans for project Eco Village II of Supertech Limited shall be subject to approval by the Hon'ble NCLT, New Delhi Bench. This approval has been prayed for in I.A. No. 3844 of 2023 in C.P.(IB) 204/ND/2021 (*Union Bank of India v. M/s. Supertech Ltd.*), which is filed by the RP to seek an extension of the CIRP period for the reissuance of Form G.

C. Proposed process and timelines

| | | |
|----|--|-----------------------------------|
| 1. | Insolvency commencement date of the corporate debtor | March 25 th , 2022 |
| 2. | Date of invitation of expression of interest and issuance of Form G | July 28 th , 2023 |
| 3. | Last date for receipt of expression of interest | August 12 th , 2023 |
| 4. | Date of issue of provisional list of prospective resolution applicants | August 22 nd , 2023 |
| 5. | Last date for submission of objections to provisional list | August 27 th , 2023 |
| 6. | Date of issue of final list of prospective resolution applicants | September 6 th , 2023 |
| 7. | Date of issue of information memorandum, evaluation matrix and request for resolution plans to prospective resolution applicants | August 27 th , 2023 |
| 8. | Last date for submission of resolution plans | September 26 th , 2023 |
| 9. | Estimated date for submission of resolution plan to the NCLT for approval* | October 10 th , 2023 |

Note*: As per order dated 10th June 2022 of Hon'ble NCLAT, no resolution plan is to be put for vote without leave of Hon'ble NCLAT. Further as per order dated 11th May 2023, of Hon'ble Supreme Court, any process beyond voting on the resolution plan should not be undertaken without specific orders of Hon'ble Supreme Court. Accordingly, the timelines for submission of resolution plan to NCLT for approval may vary.

D. Eligibility criteria for resolution applicants under section 25(2)(h) of the Code

Section 25(2)(h) of the Code provides that the resolution professional shall invite PRAs, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans.

In accordance with the above, the following eligibility criteria for PRAs has been stipulated with the approval of the Committee of Creditors of Project EV-II.

1. **For Private/ Public Limited Company/ Limited Liability Partnership ("LLP")/ Body Corporate/ any other potential Resolution Applicant:**

- Minimum Tangible Net Worth ("TNW")/ Net Owned Funds ("NOF") of Indian National Rupee ("INR") **50 crores** at the Group Level in either of the two immediately preceding completed financial years.
- TNW/NOF shall be computed as aggregate value of paid-up share capital and all reserves created out of the profits and- securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, and does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation.
- Group may comprise of entities either controlling or controlled by or under common control with the potential Resolution Applicant. "Control" means at least 26% ownership.

2. **For Individuals/ Trust/ Hindu Undivided Family ("HUF")/ Association of Homebuyers of Project EV-II:**

- Minimum Tangible Net Worth ("TNW") of INR **50 crores** in either of the two immediately preceding completed financial years shall be applicable.
- Association of Homebuyers should be formed by Homebuyers who are incumbent unit holders in Project EV-II of Supertech Limited/Allottees of Project EV- II of Supertech Limited.
- Trust/ Association of Homebuyers should be registered in accordance with the applicable laws.
- HUF must be formally registered in its name, in accordance with the applicable laws.

3. **For Financial Institution/ Investment Company/ Fund House/ Private Equity ("PE") Investor/ Non-Banking Financial Company ("NBFC")/ Asset Reconstruction Company ("ARC"):**

- Minimum Assets Under Management ("AUM") of INR **300 crores** in either of the two immediately preceding completed financial years; or
- Minimum committed funds ("Committed Funds") available for investment/ deployment in Indian companies or Indian assets of INR **50 Crores** in either of the two immediately preceding completed financial years.

4. **For potential Resolution Applicant in consortium:**

- Potential Resolution Applicants in consortium must also satisfy eligibility criteria pertaining to minimum TNW/NOF/AUM/Committed Funds as specified hereinabove, in addition to other conditions stipulated herein.

- In case the consortium is formed of Private/ Public Limited Companies/ LLPs/ Body Corporates/ any other potential Resolution Applicants, TNW/NOF of the consortium shall be calculated as consolidated TNW/NOF of individual members.
- In case the consortium is formed of Individuals/ Trust/ HUF/ Association of Homebuyers of Project EV-II, with each other or with any other body corporate/ private/ public limited company/ any other potential resolution applicants, TNW/NOF of the consortium shall be calculated as consolidated TNW/NOF of individual members. Provided that TNW/NOF on a consolidated level for such a consortium shall be **INR 50 crores**, in either of the two immediately preceding completed financial years.
- In case the consortium is formed of Individuals/ Trust/ HUF/ Association of Homebuyers of Project EV-II, with any Financial Institution/ Investment Company/ Fund House/ Private Equity ("PE") Investor/ Non-Banking Financial Company ("NBFC")/ Asset Reconstruction Company ("ARC"), the minimum Assets under Management ("AUM)/Minimum Committed Funds ("committed funds") of the consortium shall be calculated as consolidated AUM/Committed Funds of individual members. Provided that Minimum Assets Under Management or Minimum Committed Funds criteria on a consolidated level should be **INR 300 crores** and **INR 50 crores** respectively, in either of the two immediately preceding completed financial years.
- In case the consortium is formed of Individuals/ Trust/ HUF/ Association of Homebuyers of Project EV-II, with each other or otherwise, then in addition to meeting the aforementioned eligibility criteria related to TNW/NOF/AUM/Committed fund at consortium level, they shall also meet the following individual criteria
 - a. Minimum Tangible Net Worth ("TNW") of **INR1 crore** in either of the two immediately preceding completed financial years shall be applicable to each Association of Homebuyers of Project EV-II which are part of such consortium.
 - b. Minimum Tangible Net Worth ("TNW") of **INR 5 crores** in either of the two immediately preceding completed financial years shall be applicable to each of the Individuals and HUF, which are part of such consortium.
 - c. Minimum Tangible Net Worth ("TNW") of **INR 10 crores** in either of the two immediately preceding completed financial years shall be applicable to each of the Trusts, which are part of such consortium.
- In case the consortium is comprised of Financial Institutions/ Investment Companies/ Fund Houses/ PE Investors/ NBFCs/ ARCs/ any other prospective Resolution Applicants, the minimum AUM of consortium shall be calculated as consolidated AUM of individual members. Committed Funds available for investment/ deployment in

Indian companies/Indian assets shall be calculated as consolidated amount of committed funds of individual members available for investment/ deployment in Indian companies/Indian assets.

- Incorporation of a 'limited company', within the meaning of the Companies Act, 2013, shall be mandatory to enter into definitive agreements post submission and approval of the resolution plan.

Where the EOI is being submitted by a Consortium, please also note the following:

- (i) the EOI, along with all undertakings submitted pursuant to this Invitation to EOI shall be signed by each member of the Consortium;
- (ii) A person cannot be part of more than 1 (one) Consortium submitting the EOI for the Corporate Debtors. Further, a person shall submit only 1 (one) EOI, either individually as a PRA or as a constituent of a Consortium;
- (iii) The Consortium shall submit the copy of consortium agreement/memorandum of understanding, if any, entered into between the Consortium members, setting out the respective obligations of the Consortium members;
- (iv) The Consortium would be required to have a lead consortium member identified upfront which shall be the entity/person with the single largest equity participation in the Consortium and should have the authority to bind, represent and take decisions on behalf of the Consortium. Should more than one member have the largest participation in the Consortium, a lead member would be identified from amongst them at the time of submission of EOI by the Consortium. Such lead member shall be the single point of contact on behalf of the Consortium with the Resolution Professional and the CoC, their representative and advisors in connection with all matters pertaining to the Consortium;
- (v) All the members of the Consortium shall be jointly and severally responsible for compliance with the terms of the invitation for submission of EOI, the request for resolution plan and the resolution plan submitted by the Consortium;
- (vi) If any 1 (one) member of the Consortium is disqualified under Section 29A of the IBC, then the entire Consortium; i.e., all the members of such Consortium shall stand disqualified;
- (vii) The EOI must contain the details of all the members of the Consortium; and
- (viii) No change in the composition of the Consortium shall be permitted after submission of the EOI, except with the prior approval of the CoC.

5. **Other Conditions:**

- Evidence to showcase that the prospective Resolution Applicant has experience of running large industrial businesses, preferably real estate and/or infrastructure during any of the three preceding financial years.
- A refundable Earnest Money Deposit of INR **10 lakhs** is to be provided by the Prospective Resolution Applicant
- Prospective Resolution Applicant must be a fit and proper person and should not suffer from any legal ineligibility to be a promoter of a corporate entity, under the applicable laws.
- Prospective Resolution Applicant must be eligible to submit a resolution plan as per the requirements of the IBC and relevant rules and regulations, including under section 29A of the IBC, and must provide an affidavit confirming the same

Only PRAs meeting the above eligibility criteria shall be considered eligible to submit resolution plans.

The eligibility criteria may be amended or changed at any stage at the discretion of CoC. The Resolution Professional / CoC reserve the right to cancel or modify the process and/or reject/disqualify any interested party / bid / offer at any stage of the CIRP without assigning any reason and without any liability whatsoever.

E. Submission of Refundable Deposit with Expression of Interest (EOI)

All PRAs shall be required to submit refundable deposit of **INR 10 Lakhs** (Rupees Ten Lakhs Only) as detailed below along with EOI.

Refundable Deposit shall be paid through Demand Draft/RTGS/NEFT in favour of “Supertech Limited” payable at Noida-UP. The details of the Bank Account are as follows: -

| | |
|------------------------|--|
| Name of Bank | : Union Bank of India |
| Name of Account Holder | : Supertech Ltd-Eco Village-1-Project-Phase-II |
| Account Number | : 510101003297089 |
| IFSC Code | : UBIN0911704 |

Subject to clause (f) of Regulation 36A (7) of the CIRP Regulations (“*an undertaking by the prospective resolution applicant that every information and records provided in expression of interest is true and*”

correct and discover of any false information or record at any time will render the applicant ineligible to submit resolution plan, forfeit any refundable deposit, and attract penal action under the code”)

Refundable Deposit shall be refunded (without interest) within 30 days of the following:-

1. Rejection of EOI of such PRA and/or non-inclusion of the PRA in the final list of eligible PRAs.
2. Withdrawal of PRA from the resolution plan process (where such withdrawal is notified to the RP in writing) before submission of resolution plan.
3. PRA failing to submit the resolution plan by the due date as specified by the RP for submission of Resolution Plan.
4. Submission of resolution plan by the PRA, provided the Refundable Deposit/BG is not adjusted against any deposit/guarantee provided/to be provided at the time of submission of the resolution plan.
5. The impact of any gain/loss on account of foreign exchange fluctuation, if any, shall be borne by PRA without any recourse to RP/CD/CoC.

F. Norms of ineligibility applicable under section 29A

The PRAs must not be ineligible under Section 29A of the IBC. In case of a Consortium submitting the EOI, each member of the Consortium shall be required to demonstrate that they are not ineligible under Section 29A of the IBC. If any 1 (one) member of the Consortium is disqualified under Section 29A of the IBC, then the entire Consortium, i.e., all the members of such Consortium shall stand disqualified.

As per Section 29A, of the Code, a person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—

(a) is an undischarged insolvent;

(b) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949);

(c) at the time of submission of the resolution plan has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949) or the guidelines of a financial sector regulator issued under any other law for the time being in force, and at least a period of one year has lapsed from the

date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor:

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan:

Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

Explanation I.- For the purposes of this proviso, the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.

Explanation II.— For the purposes of this clause, where a resolution applicant has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under this Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under this Code;

(d) has been convicted for any offence punishable with imprisonment –

- (i) for two years or more under any Act specified under the Twelfth Schedule; or
- (ii) for seven years or more under any law for the time being in force:

Provided that this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment:

Provided further that this clause shall not apply in relation to a connected person referred to in clause(iii) of Explanation I;

(e)is disqualified to act as a director under the Companies Act, 2013 (18 of 2013):

Provided that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;

(f) is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;

(g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code:

Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;

(h) has executed a guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part;

(i) is subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or

(j) has a connected person not eligible under clauses (a) to (i).

Explanation I. — For the purposes of this clause, the expression "connected person" means—

- (i) any person who is the promoter or in the management or control of the resolution applicant; or
- (ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or (iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii):

Provided that nothing in clause (iii) of Explanation I shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor:

Provided further that the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date;]

Explanation II—For the purposes of this section, "financial entity" shall mean the following entities which meet such criteria or conditions as the Central Government may, in consultation with the financial sector regulator, notify in this behalf, namely:—

- (a) a scheduled bank;
- (b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding;
- (c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999 (42 of 1999);
- (d) an asset reconstruction company register with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- (e) an Alternate Investment Fund registered with Securities and Exchange Board of India;
- (f) such categories of persons as may be notified by the Central Government.

Note: The aforementioned ineligibility criteria is set out based on the Section 29A of the IBC, as extant on the date of issuance of this invitation for expression of interest and are subject to changes pursuant to the amendments in the IBC from time to time. The PRAs are required to stay updated on the amendments to the IBC from time to time and any modifications to the ineligibility norms set out under Section 29A of the IBC shall also apply to this invitation, without the requirement of any further communication to be issued to the PRAs.

G. Manner of submitting expression of interest to the resolution professional

The expression of interest should be unconditional and submitted in a sealed envelope in the format attached as **Annexure IV** hereto along with the proof of refundable deposit of INR 10 lakhs and documents as specified under this section. Sealed envelope through speed post/registered post or by hand delivery should be sent to Hitesh Goel, Resolution Professional for Supertech Limited Project EV-II, E Square Plot No. C2, 21st to 25th Floor, Sector 96, Noida, Uttar Pradesh- 201303, India by **6:00 PM on August 12th, 2023**. The sealed envelope should be super-scribed as “**Expression of Interest for Project Eco Village II**”. A soft copy of EOI along with all annexure(s) and details stated above is

required to be e-mailed at: cirpsupertech@gmail.com The expression of interest received after the time specified above shall be rejected.

The expression of interest must be accompanied with the following documents. In case of consortium, these documents are required to be submitted by each member of the consortium.

(a) an undertaking in the format set out as Annexure I, by the PRAs undertaking the following:

- i. it meets the criteria specified by the committee of creditors under clause (h) of sub-section (2) of section 25 of the IBC.
- ii. every information and records provided in connection with or in the expression of interest is true and correct and discovery of any false information or record at any time shall render the applicant ineligible to submit resolution plan, lead to forfeiture of any refundable deposit and attract penal action under the IBC;
- iii. it shall intimate the resolution professional forthwith if it becomes ineligible at any time during the corporate insolvency resolution process.

(b) an undertaking in the format set out as Annexure II, by the PRAs undertaking the following:

- i. it does not suffer from any ineligibility under section 29A of the IBC, to the extent applicable; and
- ii. it shall intimate the resolution professional forthwith if it becomes ineligible at any time during the corporate insolvency resolution process.

(c) an undertaking in the format set out as Annexure III, by the PRAs undertaking the following:

- i. it shall maintain confidentiality of the information and shall not use such information to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29 of the IBC.

(d) relevant records in evidence of meeting the criteria under the aforementioned point (a)(i);

(e) a list of connected persons of the PRAs (including each member of the Consortium), as defined under Section 29A of the IBC

(f) other relevant information and records to enable an assessment of ineligibility under the aforementioned point (b)(i);

(g) Other evidence to establish the credentials of the PRAs including but not limited to

- (i) financial statements for Either of the two immediately preceding financial years,
- (ii) certificate by auditors/practicing chartered accountants confirming that the PRA satisfied the eligibility conditions specified in paragraph 'D' of this invitation for EOI. (*Eligibility criteria for resolution applicants under section 25(2)(h) of the Code*)
- (iii) proof of address,
- (iv) copy of PAN card,
- (v) company profile and details of KMP/Promoters/Board of Directors and rationale for bidding for the Corporate Debtor.

H. Process for sharing Information Memorandum (“IM”) and bidding by PRAs

- i) Resolution Professional shall conduct due diligence based on material on record for all EOI received on or before the last date of submission of EOI. Short-listed parties will be informed on or before 22nd August 2023, about the same and Qualified parties will be informed on or before 6th September 2023 when the final list of prospective resolution applicants shall be issued.
- ii) Access to Information Memorandum (IM) and other relevant information along with request for resolution plan outlining future steps with evaluation matrix, will be provided to the short-listed PRAs after receiving a confidentiality undertaking as per Section 29(2) of the IBC 2016. The confidentiality undertaking to be submitted by PRA is set out in **Annexure III** hereto.

I. Notes and Other Terms and Conditions for Expression of Interest

- i) The Invitation for EOI is not an offer or invitation for sale or the solicitation of an offer to buy, purchase or subscribe to any securities, if any, of the Corporate Debtor i.e., Supertech Limited or the concerned project of the Corporate Debtor, i.e. Project EV-II, and is issued with no commitment.
- ii) CoC/ RP reserves the right to withdraw EOI and/or cancel the Resolution Plan process at any stage without assigning any reason and incurring any liability towards any PRA. Mere submission of the EOI shall not create any rights in favour of the PRA and the decision of the CoC / RP regarding the Resolution Plan process shall be final and binding on all parties. The CoC / RP further reserves the right to: -
 - a) Amend, extend, vary or modify the terms and conditions for submission of Expression of Interest/ Resolution Plan, including timelines for submission of expression of interest / Resolution Plan; and
 - b) Disqualify and/or reject any PRA / RA at any stage of the bid process without assigning any reason and without incurring any liability, including any tortious liability.
- iii) No agreement with RP or any official, representative, affiliates, associate, advisor, agent, director, partner or employee of the RP or Corporate Debtor i.e., Supertech Limited- Project EV-II or any member of the CoC or verbal communication by them shall affect or modify any terms of this EOI.

- iv) No claim against the RP or Corporate Debtor or any member of the CoC or any of their official, representative, affiliates, associate, advisor, agent, director, partner or employee would arise out of this EOI.
- v) By submitting an EOI / resolution plan, each PRA shall be deemed to acknowledge that he/ it has carefully read the entire Invitation of EOI along with its terms and conditions.
- vi) **Expression of Interest must be unconditional.**
- vii) The PRA acknowledges that any investment in/acquisition of the Corporate Debtor pursuant its resolution plan for the Corporate Debtor shall be made by the PRA on an “*as is, where is*” basis and neither the Resolution Professional nor the CoC will be providing any representations or warranties for or on behalf of the Corporate Debtor.

J. Address and email to be used for correspondence with the resolution professional

In case any PRA has any queries, they may reach out to the resolution professional at the below:

Correspondence Address:

E Square Plot No. C2, 21st to 25th Floor, Sector 96, Noida, Uttar Pradesh- 201303

Email: <https://www.supertechlimited.com/public-announcement.php>

This is not an offer document. **PRAs** should regularly visit website <https://www.supertechlimited.com/public-announcement.php> to keep themselves updated regarding clarifications, amendments or extensions of time, if any.



Hitesh Goel

Resolution Professional of Supertech Limited - Project EV-II

Insolvency Professional Registration no.: IBBI/IPA-001/IP-P01405/2018-2019/12224

AFA Certificate Number: AA1/12224/02/080224/105446 (Valid till 8 February 2024)

Registered Address: -

C4/1002 The Legend Apartments,

Sector 57, Gurgaon,

Haryana, 122011

E-mail: iphiteshgoel@gmail.com

Correspondence Address:

Supertech Limited

21st-25th Floor, E-Square, Plot No. C2,

Sector - 96, Noida, Gautam Buddha Nagar,

Uttar Pradesh – 201303

E-mail: cirpsupertech@gmail.com

(Supertech Limited-Project EV II project is under Corporate Insolvency Resolution Process as per the provisions of the Insolvency and Bankruptcy Code, 2016. Its affairs, business and assets are being managed by the Resolution Professional, Mr. Hitesh Goel, appointed by the New Delhi Bench of Hon'ble National Company Law Tribunal vide order dated 25 March 2022 under the provisions of the Code)

Please email your responses to cirpsupertech@gmail.com

Annexure I: General Undertaking by Prospective Resolution Applicant

[on stamp paper of appropriate value]

UNDERTAKING

This is in relation to the ongoing corporate insolvency resolution process of Supertech Limited- Project EV-II (“**Corporate Debtor**”) in terms of the Insolvency and Bankruptcy Code, 2016 (“**Code**”). In terms of Section 25(2)(h) of the Code and Regulation 36A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the resolution professional of the Corporate Debtor (“**RP**”) has issued an invitation for expression of interest dated 28th July 2023, for inviting expressions of interest from prospective resolution applicants (“**Invitation**”). One of the requirements of the invitation is that the prospective resolution applicants are required to submit the undertakings contained herein at the time of submission of the expression of interest.

In furtherance of the foregoing, I, [*name of the chairman/managing director/director/authorized person of resolution applicant*], son of [*_____*], aged about [*_____*] years, currently residing at [*Address to be inserted*] and having Aadhaar / Passport number [*_____*], on behalf of [*name of the resolution applicant*] having registered office at [*_____*] (“**Applicant**”, a term which also includes any person acting jointly or in concert with the Applicant) [pursuant to authorization of the Board of the Applicant dated [*_____*] (as enclosed herewith)]¹, do hereby undertake and confirm to the committee of creditors (“**CoC**”) of the Corporate Debtor and the RP as follows:

- (a) the Applicant meets the eligibility criteria specified in the Invitation and that it shall provide all documents, representations and information as may be required by the RP or the CoC to substantiate to the satisfaction of the RP and the CoC that the Applicant is eligible in terms of the eligibility criteria set out in the Invitation and is also eligible under the Code and the rules and regulations thereunder to submit an expression of interest in respect of the Corporate Debtor;
- (b) the Applicant shall provide relevant information and records to enable an assessment of ineligibility in terms of the Code and that it shall intimate the resolution professional forthwith if it becomes ineligible at any time during the corporate insolvency resolution process; and

¹ To be retained only for body corporates

- (c) that every information and records provided in connection with or in the expression of interest is true and correct and discovery of any false information or record at any time shall render the Applicant ineligible to submit resolution plan for the Corporate Debtor, lead to forfeiture of any refundable deposit and attract penal action under the Code.

This undertaking shall be governed in accordance with the laws of India and the courts/tribunals at New Delhi shall have the exclusive jurisdiction over any dispute arising under this undertaking.

For the avoidance of doubt, it is clarified that this undertaking shall inure to the benefit of any RP appointed for the Corporate Debtor from time to time.

Signed on behalf of

[Insert name of Potential Resolution Applicant] by

Mr/Ms _____

(Name and Designation)

Authorised Signatory

Annexure II: Section 29A Undertaking

[on stamp paper of appropriate value]

UNDERTAKING

I, *[name of the chairman/managing director/director/authorized person of resolution applicant]*, son of *[_____]*, aged about *[_____]* years, currently residing at *[Address to be inserted]* and having Aadhaar / Passport number *[_____]*, on behalf of *[name of the resolution applicant]* having registered office at *[_____]* ("**Applicant**") pursuant to authorization of the Board of the Applicant dated *[_____]* (as enclosed herewith), do solemnly affirm and state to the committee of creditors ("**CoC**") of Supertech Limited- Project EV-II ("**Corporate Debtor**") and the resolution professional of the Corporate Debtor (appointed from time to time) ("**RP**") as follows:

1. That I am duly authorized and competent to make and affirm the instant undertaking for and on behalf of the Applicant in terms of [resolution of its board of directors/ power of attorney dated *[_____]*]. I hereby unconditionally state, submit and confirm that the document is true, valid and genuine.
2. I hereby unconditionally state, submit and confirm that the Applicant is not disqualified from submitting an expression of interest in respect of the Corporate Debtor, pursuant to the provisions of the Insolvency and Bankruptcy Code, 2016 ("**Code**").
3. I hereby state, submit and declare that neither the (i) Applicant nor (ii) any person acting jointly or in concert with the Applicant nor (iii) any person who is a connected person (as defined under the provisions of the Code) of (a) the Applicant or (b) any person acting jointly or in concert with the Applicant):
 - (a) is an undischarged insolvent;
 - (b) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949);
 - (c) at the time of submission of the resolution plan has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act,

1949 (10 of 1949) or the guidelines of a financial sector regulator issued under any other law for the time being in force, and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor: [Provided that nothing in this paragraph 3(c) applies to the Applicant since the Applicant is a financial entity (as defined under Section 29A of the Code) and is not a related party to the Corporate Debtor]¹;

(d) has been convicted for any offence punishable with imprisonment –

(i) for two years or more under any Act specified under the Twelfth Schedule;

or (ii) for seven years or more under any law for the time being in force:

Provided that this paragraph 3(d) shall not apply in relation to a connected person referred to in clause (iii) of Explanation I under Section 29A of the Code;

(e) is disqualified to act as a director under the Companies Act, 2013 (18 of 2013):

Provided that this paragraph 3(e) shall not apply in relation to a connected person referred to in clause (iii) of Explanation I under Section 29A of the Code;

(f) is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;

(g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code: Provided that this paragraph 3(g) shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the Applicant pursuant to a resolution plan approved under the Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such Applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;

¹ To be inserted in case Applicant is a 'Financial Entity' as defined under Section 29A of the Code. In that case, the Applicant is required to provide relevant records and registrations as per the requirements of definition of 'Financial Entity' under Section 29A of the Code, evidencing that the Applicant is a 'Financial Entity'.

- (h) has executed a guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part;
- (i) is subject to any disability, corresponding to paragraphs (a) to (h), under any law in a jurisdiction outside India; or
- (j) has a connected person (as defined under Section 29A of the Code) not eligible under paragraphs (a) to (i)

[For the purposes of this paragraph 3, nothing in clause (iii) of Explanation I under Section 29A of the Code applies to the Applicant given that the Applicant is a financial entity (as defined under Section 29A of the Code) and is not a related party of the Corporate Debtor]¹.

4. [That the Applicant is a financial entity (as defined under Section 29A of the Code) and is not a related party to the Corporate Debtor]²
5. That the Applicant unconditionally and irrevocably represents, warrants and confirms that it is eligible under the terms and provisions of the Code and the rules and regulations thereunder to submit an expression of interest and that it shall provide all documents, representations and information as may be required by the RP or the CoC to substantiate to the satisfaction of the RP and the CoC that the Applicant is eligible under the Code and the rules and regulations thereunder to submit an expression of interest in respect of the Corporate Debtor.
6. That the Applicant unconditionally and irrevocably undertakes that it shall provide all data, documents and information as may be required to verify the statements made under this undertaking.
7. That the Applicant understands that the CoC and the RP may evaluate the expression of interest to be submitted by the Applicant or any other person acting jointly with it and such evaluation

¹ To be inserted in case Applicant is a 'Financial Entity' as defined under Section 29A of the Code. In that case, the Applicant is required to provide relevant records and registrations as per the requirements of definition of 'Financial Entity' under Section 29A of the Code, evidencing that the Applicant is a 'Financial Entity'.

² To be inserted in case Applicant is a 'Financial Entity' as defined under Section 29A of the Code. In that case, the Applicant is required to provide relevant records and registrations as per the requirements of definition of 'Financial Entity' under Section 29A of the Code, evidencing that the Applicant is a 'Financial Entity'.

shall be on the basis of the confirmations, representations and warranties provided by the Applicant under this undertaking.

8. That the Applicant agrees that each member of the CoC and the RP are entitled to rely on the statements and affirmations made in this undertaking for the purposes of determining the eligibility and assessing, agreeing and approving the expression of interest submitted by the Applicant.
9. That in the event any of the above statements are found to be untrue or incorrect, then the Applicant unconditionally agrees that the same shall render the Applicant ineligible to submit resolution plan for the Corporate Debtor, apart from any other action under applicable law [and the Applicant shall indemnify and hold harmless the RP and each member of the CoC against any losses, claims or damages incurred by the RP and / or the members of the CoC on account of such ineligibility of the Applicant.]
10. That the Applicant agrees and undertakes to disclose/inform forthwith, to the RP and the members of the CoC, if the Applicant becomes aware of any change in factual information in relation to it or its connected person (as defined under the Code) or persons acting in concert or jointly with it, which would make it ineligible under any of the provisions of Section 29A of the Code at any stage of the corporate insolvency resolution process of the Corporate Debtor, after the submission of this undertaking.
11. That this undertaking shall be governed in accordance with the laws of India and the courts/tribunals at New Delhi shall have the exclusive jurisdiction over any dispute arising under this undertaking.
12. For the avoidance of doubt, it is clarified that this undertaking shall inure to the benefit of any RP appointed for the Corporate Debtor from time to time.

Signed on behalf of

[Insert name of Potential Resolution Applicant] by

Mr/Ms _____

(Name and Designation)

Authorised Signatory

Annexure III: Confidentiality Undertaking

[on stamp paper of appropriate value]

CONFIDENTIALITY UNDERTAKING

This confidentiality undertaking has been signed on _____ day of _____, 2023 by _____ [Insert name of Potential Resolution Applicant], having its office at _____ acting through Mr./Ms. _____, the authorized signatory / authorized representative (“**Recipient**”, which expression shall, unless repugnant to the context, include its successors in business, administrators in business, administrators, insolvency professional, liquidator and assigns or legal representatives) in favour of **Mr. Hitesh Goel**, an insolvency professional having registration no. IBBI/IPA-001/IP-P01405/2018-2019/12224 in his capacity as the resolution professional for the Corporate Debtor (as hereinafter defined).

WHEREAS Supertech Limited, a company registered under Companies, Act, 1956 whose Project Eco Village II (“**Corporate Debtor**”) is under corporate insolvency resolution process *vide* National Company Law Tribunal (“**NCLT**”) (New Delhi Bench) order dated March 25th, 2022 and Mr. Hitesh Goel having registration no. IBBI/IPA-001/IP-P01405/2018-2019/12224 was appointed as interim resolution professional (“**IRP**”, which term shall include its assigns, successors, authorised representative). In the first meeting of the committee of creditors (“**COC**”) of the Corporate Debtor held on July 13th, 2022, the CoC resolved to appoint the IRP as the Resolution Professional (“**RP**”) of the Corporate Debtor, which term shall include its assigns, successors, authorised representative and any Resolution Professional for the Corporate Debtor as appointed from time to time).

WHEREAS the RP is preparing to share with the recipient some information including but not limited to the information memorandum (“**IM**”) as per Section 29 of the Insolvency & Bankruptcy Code, 2016 (“**Code**”) and Regulation 36 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”) in respect of the Corporate Debtor.

WHEREAS the RP is required to share the IM after receiving an undertaking from recipient of information to the effect that such recipient shall maintain confidentiality of the information contained in the Information Memorandum and shall not use such information to cause an undue gain or undue loss to itself or any other person and comply with the requirements under Section 29(2) of the Code.

THEREFORE, the Recipient hereby unconditionally and irrevocably declares and undertakes as follows:

1. The Recipient undertakes and declares that it will not divulge any part or whole of any information of the Corporate Debtor including any information contained in the Information Memorandum, any other “relevant information” as defined under Explanation to section 29 of the Code, and any other information related to Corporate Debtor of which access is provided to the Recipient during the period of corporate insolvency resolution process of the Corporate Debtor, through oral, electronic or written communication or through any mode (including on a data room) to anyone, and the same shall constitute “**Confidential Information**”. Additionally, any information or documents generated or derived by the Recipient that contains, reflects or is derived from any Confidential Information shall also be deemed as “**Confidential Information**”.
2. The Recipient further unconditionally and irrevocably undertakes and declares that:
 - a) the Confidential Information shall be kept confidential by the Recipient and shall be used solely in accordance with the terms of the Code;
 - b) the Recipient shall not use the Confidential Information to cause any undue gain or undue loss to itself, the Corporate Debtor, the RP or any other person;
 - c) the Recipient shall comply with the requirements under sub-section (2) of section 29 of the Code, and other provisions of law for the time being in force relating to confidentiality and insider trading in relation to such Confidential Information;
 - d) the Recipient shall protect any intellectual property of the Corporate Debtor which it may have access to;
 - e) the Recipient shall ensure that all Confidential Information is kept safe and secured at all times and is protected from unauthorised access, use, dissemination, copying, theft or leakage;
 - f) the Recipient shall immediately destroy and permanently erase all Confidential Information within [60 days] upon (i) being notified to do so by the RP or the Corporate Debtor or the liquidator, as the case may be; (ii) the approval of a resolution plan by the NCLT under Section 31(1) of the Code; or (iii) upon an order for liquidation of the Corporate Debtor being passed by the NCLT under Section 33 of the Code, unless otherwise waived or required under the Code.

Provided that the Recipient shall be permitted to retain copies of Confidential Information to the extent and duration for which it is strictly necessary to comply with applicable law or established document retention policies subject to (i) prior intimation to the RP and

Corporate Debtor as to the information retained, applicable law or established document retention policy under which it is retained and duration of such retention, and (ii) such copies being held by Recipient and kept confidential as per the terms of this confidentiality undertaking and the Code;

- g) the Recipient shall take all necessary steps to safeguard the privacy and confidentiality of the Confidential Information and shall use its best endeavours to secure that no Representative (as defined below) divulges or discloses or uses any part of the Confidential Information, including but not limited to the financial position of the Corporate Debtor, all information related to disputes by or against the Corporate Debtor and any other matter pertaining to the Corporate Debtor as may be specified in the Information Memorandum or otherwise; and,
- h) the Recipient shall be responsible for any breach of obligations under this confidentiality undertaking (including any breach of confidentiality obligations by any Representative) [and shall indemnify and hold harmless the Resolution Professional for any loss, damages and costs incurred by the Resolution Professional due to such breach of obligations by the Recipient or any person acting on its behalf.]

3. The Recipient agrees, acknowledges, and undertakes that the Confidential Information may only be disclosed to and shared with any officers, directors, employees, existing shareholders/ investors, or advisors of the Recipient, or, upon prior intimation to the RP, with identified co-investors or lenders of the Recipient, (collectively, referred to as, “**Representatives**”), in accordance with applicable laws in relation to confidentiality and insider trading, the Code and the CIRP Regulations, and the terms of this confidentiality undertaking, on a strict need-to-know basis and only to the extent necessary for and in relation to the corporate insolvency resolution process of the Corporate Debtor, provided that the Recipient shall bind such Representatives by way of undertakings/ agreements, to terms at least as restrictive as those stated in this confidentiality undertaking.

The Recipient shall be responsible for any breach of the confidentiality obligations by any Representatives to whom the Recipient shares the Confidential Information in accordance with this confidentiality undertaking; Provided that, disclosure of any Confidential Information by the Recipient to a Representative shall be allowed only upon prior written intimation to the RP and submission of confidentiality undertaking/ agreement as may have been entered into between the Recipient and such third party as per the terms of this clause.

4. Notwithstanding anything to the contrary contained herein, it is clarified that the obligation to maintain confidentiality of Confidential Information shall not apply to:

- a) information which, at the time of disclosure to the Recipient was already in the public domain without violation of any provisions of applicable laws;
 - b) information which, after disclosure to the Recipient becomes publicly available without any breach of this confidentiality undertaking or violation of applicable laws;
 - c) information which was, lawfully and without any breach of this confidentiality undertaking, in the possession of the Recipient prior to its disclosure, as evidenced by the records of the Recipient;
 - d) information that is mandatorily required to be disclosed by the Recipient (and to the extent required to be disclosed) pursuant to the requirements of applicable laws, or order of a judicial, regulatory or administrative authority or the guidelines of the regulatory/administrative authority or the stock exchange.
5. The Recipient agrees that the RP makes no representation, warranty or inducement, whether express or implied, as to the accuracy, completeness, authenticity or adequacy of the information (including but not limited to the Confidential Information) provided to the Recipient. The Recipient further agrees that the RP shall not be liable to the Recipient and/or the Representatives for any damage arising in any way out of the use of the Confidential Information and the Recipient and/or the Representatives shall not have any claim against the RP or the Corporate Debtor in relation to any information provided to the Recipient.
 6. Nothing in this confidentiality undertaking shall have the effect of limiting or restricting any liability arising as a result of fraud or wilful default.
 7. Damages may not be an adequate remedy for a breach of this confidentiality undertaking and the RP shall be entitled to the remedies of injunction, specific performance, other equitable relief for a threatened or actual breach of this confidentiality undertaking. The remedies herein provided shall be cumulative and not exclusive of any remedies provided by law.
 8. The Recipient hereby represents and warrants that it has the requisite power and authority to execute, deliver and perform its obligations under this confidentiality undertaking.
 9. This confidentiality undertaking and any dispute, claim or obligation arising out of or in connection with it shall be governed by and construed in accordance with Indian laws and the courts/tribunals at New Delhi shall have exclusive jurisdiction over matters arising out of or relating to this confidentiality undertaking.

10. This confidentiality undertaking shall become binding on the Recipient from the date hereinabove written.

11. The confidentiality undertaking shall be in addition to any other undertakings provided by the Recipient to the RP. For the avoidance of doubt, it is clarified that this confidentiality undertaking shall inure to the benefit of any RP appointed for the Corporate Debtor from time to time.

Signed on behalf of

[Insert name of Potential Resolution Applicant] by
Mr/Ms _____

(Name and Designation)

Authorised Signatory

Annexure IV

[On the letterhead of the entity/person submitting the expression of interest]

EXPRESSION OF INTEREST

To

[Date]

Mr. Hitesh Goel
E Square Plot No. C2, 21st to 25th Floor,
Sector 96, Noida,
Uttar Pradesh- 201303

Subject: Submission of Expression of Interest (“**EOI**”) for Supertech Limited- Project Eco Village II

Dear Sir,

This is with reference to your public advertisement in [insert name of newspaper and/or website] on [insert date], and invitation for submission of expression of interest dated [insert date] (“**IEOI**”) inviting EOIs for submitting the resolution plan for Supertech Limited- Project EV-II as per the provisions of the Insolvency and Bankruptcy Code, 2016. We confirm that we have understood the eligibility and other criteria mentioned in the IEOI and meet the necessary threshold and criteria mentioned therein and are submitting our EOI for submission of a Resolution Plan for the Corporate Debtors.

We have attached the necessary information and supporting documents required to be submitted with EOI for your review and evaluation. We hereby confirm that the information provided by us in this EOI is true, correct and accurate to the best of our knowledge.

We understand and confirm that:

- a. the EOI will be evaluated by the Resolution Professional of the Corporate Debtor based on the information provided by us in this EOI and attached documents to determine whether we qualify to submit the Resolution Plan for the Corporate Debtor;
- b. the Resolution Professional reserves the right to determine at his sole discretion, whether or not we qualify for the submission of the Resolution Plan for the Corporate Debtor and may reject the EOI submitted by us without assigning any reason whatsoever, and not include us in the provisional or final list of eligible PRAs;

- c. the Resolution Professional reserves the right to conduct due-diligence on us and/or request for additional information or clarification from us for the purposes of the EOI and we shall promptly comply with such requirements. Failure to satisfy the queries of Resolution Professional or CoC may lead to rejection of our EOI;
- d. meeting the qualification criteria set out in IEOI alone does not automatically entitle us to participate in the next stage of the bid process.

Capitalised terms used but not defined herein shall have the meaning ascribed to such terms in the IEOI.

For further information/ queries, please contact:

[•]

Thank you.

On behalf of: [insert name of the firm/company/organization/individual/entity]:

Signature:

Name of signatory:

Designation:

Company Seal/stamp

Place:

Date:

Enclosed:

- All relevant document / details as per **Annexure V**
- General Information as per **Annexure VI** along with all supporting documents

Note:

- In case of Consortium / Applicant, the EOI shall be signed by the nominated Lead.
- The person signing the EOI and other supporting documents should be an authorised signatory supported by necessary Board resolution / authorization letter, as applicable.

Annexure V

Supporting Documents Required to be Submitted with EoI

- Profile of Resolution Applicant;
- Legal Documents: Copies of Certificate of Registration / Incorporation and Constitutional Documents (Memorandum and Articles of Association) etc., of Resolution Applicant;
- Copy of PAN;
- Address Proof;
- For Net-worth: Certified true copies of Audited financial statements of either of the two immediately preceding completed financial years of PRA and / or promoter group or any other group company as per eligibility criteria **and** CA certificate for Net-Worth;
- Undertaking for fulfilment of Eligibility Criteria as per **Annexure I**;
- Declaration and undertaking under section 29A of IBC 2016 – **Annexure II**;
- Confidential Undertaking – **Annexure III**;
- A notarized declaration from PRA in order to demonstrate that the promoter/promoter group or any other group company are part of the same group, in case the interested party is using such entities for meeting the eligibility criteria. Please note that PRA shall provide all relevant documents for its promoter / promoter group or any other group company, if required to meet the eligibility criteria;
- Any other documents / information which prospective Resolution Applicant finds necessary to share or as may be notified by the RP from time to time.

Annexure VI

General Information of Prospective Resolution Applicant (PRA)

1. **Name and address (with proof) of the Resolution Applicant:**
2. **Date of establishment of Resolution Applicant / Promoter Group along with supporting document:**
3. **Core area of expertise of Resolution Applicant:**
4. **Contact Person:**
 - Name:
 - Designation:
 - Telephone No:
 - Mobile No.:
 - Email:
5. **PAN No, CIN No or equivalent details of Resolution Applicant along with copy of supporting documents:**
6. **Company's / Organisation's/Individual's/HUF's/Trust's/Association of Homebuyer of Project Eco Village II's Profile:**
 - i. **Company's / Organisation's/Individual's/HUF's/Trust's/Association of Homebuyer of Project Eco Village II's Financial Profile (consolidated / standalone as applicable):**

(**Note:** The Company / organization/Individual's/HUF/Trust/Association profile should necessarily include tangible net worth in either of the two immediately preceding completed financial years. Where the entity submitting the EOI is a financial investor / fund entity, please provide details pertaining to “assets under management” and/ or “committed funds” for either of the two immediately preceding completed financial years or the committed funds available as on March 31st, 2022/23, for investment, whichever is latest.
 - ii. **Experience in the relevant sector(s):**
 - iii. **History if any, of the company or affiliates/connected party of the company or Individual/HUF/Trust/Association of Homebuyers of Project Eco Village II or their affiliates/connected parties being declared a ‘wilful defaulter’ or ‘non-cooperative borrower’ or ‘non-performing asset’;**
 - iv. **Details of Consortium / SPV, if any, as per Annexure VII;**

(Note: In case of consortium / SPV, the details set out above are also to be provided for each of the member of the consortium / sponsors of SPV)

Annexure VII

Details of Consortium/Sponsors of SPV

| Name of the Member | % of Share in the Consortium/SPV | Nominated as Lead |
|---------------------------|---|--------------------------|
| | | |
| | | |
| | | |

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 406 of 2022

IN THE MATTER OF:

**Ram Kishor Arora Suspended Director of M/s.
Supertech Ltd.**

...Appellant

Versus

Union Bank of India & Anr.

...Respondents

Present:

For Appellant: Mr. Arun Kathpalia, Sr. Advocate along with Mr. Siddharth Bhatli, Mr. Abhijeet Sinha, Ms. Lashita Dhingra & Mr. Kshitij Wadhwa, Advocates.

For Respondent: Mr. Alok Kumar, Ms. Somya Yadava, Mr. Manan Gambhir, Mr. Nikhil Malhotra, Ms. Garima Soni & Ms. Nandita Jha, for R-1.

Mr. Bishwajity Dubey, Ms. Srideepa Bhattacharyya & Ms. Neha Shivhare, for R-2/RP.

Mr. Arvind Nayar, Sr. Advocate along with Mr. Siddhant Kumar, for Intervenor.

Mr. Ajay Bhargaa, Ms. Wamika Trehan & Ms. Maithli Moondra, Intervenor for L&T Finance.

Mr. P. Nagesh & Mr. K. Datta, Sr. Advocates along with Ms. Kanika Sachdeva, Mr. Piyush Singh, Mr. Aditya Parolia & Ms. Aditi Sinha, for Homebuyers.

Mr. Sidhartha Barua & Mr. Danish Abbasi, Intervenor for IDBI Bank, IA 1509 of 2022

ORDER

Ashok Bhushan, J:

1. This Appeal has been filed against the Order dated 25th March, 2022 passed by the Adjudicating Authority (National Company Law Tribunal, New

Delhi, Court –VI) admitting the Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as ‘The Code’) filed by Union Bank of India praying for initiation of the ‘Corporate Insolvency Resolution Process’ (hereinafter referred to as ‘CIRP’) against M/s. Supertech Limited-Corporate Debtor.

2. The Corporate Debtor is a ‘Real Estate Company’ engaged in construction of various projects in the National Capital Region (NCR). Union Bank of India vide its Sanction Letter dated 19.10.2013/16.12.2013 granted credit facilities of Rs. 150 Crores for the development of ‘Eco Village II Project’. The Union Bank of India and Bank of Baroda agreed to extend second credit facilities of Rs. 200 Crores where total exposure of Union Bank of India was Rs. 100 Crores which was sanctioned by Letter dated 21.11.2015. Credit Facilities was secured by execution of mortgage and with corporate guarantees and personal guarantees. There being default on the part of the Corporate Debtor in repaying the loan, the Account was declared as ‘Non-Performing Assets’ (NPA) on 20th June, 2018. An application under Section 7 was filed by the Union Bank of India on 20th March, 2021 claiming total amount of Rs. 431,92,53,302/- as on 31st January, 2021 and interest thereon. The Adjudicating Authority vide the Impugned Order dated 25th March, 2022 admitted the Section 7 Application directing for initiation of ‘CIRP’. Mr. Hitesh Goel was appointed as ‘Interim Resolution Professional’ (hereinafter referred to as ‘IRP’). The Appellant, the suspended director of the Corporate Debtor has filed this Appeal challenging the Impugned Order. The Appeal was entertained on 12th April, 2022, the

Appellant requested time to enable the Appellant to approach the Bank and the Appeal was adjourned and direction was issued to the IRP not to constitute the 'Committee of Creditors' (CoC in short). The Appeal was taken up thereafter on several dates. On 17th May, 2022, it was submitted by Learned Counsel for the Appellant that Appellant has approached the Bank and has offered to make upfront payment of Rs. 10 Crores with 10 Crores on acceptance of OTS and 55 Crores for exclusive security however the Bank has asked to deposit Rs. 75 Crores as upfront to consider the OTS. Additional Affidavit was filed by the Bank as well as Appellant. This Court vide Order dated 25.05.2022 directed the IRP to file Status Report. Status Report has been filed by the IRP.

3. Various Intervention Applications have been filed by home buyers, the Association of Home Buyers and IDBI Bank. The Appellant has also filed an I.A. No. 1468 of 2022 by which Resolution cum Settlement Proposal from the management of 'M/s. Supertech Limited' has been submitted.

4. We have heard Mr. Arun Kathpalia, Sr. Advocate along with Mr. Abhijeet Sinha, appearing for the Appellant and Mr. Alok Kumar, Learned Counsel appearing for the Union Bank of India. We have also heard Learned Counsel appearing for the Interveners. Submissions have been advanced by Learned Counsel for the Parties only on the prayer for Interim Relief.

5. Learned Counsel for the Appellant submits that the Appellant has approached the Respondent and presented their offer for payment of 100% of ledger balance along with 20 Crores upfront payment and rest within 24 months but the Bank has not accepted the offer and Union Bank of India

insisted that upfront payment of Rs. 75 Crores be made. It is submitted that the Appellant-Union Bank of India has extended the credit facilities only for the projects - Eco Village II Phase -I & Phase - II, Eco Village III and Romano Project. The Appellant has already paid an amount of Rs. 149.33 Corers. The Corporate Debtor have been running a large number of projects, substantial number of projects have already been completed, the existing promoters are willing to complete the projects in a time bound manner along with discharging the liabilities of all the Financial Creditors, Home Buyers and even Operational Creditors. Corporate Debtor had sufficient receivables with positive net worth and it requires only last mile funding for completing constructions which will result in generation of adequate cash-flows to meet out all obligations of the Corporate Debtor. The strategic partner 'M/s Star Realcon Pvt. Ltd.' has agreed 'in-principle' to induce 300 Crores to complete the stalled project of the Corporate Debtor. Further 'Varde' Partner a 'Grade A' fund has also shown inclination to infuse substantial fund. The Appellant vide I.A. No. 1468 of 2022 has submitted detailed Settlement cum Resolution Plan to execute the project completion.

6. Learned Counsel for the Appellant has also relied on the Judgement of this Tribunal where 'Reverse CIRP' was directed with regard to Real-Estate Projects. Learned Counsel for the Appellant submits that the present case is fit case where this Tribunal may follow the Judgment of this Tribunal in **Company Appeal (AT) Ins. No. 926 of 2019 in the matter of 'Flat Buyers Association Winter Hills-77, Gurgaon Vs. Umang Realtech Pvt. Ltd.**

through IRP &Ors.' dated 04.02.2020. It is submitted that the Promoters of the Corporate Debtor are ready to extend full cooperation to the IRP for carrying out the construction of all the projects of the Corporate Debtor and to complete the same. Detailed Settlement-cum-Resolution Plan has been submitted along with I.A. No. 1468 of 2022. In accordance with which the further steps be directed to be taken. It is submitted that corporate debtor has sufficient receiving and ex-management under the supervision of the IRP will undertake construction activities at site on all the projects. All the projects of the Corporate Debtor have their respective RERA Accounts where minimum 70% payment received for construction has to be held and the same shall be used for construction of the respective projects. 30% of the remaining amounts will be deposited in a separate account which will be to discharge all bank liabilities in a phase wise manner. Out of the total 30 projects, 12 are complete/delivered and 18 are under construction which are mostly complete. Home-Buyers will get their homes and 'No dues Certificates'. 90% approximately homebuyers of twin tower have been paid and remaining will also get their refunds as per the proposed settlement plan.

7. Mr. Alok Kumar, Learned Counsel appearing for the Union Bank of India refuting the submissions of Learned Counsel for the Appellant submits that 'Status Report' of the IRP dated 31st May, 2022 has brought glaring default and non-compliance of the ex-management. It is submitted that their being debt and default, the Application under Section 7 has rightly been admitted and 'CIRP' be allowed to proceed by constitution of 'CoC'. Certain Intervention

Applications filed by Home-Buyers are just a delaying tactics. The proposal submitted by the Appellant in an Affidavit are mis-leading. The Corporate Debtor is in fragile financial condition. The Corporate Debtor does not have enough fund to cater its home-buyers. It is submitted that Hon'ble Supreme Court has time and again emphasized need for minimal judicial interference by the NCLAT and NCLT in the framework of IBC. The Concept/Mechanism of 'Reverse Insolvency' as envisaged in the case of 'Flat Buyers Association Vs. Umang Realtech Pvt. Ltd.' (Supra) and other cases is an alien concept outside the scheme and against the provisions/objections of the IBC and the same does not have any legal basis as there is no provision/legislation enacted by the legislature, substantiating the concept. Appellant's argument that the normal mechanism as is followed in a 'CIRP' cannot be followed in cases of real estate infrastructure companies, is an attempt to circumvent the settled principles of law laid down in the Code. The Judgment relied by Learned Counsel for the Appellant on 'Reverse Insolvency' is not attracted in the facts of the present case. Learned Counsel for the Bank submitted that this Court may permit the 'CoC' be constituted and to enable the CIRP process to proceed in accordance with the law.

8. We have heard Mr. Bishwajit Dubey appearing for the IRP. He has submitted the 'Status Report' dated 31st May, 2022 giving details of various facts regarding the claim management, construction, cash flow and list of key issues, details of finances provided to 'M/s. Supertech Limited' by different Financial Creditors, Financial Creditors Claim as well as the details of various

projects, number of total units, sold units, registered units, near ready units and under construction units and unsold units. The IRP in his Status Report has submitted that IRP after the commencement of the CIRP intimated the Management and informed the Banks and Banks were requested to add the IRP as an authorized signatory in addition to the existing ones in all the bank accounts. IRP has sent communication to the Home Buyers. He has received claims of INR 15,175 Crores from 13,484 creditors of the Corporate Debtor. Learned Counsel for the IRP submits that he is prepared to undertake construction work. IRP has already managed to visit select project sites with the Project Director and others to understand the current stage of operation, scale of construction activities, site development plans, challenges and intricacies of each site etc. IRP has expressed requirement of third party needs to be appointed to estimate the balance cost to complete each project. In Report, IRP has also referred to litigation and investigation and other facts.

9. There are number of Intervention Applications which have been filed by the respective applicants. The Intervention Applications can be divided in two groups. Group one consists of I.As filed by the Home-Buyers with a prayer that 'CIRP' should not continue. In this group, there are several I.As where prayers have been made that 'CIRP' should be restricted to Eco Village II Project only. In I.A. No. 1731 of 2022, the prayer is that 'CIRP' should not continue. In I.A. No. 1730/2022, I.A. No. 1668 of 2022, I.A. No. 1617 of 2022, I.A. No. 1616 of 2022, I.A. No. 1615 of 2022, I.A. No. 1614 of 2022, I.A. No. 1116 of 2022, I.A. No. 1117 of 2022, prayers are made by the Home Buyers is that CIRP should

be restricted to Eco Village II Project only. In I.A. No. 1115 of 2022, the Applicant prays to keep the project out of 'CIRP'. In I.A. No. 1731 of 2022, the Intervener Home Buyer prays that CIRP should not be continued and the projects of the Corporate Debtor shall be kept out from the ambit of the CIRP of the Corporate Debtor so as to allottees may get their possession of their dwelling units. Banks should not come in the way of completion of projects. Group two consists of Intervention Applications where Home Buyers prays that 'CIRP' should continue in this Group I.A. Nos. 1612 of 2022, 1609 of 2022, 1610 of 2022, 1605 of 2022, 1604 of 2022, 1582 of 2022, the Interveners pray that CIRP should continue. An Application being I.A. No. 1509 of 2022 has been filed by IDBI Bank Limited which prays that IDBI who is Financial Creditor and member of consortium banking arrangement where Union Bank of India was the Lead Bank, has disbursed the loan for the development of Eco Village II Project and prays that it may be permitted to intervene in the proceeding, it being a Financial Creditor.

10. We have heard Learned Counsel for the parties as well as the Interveners and perused the record.

11. We have carefully gone into the status report submitted by the IRP dated 31st May, 2022. From the status report submitted by the IRP, it is clear that IRP in his Report has listed 20 projects of the Corporate Debtor which also included Eco Village II Project for which the finance was given by the Union Bank of India who has filed the Application under Section 7 of the Code for initiation of the CIRP. By the admission of the Application under Section 7 of

the Code by the Adjudicating Authority, CIRP has commenced against the Corporate Debtor and when CIRP has commenced against the Corporate Debtor, all projects which had been undertaken and under construction comes under CIRP. As per the IRP Status Report, IRP has taken a stock of situation by visiting the sites which are under construction. The IRP has held several meetings with the Project Director. Paragraph 1.7 of the Report details with the construction which is to the following effect:

“As apprised by the erstwhile promoters, the Corporate Debtor has ~20-25 active projects at various locations across country but mainly in Delhi-NCR. All the projects have a respective Project Director who is entrusted with the overall development of the project including but not limited to construction activities, vendor management, site management, etc, IRP had numerous meeting meetings, discussions, conferences with all the project directors to understand the current stage of operations, scale of construction activities, site development plans, challenges, and intricacies of each site. Though basic understanding of each project was provided but the consolidated view on overall constructions status, percentage completion of projects along with balance cost to complete has not been made available to the IRP. In the context, an independent third party needs to be appointed to estimate the balance cost to complete each project.”

12. At page 14 of the Report, the IRP has given the details of 20 projects of the Corporate Debtor which also included Eco Village II Project, Eco Village I project and III. The IRP has also given the details of Banks/Financial

Institutions who has provided loan to M/s. Supertech Limited as Annexure C which is to the following effect:

“

| Name of Bank/FIs | Doon Square | Eco City | EV-II | EV-III | EV-IV | Hues | Romano | Shopprix Mall Meerut | Multiple Projects | Amount Claimed |
|------------------------------|-------------|----------|-------|--------|-------|------|--------|----------------------|-------------------|----------------|
| Union Bank of India | - | - | 135 | 61 | 59 | - | 192 | - | 1 | 448 |
| IFCI Limited | - | - | - | - | - | 253 | - | 168 | - | 422 |
| PNB Housing Finance | - | - | - | - | - | 415 | - | - | - | 415 |
| L & T Finance | - | - | - | - | - | - | - | - | 411 | 411 |
| Bank of Baroda | 71 | - | - | 82 | 70 | - | - | - | - | 223 |
| IDBI Bank | - | - | 222 | - | - | - | - | - | - | 222 |
| Punjab & Sind Bank | - | 23 | - | - | - | - | 163 | - | - | 186 |
| Bank of Maharashtra | - | - | - | 128 | - | - | - | - | - | 128 |
| Indiabulls Commercial Credit | - | - | - | - | - | - | - | - | 29 | 29 |
| Indiabulls ARC | - | - | - | - | - | - | - | - | - | 0 |
| Grand Total | 71 | 23 | 356 | 271 | 129 | 668 | 354 | 168 | 441 | 2,483 |

13. Annexure E detailing the Operational Creditor Claim.

14. First we need to consider the submissions of Learned Counsel for the Appellant that in view of the fact that large number of projects of the Corporate Debtor are ongoing projects where substantial completion has been made and large number of units have also been handed over to the home buyers and rest units shall also be handed over, in event the construction of the projects are allowed to proceed as ongoing project, the promoters of the Corporate Debtor are willing to extend all cooperation to the IRP for carrying out the ongoing

projects. It is submitted that CIRP need not to be allowed to continue for all the 20 projects rather it may be undertaken on projects basis as has been held by this Tribunal in its Judgment of 'Flat Buyers Association Winter Hills' (supra). The Hon'ble Supreme Court in '**Swiss Ribbon Pvt. Ltd. Vs. Union of India**' [(2019) 4 SCC 17] has made weighty observations with regard to the Insolvency Code which deals with economic matter. In paragraph 120 of the Judgment, following has been observed:

“120. The Insolvency Code is a legislation which deals with economic matters and, in the larger sense, deals with the economy of the country as a whole. Earlier experiments, as we have seen, in terms of legislations having failed, trial having led to repeated errors, ultimately led to the enactment of the Code. The experiment contained in the Code, judged by the generality of its provisions and not by so-called crudities and inequities that have been pointed out by the petitioners, passes constitutional muster. To stay experimentation in things economic is a grave responsibility, and denial of the right to experiment is fraught with serious consequences to the nation. We have also seen that the working of the Code is being monitored by the Central Government by Expert Committees that have been set up in this behalf. Amendments have been made in the short period in which the Code has operated, both to the Code itself as well as to subordinate legislation made under it. This process is an ongoing process which involves all stakeholders, including the petitioners.”

15. The thought which was echoed by Hon'ble Supreme Court in 'Swiss Ribbons Pvt. Ltd.' (supra) has been reiterated in the Judgment of Hon'ble Supreme Court in '**Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta and Ors.**' [(2018) 8 SCC 531]. This Tribunal in the case of 'Flat Buyers Association Winter Hills' (supra) was faced with a case regarding Insolvency of a Real Estate Company. In the above Judgment, this Tribunal dealt with 'Reverse Corporate Insolvency Resolution Process' and in paragraph 21 made following observations:

“21. In Corporate Insolvency Resolution Process against a real estate, if allottees (Financial Creditors) or Financial Institutions/Banks (Other Financial Creditors) or Operational Creditors of one project initiated Corporate Insolvency Resolution Process against the Corporate Debtor (real estate company), it is confined to the particular project, it cannot affect any other project(s) of the same real estate company (Corporate Debtor) in other places where separate plan(s) are approved by different authorities, land and its owner may be different and mainly the allottees (financial creditors), financial institutions (financial creditors, operational creditors are different for such separate project. Therefore, all the asset of the company (Corporate Debtor) are not to be maximized. The asset of the company (Corporate Debtor – real estate) of that particular project is to be maximized for balancing the creditors such as allottees, financial institutions and operational creditors of that particular project. Corporate Insolvency Resolution Process should be

project basis, as per approved plan by the Competent Authority. Any other allottees (financial creditors) or financial institutions/ banks (other financial creditors) or operational creditors of other project cannot file a claim before the Interim Resolution Professional of other project and such claim cannot be entertained.

So, we hold that Corporate Insolvency Resolution Process against a real estate company (Corporate Debtor) is limited to a project as per approved plan by the Competent Authority and not other projects which are separate at other places for which separate plans approved. For example – in this case the Winter Hill – 77 Gurgaon Project of the ‘Corporate Debtor’ has been place of Corporate Insolvency Resolution Process. If the same real estate company (Corporate Debtor herein) has any other project in another town such as Delhi or Kerala or Mumbai, they cannot be clubbed together nor the asset of the Corporate Debtor (Company) for such other projects can be maximised.”

16. This Tribunal also made observations that ‘Secured Creditor’ such as ‘financial institutions/ banks’, cannot be provided with the asset (flat/apartment) by preference over the allottees (Unsecured Financial Creditors) for whom the project has been approved. This Tribunal directed for following ‘Reverse Corporate Insolvency Resolution Process in case of Real Estate Infrastructure Companies in the interest of allottees and survival of the Real Estate Infrastructure Companies and to ensure completion of projects. In paragraph 25, following observations have been made:

“25. In the light of aforesaid discussion, as we find it is very difficult to follow the process as in normal course is followed in a Corporate Insolvency Resolution Process, we are of the view, that a ‘Reverse Corporate Insolvency Resolution Process’ can be followed in the cases of real estate infrastructure companies in the interest of the allottees and survival of the real estate companies and to ensure completion of projects which provides employment to large number of unorganized workmen.”

17. In the above case, one of the promoters were directed to cooperate with the Interim Resolution Professional and to disburse the amount not as a promoter but as the outside Lender and direction for phase-wise completion of the project as well as direction for payment of financial institutions/banks simultaneously. In paragraph 26-27, following observations have been issued:

“26. The ‘Uppal Housing Pvt. Ltd.’ – Intervenor (One of the Promoter) is directed to cooperate with the Interim Resolution Professional and disburse amount (apart from the amount already disbursed) from outside as Lender (financial creditor) not as Promoter to ensure that the project is completed with the time frame given by it. The disbursement of amount which has been made by ‘Uppal Housing Pvt. Ltd.’ and the amount as will be generated from dues of the Allottees (Financial Creditors) during the Corporate Insolvency Resolution should be deposited in the account of the Company (Corporate Debtor) to keep the Company a going concern. The amount can be utilized only by issuance of cheque signed by the authorised person of the Company (Corporate Debtor) with counter signature by

the Interim Resolution Professional. The Bank in which the Corporate Debtor (Company) has account the amount should be deposited only for the purpose of completion of the Winter Hill – 77 Gurgaon Project. Banks will allow the cheques for encashment only with the counter signature of the Interim Resolution Professional.

27. The flats/apartments should be completed in all aspect by 30th June, 2020. All internal fit outs for electricity, water connection should be completed by 30th July, 2020. The Financial Institutions/ Banks should be paid simultaneously. The allottees are directed to deposit their balance amount and pay 90% without penal interest, if not deposited, by 15th March, 2020. The Allottees in whose favour possession has been offered and clearance has been given by the competent authority are bound to pay the cost for registration and directed to deposit registration cost to get the flats/apartments registered after paying all the balance amount in terms of the agreement.”

18. An appeal was also filed before the Hon’ble Supreme Court of India vide Diary No. 13889-2020 in the matter of Narendra Singh Vs. M/s. Umang Realtech Pvt. Ltd. against the Order dated 04.02.2020 of this Tribunal in Company Appeal (AT) Ins. No. 926 of 2019 which was dismissed by an Order dated 11th August, 2020

19. From the facts, which has been brought on record especially the Status Report by the IRP it is clear that all 20 Projects which are of the Corporate Debtor are ongoing projects where substantial units of the total units have

been sold. Project-wise detail has been given in Page 14 of the Report which is to the following effect:

| S.no | Project name | Total Units | Sold Units | Registry Units | NDC Issued Units | Possession Without OC Units | Near Ready Units (NDC Issued) | Under construction Units | Unsold Units |
|--------------|-----------------------------|---------------|---------------|----------------|------------------|-----------------------------|-------------------------------|--------------------------|---------------|
| 1 | Eco Village - 1 | 8,012 | 7,685 | 1,473 | 6,657 | 3,171 | 2,013 | 1,355 | 327 |
| 2 | Upcountry | 5,876 | 3,248 | 19 | 744 | 469 | 256 | 5,132 | 2,628 |
| 3 | Eco Village - 2 | 5,696 | 5,189 | 1,079 | 4,287 | 2,054 | 1,154 | 1,409 | 507 |
| 4 | Capetown | 5,054 | 4,983 | 3,321 | 4,644 | 1,010 | 313 | 410 | 71 |
| 5 | Eco Village - 3 | 3,909 | 2,892 | 593 | 1,718 | 667 | 458 | 2,191 | 1,017 |
| 6 | Hill Town | 2,561 | 1,208 | 72 | 75 | -61 | 64 | 2,486 | 1,353 |
| 7 | Cape Town North Eyes | 2,449 | 1,561 | 23 | 340 | 39 | 278 | 2,109 | 888 |
| 8 | Green Village | 2,204 | 1,400 | 891 | 1,047 | 29 | 127 | 1,157 | 804 |
| 9 | Eco City | 2,145 | 2,141 | 1,333 | 2,130 | 720 | 77 | 15 | 4 |
| 10 | Meerut Sport City | 2,124 | 1,103 | 385 | 477 | 17 | 75 | 1,647 | 1,021 |
| 11 | Romano | 2,105 | 1,491 | - | 514 | 172 | 342 | 1,591 | 614 |
| 12 | Czar Suites | 2,083 | 1,862 | 265 | 1,678 | 976 | 437 | 405 | 221 |
| 13 | Crossing Livingston | 1,318 | 1,318 | 1,255 | 1,309 | 31 | 23 | 9 | - |
| 14 | River Crest | 1,301 | 265 | - | 199 | 55 | 144 | 1,102 | 1,036 |
| 15 | Araville | 618 | 493 | 82 | 336 | 88 | 166 | 282 | 125 |
| 16 | Doon Square | 606 | 326 | 60 | 149 | 19 | 70 | 457 | 280 |
| 17 | Palm Green Residence Meerut | 562 | 562 | 562 | 562 | - | - | - | - |
| 18 | Palm Green Moradabad | 434 | 434 | 401 | 429 | 28 | - | 5 | - |
| 19 | 34 Pavilion | 367 | 367 | 138 | 361 | 221 | 2 | 6 | - |
| 20 | Micasa - Bangalore | 130 | 75 | 1 | 17 | - | 16 | 113 | 55 |
| Total | | 49,554 | 38,603 | 11,953 | 27,673 | 9,705 | 6,015 | 21,881 | 10,951 |

20. We further notice that the Union Bank of India who has initiated CIRP by filing Section 7 Application has stated in Section 7 Application that it had given finance for Eco Village II Project. In annexure C of the Status Report of the IRP, Union Bank of India has shown to have given finance for Eco Village II Project, Eco Village III Project, Eco Village IV and One Romano Project. With regard to the Eco Village II Project, there is another Financial Creditor i.e. IDBI Bank

who has filed Intervention Application as noted above. Large number of home buyers who has filed Intervention Application has prayed that CIRP be confined to Eco Village II Only. With regard to the other projects, the construction may be allowed to be completed so that home buyers may get their flats.

21. We are conscious of the fact that 'CIRP' has been initiated against the Corporate Debtor. 'CIRP' has commenced against all the projects of the Corporate Debtor. 'CIRP' encompasses all the assets of the Corporate Debtor including all Bank Accounts. The IRP has already been appointed and has taken steps by informing all concerned including Banks to add the name of IRP for operation of the Account. The Learned Counsel for the Appellant made submissions and also filed an I.A. No. 1468 of 2022 by which Resolution cum Settlement Proposal has been submitted by the Management with an object to carry out the construction of all the projects.

22. As noted above, the consequence of 'CIRP' is that all assets of the Corporate Debtor come in the control and management of the IRP. All bank accounts are to be operated with the counter signature of the IRP. No amount from any account can be withdrawn without the counter signature and permission of the IRP. IRP under the IBC has responsibility to run the Corporate Debtor as a going concern. Further when Promoters are ready to extend all cooperation with all its staffs and employees to the IRP, we see no reason for not to direct the IRP to proceed with construction of all the projects under the overall supervision and control of the IRP. We by an Interim Order

dated 12th April, 2022 directed not to constitute the 'CoC' which Interim Order is continuing as on date.

23. In the facts of the present case and keeping in view the submissions raised by the Learned Counsel for the parties, we are of the view that in 'CIRP' Process, Project-Wise Resolution to be started as a test to find out the success of such Resolution. Keeping an eye regarding construction and completion of the projects, we at present, are of the view that Interim Order dated 12th April, 2022 staying the constitution of CoC be modified to the extent that CoC be constituted for the Eco Village II Project only with all Financial Creditors including Financial Creditors/Banks/Home Buyers. The Committee of Creditors of Eco Village II Project shall start process for Resolution of Eco Village II Project. The IRP shall separate the claims received with regard to the Eco Village II Project and prepare an 'Information Memorandum' accordingly and proceed for meeting of the CoC as per the Code. It is further directed that even for Eco Village II Project, the IRP shall carry the Project and continue the project as ongoing project by taking all assistance from the ex-management, employees, workmen etc. We however make it clear that other projects apart from the Eco Village II Project shall proceed as ongoing project basis under the overall supervision of the IRP. IRP in his report stated that with regard to the projects, there are separate accounts as per 'RERA' Guidelines. Detail account of all the inflow and outflow with regard to each project shall be separately maintained as per the 'RERA' Guidelines. 70% of the amount received with regard to the project shall be utilized for construction purpose only with regard

to the disbursement of rest 30 % amount, we shall issue appropriate direction after receiving further Status Report and after hearing all concern subsequently.

24. The Promoters of the Corporate Debtor has submitted that they shall arrange for Interim Finance to support the ongoing construction of the different projects by arranging finances as submitted in their Settlement cum Resolution Plan. Annexure 3 to the I.A. No. 1468 of 2022, with an object to complete the projects and clear the outstanding of all Financial Institutions including the Financial Creditors on the basis of 100% ledger balance and also payment to the Operational Creditor. The pendency of this proceeding shall in no manner hinder the Appellant to approach the Financial Creditors for entering into Settlement with the Financial Creditors. With regard to the disbursement to the Financial Creditors, out of 30% of the amount, we shall issue necessary direction after receiving the status report and receiving the progress of the projects.

25. In view of the foregoing discussions, we issue following Interim Directions:

- i. The Interim Order dated 12th April, 2022 continuing as on date is modified to the extent that IRP may constitute the CoC with regard to the Project Eco Village II only.
- ii. After constitution of CoC of Eco Village II Project, the IRP shall proceed to complete the construction of the project with the assistance of the ex-management, its employees and workmen.

- iii. With regard to the Eco Village II Project, the IRP shall proceed with the completion of the project, Resolution and shall be free to prepare Information Memorandum, issue Form -G, invite Resolution Plan however no Resolution Plan be put for voting without the leave of the Court.
- iv. All receivables with regard to the Eco Village II Project, shall be kept in the separate account, earmarked account and detail accounts of inflow and outflow shall be maintained by the IRP.
- v. That all other projects of the Corporate Debtor apart from Eco Village II Project shall be kept as ongoing project. The Construction of all other projects shall continue with overall supervision of the IRP with the assistance of the ex-management and its employees and workmen.
- vi. The promoter shall infuse the funds as arranged by it in different projects which shall be treated as Interim Finance regarding which detail account shall be maintained by the IRP.
- vii. No account of Corporate Debtor shall be operated without the counter signature of the IRP. All expenses and payments in different projects, shall be only with the approval of the IRP. All receivables in different projects shall be deposited in the account as per 'RERA' Guidelines and 70% of the amount shall be utilized for the construction purpose only. With regard to the disbursement of rest of the 30 %, appropriate direction shall be issued subsequently after receiving the status report and after hearing all concerns.

- viii. The IRP shall obtain approval of the CoC which is directed to be constituted for Eco Village II Project and incur all the expenses regarding the said projects and further incur the expenses accordingly.
- ix. With regard to the expenses to other projects for which no CoC has been constituted, IRP is at liberty to submit a proposal for payment of various expenses including 'CIRP' expenses to this Tribunal.
- x. The Promoters of the Corporate Debtor shall be at liberty to bear any expenses as requested by the IRP without in any manner utilizing any of the funds of the Corporate Debtor.
- xi. Let the IRP submit a further Status Report within six weeks from today regarding Eco Village II Project and all other projects.
- xii. The Parties are at liberty to file an I.A. for any direction/clarification in the above regard.
- xiii. List this Appeal on **27th July, 2022.**

[Justice Ashok Bhushan]
Chairperson

[Mr. Naresh Salecha]
Member (Technical)

New Delhi
10.06.2022
Basant

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 1925 OF 2023**

**INDIABULLS ASSET RECONSTRUCTION
COMPANY LIMITED**

....APPELLANT(S)

VERSUS

RAM KISHORE ARORA & ORS.

....RESPONDENT(S)

WITH

CIVIL APPEAL NO. 5941 OF 2022

CIVIL APPEAL NO. 1975 OF 2023

ORDER

Civil Appeal No. 5941 of 2022 and Civil Appeal No. 1925 of 2023

1. These two appeals (Civil Appeal Nos. 5941 of 2022 and 1925 of 2023) filed by the Union Bank of India and Indiabulls Asset Reconstruction Company Ltd. respectively, being the financial creditors of the corporate debtor – Supertech Ltd., are directed against the order dated 10.06.2022 passed by the National Company Law Appellate Tribunal, Principal Bench, New Delhi¹, in Company Appeal (AT) (Ins.) No. 406 of 2022. By the order impugned, the Appellate Tribunal, while dealing with an appeal against the order dated 25.03.2022 passed by the National Company Law Tribunal,

¹ Hereinafter referred to as 'the Appellate Tribunal' or 'NCLAT.'

New Delhi – Court VI², in admitting an application under Section 7 of the Insolvency and Bankruptcy Code, 2016³, has issued a slew of directions which practically have the effect of converting the corporate insolvency resolution process⁴ in question into a “project-wise insolvency resolution process” inasmuch as the constitution of committee of creditors⁵ has been restricted only to one project named “Eco Village-II” of the corporate debtor, who is dealing in real estate and has several ongoing projects.

2. The other appeal, being Civil Appeal No. 1975 of 2023, is preferred by Assets and Care Reconstruction Ltd., a beneficiary of corporate guarantee, challenging the order dated 10.01.2023 whereby, the Appellate Tribunal directed the interim resolution professional⁶ to call a meeting of only those financial institutions who have lent money to the corporate debtor before finalisation of the term sheet.

3. Having regard to myriad issues involved and the fact that final disposal of the appeals is likely to take time, we have heard the learned counsel for the parties as regards interim relief and/or interim arrangement, particularly after taking note of the fact that in terms of the direction of NCLAT, certain offers were received from the prospective resolution applicants. Those offers were directed to be placed before NCLAT and we requested the NCLAT to keep further proceedings in abeyance and await further orders of this Court. Thereafter, we heard the learned counsel for

² Hereinafter referred to as ‘the Tribunal’ or ‘NCLT’.

³ Hereinafter referred to as ‘IBC’ or ‘the Code’.

⁴ For short, ‘CIRP’.

⁵ For short, ‘CoC’.

⁶ For short, ‘IRP’.

the parties at substantial length as regards the propositions towards interim relief/interim arrangement in view of the typical issues involved in these matters.

4. A brief reference to the relevant background aspects shall be apposite.

4.1. The corporate debtor is a real estate company engaged in construction of various projects, mostly in the National Capital Region, which received credit facilities from Union Bank of India by way of sanction letter dated 19.10.2013/16.12.2013, in the sum of Rs. 150 crore, for the development of the “Eco Village-II Project.” Subsequently, Union Bank of India and Bank of Baroda entered into an agreement, extending second credit facilities in the sum of Rs. 200 crore, with Union Bank of India’s total exposure being Rs. 100 crore, as sanctioned by letter dated 21.11.2015.

4.2. The credit facilities provided by Union Bank of India to the corporate debtor were secured through a mortgage, corporate guarantees, and personal guarantees. As a result of the corporate debtor’s default on the loan repayment, the account was declared as a ‘Non-Performing Asset’ on 20.06.2018.

4.3. Union Bank of India filed an application under Section 7 of the Code on 20.03.2021, claiming a total amount of Rs. 431,92,53,302 as on 31.01.2021, along with accrued interest. The NCLT, by its order dated 25.03.2022, admitted the Section 7 application and directed for initiation of CIRP for the corporate debtor. Following this, Mr. Hitesh Goel – respondent No. 3 was appointed as the IRP.

4.4. Aggrieved by this order so passed by NCLT, respondent No. 1 – promoter/suspended director of corporate debtor filed an appeal before NCLAT. On 12.04.2022, an interim order was passed by NCLAT, directing that CoC shall not be constituted until the next date. The said order continued until passing of the impugned order dated 10.06.2022.

4.5. In the impugned order dated 10.06.2022, the Appellate Tribunal partly modified its order dated 12.04.2022 and issued interim directions, including constitution of CoC for Eco Village Project-II only; the said project to be completed with assistance of ex-management whereas other projects, apart from Eco Village-II, were ordered to be continued as ongoing projects. The interim directions in the impugned order dated 10.06.2022 read as follows: -

“i. The Interim Order dated 12th April, 2022 continuing as on date is modified to the extent that IRP may constitute the CoC with regard to the Project Eco Village II only.

ii. After constitution of CoC of Eco Village II Project, the IRP shall proceed to complete the construction of the project with the assistance of the ex management, its employees and workmen.

iii. With regard to the Eco Village II Project, the IRP shall proceed with the completion of the project, Resolution and shall be free to prepare Information Memorandum, issue Form –G, invite Resolution Plan however no Resolution Plan be put for voting without the leave of the Court.

iv. All receivables with regard to the Eco Village II Project, shall be kept in the separate account, earmarked account and detail accounts of inflow and outflow shall be maintained by the IRP.

v. That all other projects of the Corporate Debtor apart from Eco Village II Project shall be kept as ongoing project. The Construction of all other projects shall continue with overall supervision of the IRP with the assistance of the ex-management and its employees and workmen.

vi. The promoter shall infuse the funds as arranged by it in different projects which shall be treated as Interim Finance regarding which detail account shall be maintained by the IRP.

vii. No account of Corporate Debtor shall be operated without the counter signature of the IRP. All expenses and payments in

different projects, shall be only with the approval of the IRP. All receivables in different projects shall be deposited in the account as per 'RERA' Guidelines and 70% of the amount shall be utilized for the construction purpose only. With regard to the disbursement of rest of the 30 %, appropriate direction shall be issued subsequently after receiving the status report and after hearing all concerns.

viii. The IRP shall obtain approval of the CoC which is directed to be constituted for Eco Village II Project and incur all the expenses regarding the said projects and further incur the expenses accordingly.

ix. With regard to the expenses to other projects for which no CoC has been constituted, IRP is at liberty to submit a proposal for payment of various expenses including 'CIRP' expenses to this Tribunal.

x. The Promoters of the Corporate Debtor shall be at liberty to bear any expenses as requested by the IRP without in any manner utilizing any of the funds of the Corporate Debtor.

xi. Let the IRP submit a further Status Report within six weeks from today regarding Eco Village II Project and all other projects.

xii. The Parties are at liberty to file an I.A. for any direction/clarification in the above regard.

xiii. List this Appeal on **27th July, 2022.**"

5. Dissatisfied with the interim directions so issued by the Appellate Tribunal, the appellants, financial creditors of corporate debtor, have filed appeals before this Court, essentially challenging the adoption of reverse CIRP by the Appellate Tribunal and limiting the CIRP and constitution of CoC to only one project of corporate debtor, i.e., Eco Village-II.

6. It has been contended on behalf of the appellants that the Appellate Tribunal does not have power under IBC to allow project-wise CIRP and does not have power to accept a resolution plan presented by the promoter without giving opportunity to the CoC to study the commercial viability of the plan. It has also been contended that there is no concept of project-wise resolution under IBC and the order impugned was passed by the

Appellate Tribunal without notice to the appellants, who are the financial creditors having substantial stakes in the matter.

7. As regards interim relief/interim arrangement, the contesting parties have put forward different propositions which could be summarised as *infra*.

7.1. It has been submitted on behalf of the appellant - Union Bank of India that the financial institutions, including appellant, have funded the corporate debtor as a single corporate entity irrespective of the fact that the funds are being utilised for a single project or multiple projects. Therefore, the credit facility extended by the appellant does not get converted to 'project finance' allowing resolution through 'project based insolvency' mechanism; and the scheme of IBC envisages CIRP of whole corporate entity that is to be carried out only through CoC mandated to be constituted for the corporate debtor as a whole instead of only one of its projects. Moreover, any procedure that allows the erstwhile management, the cause of suspension of the projects, to participate as a resolution applicant or in any other form or to receive funds from a third party for the corporate debtor will defeat the purpose of the Code, as it is in violation of Section 29-A of the Code as well as various judgments of this Court; and there are serious delinquencies dimension against the ex-management. It is submitted that the appellant is in favour of the investment being made by any third party on the primary condition that the ex-management is not included for resolution of the corporate debtor.

7.2. It has been submitted on behalf of the appellant – Indiabulls Asset and Reconstruction Company Ltd. that the impugned order restricting constitution of CoC only to Eco Village-II is required to be modified to constitute CoC for entire company; promoter/erstwhile management of the corporate debtor should have no involvement in CIRP and must maintain the *status quo* concerning the assets of the corporate debtor.

7.3. It has been submitted on behalf of promotor-respondent No.1 that interim direction No. (i) and (ii) issued by the Appellate Tribunal be modified to include Eco Village-II project also within the interim arrangement. Additionally, the ex-management of the corporate debtor may be allowed to carry out the execution of the interim funding and settlement plan under the supervision of IRP, which could be monitored by a Monitoring Committee designated by this Court. Further, the IRP, ex-management, and the Monitoring Committee be required to submit quarterly progress reports to NCLAT, or alternatively, to this Court. It has also been submitted that no coercive action be taken against assets of corporate debtor, its promoters, directors and management which otherwise would delay completion of projects.

7.4. It has been submitted on behalf of IRP that interim directions issued by the Appellate Tribunal, by way of the impugned order, deserve not to be interfered with; the construction can be monitored by a steering committee which can file reports every quarter; and directions may be issued to initiate efforts to procure interim financing for all of the corporate debtor's

projects, which would include both Eco Village-II and Non-Eco Village II projects.

7.5. It has been submitted on behalf of home buyers of Eco Village-II that the direction be issued to complete the construction of the said project in a similar manner as envisaged for other home buyers for whom no CoC has been constituted and construction deserves to be completed under supervision of IRP with assistance of ex-management.

7.6. It has been submitted on behalf of other home buyers that the impugned order deserves not to be interfered with and direction may be issued to NCLAT to complete the process of approval and infusion of funds from proposed investor; a Monitoring Committee may be formed in regard to interim arrangement and settlement plan and due diligence report may be circulated for their opinion; and no coercive action to be taken against assets of the corporate debtor.

8. We have given anxious consideration to the submissions made by the learned counsel for the parties, who have assigned various reasons in support of their respective propositions. As aforesaid, in this order, we are only dealing with the question of interim relief/interim arrangement during the pendency of these appeals.

9. As noticed, the present appeals (Civil Appeal No. 5941 of 2022 and Civil Appeal No. 1925 of 2023) are directed against an interim order of the Appellate Tribunal. However, the said interim order, *prima facie*, gives rise to several questions worth consideration, including the fundamental one as to the tenability of the proposition of “project-wise resolution” as adopted

by the Appellate Tribunal. The question, at present, is as to what should be the interim relief/interim arrangement until disposal of these appeals. In regard to this question, we may take note of the relevant principles in relation to the matter concerning grant of interim relief which have been re-emphasized by this Court in the case of ***Union of India and Ors. v. M/s Raj Grow Impex LLP and Ors.***: 2021 SCC OnLine SC 429 as follows:-

“194. In addition to the general principles for exercise of discretion, as discussed hereinbefore, a few features specific to the matters of interim relief need special mention. It is rather elementary that in the matters of grant of interim relief, satisfaction of the Court only about existence of *prima facie* case in favour of the suitor is not enough. The other elements i.e., balance of convenience and likelihood of irreparable injury, are not of empty formality and carry their own relevance; and while exercising its discretion in the matter of interim relief and adopting a particular course, the Court needs to weigh the risk of injustice, if ultimately the decision of main matter runs counter to the course being adopted at the time of granting or refusing the interim relief. We may usefully refer to the relevant principle stated in the decision of Chancery Division in *Films Rover International Ltd. v. Cannon Film Sales Ltd.* : (1986) 3 All ER 772 as under:—

“...The principal dilemma about the grant of interlocutory injunctions, whether prohibitory or mandatory, is that there is by definition a risk that the court may make the “wrong” decision, in the sense of granting an injunction to a party who fails to establish his right at the trial (or would fail if there was a trial) or alternatively, in failing to grant an injunction to a party who succeeds (or would succeed) at trial. **A fundamental principle is therefore that the court should take whichever course appears to carry the lower risk of injustice if it should turn out to have been “wrong”** in the sense I have described. The guidelines for the grant of both kinds of interlocutory injunctions are derived from this principle.”

(emphasis in bold supplied)

195. While referring to various expositions in the said decision, this Court, in the case of *Dorab Cawasji Warden v. Coomi Sorab Warden* : (1990) 2 SCC 117 observed as under:—

“16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that

have been illegally done or the restoration of that which was wrongfully taken from the party complaining. **But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines.** Generally stated these guidelines are:

- (1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.
- (2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.
- (3) The balance of convenience is in favour of the one seeking such relief.

17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion.”

(emphasis in bold supplied)

196. In keeping with the principles aforesaid, one of the simple questions to be adverted to at the threshold stage in the present cases was, as to whether the importers (writ petitioners) were likely to suffer irreparable injury in case the interim relief was denied and they were to ultimately succeed in the writ petitions. A direct answer to this question would have made it clear that their injury, if at all, would have been of some amount of loss of profit, which could always be measured in monetary terms and, usually, cannot be regarded as an irreparable one. Another simple but pertinent question would have been concerning the element of balance of convenience; and a simple answer to the same would have further shown that the inconvenience which the importers were going to suffer because of the notifications in question was far lesser than the inconvenience which the appellants were going to suffer (with ultimate impact on national interest) in case operation of the notifications was stayed and thereby, the markets of India were allowed to be flooded with excessive quantity of the said imported peas/pulses.”

10. In the light of the principles aforesaid, in our view, as at present, we should adopt the course which appears to carry lower risk of injustice, even if ultimately in the appeals, this Court may find otherwise or choose any other course. In that regard, the element of balance of convenience shall have its own significance. On one hand is the position that the Appellate Tribunal has adopted a particular course (which it had adopted in another matter too) while observing that the project-wise resolution may be started as a test to find out the success of such resolution. The result of the directions of the impugned order dated 10.06.2022 is that except Eco Village-II project, all other projects of the corporate debtor are to be kept as ongoing projects and the construction of all other projects is to be continued under the supervision of the IRP with the ex-management, its employees and workmen. Infusion of funds by the promoter in different projects is to be treated as interim finance, regarding which total account is to be maintained by IRP. If at the present stage, on the submissions of the appellants, CoC is ordered to be constituted for the corporate debtor as a whole in displacement of the directions of the Appellate Tribunal, it is likely to affect those ongoing projects and thereby cause immense hardship to the home buyers while throwing every project into a state of uncertainty. On the other hand, as indicated before us, the other projects are being continued by the IRP and efforts are being made for infusion of funds with the active assistance of the ex-management but without creating any additional right in the ex-management. In our view, greater inconvenience is likely to be caused by passing any interim order of constitution of CoC in

relation to the corporate debtor as a whole; and may cause irreparable injury to the home buyers. In this view of the matter, we are not inclined to alter the directions in the order impugned as regards the projects other than Eco Village-II.

11. In relation to Eco Village-II project, since CoC was ordered to be constituted by the Appellate Tribunal in the impugned order dated 10.06.2022, we are not interfering with those directions too but, in our view, any process beyond voting on the resolution plan should not be undertaken without specific orders of this Court.

12. The other propositions, including that of constituting monitoring committee, are kept open, to be examined later, if necessary.

13. For what has been discussed hereinabove, the impugned order dated 10.06.2022 is allowed to operate subject to the final orders to be passed in these appeals and subject, of course, to the modification in respect of Eco Village-II project that the process beyond voting on resolution plan shall await further orders of this Court.

14. The interim direction dated 27.01.2023 by this Court in these matters is modified in the manner that the NCLAT may deal with the offers said to have been received and pass an appropriate order thereupon but, the entire process shall remain subject to the orders to be passed in these appeals.

15. These appeals may be listed for final hearing at the admission stage in the second week of July, 2023.

Civil Appeal No. 1975 of 2023

16. As regards Civil Appeal No. 1975 of 2023, no interim relief or interim arrangement is considered requisite at the present stage. The question of maintainability of this appeal is also kept open, to be examined at the appropriate stage. This appeal also be listed along with Civil Appeal No. 5941 of 2022.

Regarding interlocutory applications

17. In the interest of justice, it is made clear that other pending interlocutory applications in these matters are also left open to be examined at appropriate stage with liberty to the parties to mention, if so advised and necessary.

..... J.
(DINESH MAHESHWARI)

..... J.
(SANJAY KUMAR)

**NEW DELHI;
MAY 11, 2023.**