

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

I.A. No. OF 2024
IN

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

IN THE MATTER OF:

Ram Kishor Arora
Suspended Director of Supertech Ltd.

...Appellant

Versus

Union Bank of India & Anr.

...Respondents

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Date: 31.07.2024

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APPLICATION ON BEHALF OF NBCC (I) LTD.

SEEKING NECESSARY DIRECTIONS

MOST RESPECTFULLY SHOWETH:-

1. That vide the hearing conducted before this Hon'ble Tribunal on 08.07.2024, a submission was made by the Respondent No 1 before this Hon'ble Tribunal that NBCC(India) Limited (hereinafter referred to as 'NBCC') is interested in undertaking the pending projects of M/s Supertech Ltd. (hereinafter referred to as 'Supertech'), subject to due diligence. It was further submitted by Respondent No 1 that NBCC was earlier contacted by the Interim Resolution Professional ("IRP") with regard to project 'Eco Village-II' and NBCC has now informed the lenders that they may take all

the projects, provided they are given access to the details of the projects and other relevant data. It was further recorded by this Hon'ble Tribunal that the lenders of the Supertech are also not averse to the said proposal. That this Hon'ble Tribunal accordingly, directed NBCC to make an appropriate request to the IRP regarding the same.

2. Accordingly, NBCC vide email dated 12.07.2024, requested the IRP of Supertech to permit access to the Virtual Data Room ("VDR") containing all the data with regard to the pending projects of Supertech, so as to enable it to peruse the records and carry out due diligence.

3. That vide order dated 15.07.2024, this Hon'ble Tribunal directed NBCC to again make an appropriate request to the IRP regarding the access to the VDR within 24 hours of uploading the order and vide email dated 15.07.2024, NBCC again requested the IRP of Supertech to permit access to the VDR, containing all the data with regard to the pending projects of Supertech, so as to enable it to peruse the records and carry on the due-diligence. That vide email dated 16.07.2024, the IRP has shared the necessary details with NBCC.

4. That in furtherance to the same, NBCC had constituted teams of

necessary officials to peruse the documents available in the VDR as well as projects on site and prima facie, found that in many projects, certain pertinent data, which is required for the due-diligence, has been listed as 'Not Available'. That in order to have a comprehensive assessment of the current status of the pending projects, all the data, {which are not available in the VDR}, is extremely necessary and as such, more time would be required by NBCC, to gather the relevant information, so as to comprehensively prepare reports for the projects, for which the assistance of this Hon'ble Tribunal is required.

5. That from the previous experiences of NBCC, it has been gathered that availability of all the relevant and accurate information/documents with regard to the current status of projects becomes imperative, so as to correctly assess the feasibility of the projects and for the overall smooth completion of the projects. That some of the experiences faced by NBCC in the past are enumerated hereunder for the ready reference of this Hon'ble Tribunal, so as to have a better appreciation of the ground realities that may crop up during the execution of the works akin to the present project.

**PREVIOUS EXPERIENCES OF NBCC IN AMRAPALI PROJECTS
BEING UNDERTAKEN UNDER THE SUPERVISION OF THE
HON'BLE SUPREME COURT AND THE LD. COURT RECEIVER**

6. That vide various order(s), NBCC has been appointed as Project Management Consultant ("PMC") by the Hon'ble Supreme Court of India in WP (Civil) No. 940 of 2017 titled '*Bikram Chatterji & Ors Vs. UOI & Ors*', to complete the balance/left-out works of Amrapali Projects in Noida & Greater Noida and further to sell the unsold inventories of the aforesaid projects as well as their attached properties and unused FAR, under the supervision of the Ld. Court Receiver appointed by the Hon'ble Supreme Court.

7. It is submitted that the completion of balance/left-out works of Amrapali Projects involved incomplete inventory of approximately 37,000 units in Noida and Greater Noida and NBCC has awarded these projects in phases, starting from the year 2020 and projects are presently in different stages. Some projects have been completed and handing over is in progress. In remaining projects work is going on in full swing and is expected to be completed by March 2025.

8. That NBCC had faced many hindrances from 2020, which are as under:-



- A. One of the major hindrances faced by NBCC is delay in payment to contractors against their bills, due to irregular fund flow. Amrapali group had committed various frauds like- selling units at lower prices, selling to multiple allottees, subvention issues, JV adjustments, bogus allotments, claims on unsold units, etc. Encountering all these issues during execution resulted in abnormal delay in completion of the projects.
- B. Trust deficit among the existing buyers to deposit remaining payment due to stigma of fraud committed by the Amrapali Group.
- C. Maximum home buyers booked the flats around 8-10 years back. Out of which, some home buyers purchased another flat in other project. Resultantly, they have opted for refund and are not paying further dues which have impacted cash flow of the project.
- D. As per Forensic Audit report, the receivable from Sold units was around Rs 3870 Cr which were to be paid by existing home buyers within 3 month's time as per the order dated 2307.2019 passed by the Hon'ble Supreme Court. However, till June 2024, only around Rs

2459 Cr has been received and around Rs 1400 Cr is yet to be received.

E. **DEFAULTER BUYERS:** It was noticed that a large numbers of home buyers were not making payments against their dues. NBCC has identified around 9000 defaulters (*neither registered in customer portal created by Ld. Court Receiver nor having made any payment in UCO Bank*) a list of which was prepared and published in newspaper, sent them mails, messages, speed post etc. with the approval of court, for making payments. While many home buyers are now paying their dues, however still around 1800 units have been declared as Defaulters units.

F. **INCORRECT/ INCOMPLETE OR IMPROPER DATA:** The biggest challenge was the improper data. Some Towers were shown on papers and sold to various buyers, but as per drawings, there were no such towers. There was mismatch in actual area & area provided in forensic report.

G. **UNSOLD INVENTORY:-** The unsold inventory as per forensic report meant to be sold for fund generation, faced claims form other buyers

which resulted in reduction in fund generation as was initially anticipated during start of the projects.

- H. NON AVAILABILITY OF DRAWINGS:- The absence of various documents like sanctioned drawing (*mismatch between available sanctioned drawings and actual construction at site*)& expiry of documents like various statutory approvals created hindrance in construction activities as well as sale in these projects.
- I. Few home buyers are not turning up to take over their completed flats since long back (*may be bogus booking, ghost buyers etc.*) resulting that NBCC could not close their contracts with various agencies appointed by NBCC for completion of works. In the absence of clarity, the units are in locked conditions since more than 3 years.
- J. Problem faced from respective RWA in taking handover of common facilities and pressuring NBCC to do maintenance works without paying maintenance charges. Also, many times, RWA pressurizes NBCC to execute the works which are out of scope of NBCC (*which comes under regular maintenance by RWA*).

- K. At some projects, residents were already residing and around 60% to 90% flats were occupied by residents when NBCC took over the project. There are lot of day-to-day hindrances & interventions by the residents in various execution, resulting in slow work of progress. At many instances residents called police at the projects that also hampered the progress of works.
- L. All Amrapali projects were stalled and left-out/abandoned for more than 8 to 10 years, the condition of the left-out works had deteriorated due to poor quality and environmental impact.
- M. Theft of existing protuberant reinforcement/materials by the locals from the existing structures before start of the works by NBCC.
- N. Damaged reinforcement steel of slab and shear wall of existing towers at the time of taking over from Amrapali. So, Rectification/Retrofitting works are being done as per structural stability requirement, which is causing delay in start of main activities.
- O. Challenge to sell the remaining unsold inventories because of the bad name of Amrapali. In spite of bad name of erstwhile Amrapali group, NBCC has sold around 6409 units out of 6988 units (including

defaulter units) as on 30.06.2024 having sale value of around Rs. 3700 Crores, out of which around Rs. 2466 Crores has been received till June 2024.

P. Shortage of available Car Parking is a very critical issue among the other issue.

Q. WRONG COMMITMENT FROM AMRAPALI GROUP:- In many cases, wrong commitments were made by Amrapali Group in order to sell their flats and issues like extra car parking, private space for garden area, landscaping, amenities, specifications etc. were faced by NBCC and were creating hindrance in sale

9. The List of challenges are many and few of them are highlighted above. Further, the execution of construction activities with safety and all preventive measures in habitat & such large-societies is unique in nature. In spite of the above facts, at present, around 21,000 units have been completed by NBCC till June 2024 out of around 37,000 units and the remaining units shall be completed before March 2025, subjected to Fund availability.

10. It has been the experience of NBCC that despite forensic audit having

been carried out for the pending projects of Amrapali, the actual figures qua receivables and status of inventory have been found to be very different in reality, which has impacted cash flows of the projects and in turn is affecting the pace of construction at the Amrapali Projects. The Ld. Court Receiver as well as the Hon'ble Supreme Court is being duly apprised of the same and NBCC is making all efforts to ensure that the projects are completed within reasonable timelines, subject however to availability of funds.

11. It is pertinent to mention that no forensic audit has been ordered for Supertech, as on date and hence the veracity of the data available may yet be disputable.

12. Therefore, taking heart from its previous experiences, NBCC believes that proper planning for completion of the projects of Supertech is important at the inception stage itself, as opposed to rushing headlong into execution, which may not serve the purpose of alleviating the suffering of the homebuyers who have been waiting for a long time to get possession of their homes.

13. The said planning necessitates sufficient time being made available to

get a proper perspective of the receivables, actual inventories, statutory approvals and compliances thereof, as well as status of construction of projects, in order to present a proper picture of the proposed execution plan before this Hon'ble Tribunal.

In view of the facts and circumstances stated above, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to:

PRAYER

- i. Issue necessary directions/orders granting 2months' time for NBCC to carry out detailed study and to check the feasibility of projects.
- ii. An online customer portal should be directed to be created and all the home buyers may be directed to fill their complete details and to upload complete payment proof within a fixed period of time. This activity will result in accurate compilation of data of the project viz.

no. of sold units, amount received from sold units, amount to be received from sold units, dual allotment, JV cases, subvention, buyers who want to opt for refund, clear unsold units, claim on unsold units, etc. These details will present actual feasibility of the project along with details of fund flow which eventually result in hindrance free, smooth and timely execution of works. The customer portal may be monitored by IRP, Banks or some other agency as appointed by this Hon'ble Tribunal.

- iii. Issue necessary directions/orders thereby directing publication of advertisement in various leading newspapers for filling the customer data on customer portal. Also, list of unsold units may be published in newspapers for information of any claims.
- iv. Issue necessary directions/orders whereby the Existing Architects, Consultants appointed by Supertech shall continue to provide their services for smooth completion of projects.
- v. Issue necessary directions/orders to all the Statutory Authorities to provide the status of statutory approvals/clearances to NBCC, so as to ascertain the current status of the projects.

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vi. Pass such other and further orders that this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.

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



डॉ. विजय कुमार चौधरी / Dr. V. M. V. KUMAR CHOUDHARY
कार्यकारी निदेशक (वित्त) / Executive Director (Finance)
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(भारत सरकार का उद्यम) / (Govt. of India Enterprise)
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NBCC (I) Ltd.



Gudipati G. Kashyap
{ Advocate }

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Email: advocate.kashyap.gudipati@gmail.com

Place: New Delhi

Date: 30.07.2024



सत्यमेव जयते

INDIA NON JUDICIAL

14

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL27698515146587W
Certificate Issued Date	: 30-Jul-2024 07:01 PM
Account Reference	: IMPACC (IV)/ dl720603/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL72060309254574826554W
Purchased by	: NBCC INDIA LTD
Description of Document	: Article 4 Affidavit
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: NBCC INDIA LTD
Second Party	: Not Applicable
Stamp Duty Paid By	: NBCC INDIA LTD
Stamp Duty Amount(Rs.)	: 10 (Ten only)



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Statutory Alert:

- The authenticity of this Stamp certificate should be verified at 'www.singlestamp.com' or using e-Stamp Mobile App of Stock Holding.
- Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
- The burden of checking the legitimacy is on the users of the certificate.
- In case of any discrepancy please inform the Competent Authority.

VERIFICATION:

Verified at New Delhi on this 30 JUL 2024, that the factual contents of this affidavit are true and correct to my knowledge as derived from the records and nothing stated herein is false and nothing material has been concealed therefrom.

DEPONENT

डॉ. विजय कुमार चौधरी / Dr. VIJAY KUMAR CHOUDHARY
कार्यकारी निदेशक (वित्त) / Executive Director (Finance)
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जीपीआरए कामप्लेक्स, न्यू मोती बाग, नई दिल्ली-110023
GPRA Complex, New Moti Bagh, New Delhi-110023

I identified the deponent/executant who has signed in my presence.



solemnly affirmed before me, read over & explained to the deponent

Notary Public. DELHI

30 JUL 2024

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IN THE COURT OF *NCLAT, Principal Bench, New Delhi*

Suit/Petition/Appeal/ O.A. No. OF

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

Ram Kishor Arora ..

... Plaintiff/Appellant/Complainant

VERSUS

Union Bank of India & Anr.

... Respondent/Defendant/Accused



KNOW ALL to whom these presents shall come that I, Dr. Vijay Kumar Choudhary, son of Sh. Mu Lal Choudhary authorized representative of NBCC (India) Limited, having its office at NBCC Bhaw Lodhi Road, New Delhi-110003 presently at GPRA Complex, New Moti Bagh, New Delhi-110023 hereby appoint:

**GUDIPATI G. KASHYAP
D/3906/2013**

Hereinafter called the Advocate(s) to be my/our Advocate(s) in the above-noted case and author him/her/them;

To act, appear and plead in the above-noted case in this Court or in any other Court in which the same may be tried or heard and also in the Appellate Court/ including High Court subject to payment of fees separately for each Court by me/us.

To sign, file, verify and present pleadings, replications, appeals, cross-objections or petitions for executions review, revision, restoration, withdrawal, compromise or other petitions, replies, objections or affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case in its stages. To file and take back documents. To withdraw or compromise the said case submit to arbitration any difference(s) or dispute(s) that may arise touching or in any manner relating to the said case. To take our execution proceedings. To deposit, withdraw and receive monies, cheques and grant receipts thereof and to do all other acts, deeds and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.

To appoint and instruct any other legal practitioner authorizing him to exercise the power and authority hereby conferred upon the Advocate(s) whenever he/she may think fit to do so and to sign, the power of attorney on our behalf.

And I/we, the undersigned do hereby agree to ratify and confirm all acts done by the said Advocate(s) or substitute in the matter as my/our own acts as if done by me/us to all intents and purposes.

And I/we, the undersigned undertake that I/we or my/our duly authorized agent would appear in Court on all hearings and will inform the Advocate(s) for appearance, when the said case is called.

And I/we, the undersigned do hereby agree not to hold the Advocate(s) or his/her substitute responsible for the result of the said case in consequence of his/her/their absence from Court when the said case is called up for hearings unless the same is necessitated by some personal emergency that has been brought to the prior notice of the Court.

And I/we, the undersigned do hereby agree that in event of the whole or any part of the fee agreed by me/us to be paid to the Advocate(s) remains unpaid, he/she/they will be entitled to withdraw from prosecution of the said case until the same is paid up. If any costs are allowed for an adjournment, the Advocate(s) would be entitled to the same unless the same is caused due to any action/inaction of the said Advocate(s). The fees will be paid post hearings against bills submitted by the said Advocate(s). I/we hereby agree that once the fees are paid, I/we will not be entitled for refund of the same in any case. However in case of any inadvertent excess/wrongful payments, the same shall be adjusted during payment of later bills.

IN WITNESS WHEREOF I/we do hereunto set my/our hand to these presents the contents of which have been understood by me/us on this the 30th day of July 2024.



Advocate
Gudipati G. Kashyap
D/3906/2013

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Advocate
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Vijay Kumar Choudhary
Client

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