

BEFORE THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

(APPELLATE JURISDICTION)

COMPANY APPEAL (AT) (INS) NO. 406 OF 2022

IN THE MATTER OF:

MR. RAM KISHOR ARORA
SUSPENDED DIRECTOR OF
SUPERTECH LIMITED

...APPELLANT

VERSUS

UNION BANK OF INDIA & ANR.

...RESPONDENT

CONSOLIDATED REPLY IN AFFIDAVIT, ON BEHALF OF THE INTERIM RESOLUTION PROFESSIONAL OF SUPERTECH LIMITED, BEING FILED IN COMPLIANCE OF ORDER DATED SEPTEMBER 18, 2023 PASSED BY THIS HON'BLE APPELLATE TRIBUNAL IN THE CAPTIONED PETITION.

MOST RESPECTFULLY SHOWETH:

I, Hitesh Goel, S/o Shree Sat Narain Goel, aged about 40 years being the Interim Resolution Professional of M/s. Supertech Ltd., having its office at: 21st-25th Floor, E-Square, Plot No. C2, Sector - 96, Noida, Gautam Buddha Nagar, Uttar Pradesh - 201303, presently at New Delhi, do hereby solemnly affirm and state as follows:

1. The instant consolidated Affidavit in Reply ("**Reply**") is being filed by the Interim Resolution Professional ("**IRP**") of Supertech Limited ("**Corporate Debtor**") in compliance of the order dated September 18, 2023 passed by the Hon'ble Appellate Tribunal, directing as follows:

"5. We are also of the view that the IRP may file a consolidated reply to all the applications giving their response to the issues raised in the applications and other relevant issues."

A copy of order dated September 18, 2023 passed by Hon'ble Appellate Tribunal is annexed herewith and marked as **Annexure R-1**.

2. It is submitted at the outset that the instant consolidated Reply is being filed by the IRP in order to provide his response on the broad issues which have been raised by the Applicants in the various interlocutory applications filed and pending before this Hon'ble Appellate Tribunal ("**Applications**"), in compliance of this Hon'ble Appellate Tribunal's aforementioned order dated September 18, 2023. The IRP has not endeavoured, in the instant Reply, to provide his response to each and every allegation/avermment which may have been raised in the said Applications and has



confined his response to the basic, broader issues as stated hereinabove. Should this Hon'ble Appellate Tribunal so direct at any point of time in the future, the IRP will provide a detailed response to any or all of the said Applications, as this Hon'ble Tribunal may be pleased to direct. A copy of the list of all such Applications, filed and pending before this Hon'ble Appellate Tribunal, till the date of filing the instant Reply, is annexed herewith and marked as **Annexure R-2**.

3. Further, at the outset, the IRP denies all such averments, allegations, contentions, and submissions made in the Applications, in respect of the IRP/ Corporate Debtor, except those which are specifically admitted herein. Nothing in these Applications may deem to have been admitted for non-traverse. It may also be noted by this Hon'ble Appellate Tribunal that this Reply has been made considering the Applications which have been served upon the IRP and/or his legal counsel only up to September 25, 2023 (even though the Hon'ble Appellate Tribunal's order was passed earlier on September 18, 2023). Applications served thereafter, if any, have not been considered in this Reply.
4. Having stated the above, the IRP now proceeds to provide his response on the issues contained in the said Applications, as elaborated hereinbelow.

I. APPLICANTS SEEKING IMPLEADMENT IN THE INSTANT APPEAL PROCEEDINGS

5. It is submitted that in a large number of the Applications filed before this Hon'ble Appellate Tribunal in the instant Appeal proceedings, the Applicants have sought to be impleaded as parties to the instant Appeal proceedings. Below is a table of all such applications, where such prayer of impleadment has been sought-

Sr. No.	Application No.	Filed on Behalf of	Relation with the Corporate Debtor
1.	I.A. No. 1924/2022	L&T Finance Limited	Project Lender
2.	I.A. No. 3206/2022	New Okhla Industrial Development Authority	Purported Creditor
3.	I.A. No. 3281/2022	IFCI Limited	Purported Creditor

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4.	I.A. No. 3776/2022	Asset Care and Reconstruction Enterprise Limited	Purported Creditor
5.	New IA (number unknown to us)	Indiabulls Asset Reconstruction Co. Ltd.	Purported Creditor
6.	New IA (number unknown to us)	Indiabulls Housing Finance Ltd.	Purported Creditor
7.	I.A. No. 4574/2022	Upcountry Buyers Association	Homebuyers
8.	I.A. No. 4575/2022	Upcountry Buyers Association	Homebuyers
9.	I.A. No. 4712/2022	Veena Kumari	Homebuyer
10.	New I.A. (number unknown to us)	Rahul Agarwal and Anr.	Homebuyers
11.	New I.A. (number unknown to us)	Nikhil Behl and Anr.	Homebuyers

6. It is submitted that the IRP is neither supporting nor opposing the impleadment of above-referred stakeholders in the instant Appeal. It is humbly submitted that it is at the discretion of this Hon'ble Appellate Tribunal to implead, or otherwise, the above referred stakeholders in the captioned Appeal proceedings, after hearing the above Applicants on merits. Since the IRP himself is a party Respondent (Respondent no.2) to the instant Appeal proceedings, he has no submissions to make in this regard.

7. Having stated the above, the IRP has segregated the Applications under the following groups, considering the commonality of issues involved therein-



- i. Applications filed by lenders (apart from homebuyers) in various Projects of the Corporate Debtor who are seeking constitution of CoC for other projects of the Corporate Debtor apart from Project Eco Village-II;
- ii. Applications filed by some creditors to the Corporate Debtor, seeking certain directions against the Corporate Debtor and/or the IRP; and
- iii. Applications filed by various homebuyers in various Projects of the Corporate Debtor.

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II. APPLICATIONS ON BEHALF OF LENDERS OF THE CORPORATE DEBTOR SEEKING CONSTITUTION OF COMMITTEE OF CREDITORS (CoC) FOR OTHER PROJECTS OF THE CORPORATE DEBTOR APART FROM ECO VILLAGE-II

LA. No. 2246/2022 FILED ON BEHALF OF UNION BANK OF INDIA (UBI)

8. This application was filed on behalf of Union Bank of India ("UBI") - a financial creditor to the Corporate Debtor. As per the Applicant, its lending to the Corporate Debtor was in the nature of Corporate Finance and not Project Finance, though the amounts were utilized by the Corporate Debtor towards construction of the following projects viz. Eco Village-II (for which this Hon'ble Appellate Tribunal had directed constitution of the CoC vide order dated June 10, 2022), Eco Village-III, Eco Village-IV and Romano. In view of the same, the Applicant seeks clarification/ modification of the order dated June 10, 2022 passed by this Hon'ble Appellate Tribunal in the present Appeal, to the extent that this Hon'ble Appellate Tribunal may be pleased to direct constitution of CoC for projects Eco Village-III, Eco Village-IV and Romano also. The prayers which have been sought in the said application are reproduced hereinbelow:

- "
- a) *Allow the Present Application of Union Bank of India and;*
 - b) *Direct the IRP to constitute COC for Eco Village II, Eco Village IV and Romano along with Eco-Village -II."*

9. IRP submits that UBI is the original financial creditor, who had filed an application - C.P. (IB) No. 204/ 2021, seeking initiation of corporate insolvency resolution process ("CIRP") in respect of the Corporate Debtor, under Section 7 of Insolvency and Bankruptcy Code, 2016 ("IBC"). The Ld. Adjudicating Authority, New Delhi Bench ("Ld. NCLT"), admitted the application and directed initiation of CIRP, vide order dated March 25, 2022 ("**Insolvency Commencement Order**"). By the same order, the IRP herein was appointed as the interim resolution professional for the Corporate Debtor.

10. Subsequently, the promoters filed the captioned Appeal before this Hon'ble Appellate Tribunal, assailing the Insolvency Commencement Order. This Hon'ble Appellate Tribunal, by an order of April 12, 2022, directed a stay on the constitution of the CoC.

11. Despite several objections raised by UBI, this Hon'ble Appellate Tribunal, vide an order dated June 10, 2022, was *inter-alia*, pleased to direct the IRP to constitute a

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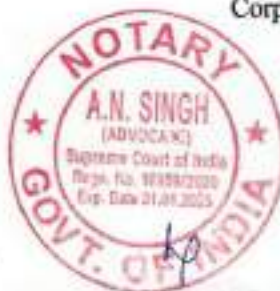
committee of creditors ("CoC") in respect of Eco-Village II project. It may be noted in this regard that Project Eco Village-IV (which is essentially Project Eco Village -II Phase-2) has already been considered as part of Project Eco Village-II when the CoC for the latter has been constituted pursuant to the aforementioned order of this Hon'ble Appellate Tribunal.

12. Subsequent to this, and much belatedly, UBI also filed an appeal before the Hon'ble Supreme Court (being Civil Appeal No.5941 of 2022), assailing the said order of June 10, 2022, passed by this Hon'ble Appellate Tribunal. After hearing the parties in detail in the said Appeal and other connected Appeals, the Hon'ble Supreme Court by an interim order of May 11, 2023, refused to interfere with the directions contained in the said order dated June 10, 2022, apart from making certain modifications thereto, and further directed that the proposed investor for interim finance shall be allowed to infuse funds in respect of Non-Eco Village projects. A copy of the said interim order dated May 11, 2023 passed by the Hon'ble Supreme Court is annexed herewith and marked as **Annexure-R-3**.

13. In view of the aforementioned order dated May 11, 2023 passed by the Hon'ble Supreme Court whereby no interference has been directed with the said order dated June 10, 2022 passed by the Hon'ble Appellate Tribunal (apart from some limited modifications thereto), and also considering that the aforementioned Civil Appeal filed by UBI remains pending before the Hon'ble Supreme Court, the instant application filed by UBI may be disposed of at this instance, or in the alternate, be kept pending, awaiting decision of this Hon'ble Appellate Tribunal on the interim finance proposed to be brought in for the Non-Eco Village II projects.

L.A. No. 3034/2022 FILED ON BEHALF OF L&T FINANCE LIMITED

14. The present application is filed on behalf of L&T Finance Limited ("L&T") seeking direction for constitution of CoC in respect of various Non Eco-Village-II projects (namely Project- Eco Village I, Capetown, North Eye, Crown Towers, Radiant Towers and Upcountry) of the Corporate Debtor, which are financed by, and charged in favour of L&T under various loan agreements executed with the Corporate Debtor. Following prayers have been made in the application:



"a) Pass appropriate order and/or directions directing a Committee of Creditors to be constituted in respect of the following project of the Corporate Debtor:

a) Eco-Village I situated at greater Noida West, Greater Noida, Uttar Pradesh.

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- b) *Capetown situated at Plot No. Gh-01, Sector 74, Noida, Uttar Pradesh.*
- c) *North Eye situated at Plot No. Gh-01/A, Sector 74, Noida, Uttar Pradesh.*
- d) *Crown Towers situated at Plot No. Gh-01/A, Sector 74, Noida, Uttar Pradesh.*
- e) *Radiant Towers situated at Plot No. Gh-01/A, Sector 74, Noida, Uttar Pradesh.*
- f) *Upcountry situated at Plot No. Gh-01/A, Sector 74, Noida, Uttar Pradesh.*
- b) *Pass appropriate orders and/or directions directing that the project-wise CIRP of the Corporate Debtor be allowed to progress in respect of the projects as elaborated in the paragraph hereinabove in accordance with law."*

15. It is submitted by L&T that it is a non-banking financial company (NBFC) which has extended several loans in favor of the Corporate Debtor, the Corporate Debtor defaulted on its payment obligations in respect of these facilities. It is further submitted that Corporate Debtor had also given guarantees for loans specifically for the unit sales related to Projects- North Eye, Radiant Towers, Eco Village I, Upcountry, Eco Village II, Eco Village II, Golf Country and others.
16. L&T has filed a total claim of Rs. 1,963,00,00,000/- (Indian Rupees One Thousand Nine Hundred Sixty Three Crores only) (approx.) in respect of the Corporate Debtor, as against a total claims being filed for Rs. 6141 Crores against the Corporate Debtor, thereby constituting to 31.96% of the total claims, filed by banks/ financial institution.
17. It is contended by L&T in the said application that despite being one of the major stakeholders, it has no say or control over the construction/completion/operation of the projects mortgaged in favour of L&T. To the contrary, the management of the Corporate Debtor which ought to have been suspended under Section 17(1) (b), IBC upon passing of the admission order, continues to be in control of the operations of the Corporate Debtor and construction/ completion of various projects. It is also the contention of L&T that this goes against the very object of the IBC and Section 31 in particular, as the rights and interest of stakeholders of the Corporate Debtor (apart from the management itself), are not at all balanced.



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18. It is contended by L&T that in case CoC is constituted in respect of the above-referred projects CIRP would not adversely affect the rights or interest of any stakeholders. It is further contended that functioning of Corporate Debtor under supervision of its erstwhile management is not only arbitrary but also contrary to provisions of the IBC.
19. As above, the IRP submits that in view of the order passed by the Hon'ble Supreme Court on May 11, 2023, whereby no interference has been directed with the said order dated June 10, 2022 passed by the Hon'ble Appellate Tribunal (apart from some limited modifications thereto), there is no occasion for this Hon'ble Appellate Tribunal to grant the prayers sought by L&T in the instant application, pending further orders from the Hon'ble Supreme Court in this regard, especially while the process to raise interim finance for the Non Eco Village-II projects of the Corporate Debtor remain ongoing. Therefore, the IRP submits that this application may be disposed of at this instance, or in the alternate, be kept pending, awaiting decision of this Hon'ble Appellate Tribunal on the interim finance proposed to be brought in for the Non-Eco Village II projects.

III. APPLICATIONS FILED BY SOME CREDITORS TO THE CORPORATE DEBTOR, SEEKING CERTAIN DIRECTIONS AGAINST THE CORPORATE DEBTOR AND/OR THE IRP

LA. No. 2717/2022 FILED ON BEHALF OF M/S. TIRUPATI BUILDPLAZA PVT. LTD.

20. The instant Application has been preferred on behalf of Tirupati Buildplaza Pvt. Ltd. ("TBPL") and Gupta Promoters Pvt Ltd. ("GPPL"), seeking intervention and appropriate directions from this Hon'ble Appellate Tribunal, in accordance with its order dated June 10, 2022 in the present Company Appeal. Following prayers have been made in the instant application:

"a. Direct the Corporate Debtor, under the supervision of the IRP, to not withhold 30% of its Project Receivables from the Araville Project on a contemporaneous basis and to ensure that the same are transferred to TBPL as per its contractual entitlements as and when the same are collected in the event any project receivables are collected in the Araville Project.

b. Direct the Respondent to place on record and to submit to the Applicant information qua particulars of sold/unsold units in the



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Araville Project including the exact status of the unsold/unallocated stock; the status of the collection made in the Araville project with a detailed breakup of when such collections were made and in which Bank Accounts; and the status of the future project receivables due on the already allocated but unsold stock."

21. It is contended by TBPL that it is the owner of licensed land admeasuring 10 acres situated in Section 79, Village Naurangpur, Tehsil and District Gurgaon and has secured License No. 37 of 2022 dated April 26, 2011, from the Directorate of Town & Country Planning, Haryana for development and construction of Group Housing Project over the said land. After various negotiations, TBPL had entered into various agreements for the development of a group housing project under the name and style "Araville" on the said land. These agreements included, *inter-alia* a Memorandum of Understanding with Corporate Debtor dated February 25, 2012 and a Collaboration Agreement dated March 27, 2012.
22. The essence of the understanding in terms of the aforesaid agreements was that in exchange for making available the land owned by TBPL for development of the Project, TBPL would be allocated 35% of the total project receivables with remaining 65% being allocated to the Corporate Debtor. It was further agreed that the Corporate Debtor would ensure completion of the project with 42 months with a 6 month grace period from the date of sanction of Building Plans i.e. May 10, 2012 and that the Corporate Debtor will bear the entire cost of the project.
23. It is provided in the above referred agreements that the entire revenue of the Project were to be deposited by the Corporate Debtor in an Escrow Account to ensure complete transparency. Pursuant to the same, an Escrow Account bearing No. ECBCA/01/200112 was opened with the Corporation Bank for such purpose.
24. It is contended by TBPL that vide order dated October 10, 2022, the Hon'ble Appellate Tribunal had directed that 70% of the funds henceforth for each project shall be used for "construction purpose only". TBPL's entitlement to 33.5% of the project receivable stems from its status as the owner of the said land. Consequently, it is submitted that TBPL's entitlement to 33.5% of the project receivable is effectively the Corporate Debtor's cost of acquiring the said land for purpose of constructions. It is thus submitted by TBPL that its contractual entitlement to 33.5% of the project receivables ought to be met out of the 70% share of receivables, items of this Hon'ble Appellate Tribunal order dated October 10, 2022.



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25. It has further been alleged that Corporate Debtor has failed in providing accurate accounts to TBPL. It is alleged that figures submitted to RERA are also in complete contradiction to the figures submitted by the Corporate Debtor in Sale Data dated October 31, 2020.
26. Be that as it may, in the instant application, the Applicant has made two-fold prayers. Its first prayer is to the effect that without prejudice to the Applicant's entitlement to receive its contractual dues from the 70% corpus dedicated to meet construction costs, and to its entitlement to receive 33.5% of project receivables from such corpus, as elaborated hereinabove, the Applicant at present seeks only a direction from this Hon'ble Appellate Tribunal to the Corporate Debtor to contemporaneously transfer to the Applicant the balance 30%-share of the amounts received qua the Project during the CIRP period, against the Corporate Debtor's contractual entitlements to TBPL. In this regard, the IRP states and submits that in usual circumstances, it would be impermissible for this Hon'ble Appellate Tribunal to grant such direction as sought by TBPL at this stage, as any direct payment made to any creditor from any project account of the Corporate Debtor or any account held by the Corporate Debtor in its own name during the CIRP period, no matter such creditor's contractual entitlements against the Corporate Debtor, would be in violation of the moratorium envisaged under Section 14 of the IBC. Further, any arrangement whereby the Corporate Debtor would have to transfer any percentage of its receivables/future receivables in a project to a creditor, even if such arrangement is otherwise covered by a contract executed between the Corporate Debtor and such creditor, may also be in conflict with this Hon'ble Appellate Tribunal's aforementioned order dated June 10, 2023, whereby all receivables in the projects have been directed to be segregated into designated 70% (for construction) and 30% (for distribution to lenders upon further orders of this Hon'ble Appellate Tribunal) RERA accounts maintained for such projects. This Hon'ble Appellate Tribunal may therefore be pleased to issue necessary clarification to this effect.
27. The other prayer made by TBPL in the instant application is one vide which TBPL seeks "*particulars of sold/unsold units in the Araville Project including the exact status of the unsold/unallocated stock; the status of the collection made in the Araville project with a detailed breakup of when such collections were made and in which Bank Accounts; and the status of the future project receivables due on the already allocated but unsold stock*". Should this Hon'ble Appellate Tribunal direct the IRP to provide such data to TBPL, the IRP, with the assistance of the ex-management, would be able to procure and provide such data to TBPL, provided the ex-management is cooperative with the IRP in this regard.



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I.A. No. 4213/2022 FILED ON BEHALF OF M/S. TIRUPATI BUILDPLAZA PVT. LTD.

28. The aforementioned TBPL and GPPL have also filed the above application before this Hon'ble Appellate Tribunal, seeking leave of this Hon'ble Appellate Tribunal to continue the aforementioned arbitration proceedings that it has initiated against the Corporate Debtor. Following prayers have been made in the instant application:

"a) Grant leave for the Arbitral Proceedings titled "M/s. Tirupati Buildplaza Pvt. Ltd. and Anr. V. Supertech Limited and Anr." Before the Hon'ble Arbitral Tribunal comprising of Justice (Retd.) D.K. Jain to continue.

b) Clarify that the application filed u/s 27(5) of the Arbitration and Conciliation Act, 1996 before the said Hon'ble Tribunal be considered and adjudicated upon along with the claim and counter-claim in the said Arbitration proceedings."

29. It is submitted that contentions and submissions made on behalf of TBPL in I.A. No. 2717/2022 made hereinabove are referred to, reiterated and relied upon, but not reproduced for the sake of brevity and to avoid repetition.

30. It is submitted that in light of above referred issues, TBPL had also filed a petition under Section 11(6) of the Arbitration and Conciliation Act, 1994 ("Act"), bearing Arb. Petition No. 903/2021, seeking appointment of a sole-arbitrator. The Hon'ble High Court of Delhi, vide its Order dated October 8, 2021, allowed this Petition, and appointed Mr. Justice D.K. Jain, Retired Judge of the Supreme Court as the Sole Arbitrator to adjudicate upon the disputes arising out of the *inter-se* Agreement. TBPL, consequently had filed a statement of claim, *inter alia*, claiming for a sum of INR 406.90 crores. In response to the same, the Corporate Debtor had filed a statement of defence cum counterclaim before the Hon'ble Arbitral Tribunal for a sum of Rs. 301.4 Crores.

31. TBPL has also filed a petition under Section 9 of the Act before the Hon'ble Delhi High Court titled '*Tirupati Buildplaza Pvt. Ltd. & Anr. V. Supertech Limited & Anr.*', bearing OMP (I) (COMM) No. 176 of 2021 wherein it was recorded that 'status quo as to the property in question will be maintained' vide order dated July 30, 2021.

32. In this context, on July 21, 2022 and September 5, 2022, TBPL and the Corporate Debtor addressed their respective arguments before the Hon'ble Arbitral Tribunal on the aspect of continuance of the arbitration proceedings in the context of the



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Section 14 moratorium imposed upon the Corporate Debtor. On September 5, 2022, the Hon'ble Arbitral Tribunal adjourned the said proceeding *sine-die*.

33. It is contended by TBPL that mere continuance of the adjudication of the said Arbitration proceedings would under no circumstances endanger, diminish, dissipate or impact the assets of the Corporate Debtor in any manner. Hence, continuation of the proceedings would be in synchronization with the purpose of the moratorium and will not cause any prejudice to any of the parties in the present proceedings.

34. To the above, the IRP submits that no proceeding can be initiated, or continued, in respect of the Corporate Debtor as per the provisions of Section 14 of the IBC. The Hon'ble Appellate Tribunal, vide its order dated September 12, 2022, has been pleased to clarify as follows:

"...

The CIRP Order has not been stayed. The Moratorium is continuing."

35. In view of the above, the IRP submits that this application may be dismissed by this Hon'ble Appellate Tribunal.

LA. No. 3206/ 2022 FILED ON BEHALF OF NEW OKHLA INDUSTRIAL DEVELOPMENT AUTHORITY (NOIDA)

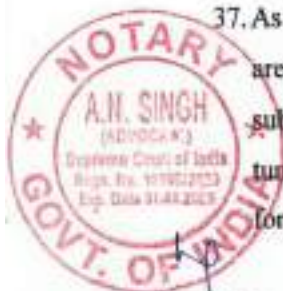
36. The present application is preferred on behalf of the New Okhla Industrial Development Authority ("NOIDA") seeking impleadment as a Respondent in present appeal and a direction to IRP to decide the claim of NOIDA at the earliest. Following prayers have been made in the instant application:

"A. Allow the Applicant to be impleaded as a Respondent to the present Appeal.

B. Direct the Appellant to serve a copy of the present Appeal along with all the replies, rejoinders, Applications and Written Submissions to the Applicant.

C. Direct the Respondent no. 2 to decide the claim of the Applicant at the earliest."

37. As far as the issue of impleadment of NOIDA to the present Appeal proceedings are concerned, the IRP has already provided his response hereinabove. It is further submitted by NOIDA that it has filed the claims before the IRP in Form B to the tune of Rs. 7,61,84,44,434/- on June 20, 2022 on the online portal made available for filing of the claims in respect of CIRP of the Corporate Debtor.



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38. It is further submitted that NOIDA has filed its claim with respect to following plots leased to the Corporate Debtor by NOIDA:

- a. Plot No. GHP-07 admeasuring 10,679.12 sq. Mtrs. situated at Block C, Sector-34, Noida, District- Gautam Buddh Nagar, Uttar Pradesh-201301 leased to Corporate Debtor vide Lease Deed;
- b. Plot No. GH- 01/A admeasuring 2,00,000 sq. Mtrs. situated at Sector-74, Noida, District- Gautam Buddh Nagar, Uttar Pradesh-201301 leased to Corporate Debtor vide Lease Deed dated October 7, 2010;
- c. Plot No. GH- 03 admeasuring 51,000 sq. Mtrs. situated at Sector-137, Noida, District- Gautam Buddh Nagar, Uttar Pradesh-201301 leased to Corporate Debtor vide Lease Deed dated March 26, 2010;

39. NOIDA had contended in the aforementioned application that no response regarding admission/ denial of Claim filed by NOIDA has been received yet from the IRP.

40. In this regard, it may be noted that the IRP has scrutinized NOIDA's claim carefully and has thereafter partially admitted such claim to the tune of Rs. 556.41 crores, while rejecting claims to the tune of Rs.205 crores approx.. This has been notified to the Applicant, with reasons, as far back as January 3, 2023. A copy of the said email dated January 3, 2023 issued by the IRP to NOIDA is annexed herewith and marked with as **Annexure-R-4**.

41. In view of what has been stated hereinabove, the IRP states and submits that the said application filed by NOIDA has become infructuous, to the extent of its prayer of a direction upon the IRP to decide its claim, and the same may therefore be disposed of accordingly.

I.A. No. 3281/2022 FILED ON BEHALF OF IFCI LIMITED

42. The aforementioned application is preferred on behalf of the IFCI Limited ("IFCI") which is one of the purported financial creditors of the Corporate Debtor, *inter-alia*, seeking the following prayers:

"A. Allow the present application and permit the Applicant to intervene in the present appeal.

B. Add the Applicant as a party to the present appeal and allow the Applicant to file a detailed reply to the present appeal i.e. Company Appeal (AT) (Ins) No. 406/ 2022.

C. Allow the Applicant to enforce its security under SARFAESI Act and any other applicable laws.

D. Take cognizance of the difficulties being faced by the Applicant (as discussed in the present application) and pass appropriate directions



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to take care of the interests of the other financial creditors of the Corporate Debtor, including the Applicant."

43. Facts and circumstances leading to filing of present application on behalf of IFCI are as follows:

- a. IFCI had granted a rupee term loan and corporate loan of Rs. 150 Crore and Rs. 100 Crore respectively to the Corporate Debtor in the years of 2014 and 2015 respectively. In relation to said loans, the Corporate Debtor has executed a series of documents and security interest over several of its assets in favor of IFCI. This included mortgages of various lands owned by the Corporate Debtor in favor of IFCI. Personal Guarantees were also executed by the promoters of the Corporate Debtor in favor of IFCI.
- b. That in 2018 the Corporate Debtor had defaulted in its repayment obligation. As a consequence, IFCI had recalled these loans and had invoked the guarantees issued by the personal guarantors.
- c. In the year 2021, IFCI has also initiated personal insolvency proceedings (Under Section 95 of the Code) against the promoters of the Corporate Debtor.
- d. Pursuant to admission of insolvency proceeding against the Corporate Debtor, IFCI has submitted its claim before the IRP in prescribed Form C. The overall claim of IFCI against the Corporate Debtor stood at Rs. 4,21,60,22,789.45/-.
- e. The IRP has partially admitted the claim of IFCI to the extent of Rs. 1,68,36,30,745.45/- in view of order dated November 29, 2019 passed by Haryana RERA ('HRERA'), which provided for shifting of the registration of the project 'Supertech Hues' as well as restructuring of all assets and liabilities (including project loans) with regard to such project, from the Corporate Debtor to one M/s. Sarv Realtor Pvt. Ltd. and DSC Estate Developer Pvt. Ltd. A copy of the said HRERA order dated November 29, 2019 is annexed herewith and marked as **Annexure-R-5**.

44. Vide the said application, IFCI states that while the issue partial rejection of claims has been taken up with the IRP, they have primarily sought to enforce their mortgages/security interests against the Corporate Debtor through the provisions of the SARFAESI Act, 2002, in view of the CoC having been constituted only with regard to Project Eco Village-II of the Corporate Debtor.

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45. In this regard, it may be reiterated that the Hon'ble Supreme Court by an interim order of May 11, 2023, refused to interfere with the directions contained in the said order dated June 10, 2022, apart from making certain modifications thereto, and further directed that the proposed investor for interim finance shall be allowed to infuse funds in respect of Non-Eco Village projects. Further, as stated hereinabove, any legal proceeding initiated against the Corporate Debtor during the CIRP period would be struck by the moratorium as contained in Section 14 of the IBC.
46. In view of the same, the IRP states and submits that the said application of IFCI ought to be dismissed to the extent of such prayer.

I.A. No. 3776/2022 FILED ON BEHALF OF ASSET CARE AND RECONSTRUCTION ENTERPRISE LIMITED

47. The present application is preferred on behalf of the Asset Care and Reconstruction Enterprise Limited ('ACRE') acting in capacity as a trustee of the Indian Real Estate 2021 Trust. The following prayers have been made in the instant application:

"A. Allow the present application and permit the Applicant to intervene and make submission in Company Appeal (AT) (Ins) No. 406 of 2022.

B. Allow the present Application and implead the Applicant as a party to Company Appeal (AT) (Ins) No. 406 of 2022.

C. Direct the Respondent no. 1 and Respondent no. 2 to furnish a copy of Company Appeal (AT) (Ins) No. 406 of 2022, all interlocutory applications, report, settlement proposals, all or any other pleading/ documents filed before this Hon'ble Tribunal to the Applicant."

48. The brief facts with regard to ACRE's claim against the Corporate Debtor is as follows:-

- a) On 20 December 2017, a facility agreement was entered into between Altico Capital India Limited ("Altico") and Supertech ORB Project Private Limited ("Principal Borrower") whereby Altico sanctioned an amount of upto INR 430,00,00,000/- ("Facility Agreement").
- b) Out of the above sanctioned amount, an amount of INR 349,36,07,801/- was drawn down and disbursed to the Principal Borrower.
- c) The amount disbursed under the Facility Agreement was secured in accordance with Clause 4 of the Facility Agreement. Among the various securities for the facility was a corporate guarantee provided by the Corporate Debtor.
- d) On 4 March 2021, Altico assigned the amount outstanding under the Facility Agreement along with the underlying security interest to ACRE.



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- e) The Principal Borrower and the Corporate Debtor were in default of their repayment obligations. As a result, on 6 September 2021, ACRE issued an 'acceleration and enforcement notice' ("Acceleration Notice").
- f) Pursuant to this Acceleration Notice, the Principal Borrower proposed a settlement offer to ACRE whereby the Principal Borrower and the Corporate Debtor would discharge the total outstanding dues under the Facility Agreement by way of conveyance of assets equivalent to INR 177,71,60,025 to ACRE. The terms of this settlement were recorded in a Settlement Agreement dated 29 September 2021 ("Settlement Agreement"). The Settlement Agreement was entered into between ACRE, the Principal Borrower, the Corporate Debtor, Mr RK Arora (Sponsor 1) and Mr Mohit Arora (Sponsor 2). The Principal Borrower, the Corporate Debtor, Sponsor 1 and Sponsor 2 were collectively referred to as the "Obligors".
- g) On 5 April 2022, ACRE terminated the Settlement Agreement pursuant to Clause 9.2(iii) and 9.2(viii) and contended against the Obligors that they were now jointly and severally liable to pay ACRE the total outstanding amount under the Facility Agreement, which, as on 5 April 2022, amounted to INR 389,11,84,932 according to ACRE.
- h) Thereafter, ACRE filed its claim before the IRP of the Corporate Debtor as a financial creditor. It may be noted in this regard that the claim has come to be partially admitted by the IRP vide his email dated February 7, 2023, which is annexed hereto and marked as **Annexure-R-6**. It may also be noted that ACRE has filed an application, bearing I.A. no.3421/ND/2023 in the insolvency proceedings of the Corporate Debtor before the Hon'ble NCLT, New Delhi, challenging such partial rejection of their claim. In view of the same, all issues raised by ACRE in the instant application as to non-consideration of their claim by the IRP has been rendered infructuous.

49. The other grievance of ACRE in the instant application (apart from issues as to impleadment/intervention upon which the IRP has already provided his response hereinabove), seems to be that the IRP has not invited ACRE to be a part of the lenders' meetings he has convened with regard to the Non Eco Village-II projects and/or not sharing minutes etc. of the same. In this regard, the IRP states and submits that vide an order dated January 10, 2023 passed in the instant Appeal proceedings by this Hon'ble Appellate Tribunal, it had been clarified that "*financial institutions who have lent money to the corporate debtor*" will be called to the meetings of lenders of Supertech Ltd. which are to



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take place with regard to the CIRP of the Non EV-II projects of Supertech Ltd. It is an admitted fact that ACRE has lent no money to the Corporate Debtor and there is certainly no lending of the Applicant in any of the Non EV-II Projects of the Corporate Debtor. ACRE's claims against the Corporate Debtor are based solely on uninvoked corporate guarantees provided to the Applicant by the Corporate Debtor against Altico's lending into a group entity of the Corporate Debtor, and even prior to invocation of such guarantee, the Applicant entered into a settlement with the principal borrower as well as the Corporate Debtor, on which settlement the Applicant as well as the Corporate Debtor have admittedly acted upon.

50. The IRP therefore understands, in terms of the aforementioned order dated January 10, 2023 of this Hon'ble Appellate Tribunal, that the Applicant is not entitled to the minutes of meetings of lenders' committees/sub-committees. The other documents sought by ACRE vide the instant Application, such as copies of Appeal, interlocutory applications, status reports filed by the IRP from time to time etc. are already available on the website of the Corporate Debtor, pursuant to the orders of this Hon'ble Appellate Tribunal, and the prayer made by ACRE to such extent has been rendered infructuous.

51. In view of the above, the IRP states and submits that such prayer of the Applicant ought to be disallowed by this Hon'ble Tribunal.

I.A. Nos. _____ /2023 (IA NUMBER UNKNOWN TO IRP) AND
_____ /2023 (IA NUMBER UNKNOWN TO IRP) FILED ON BEHALF OF
INDIABULLS ASSET RECONSTRUCTION COMPANY LIMITED AND
INDIABULLS HOUSING FINANCE LIMITED RESPECTIVELY

52. The aforementioned applications have been preferred on behalf of the Indiabulls Asset Reconstruction Company Limited ('Indiabulls ARC') and Indiabulls Housing Finance Ltd. ('IHFL') respectively, seeking similar prayers as reproduced hereinbelow:

"A. Allow the present Application and permit the Applicant to intervene and make submissions in the Company Appeal (AT) (Ins) 406 of 2022.

B. Allow the present Application and implead the Applicant as a party to the Company Appeal (AT) (Ins) 406 of 2022.

C. Direct the parties to the Company Appeal (AT) (Ins) 406 of 2022 to furnish a copy of the said Appeal, reports, settlement proposals, all or any other pleadings/ documents filed before this Hon'ble Appellate Authority to the Applicant.

D. Direct the Interim Resolution Professional/ Respondent herein to admit the entire bona fide claim of the Applicant."



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The aforementioned applications are hereinafter referred to as 'Indiabulls ARC application' and 'IHFL application' respectively.

53. Facts and circumstances leading to filing of the Indiabulls ARC application as well as the IFL application are stated in brief, as follows:

- a. Indiabulls Housing Finance Limited had entered into a Loan Agreement dated September 17, 2014, for a Loan amount of Rs. 95 Crore ('Loan-1') with the Corporate Debtor. Subsequently, Indiabulls Housing Finance Limited entered into another Loan Agreement dated March 26, 2015, for loan amount Rs. 103 crores ('Loan-2'), with the Corporate Debtor.
- b. A group company of the Corporate Debtor, namely Supertech Realtors Pvt. Ltd. approached Indiabulls Housing Finance Limited for a loan, pursuant to which, a Loan Agreement dated December 4, 2017 for a loan amount of Rs. 195 crore ('Loan-3') and Loan Agreement dated December 4, 2017 for a loan amount of Rs. 200 crores ('Loan-4') were entered into by Indiabulls Housing Finance Limited with Supertech Realtors Pvt. Ltd. In compliance with the terms of loan documents of Loan 3 and 4, the Corporate Debtor had executed Deeds of Guarantee in favor of Indiabulls ARC.
- c. Subsequently, Supertech Realtors Pvt. Ltd. defaulted in repayment of Loan 3 and 4. Therefore the account of Supertech Realtors Pvt. Ltd was classified as Non Performing Asset. That in the meanwhile, Indiabulls Housing Finance limited has assigned all rights, title and interest with respect to the Loan Facilities of Loan 1, 2, 3 and 4 vide Assignment Deed dated March 28, 2018 in favor of Indiabulls ARC acting in the capacity as Trustee of the Indiabulls ARC-VII Trust.
- d. Subsequent to admission of CIRP against the Corporate Debtor, Indiabulls ARC has submitted its claim under Form C dated April 8, 2022 for an amount of Rs. 1018,16,22,958/- with the IRP.
- e. As for the IHFL application, it is IHFL's contention that it had lent a sum of Rs.85 crore to one Revital Realty Pvt. Ltd. vide Loan Agreement dated February 22, 2016, against which the Corporate Debtor had provided a corporate guarantee. Upon failure of the said Revital Realty Pvt. Ltd. to make repayment of the facility to IHFL, it is the claim of the Applicant, that the Corporate Debtor owes an amount of Rs.157 crores approx.. to IHFL and a claim has been filed by IHFL with the IRP to that effect.



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f. The IRP vide its email dated November 16, 2022 informed the Applicants that the claim amount of about Rs. 1205 Crore of the Indiabulls group (which includes the aforementioned claims of Indiabulls ARC as well as IHFL against the Corporate Debtor) has been admitted at a notional value of Re. 1 in view of pending arbitration applications between the Corporate Debtor and the Indiabulls group before the Hon'ble High Court of Delhi. The IRP had further, vide his email dated November 18, 2022, requested the Indiabulls group to submit certain documents to further review the admission of claim.

54. It is pertinent to note herein that subsequent to the events as stated hereinabove, the IRP and his team had been in continuous correspondence with the Applicants and decided their claims upon an evaluation of merits thereof, in his own assessment, basis the correspondence/documents received from the Applicants in the course of such correspondence. Thereafter, the IRP vide an email dated April 7, 2023, admitted the claim of Indiabulls ARC to the extent of 33.56 lakhs (against claim amount of Rs.33.74 lakhs as far as aforementioned Loan-1 account is concerned), while rejecting the rest of its claims against the Corporate Debtor. The primary reason for rejection of the majority of claim amount of Indiabulls ARC as well as the entire claim amount of IHFL, as stated hereinabove, is because such claims are based on corporate guarantees which were issued by the Corporate Debtor to the Applicants against loan facilities availed of by its group companies. These corporate guarantees were never invoked, in terms of the relevant Guarantee Deeds, prior to the Insolvency Commencement Date ('ICD') of the Corporate Debtor. The Applicants, despite various opportunities given to them in this regard by the IRP, has been unable to adduce adequate documentation to evince that it had invoked the said corporate guarantees against the Corporate Debtor.

55. In this regard, the IRP states and submits that as per this Hon'ble Appellate Tribunal's judgment in *Edelweiss Asset Reconstruction Co. Ltd. v. OMMI*, subsequently upheld by the Hon'ble Supreme Court in *Ghanshyam Mishra v. EARC*, (2021) 9 SCC 657, it is now trite law that where a corporate guarantee has not been invoked prior to the moratorium under CIRP, the guarantee holder's claim in that regard is to be rejected by the IRP/RP, as the case may be. Further, in the matter of *IDBI Trusteeship Services Limited vs. Mr. Abhinav Mukherji & Ors.* dated July 12, 2022 [in Company Appeal (AT) (Ins) No. 356 of 2022], it has been held that "the claim amounts in the CIRP of the 'Corporate Debtor' as a 'Corporate Guarantor' on the basis of the deed of guarantee, which was never invoked as on the date of filing of the claims, cannot be accepted by the Resolution



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Professional."

56. The reasons for rejection of the majority of the claim of the Applicants has been informed to the Applicants by the IRP vide his emails dated April 7, 2023 and April 11, 2023, copies of which are annexed herewith and marked as **Annexure-R-7**. It is curious to note that despite the IHFL application being dated as late as September 21, 2023, these correspondences and developments have been suppressed therein and the same only makes reference to the aforementioned correspondences that had taken place between the IRP and IHFL as far back as November, 2022.

57. The IRP craves leave of this Hon'ble Tribunal to refer to and rely upon the relevant documentation, as received from the Applicants, which have been considered by the IRP while deciding their claim as well as any other document that may be relevant in this regard.

IV. APPLICATIONS ON BEHALF OF HOMEBUYERS

58. The IRP states and submits that the following IAs have been served upon the IRP and/or his legal counsel, which have been filed on behalf of the homebuyers of various projects of the Corporate Debtor -

<u>I.A. No.</u>	<u>Details of Applicant</u>	<u>Project(s) in which Applicant(s) has/have his/her/their unit</u>	<u>Reliefs sought</u>
4574/2022	Upcountry Buyers Association	Supertech Upcountry	<p>1. Allow the present application and implead the Applicant in Company Appeal (AT) (Ins) No. 406 of 2022 filed by the Appellant titled as "Mr. Ram Kishor Arora Versus Union Bank of India.</p> <p>2. The present intervention application may kindly be allowed and thereby clarifying the Order dated 10.06.2022, categorically with respect to whether moratorium is extending to the project called "Supertech Upcountry" or not.</p> <p>3. Pass an order directing the Hon'ble National Company Law Tribunal and the Interim Resolution Professional to keep the project named as "Supertech Upcountry" of M/s. Supertech Limited situated at</p>



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			Plot No. TA-01, Sector 17A, Yamuna Expressway, Greater Noida, Uttar Pradesh, out of the Corporate Insolvency Resolution Process (CIRP) of Corporate Debtor- M/s. Supertech Limited, initiated vide Order dated 25.03.2022 passed by the Hon'ble NCLT, New Delhi Bench VI in the case bearing no. I.B. No. 204/(ND)/2021.
4712/2022	Veena Kumari	Supertech Eco-Village-I	<p>1. Pass an order directing the Applicant herein to be impleaded in instant Appeal.</p> <p>2. Modify the relevant paragraph 16 of the order dated 25.03.2022.</p> <p>3. Pass an order wherein the moratorium is imposed only on the project namely Supertech Eco-Village II and not on any other project of the appellant company</p>
2763/2023	Amardeep Singh & Ors.	Project Eco-Village-II	<p>1. Take the present application on record and into consideration.</p> <p>2. Allow the present application and issue appropriate Orders and directions.</p> <p>3. Direct the RP to take all possible steps including with the investor Oak Tree and/or any other prospective investor/ RA to provide interim finance towards construction of Eco-Village 2 project.</p> <p>4. Direct the RP to consider the representation by way of letter dated 24.01.2023 in its letter and spirit and as per law.</p>



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5. Quash minutes of meeting of 5th and 6th CoC dated 25.11.2022 & 19.12.2022.

6. RP should be directed to take steps including but not limited to following up with bank and lenders, following up with credit rating agencies filing appropriate applications before various courts where buyers are facing cases due to re-Emi defaults considering the fact that RP acknowledges the re-Emi liability of Corporate Debtor.

7. Direct the RP to honor and comply with all valid and subsisting contracts and agreements entered by the Corporate Debtor including but not limited to payment of pre-Emi under subvention scheme, monthly rentals *qua* homebuyers/ allottees.

8. Direct the RP to furnish list of banks, lenders and financial institutions who have given home loans to the allottees and implead them as proper and necessary parties in the captioned matter.

9. Direct the RP to contact appropriate agency such as SFIO and/ EOW for necessary forensic audits and transactional audits as also criminal investigation into the affairs of the Corporate Debtor for entire period prior to initiation of CIRP on 25.03.2022.

10. Direct the RP not to raise any demands for payments or offer possession unless and unit OC, CC and all necessary



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			permissions, NOCs are obtained as per law and adhere strictly to the payment schedule in the Builder Buyer Agreements and also adhere to the minutes of the meeting of the 5 th CoC dated 25.11.2022 in this regard.
New IA (number unknown to IRP)	Rahul Agarwal and Pooja Agarwal	Project Araville	Issue an appropriate order impleading the Applicants as party Respondents in the present appeal.
New IA (number unknown to IRP)	Rahul Agarwal and Pooja Agarwal	Project Araville	Issue an appropriate order clarifying that the order of this Hon'ble Tribunal dated 10.06.2022, which has restricted the CIRP of the Corporate Debtor only to the "Eco-Village II" Project, does not prohibit the Haryana real Estate Regulatory Authority, Gurugram, from adjudicating the execution application filed by the Applicant herein in accordance with law.
New IA (number unknown to IRP)	Nikhil Behl and Mrs. Malvika Behl	Supertech Czar Suites	<p>1. To allow the present application and implead the Applicants in the instant appeal being C.A. (AT) (Ins) No. 406 of 2022;</p> <p>2. To clarify that the order dated 10.06.2022 passed by this Hon'ble Appellate Authority, would not encumber the Interim Resolution Professional from handing over the possession of the unit bearing Flat No. Orchid/1304/12th floor in the project Supertech Czar Suites, Greater Noida for which the Applicants have paid the full sale consideration of Rs. 74,96,350 between the years 2007-2009; or</p> <p>3. Without prejudice to prayer (ii) above, clarify that the order dated 10.06.2022 and</p>



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			subsequent orders passed in the instant appeal would not prohibit the Hon'ble National Consumer Disputes Redressal Commission from proceeding with Execution Application No. 399 of 2023.
3619/2023	Sureel Singh & Ors.	Project Eco Village-I	Direct the management (IRP/Promoter) and Greater Noida Authority to execute the sale deed/sub-lease deed in favour of the Applicants in relation to the respective flats whose details are mentioned in the chart.

59. From the above chart, it is evident in most of the aforementioned applications filed by the homebuyers, the issues raised are those seeking impleadment of the Applicants in the present Appeal proceedings (to which the IRP has already clarified his position hereinbefore) or those seeking clarification to the extent that their respective projects are kept out of the clutches of CIRP (and consequent moratorium) and/or seeking to enforce decrees that they hold against the Corporate Debtor from the RERA or Consumer Disputes authorities, as the case may be. As far as such issue is concerned, the IRP reiterates that this Hon'ble Appellate Tribunal has made it amply clear, vide its subsequent order dated September 12, 2022, that the order dated June 10, 2022 does not stay the CIRP order of the Corporate Debtor and therefore moratorium continues on the entirety (and thereby all projects) of the Corporate Debtor. It is therefore stated and submitted that such prayers of the homebuyers, as may be evinced from the chart hereinabove, are to be rejected by this Hon'ble Appellate Tribunal.

60. Further, certain homebuyers, namely Nikhil Behl & Anr. (IA number unknown to IRP) and Sureel Singh & Ors. (IA 3619/2023), have stated that they have paid full sale consideration for their units and in view thereof, have either sought possession (Nikhil Behl & Anr. for their unit in Project Supertech Czar Suites) or execution of sale deed/sub-lease deed (Sureel Singh & Ors. for their units in Project Eco Village-I). In this regard, the IRP agrees with these Applicants to the extent that in case of a real estate company, handing over of possession or registration of a unit in favour of a homebuyer who has paid all his/her dues and such unit having been sold in the pre-CIRP period, would not necessarily amount to contravention of the provisions regarding moratorium as contained under section 14 of the IBC, as long as the applicant has been determined as the rightful owner of the concerned unit.



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This position finds support from certain judicial pronouncements made by this Hon'ble Appellate Tribunal in this regard as well.

61. However, having stated the above, the IRP states and submits that as far as the aforementioned application filed by Nikhil Behl is concerned, the unit allotted to the said homebuyer has been cancelled as per the records of the Corporate Debtor. It is noteworthy that National Consumer Disputes Redressal Commission, New Delhi (NCDRC) *vide* order dated June 07, 2023, has ordered to issue refund to the customer along with reasonable interest. However, due to moratorium under section 14 of the IBC, refund for the same cannot be issued at this juncture. Further, as regards application filed by Sureel Singh & Ors. is concerned, the IRP states and submits that he is still bound by the applicable real estate laws and grant of possession/execution of registration can only be undertaken by the Corporate Debtor/IRP once the requisite Occupancy Certificate ('OC')/Completion Certificate ('CC') has been issued in that regard by the relevant authorities, provided such applicants are rightful owners. Since completion of pending construction activities, safety-related activities, payment of pending land dues etc. are pre-requisites for grant of such OC/CC, the hands of the IRP are tied by virtue of the applicable real estate laws as far as matters of possession, registration, execution of sub-lease deeds etc. are concerned unless the OC/CC is granted by the authorities concerned..

62. Apart from the aforementioned issues raised by the homebuyer-Applicants in the aforementioned applications, certain other issues have been brought up in IA no.2763/2023 ('Amardeep Singh IA') particularly with regard to Project Eco Village-II ('EV-II'), for which CoC has been constituted, as per the aforementioned order dated June 10, 2022 passed by this Hon'ble Appellate Tribunal. In this regard, the IRP (being the RP for Project Eco Village-II) states and submits at the outset that the homebuyers for such project, being the creditors in class, must raise their concerns with the RP and the CoC through an Authorised Representative under the terms of the IBC. One such AR has also been appointed in this case *vide* order dated July 5, 2022 passed by the Hon'ble NCLT, New Delhi, a copy of which is annexed herewith and marked as **Annexure-R-8**. However, certain homebuyers of Project Eco Village-II have chosen to agitate these issues before this Hon'ble Tribunal through the Amardeep Singh IA, which defeats the aforesaid procedure as laid down in the Code. If these concerns are raised before the CoC through the Authorised Representative and the CoC is of the opinion that the IBC is being violated in any manner whatsoever, it is the CoC's prerogative to raise such issues before the Hon'ble Adjudicating Authority or the Hon'ble Appellate Tribunal. Further and more importantly, most of such issues have been



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discussed and deliberated in the CoC meetings for Project Eco Village-II. Keeping in mind the above, the Amardeep Singh IA ought not to be entertained by this Hon'ble Appellate Tribunal.

63. Without prejudice to what has been stated above, the IRP/RP deals with the principal issues raised in the Amardeep Singh IA as briefly as possible, hereinbelow:-

A. Interim finance for EV-II Project and commencement of construction therein

64. The Applicant has stated that it is unclear whether the interim finance proposed by Oaktree, will be utilized for Project EV-II or not. It has also been alleged that construction activities at the Project is totally stopped due to which Potential Resolution Applicants ('PRAs') are disinclined to invest therein. In this regard, the IRP states and submits that Oaktree's termsheet pertains to the Non-Eco Village II projects only and details of same has been submitted to this Hon'ble Appellate Tribunal. Be that as it may, an agenda for raising interim financing has been approved in the 10th CoC meeting on June 28, 2023 and currently the IRP/RP is exploring alternative investors for raising interim finance for the said Project. As far as the construction activities at Project EV-II is concerned, the IRP/RP states and submits that construction has continued during the CIRP period and status of the same has been apprised to this Hon'ble Appellate Tribunal vide status reports filed by the IRP/RP from time to time, which are also available on the website of the Corporate Debtor.

B. To conduct Forensic Audit/ Or Transactional Audits to decipher the alleged money laundering done with respect to project(s) of the Corporate Debtor

65. Besides the above, the Applicants in the Amardeep Singh IA have also sought appointment of agencies like SFIO/ED etc. for investigating into the affairs of the Corporate Debtor. In this regard, the IRP/RP states and submits that transaction audit review for Project Eco Village-II has already been concluded and three applications bearing IA nos. IA/5028/ND/2023 (under section 66 of the IBC), IA/5129/ND/2023 (under section 43 of the IBC) and IA/5131/ND/2023 (under section 45 of the IBC) have been filed before the Hon'ble National Company Law Tribunal (NCLT), New Delhi seeking appropriate reliefs for fund recovery and the setting aside of avoidance transactions based on the findings of the Transaction Review Audit ('TRA') report. The said applications remain sub judice before the Hon'ble NCLT, New Delhi.



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66. Regarding the appointment of the Serious Fraud Investigation Office ('SFIO') or the Enforcement Directorate ('ED') as sought by the Applicants, it is emphasized that the IRP/RP lacks the authority under the IBC to make such appointments. Additionally, it is important to note that the ED has already initiated actions against the promoters of the Corporate Debtor.

C. No resolution applicant on board for Project EV-II

67. In the instant Amardeep Singh IA, the Applicants had also expressed their concern about the fact that there was no resolution applicant for the said Project at the time of filing of the said IA. In this regard, it may be noted that the IRP/RP, initiated the resolution plan invitation process by publishing Form-G on August 23, 2022. Unfortunately, no resolution plans were received in response to the initial Form G. However, it is crucial to note in this regard that subsequent to the filing of the Amardeep Singh IA, an extension of the CIRP period has been granted by the Hon'ble NCLT, New Delhi until October 31, 2023, vide its order dated September 1, 2023. Following the directives of the CoC, the RP has reissued Form G on July 28, 2023, leading to expressions of interest from five PRAs. A copy of the said order dated September 1, 2023 passed by the Hon'ble NCLT, New Delhi is annexed herewith and marked as **Annexure-R-9**.

D. Periodic Updates

68. It has been strangely alleged by the Applicants in the Amardeep Singh IA that periodic and regular construction updates have not been shared by the IRP/RP with the CoC of Project EV-II. The IRP/RP denies and disputes all such allegations vehemently. The CoC has been consistently and comprehensively briefed on the construction progress. These updates have been presented at various CoC meetings as follows: In the 1st CoC meeting, a cash flow update for Construction Development was shared, along with a detailed tower-wise construction plan. In the 2nd CoC meeting, the RP provided an update on construction progress, including tentative tower-wise work targets. The CoC was updated on construction progress again during the 3rd CoC meeting and subsequently in the 4th, 6th, 7th, and 8th CoC meetings. Additionally, during the 10th CoC meeting, a detailed breakdown of pending construction costs for each tower was provided. Copies of the aforementioned minutes of the 1st, 2nd, 3rd, 4th, 6th, 7th and 8th CoC meetings are annexed herewith and collectively marked as **Annexure-R-10**.

E. Issue of Payment of Pre-EMIs of Subvention Scheme Allottees as per tripartite agreements by and between the Corporate Debtor with the allottee/borrower and Lender concerned and consequential issues, along



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with issue regarding payment of rental dues where flats have been sold under the Rental Scheme

69. It is relevant to state on this regard that there are certain homebuyers of the Corporate Debtor who had purchased the offered units under a Subvention Scheme, under which a tripartite loan agreement was executed between the respective homebuyers, the Corporate Debtor and concerned lender. As per the said agreements, the loan was undertaken by the respective homebuyer and EMI dues were to be paid by the Corporate Debtor till possession of the unit was not handed over.
70. It is understood that under the Subvention Scheme, the primary responsibility of paying the EMI before possession ('Pre-EMI') was of the Corporate Debtor and in an event of default of payment of the Pre-EMI, the responsibility of payment was undertaken by the respective homebuyer to pay the dues.
71. Similarly, the Corporate Debtor had entered into a 'No Rent Scheme' with certain allottees, whereby the allottees who opted to avail the No Rent Scheme as available for their allotted units were provided with a ready to move-in flats till the offer of possession of the residential allotted units in Eco Village-II was provided to them by the Corporate Debtor. The allottees were engaged into a separate rent agreement under the No Rent Scheme with such third-party flat owners which covered the obligations related to any maintenance charges or utility charges from the homebuyers/allottees. It is noted that under the prerogative of the No rent Scheme, the allottees/ homebuyers were entitled to receive the rental payments until the actual offer of possession is given to such allottees.
72. The Applicants have alleged that since the Corporate Debtor continues to be going concern and all contracts/agreements/undertakings on behalf of the Corporate Debtor with regard to the Subvention Scheme/No Rent Scheme would continue to hold good against the Corporate Debtor. It has been state that claims have only been admitted as on the ICD, that is till 25th March 2022, but buyers are paying pre-EMIs even after the said date. The homebuyers are facing cheque bounce cases, criminal cases, downgrading of credit scores in this regard and simple admission of their claims by the IRP/RP in this regard do not serve any purpose at all.
73. In this regard, the IRP/RP states and submits that the homebuyers' claims for Subvention Scheme/No Rent Scheme dues have been duly verified and admitted by the IRP/RP under the provisions of the Code, for Project EV-II as well as the Non EV-II projects, wherever applicable. However, the IRP states and submits that
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Corporate Debtor during the CIRP period would be barred under the moratorium as contained under section 14 of the IBC. The prayers of the Applicants in this regard therefore ought to be rejected in such regard.

F. Purported Illegal Demands/ Threats/ Notices etc. issued to allottees by Corporate Debtor

74. It has been averred in the Amardeep Singh IA that the Corporate Debtor cannot send demand notices for outstanding dues to allottees, without OC/CC for possession. It has also been contended that the penalty amount, as stipulated in BBA also needs to be paid to the allottee by the Corporate Debtor.

75. In this regard, the IRP/RP has implemented several measures to address outstanding dues and enhance transparency in the Project EV-II resolution process, including aligning statements with BBA terms, updating terminology to "Statement of Balance Dues" with optional payments during the CIRP, communicating terminology changes to homebuyers, providing explanatory notes in the due statements, addressing discrepancies, emphasizing the importance of homebuyer contributions for construction completion, and clarifying that formal unit possession depends on obtaining both OC and CC (as elaborated hereinabove), all aimed at ensuring fairness and clear communication with homebuyers regarding their rights and choices.

G. Unsold Inventories

76. It has been averred in the Amardeep Singh IA that the unsold inventories in Project EV-II can be utilized and offered to allottees from non-structured and / or incomplete towers, thereby alleviating the concerns regarding delay in possession by many allottees.

77. In this regard, the IRP/RP states and submits that the unsold inventory of Project EV-II constitutes a primary asset available for consideration by any PRA. However, it's important to note that the RP was only recently authorized by the CoC of Project EV-II, during the 10th CoC meeting held on June 28, 2023, to explore the sale of unsold inventory in Project EV-II. Subsequently, a verification process was conducted to identify unsold units where construction could be feasibly completed using the funds generated from the sale of such units. These units have thereafter been put up for sale, with the application deadline set for September 21, 2023. Unfortunately, no applications for the purchase of these units were received.



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78. In view of what has been stated hereinabove, the IRP states and submits that this Hon'ble Appellate Tribunal may be pleased to consider the pending Applications/IAs after taking into consideration the contents of this consolidated Reply being filed by the IRP. Further, as stated hereinabove, should this Hon'ble Appellate Tribunal direct the IRP to provide a more detailed response to any of such pending Applications or any part thereof, the IRP would be ready and willing to do the same in compliance of such directions of this Hon'ble Appellate Tribunal, if any.

79. The contents of paragraphs 1 to 47 hereinabove are true to my knowledge and based on the records of the Corporate Debtor, and the rest are my humble submissions before this Hon'ble Appellate Tribunal.

H Goel
DEPONENT
Hitesh Goel

IBBUIPA-001/P-P01405/2018-2019/12224

Wairants
I identify the deponent who has Signed/Put T.J. in my presence

VERIFICATION

I, Mr. Hitesh Goel, the above-named Deponent do hereby verify that the contents of this Affidavit have been read by me and I have understood the same. I do hereby verify that the contents of the affidavit are true and correct to the best of my knowledge and belief and that no part of this Affidavit is false, and no material facts have been concealed there from.

09 OCT 2023

Verified at New Delhi on this day of October, 2023.

H Goel
DEPONENT

Hitesh Goel

IBBUIPA-001/P-P01405/2018-2019/12224



Certified that the above named Deponent identify by Signature
Solemnly affirmed before me at Delhi
S. No. 4382
The contents of the affidavit which have been read & explained to me are true and correct
[Signature] Notary

R. S. Khurshid, A. Khan
4382

ATTESTED
[Signature]
Notary
Govt. of India, New Delhi

09 OCT 2023