

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
I.A. NO. _____ OF 2023
IN
CIVIL APPEAL NO. 5941 OF 2022

IN THE MATTER OF :

Union Bank of IndiaAppellant
Versus
Ram Kishore Arora&Anr.Respondents

AND IN THE MATTER OF :

EcoVillage-II Welfare Association (Regd.)Applicant

PAPER BOOK

I.A. NO. _____ OF 2023
APPLICATION FOR MODIFICATION

[KINDLY SEE INSIDE FOR INDEX]

ADVOCATE FOR THE APPLICANT : **MR. HIMANSHU SHEKHAR**

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....Appellant

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Ram Kishore Arora & Anr.

....Respondents

AND IN THE MATTER OF :

Eco Village-II Welfare Association (Regd.)

Registered office at :

C7/1607, Supertech Eco Village-II,

Plot No.GH01, Sector-16B,

Greater NOIDA, Utter Pradesh.

through its Authorized Signatory

.....Applicant

APPLICATION FOR MODIFICATION

To

The Hon'ble Chief Justice of India and his
Hon'ble Companion Judges of the Supreme
Court at New Delhi.

MOST RESPECTFULLY SHOWETH :

1. By the present application, the Applicant Association is seeking modification of the Order dated 11.05.2023 passed by this Hon'ble Court in relation to the Project Eco Village-II in the light of

the subsequently circulated Transactional Audit Report dated 02.06.2023 which would justify inclusion of Eco Village-II in the category of projects being executed under the supervision of the Interim Resolution Professional [IRP] and not to constitute COC only for the said Eco Village-II Project.

2. The facts briefly stated are as under :

2.1 The Applicant, EcoVillage-II Welfare Association, is a society registered on 21.10.2022 under the Societies Registration Act, 1860 to represent and seek redressal of collective grievances of member Home Buyers of Supertech Eco Village-II Project. Copy of the Registration Certificate dated 21.10.2022 is annexed herewith as **ANNEXURE-A1**.

2.2 In the year 2010-11, Supertech Ltd. launched in phased manner the group housing project by the name of "Eco Village-II" in Plot No.GH01, Sector-16B, Greater NOIDA, Distt. Gautam Budha Nagar, Uttar Pradesh. In Phase I, there were 36 Towers consisting of 5737 units and in Phase 2, 8 Towers consisting of 1397 units totaling to 7134 units.

2.3 Reposing trust in promises publicly held out by Supertech Ltd., the Home Buyers booked their Flats in the Eco Village-II

during 2010 – 15 as the committed date of possession was three years with a further grace period of six months.

2.4 As Supertech Ltd. failed to complete the project even after lapse of several years of booking, the Home Buyers approached the National Consumer Dispute Redressal Commission (NCDRC), New Delhi by filing Consumer Complaint under Section 12(1)(c) of the Consumer Protection Act, 1986 inter-alia seeking direction for possession of the flat within two months post completion in accordance with law including registration of sale deed and compensatory interest @ 24% p.a. on account of delay in delivering the Project.

2.5 On the other hand as the Supertech Ltd. failed in repayment of dues to the Union Bank of India, the said Bank initiated CIRP proceedings against Supertech Ltd. by filing Company Petition No.IB-204/(ND)/2021 before NCLT, New Delhi under Section 7 of IBC for the alleged default amount of Rs.431,92,53,302/-.

2.6 The said petition was admitted vide order dated 25.03.2022 and the NCLT passed all consequential orders/directions under the IBC including the appointment of IRP.

Copy of the Order dated 25.03.2022 passed by NCLT in Company Petition No.IB-204/(ND)/2021 is annexed herewith as **ANNEXURE-A2.**

2.7 The above Order of NCLT was challenged by the suspended Director of Supertech Ltd. one Mr. Ram Kishor Arora by filing Company Appeal (AT) (Insolvency) No.406 of 2022 before the National Company Law Appellate Tribunal, New Delhi [NCLAT], in which the Appellant Director submitted that he has approached the Bank for a negotiated settlement including OTS. It was further submitted that Supertech has sufficient receivable and have positive net worth and it would require some funding for completing construction of all its 30 projects and that it had already have tied up with strategic partner who had agreed to infuse over Rs.300 crores. It was also submitted that the Promoters of Supertech are ready to extend full cooperation to the IRP for carrying out the construction of all the projects.

2.8 The NCLAT, New Delhi in its order dated 10.06.2022 referred to the Status Report dated 31.05.2022 submitted by the IRP in which vide Annexure-C the status of the various projects of Supertech including Eco Village-II, Eco Village-I and Eco Village-III were given vide as under :

S.No.	Project	Total Units	Sold Units	Possession without OC Units	Near Ready Units OC Units	Under Consideration Units	Unsold Units
1.	Eco-Village-I	8,012	7,685	3,171	2,013	1,355	327
2.	Eco-Village-II	5,696	5,189	2,054	1,154	1,409	507
3.	Eco-Village-III	3,909	2,892	667	458	2,191	1,017
4	Romano	2,105	1,491	172	342	1,591	614
	Total	19,722	17,257	6,064	3,967	6,546	2,465

2.9 The details of Bank/Financial Institutions who have provided loan to Supertech Ltd. are also given as Under :

Name of Bank/FIs	Doon Square	Eco City	EV-II	EV-III	EC-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 Limited	-	-	-	-	-	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	355	168	441	2,483

2.10 The above two charts vividly reflected that so far as Eco Village-II is concerned, the amount due to the Union Bank of India was to the tune of only Rs.135 Crores and that of IDBI Rs. 222 Crores and that, out of the total units of 5696, the possession of

2054 units were already given (without OC) and that the unsold units were 507. Further the units which were under construction at advanced stages with above 90% construction were 3500 (approx.), thereby leaving the under-construction unit only to 1300 (approx.). In the first COC meeting, dated 13th July 2022, the IRP apprised the COC indicated that in 22 Towers (? units) where the constructions were completed even upto 99.7%, could be completed in a short period i.e. within three months with a monthly construction spend of only Rs.2-3 crores. Further, in 10 Towers (? units), where the construction were completed upto 89.8%, could be completed within a period of 3 – 6 months with a monthly spend of less than Rs.6 – 7 Crores. The said Chart is as under :

S.No.	Type(Tower) Villa/Plot/ Commercial	Name of Tower	Nos. of Units	Estimated Const Cost (Crs.)	Balance cost to incur (Crs.)	Percentage of Complete	OC status (yes/no)	Completion period (in months)
1	Tower	B15	167	18.01	0.07	99.6%	Yes	0 - 3
2	Tower	B16	167	18.01	0.07	99.6%	Yes	0 - 3
3	Tower	C1	167	21.48	0.09	99.6%	Yes	0 - 3
4	Tower	C2	167	21.51	0.08	99.6%	Yes	0 - 3
5	Tower	C3	167	21.48	0.07	99.7%	Yes	0 - 3
6	Tower	D1	83	14.25	0.07	99.5%	Yes	0 - 3
7	Tower	D2	83	14.25	0.07	99.5%	Yes	0 - 3
8	Tower	D3	83	14.25	0.10	99.3%	Yes	0 - 3
9	Tower	B1	167	18.22	0.06	99.7%	Yes	0 - 3
10	Tower	B2	167	18.21	0.22	98.8%	Yes	0 - 3
11	Tower	B5	167	18.22	0.16	99.1%	Yes	0 - 3
12	Tower	B9	167	18.22	0.14	99.2%	Yes	0 - 3
13	Tower	B10	167	18.22	0.08	99.5%	Yes	0 - 3
14	Tower	B12A	167	18.21	0.18	99.0%	Yes	0 - 3
15	Tower	B14	167	18.21	0.14	99.2%	Yes	0 - 3
16	Tower	C4	167	21.58	0.30	98.6%	Yes	0 - 3
17	Tower	C5	167	21.59	0.38	98.2%	Yes	0 - 3
18	Tower	C12	125	17.01	0.39	97.7%	Yes	0 - 3
19	Tower	B3	167	18.21	0.40	97.8%	No	0 - 3

20	Tower	B4	167	18.22	0.66	96.4%	No	0 - 3
21	Tower	B11	167	18.22	1.82	90.0%	No	0 - 3
22	Tower	B12	167	18.25	1.85	89.8%	No	0 - 3
23	Tower	A2	167	24.32	2.48	89.8%	No	3 - 6
24	Tower	B6	167	18.20	3.35	81.6%	No	3 - 6
25	Tower	C6	167	21.58	2.45	88.7%	No	3 - 6
26	Tower	C8	167	21.57	2.43	88.7%	No	3 - 6
27	Tower	B7	167	18.19	5.02	72.4%	No	3 - 6
28	Tower	B8	167	18.20	5.18	71.5%	No	3 - 6
29	Tower	C7	167	21.57	5.12	76.2%	No	3 - 6
30	Tower	C9	167	21.58	7.92	63.3%	No	6 - 12
31	Tower	F3	83	17.80	6.97	60.8%	No	6 - 12
32	Tower	G1	125	20.91	5.85	72.0%	No	3 - 6
33	Tower	G2	125	20.96	6.51	68.9%	No	3 - 6
34	Tower	E1	83	16.41	8.29	49.5%	No	6 - 12
35	Commercial	Eco Bazar2	109	16.52	2.57	84.4%	Yes	3 - 6
36	Non-tower, external development			98.84	14.82	85.0%	N.A.	6 - 12
37	Tower	D4	78	14.44	6.70	53.64%	No	6 - 12
38	Tower	D5	78	14.44	7.92	45.20%	No	6 - 12
39	Tower	11	212	28.61	16.03	43.98%	No	12 +
40	Tower	12	212	28.83	18.15	37.06%	No	12 +
41	Tower	J1	159	26.26	15.24	41.98%	No	12 +
42	Tower	J2	159	26.26	16.65	36.59%	No	12 +
43	Tower	H4	131	31.24	27.71	11.30%	No	12 +
44	Tower	K1	212	32.85	26.10	20.56%	No	12 +
45	Non-tower, external development			51.96	45.72	12.01%		12 +

It has also been informed in first COC Meeting by the IRP that the estimated cost required for completion of the entire project of Eco village-II is Rs.311.98 crores for Phase-I and Rs.244.45 crores for Phase-II.

2.11 The NCLAT too have recorded that the ongoing projects of Supertech were at substantial completion stage and in the event construction of the projects are allowed to proceed with the funds to be infused by the Project Proponents, the concerns of the stakeholders including Home Buyers would be sufficiently resolved.

2.12 The NCLAT thereafter felt it appropriate as a test case to modify the NCLT order dated 25.03.2022 by directing that the COC may not be constituted for other than Eco Village-II and asked the construction of all other projects to be carried out under the supervision of IRP with the assistance of Ex-Management by directing the Ex-Management to infuse the required funds. So far as Eco-village-II is concerned, a distinct regime was envisaged and IRP was asked to constitute the COC only for Eco-villageII.

Copy of order dated 10.06.2022 passed in Company Appeal (AT) (Insolvency) No.406 of 2022 by the NCLAT, New Delhi is annexed herewith as **ANNEXURE-A3.**

3. As there was neither any justification nor any material for this discriminatory treatments given to the Home Buyers of Eco Village-II project vis-à-vis the other projects of Supertech, and therefore I.A. No.~/2023 in the ongoing Civil Appeal No.5941 of 2022 was moved by the Applicant Association of the Home Buyers

of Eco-Village-II. It was submitted that the secured creditors like Bank or Financial Institutions cannot be provided with the assets (Flats/Apartments) by preference over the Allottee Home Buyers for whom the projects have been envisaged as proclaimed and pronounced by this Hon'ble Court in Chitra Sharma and that the said Order of NCLAT dated 10.06.2022 amounts to throwing the Home Buyers of Eco Village-II towards the liquidation a mere thought of which gives a nightmarish experience.

4. It is submitted that both the Charts annexed with the IRP's Status Report dated 30.05.2022 clearly borne out the fact that the Project Eco Village-II cannot be distinguished and discriminated with other Supertech Projects on any of the criteria including the status of the construction, the total indebtedness to the Union Bank of India and/or the availability of the resources which include large number of unsold units.

5. That after extensive hearing of various stakeholders including the Eco Village-II Home Buyers this Hon'ble Court passed the Order on 11.05.2023 modifying the Order of NCLAT dated 10.06.2022 only to a limited extent that the COC may be constituted in relation to Eco Village-II, but an embargo was imposed that the process beyond voting on the Resolution Plan

would not be undertaken without the specific orders of this Hon'ble Court.

6. It is of utmost significance to point out that the said direction was passed notwithstanding what is recorded in paras 7.3, 7.4 and 7.5 of the said Order dated 11.05.2023 that all the three parties, namely, the Promoters of Supertech Ltd., the IRP as also the Home Buyers of Eco Village-II have agreed in clearest terms that the Eco Village-II project may be given the same treatment as has been given to all other projects of Supertech, namely, the construction may be allowed under the supervision of IRP with the support of Ex-Management by infusing the required funds for completion of all the projects. It is a great frustration of the Home Buyers of Eco Village-II that this Hon'ble Court has not given any credence to the said agreed stand of all the three stakeholders.

Copy of the Order dated 11.05.2023 passed by this Hon'ble Court in Civil Appeal No.5941 of 2022 is annexed herewith as **ANNEXURE-A4.**

7. After the said order dated 11.05.2023, the Applicant Association is able to lay its hands to the Transactional Audit Report dated 02.06.2023, which was submitted by J Mandal & Co. pursuant to the 1st COC Meeting dated 13.07.2022 in which the necessity of the Transaction Audit was felt and J Mandal & Co. was

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appointed to carry out Transaction Audit. However, for the reasons not known to the Applicant Association, the transaction audit was confined only to Eco Village-II.

8. In the Transactional Audit Report dated 02.06.2023 apart from other irregularities and misappropriation of funds of Eco Village-II, it has been categorically observed that "payments of Rs.419.94 Crores have been made for meeting the expenditure of other projects of Supertech Ltd. against which amounting to Rs.109.57 Crores was received back from these project." It thus ex-facie establishes the diversion of at least Rs.310.36 Crores from Eco Village-II to other projects of Supertech Ltd.

9. The Report further states that Supertech Ltd. had utilized an amount of Rs.37.88 Crores out of the funds of Eco Village-II for the purchase of land in the name of ASP Sarin Reality Pvt. Ltd. and M/s. Revital Reality Pvt. Ltd.

10. It has also been revealed that an amount of Rs.31.64 Crores collected from the Home Buyers towards IFMS had been treated as part of sales and not showing as Funds in the books of Supertech Limited would leads to the presentation of incorrect picture to

Home Buyers which tantamount to diversion and siphoning of funds.

11. Furthermore, according to the said Transaction Report a total amount of Rs.15,34,67,66,769/- (Rs.13,08,17,30,570/- from Phase-1 and Rs.2,26,50,36,199/- from Phase-2) has already been collected by Supertech Ltd. from the Home Buyers of Eco Village-II. It is observed that out of the amount collected from the Home Buyers, apart from the above diversion, a further total amount of Rs. 239.53 Crores was utilized during 01.04.2010 to 25.05.2022 in making the payments to the various Vendors of Supertech Ltd. or of its Group Companies. It thus regards :

".. CD was regularly using the Funds of Eco Village - II (Phase I & II) received from Home Buyers or banks to pay the creditors or to meet out the expenses of other projects of Supertech Limited..."

Relevant pages of the Transactional Audit Report dated 02.06.2023 is annexed herewith as **ANNEXURE-A5.**

12. The Transaction Report thus reveals that a total of at least Rs.617 Crores (Rs. 310 cr. + Rs. 239 cr. + Rs. 37 cr. + Rs. 31 cr.) of Eco Village-II have been diverted and or utilized by Supertech Ltd. for other projects and if the said money is properly accounted

for and used for completion of remaining work the thousands of Home Buyers of Eco Village -II both Phase-I & II would have no grievance at all.

13. Significantly the IRP have also proposed that the funds currently available with the corporate debtor for Eco Village-II project be immediately infused for the purposes of construction. Moreover, the unsold inventory may be sold to generate cash for construction of pending units subject to RERA compliances. The home buyers were also requested by the IRP as pay their milestone-based payments on timely basis. It was suggested that the interim funding may also be sought from promoters as per the Hon'ble NCLAT order or from any investor so that the construction activities are carried out at a brisk pace of the Eco Village-II Project.

14. The Applicant submits that if the Transaction Audit Report would have been available in time, this Hon'ble Court might not have passed the Order dated 11.05.2023 and would certainly not excluded the Eco Village-II Project from the rest of Supertech Projects and would certainly not directed constitution of COC only for Eco Village-II Project.

15. In the backdrop of the facts and circumstances narrated hereinabove, particularly in the light of the Transactional Audit Report dated 02.06.2023, the Applicant Association is seeking appropriate direction from this Hon'ble Court to suitably modifying the Order dated 11.05.2023 so that the construction of Project Eco Village-II is also completed with all other projects of Supertech Ltd. under the supervision of IRP with the assistance of ex-management.

16. The Applicant Association does not have any efficacious and/or alternative remedy available with it, but for moving the present Application.

17. The application is moved bonafide and in the interest of justice.

PRAYER

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

[a] pass appropriate order/direction modifying the Order dated 11.05.2023 passed by this Hon'ble Court in relation to project Eco Village-II in the light of the Transactional Audit Report dated 02.06.2023 and include of Eco Village-II in the

category of projects being executed under the supervision of the IRP;

- [b] pass such other or further order[s] as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

DRAWN BY :

M.L. LAHOTY
ADVOCATE
Supreme Court of India
Drawn on : 03.07.2023

FILED BY :

HIMANSHU SHEKHAR
ADVOCATE ON RECORD
FOR THE APPELLICANT
Filed on : 03.07.2023

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
I.A. NO. _____ OF 2023
IN
CIVIL APPEAL NO. 5941 OF 2022

IN THE MATTER OF:

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AND IN THE MATTER OF

Ecovillage -II Welfare AssociationApplicant

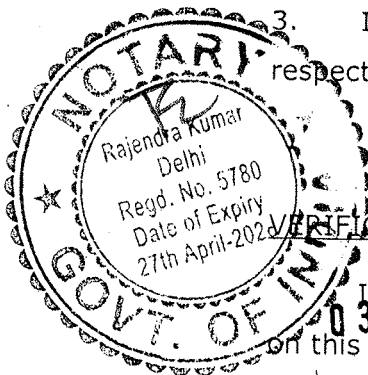
AFFIDAVIT

I, Anupam Kumar, son of Sh. Dinesh Chandra Mishra, aged about 34 years, resident of 114, Street No. 13, Pratap Nagar, Mayur Vihar, Phase-1, New Delhi-110091, do hereby solemnly affirm and state as under :

1. I state that I am the Authorized Signatory of the Applicant Association and well conversant with the facts and circumstances and as such I am duly authorized and competent to swear the present affidavit on behalf of the Applicant Association.

2. I state that the contents of the accompanying Interlocutory Application are true and correct to the best of my knowledge and belief and derived from records of the case.

3. I further state that the Annexures are true copies of their respective originals.



Anupam Kumar
DEPONENT

VERIFICATION :
I, the above named deponent do hereby verify at New Delhi on this 03 day of July, 2023 that the contents of my above affidavit are true and correct, no part of it is incorrect and nothing material has been concealed therefrom.

03 JUL 2023
CERTIFIED THAT THE CONTENTS EXPLAINED TO THE DEPONENT EXECUTIVE WHO IS SEEMED PERFECT TO UNDERSTAND & AFFIRMED DEPOSED BEFORE ME AT DELHI ON..... IDENTIFIED BY..... IDENTIFY THE EXECUTIVE / DEPONENT WHO HAS SIGNED IN MY PRESENCE
IDENTITY THE EXECUTANT / DEPONENT WHO WAS SIGNED IN THE PRESENCE OF

Anupam Kumar
BEFORE ME DEPONENT
RAJENDRA KUMAR
NOTARY, DELHI-R-5780
GOVERNMENT OF INDIA
SUPREME COURT OF INDIA
COMPOUND, NEW DELHI
Register Pg./Sl. No.....
Mobile No.: 9899446209

03 JUL 2023

पल्ल-8
नियम 7(2) देखिये



**सोसाइटी-रजिस्ट्रीकरण
का
प्रमाण-पत्र**

(अधिनियम संख्या 21, 1860 के अधीन)

पंजीकरण संख्या GBN/07152/2022-2023

एतद्वारा प्रमाणित किया जाता है कि **Ecovillage2 Welfare Association, C 7/1607 Supertech Eco Village 2 Plot no. GH01, Sector 16 B, Greater Noida, Distt. Gautam Buddha Nagar, U.P- 201303, गौतम बुद्ध नगर, 201303** को आज उत्तर प्रदेश में अपनी प्रकृति के संबंध में यथासंशोधित सोसाइटी रजिस्ट्रेशन अधिनियम 1860 के अधीन सम्यक रूप से रजिस्ट्रीकृत किया गया है।

यह प्रमाण पत्र दिनांक **20/10/2027** तक विधिमान्य होगा।
आज दिनांक **21/10/2022** को मेरे हस्ताक्षर से दिया गया।



**Digitally Signed By
(Varun Khare)**

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Date: 21/10/2022 2:53:40 PM Location: New Delhi

**सोसाइटी के रजिस्ट्रार
उत्तर प्रदेश**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

IB-204/(ND)/2021.

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

Union Bank of India

Through its Chief Manager

Union Bank of India,

Stressed Assets

Management Vertical Branch,

M-93 Connaught Place,

New Delhi - 110001

Applicant/Financial Creditor

Versus

M/s Supertech Limited

Registered Office At:

1114, Hemkunt Chambers,

11th Floor, 89, Nehru Place,

New Delhi- 110019

...Respondent/ Corporate Debtor





Coram:

SHRI. P.S.N. PRASAD, Hon'ble Member (Judicial)

SHRI. RAHUL BHATNAGAR, Hon'ble Member (Technical)

Counsel for Petitioner/Financial Creditor: Adv. Alok Kumar

Counsel for Respondent/Corporate Debtor: Adv. Kanishk Khetan

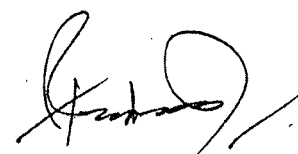
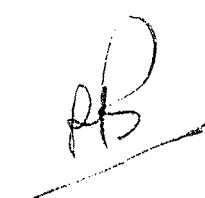
ORDER

Per SHRI. P.S.N PRASAD, MEMBER (JUDICIAL) &

SHRI. RAHUL BHATNAGAR, MEMBER (TECHNICAL)

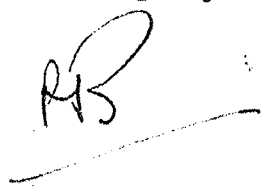
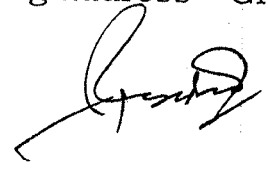
Date:25.03.2022

1. This is an application filed by Union of India to initiate corporate insolvency resolution process ("CIRP") against M/s Supertech Ltd. under Section 7 of the Insolvency and Bankruptcy Code 2016 ("the Code") for the alleged default on the part of the Respondent in settling an amount of Rs. 431,92,53,302 (Four Hundred Thirty One Crore Ninety Two Lakhs Fifty Three Thousand Three Hundred and Two Rupees only) as on 31.01.2021. The details of transactions leading to



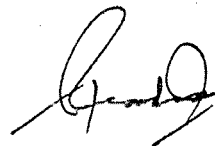
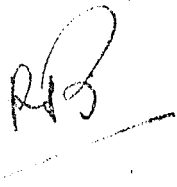
the filing of this application as averred by the Applicant are as follows:

- That the Corporate Debtor approached various financial institutions in 2013 including the Financial Creditor, to avail a credit facility of Rs. 350 Crores from a consortium of banks; out of which the exposure of the Financial Creditor i.e. the Lead Bank was Rs. 150 Crores. The purpose of availing the said loan amount was to part finance the development of the Corporate Debtor's Project namely Eco Village II located at Group Housing Plot No. GH-01, Sector 16B, Greater Noida (West), Uttar Pradesh at an estimated project cost of Rs. 1106.45 Crores.
- That vide sanction letter dated 19.10.2013 and revised letter dated 16.12.2013, the Respondent was granted credit facility of Rs. 150 Crores for the development of Eco Village II Project.
- The in pursuance to the loan agreement which was executed between the Applicant along with other Banks and the Respondent, the Respondent had deposited the title deeds of the property bearing address - Group Housing

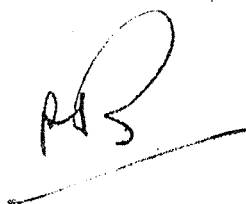
Plot No. GH-01, Sector-16B, Greater Noida, Uttar Pradesh for creating an equitable mortgage on the said property vide Memorandum of Deposit of Title Deeds dated 30.12.2013.

- That the Corporate Debtor again approached the Financial Creditor and Bank of Baroda (formerly known as Vijaya Bank) for part financing the construction of Phase-II of this Project. The Financial Creditor and Bank of Baroda agreed to extend the second credit facility for Rs. 200 Crores to the Respondent out of which the total exposure of the Financial Creditor was Rs. 100 Crore. The credit facilities were granted to the Respondent by the Applicant vide sanction letter dated 21.11.2015 which was revalidated vide sanction letter dated 11.08.2016. The Respondent, Applicant and Bank of Baroda entered into a Construction Facility Agreement dated 07.09.2016. In order to secure the credit facility from the Applicant and Bank of Baroda, the Corporate Debtor delivered the Title Deeds of the Subject Property for creation of mortgage on pari-passu basis.
- That the Corporate Debtor was under an obligation to make timely repayment towards the Principal and the Interest



thereon within the stipulated period to the Financial Creditor, without any delay, demur or protest. However, despite various reminders and requests made by the Financial Creditor, the Corporate Debtor failed to honor its obligation and failed to make payment of the outstanding amount due to the Applicant Bank.

- That the Loan Account of the Respondent maintained by the Applicant in respect of the Credit Facilities became highly irregular and even after repeated requests by the Applicant, the Respondent failed to regularize both of its accounts with the Applicant. The repeated defaults in payment of principal amount or the interest component by the Respondent resulted in the classification of both Loan Accounts of the Respondent as Non-Performing Asset (NPA).
- That notice under Section 13(2) of SARFAESI Act dated 24.04.2019 (Term Loan-I) and 23.04.2019 (Term loan- II) was sent to Respondent but the Respondent not only failed to repay the outstanding debt but also abstained from making any effort for the same



2. Consequent to the notice issued by this Tribunal, the Respondent filed its reply in which the following contentions were made:

- That the instant petition has been filed without proper authority. The Application is filed by the Financial Creditor through an officer/employee, namely Mr. Shakti Singh Yadav, Chief Manager of the Applicant. However, Mr. Shakti Singh Yadav is not authorized to file such petition.
- That the Form 1 filed by the Applicant is incomplete and not in accordance with the provisions of the IBC particularly Section 7 and Section 215 of the IBC.
- That as per Article IV, Clause 4.4, sub-clause (g) of the Inter Creditor Agreement, the lenders are restricted to initiate any action for winding up, liquidation, bankruptcy, insolvency or dissolution of borrower before following the procedure as prescribed under Clause 4.3 of the Inter-creditor Agreement. Therefore, the instant Application under Section 7 of the IBC for initiating Corporate Insolvency Resolution Process before following the procedure as prescribed under Clause 4.3 of Inter



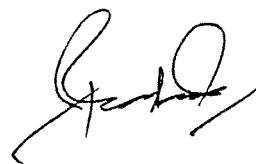
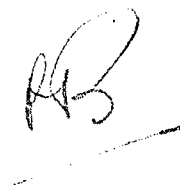
Creditor Agreement is premature and is liable to be dismissed on this ground alone.

- That the NPA classification is contrary to guidelines issued by the Reserve Bank of India.
 - That the Statement of Account as filed by the Applicant Bank is not in accordance with the mandatory requirement of law. That the Applicant has failed to annex copy of the Certificate required under Section 2(a) of the Bankers Book Evidence Act, 1891 which is a mandatory requirement Under Column 7 of Part V of FORM -1.
 - That the Applicant has failed to furnish the calculation chart and thereby the claim of the Applicant is unsubstantiated, exorbitant and thus, the same is liable to be rejected at the outset.
3. Pursuant to the Respondent's reply, the applicant has filed its Rejoinder in which the following contentions were made:
- That Sh. Shakti Yadav has been given general authorisation by the Bank with respect to all the business and affairs of the Bank, including commencement of legal proceedings before any court or tribunal with respect to any demand



and filing of all necessary applications in this regard vide Power of Attorney dated 12.11.2013.

- That Mr. Hitesh Goyal, the proposed Interim Resolution Professional has given the valid and appropriate consent form.
- That under Insolvency and Bankruptcy Code, 2016, the only criteria that is required to be satisfied is "existence of debt and its default in repayment by corporate debtor" and the same has existed since July, 2019 and the same is clearly evident from Statement of Account of the Respondent filed by the Applicant along with Petition under Section 7 of the Code along with Certificate under 2A of the Bankers' Books Evidence Act, 1891.
- That the account was classified as NPA after the completion of 90 days.
- That the Corporate Debtor has not paid its debt since July 2019. The Statement of Account filed by the Applicant is well in accordance with Section 2A of the Bankers' Books Evidence Act, 1891.



- That the Claim Amount of the Applicant/Petitioner is completely substantiated by its Statement of Account and Balance Confirmation filed along with filing of Claim Form
4. We have gone through the documents filed by both the parties and heard the arguments made by the counsels. The applicant has claimed the default on part of the Respondent for the Loan amount of Rs. 431,92,53,302 (Four Hundred Thirty One Crore Ninety Two Lakhs Fifty Three Thousand Three Hundred and Two Rupees only) as on 31.01.2021.
 5. From the daily order dated 17.03.2022, it is clear that the Counsel for the Corporate Debtor has submitted that the One Time Settlement proposal submitted by the Corporate Debtor has not been accepted by the Financial Creditor. The counsel for the Corporate Debtor has therefore admitted the debt and default.
 6. Mere plain reading of the provision under section 7 of IBC and decision (supra) shows that in order to initiate CIRP under Section 7 the applicant is required to establish that there is a

financial debt and that a default has been committed in respect of that financial debt.

7. In the light of the aforesaid facts, we find that the documents submitted by the Financial Creditor and the Corporate Debtor clearly substantiate the Financial Creditor's claim that the Corporate Debtor has indebted and defaulted the repayment of loan amount.

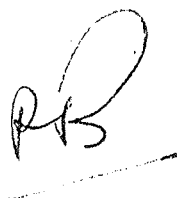
8. In light of the above discussion, after giving careful consideration to the entire matter, hearing the arguments of the parties and upon appreciation of the documents placed on record to substantiate the claim, this Tribunal **admits** this petition and initiates CIRP on the Corporate Debtor with immediate effect.

9. Sub-section (3) (b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Hitesh Goel for appointment as Interim Resolution Professional having registration number IBBI/IPA-001/IP-P-01405/2018-2019/12224. Mr. Hitesh Goel has agreed to accept the appointment as the interim resolution professional and has

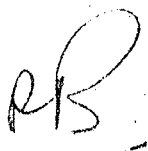
RB *Goel*

signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.

10. It is thus seen that the *requirement of sub-section 5 (a) of Section 7 of the code* stands satisfied as default has occurred, the present application filed under Section 7 is complete, and as no disciplinary proceeding against the proposed IRP is pending.
11. It is pertinent to mention here that the Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication as to the occurrence of default before admitting the application. The material on record clearly goes to show that respondent had availed the credit facilities and has committed default in repayment of the outstanding loan amount.



12. We are satisfied that the present application is complete in all respects and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.
13. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.
14. Mr. Hitesh Goel, having Registration No. IBBI/IPA-001/IP-P-01405/2018-2019/12224 is appointed as an Interim Resolution Professional.
15. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.
16. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:



“(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

17. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to



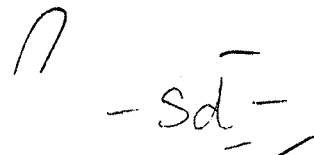
the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

18. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-

directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

19. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.


 (SHRI. RAHUL BHATNAGAR)
 MEMBER (TECHNICAL)


 (SHRI. P.S.N. PRASAD)
 MEMBER (JUDICIAL)

ANNEXURE- A3

33

**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	Romand	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

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ANNEXURE-A4

ITEM NO.1502

COURT NO.5

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).1925/2023

INDIABULLS ASSET RECONSTRUCTION
COMPANY LIMITED

Appellant(s)

VERSUS

RAM KISHOR ARORA & ORS.

Respondent(s)

[HEARD BY: HON'BLE DINESH MAHESHWARI AND HON'BLE SANJAY KUMAR,
JJ.]
WITH

C.A. No.5941/2022 (XVII)

C.A. No.1975/2023 (XVII)

Date : 11-05-2023 These appeals were called on for pronouncement
of order.

For Appellant(s)

Mr. Mahesh Agarwal, Adv.
Mr. Ankur Saigal, Adv.
Mr. Shashwat Singh, Adv.
Ms. Geetika Sharma, Adv.
Mr. Sumesh Dhawan, Adv.
Mr. E. C. Agrawala, AOR

Mr. Balaji Srinivasan, AOR

Mr. Angad Varma, Adv.
Mr. Toyesh Tiwari, Adv.
Mr. Nikhil Mehndiratta, Adv.
M/s. Dua Associates, AOR

For Respondent(s)

Mr. Siddharth Bhatli, Adv.
Mr. Dinesh Kumar Garg, AOR
Mr. Abhishek Garg, Adv.
Mr. Dhananjay Garg, Adv.
Ms. Khyati Jain, Adv.
Mr. Ishaan Tiwari, Adv.

Mr. Nakul Dewan, Sr. Adv.
Mr. R. Gopalakrishnan, AOR
Mr. Somdutta Bhattacharyya, Adv.
Ms. Niharika Sharma, Adv.

Ms. Kiran Sharma, Adv.
Mr. Sathvik Chandrasekar, Adv.
Mr. R Sudhinder, Adv.
Mr. R Gopalakrishnan, Adv.

Mr. Viplan Acharya, Adv.
Mr. N. B. V. Srinivasa Reddy, Adv.
Mr. Akshat Srivastava, AOR

Mr. Divyesh Pratap Singh, AOR

Mr. Himanshu Shekhar, AOR
Mr. M. L. Lahoty, Adv.
Mr. Paban Kumar Sharma, Adv.
Mr. Anchit Sripat, Adv.
Mr. Pranab Kumar Nayak, Adv.
Mr. Arvind Kumar, Adv.

Mr. Nishant Verma, AOR
Ms. Shisba Chawla, Adv.
Mr. Sourav Singh, Adv.

Mr. Ravi Prakash Mehrotra, Sr. Adv.
Mr. Apoorv Srivastava, Adv.
Mr. Jogy Scaria, AOR

Mr. Somesh Dhawan, Sr. Adv.
Mr. Mahesh Agarwal, Adv.
Mr. Rishi Agrawala, Adv.
Mr. Ankur Saigal, Adv.
Ms. Geetika Sharma, Adv.
Mr. Shivam Shukla, Adv.
Mr. E. C. Agrawala, AOR

Hon'ble Mr. Justice Dinesh Maheshwari pronounced the order of the Bench comprising His Lordship and Hon'ble Mr. Justice Sanjay Kumar.

In terms of the signed order, Civil Appeal No.5941 of 2022 and Civil Appeal No.1925 of 2023 may be listed for final hearing at the admission stage in the second week of July, 2023 and Civil Appeal No.1975 of 2023 be listed along with Civil Appeal No.5941 of 2022.

Regarding interlocutory applications

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.

(ARJUN BISHT)
COURT MASTER (SH)

(MATHEW ABRAHAM)
COURT MASTER (NSH)
(signed order is placed on the file)

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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

Signature Not Verified

Digitally signed by
ARJUN BISWAS
Date: 2024.05.11
15:49:31 IST
Reason:

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

National Company Law Tribunal, 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

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'.

abeyance and await further orders of this Court. Thereafter, we heard the learned counsel for 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 counte 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 promoter-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.

ANNEXURE - A5 70

TRANSACTIONAL AUDIT REPORT

OF

SUPERTCH LIMITED (PROJECT ECO VILLAGE II &
IV)

BY:-

J MANDAL & CO., CHARTERED ACCOUNTANTS

To,

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Mr. Hitesh Goel,
IP Registration No. IBBI/IPA-001/IP-P01405/2018-2019/12224
Resolution Professional in the Matter of
Supertech Limited (Project Eco Village – II)

**Subject: Submission of Transaction Audit Report of M/s Supetech Limited
(Project Eco Village-II & IV)**

This is in reference to your Engagement Letter dated 12th January, 2023 requiring M/s J. Mandal & Co. Chartered Accountants (Hereinafter called JMC) to carry out the Transactional Audit of **M/s Supertech Limited (Project Eco Village – II & IV)**. As per our engagement, we have performed Audit of the said concern under Corporate Insolvency Process under Insolvency and Bankruptcy Code 2016. As per the terms of the engagement, we have tried to form our opinion on the basis of documents of data made available to us by Resolution Professional and Corporate Debtor for the period of 01st April, 2010 to 25th March, 2022.

We have performed services and prepared the Report in accordance with our engagement letter and subject to the terms and conditions stated therein.

Based on the scope of work, we understand that the Resolution Professional requires the services of professional firm to conduct Transactional Audit of the accounts of the stated borrower.

SCOPE OF WORK INCLUDED THE FOLLOWING

The assignment was undertaken in accordance with the Standards on Related Services (SRS) 4400 “Engagement to Perform Agreed-upon Procedures regarding Financial Information” issued by the Institute of Chartered Accountant of India (“ICAI”). Our procedures did not constitute either an audit or a review conducted in accordance with generally accepted auditing standards in India. The sufficiency of Internal Control & procedures thereof is the responsibility of the Auditee. Consequently, we do not confirm the sufficiency of the procedures described herein in the report, either for the purpose for which the report has been prepared or for any other purpose.

Our report is solely for the purpose set forth in the Engagement Letter and is not to be used for any other purpose or to be shared with any other parties. This report relates only to the subject matter specified in the Engagement Letter and does not extend to any Financial Statements of the Company.

RESTRICTION ON USE

The report analysis, schedules or other material produced or provided by JMC have been prepared solely for internal use of Resolution Professional. However, Resolution Professional may deem think, can circulate this report to any other investigating agency/other party for the purpose of carrying out any further investigation. Neither his report nor the information contained in the report has to

be reproduced, preferred to or disclosed, in whole or in part, or used for any other purpose. We do not assume any responsibility of liability for losses occurred to any party as a result of unauthorized circulation, publication, reproduction or use of this report or the information.

The procedures performed by JMC do not constitute a financial audit so we do not express an audit opinion on the amounts & data stated in this report.

Yours faithfully,
For J MANDAL & CO.

Partner

XX. DETAILED TRANSACTIONAL AUDIT REPORT**20.1 PREFERENTIAL TRANSACTION (SECTION 43 OF INSOLVENCY AND BANKRUPTCY CODE (IBC), 2016****Section 43 of Insolvency and Bankruptcy Code, 2016:**

- (1) Where the liquidator or the resolution professional, as the case may be, is of the opinion that the corporate debtor has at a relevant time given a preference in such transactions and in such manner as laid down in sub-section (2) to any persons as referred to in sub-section (4), he shall apply to the Adjudicating Authority for avoidance of preferential transactions and for, one or more of the orders referred to in section 44.
- (2) A corporate debtor shall be deemed to have given a preference, if-
- (a) There is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor or a surety of a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor; and
 - (b) the transfer under clause (a) has the effect of putting such creditor, or a surety or a guarantor into beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53.
- (3) For the purposes of sub-section (2), a preference shall not include the transfer-
- (a) transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee,
 - (b) any transfer creating a security interest in property acquired by the corporate debtor to the extent that –
 - (i) such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest, and was used by corporate debtor to acquire such property; and
 - (ii) such transfer was registered with an information utility on or before thirty days after the corporate receives possession of such property:

Explanation – For the purpose of sub-section (3) of the section, “new value” means money or its worth in goods, services, or new credit, or release by the

transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the liquidator or the resolution professional under this Code, including proceeds of such property, but does not include a financial debt or operational debt substituted for existing financial debt or operational debt.

- (4) A preference shall be deemed to be given at a relevant time, if –
- (a) It is given to a related party (other than by reason only of being an employee), during the period of two years preceding the insolvency commencement date; or
 - (b) a preference is given to a person other than a related party during the period of one year preceding the insolvency commencement date.

Our understanding of Section 43 of IBC, 2016

The above provisions ensure that the value of assets of the company is maximized and all the creditors get their dues in an equitable manner. These provisions aim at setting aside transactions which are preferential in nature.

Certain transactions are to be avoided under section 43 of the Code if it appears that they have been preferred over others. It covers transaction where there is a transfer of property or an interest in respect of an existing debt or liability and such transfer has the effect of putting such creditor in a beneficial position than it would have been in the event of a distribution of assets u/s 53 of the Code. However, the transfers which have been made in the ordinary course of business or financial affairs of the corporate debtor of the transferee not treated as preferential transaction as explained in the section itself.

- a. In case of repayment/adjustment of unsecured loan if payment/adjustment has been made to give preference as compared to other.
- b. If the parties with whom transactions have been entered into during 26/03/2020 to 25/03/2022 are related parties.
- c. In case of return of material : documents available in case of return of material to ensure if the return of material was appropriate.
- d. In case of transfer of property: if there is any transfer of property including adjustment of advance for the benefit of a creditor in preference to other

AUDIT METHODOLOGY:

We have analysed transactions entered into in the books of accounts of the company during the audit period to investigate if there is any preferential transaction as mentioned in Section 43 of IBC,

Our observations on the same is given below:

According to Section 43(4), the relevant time period given for the preferential transactions

- (a) It is given to a related party (other than by reason only of being an employee), during the period of two years preceding the insolvency commencement date; or
- (b) a preference is given to a person other than a related party during the period of one year preceding the insolvency commencement date.

Analysis & observation reported on Section 43 were based upon the analysis of SAP Data and the document/data/records/information's etc. provided by the CD or RP either in the form Physical Documents, Excel sheet, Word Files etc. as stated in Section 11 of the Report and on that basis some of the transactions were noticed which is required to be reported here.

20.1.1. SALE OF GYM

While analyzing the Sales Report and Customer Ledgers, it was observe that GYM was sold to M/s Supertech Estate Private Limited on dated 10th February, 2022, having Super Area of 5818 Sq. ft. @ Rs. 6325 per sq. ft. Total cost of TYM was of Rs. 3,74,67,920/-.

While analyzing the Ledger of M/s Supertech Estate Private Limited (1137406), (Related Party of Supertech Limited), it was further transpired that Rs. 3,84,53,500 was due to other projects, which was adjusted against the Sale amount. These adjustments are related party adjustment which prima facie does not support the concept of Arm Length's and such transactions falls under the nature of Preferential Transactions.

It should be noted that as per clause 43(2) of IBC, 2016 "a corporate debtor shall be deemed to have given a preference if there is a transfer of property or an interest thereof of the corporate debtor for the benefit of creditor and such transfer has the effect of putting such creditor in a beneficial position than it would have been in the event of a distribution o assets being made in accordance with section 53". Additionally, section 53(1) of IBC, 2016 states "debts owed to secured creditors shall be paid in priority to unsecured debts".

Therefore, the above mentioned adjustments made by the Company in regards to Related party was not in line with the "order of priority" as set out in Section 53 of IBC, 2016. Further another important ingredient to categorize the payment as preferential is if the same under Section 43(4) of the IBC Act has been deemed to be given at the relevant time. This transaction was entered 2021-22 and the CIRP of the Corporate Debtor was initiated on 21.03.2022 thus thy satisfy the provisions under Section 43(4)(b) of the IBC Act and prime facie, Sale Transactions with the Related party appears to be preferential in nature.

Management Response

The sale transaction is done on arm-length basis. More details are being worked out.

20.1.2. ALLOTMENT OF FLATS UNDER BARTER SYSTEM

While reviewing the Sales & Allotment of Flats/Shops of Eco Village-II (Phase-I&II) for the period 26th March 2021 to 25th March 2022, it was observed that 5 flats whose total cost was Rs. 2.61 Crores were allotted to EV-II Vendors. Sampling Technique was used to analyse for those flats sold in between 26th March 2021 to 25th March 2022.

Allotment of Flats/Shops against their payable balance to nullify their outstanding balances seems given preference over other Home Buyers. Giving preferences to these Vendors will cover as per clause 43(2) of IBC Act, 2016.

(All Details are enclosed by way of Annexure – 20.1.2.1)

It should be noted that as per clause 43(2) of IBC, 2016 “a corporate debtor shall be deemed to have given a preference if there is a transfer of property or an interest thereof of the corporate debtor for the benefit of creditor and such transfer has the effect of putting such creditors in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53”(1) of IBC, 2016 states “debts owed to secured creditors shall be paid in priority to unsecured debts”.

Therefore, the above mentioned adjustments made by the Company in regards to Allotment of flats under Barter system was not in line with the “order of priority” as set out in Section 53 of IBC, 2016. Further another important ingredient to categorize the payment as preferential is if the same under Section 43(4) of the IBC Act has been deemed to be given at the relevant time. This transaction was entered 2021-22 and the CIRP of the Corporate Debtor was initiated on 25.03.2022 thus they satisfy the provisions under Section 43(4)(b) to the IBC Act and prima facie, these transactions appear to be preferential in nature.

Management Response

Barter system is normal practice in real estate, Company enters into agreement for availing the media and other promotional services and against the provided services, company settles the dues against the allotment of the flats in the projects or in the same project wherein services was rendered.

20.1.3. RELATED PARTY TRANSACTIONS

While review the books of Accounts it was observed that following transactions with related party were incurred in between 26.3.2020 to 25.3.2022. Details are given below:

Sl. No.	Related Parties	Codes	Account Type	Sales/ Services Purchases	Payments	Transfers
1.	ANEWADDRESS CONSULTANCY PRIVATE LIMITED	310404	VENDER		6,22,600	
2.	MR. VIKAS KANSAL	E00786	VENDER		76,255	
3.	PERPENDICLAR CONSTRUCTION PRIVATE LIMITED	2210417	GL		4,00,000	
4.	REVITAL REALITY PRIVATE LIMITED	203090	GL		15,88,491	
5.	SUPERTECH ORB PROJECT PRIVATE LIMITED (FORMERLY KNOWN AS DWEEP INFRA PROJECT PRIVATE LIMITED)	1203099	GL		28,500	54,74,957
6.	SUPERTECH REALTORS PRIVATE LIMITED	1203035	GL		11,45,715	51,02,222
7.	SUPERTECH TOWNSHIP PROJECT LIMITED	1203050	GL			5,42,171
8.	SUPERTECH ESTATE PRIVATE	1137406 1203001	Customer GL	3,47,67,920		3,34,53,500 9,14,204
	TOTAL			3,74,67,920	38,61,561	4,54,87,054

From above summary, it was observed that CD had made payment of Rs. 38.61 Lacs and recorded the transfer entries of Rs. 1.21 Crores in their books of accounts.

CD was not able to provide the reasons along with the sufficient documents and records for making the payment or transferring/adjustments of funds with various Related Parties.

In the case of M/s Supertech Estate Private Limited, Rs. 3.34 Crores was adjusted against Sale of GYM for which documents were provided.

It should be noted that as per clause 43(2) of IBC, 2016 “a corporate debtor shall be deemed to have given a preference if there is a transfer of property or an interest thereof of the corporate debtor for the benefit of creditor and such transfer has the effect of putting such creditor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53”. Additionally, section 53(1) of IBC, 2016 states “debts owed to secured creditors shall be paid in priority to unsecured debts”.

MANAGEMENT RESPONSE

Transaction covered under Sl. No. 9 was earlier stated in Para No. 20.1.1. It is further stated that if we consider the overall volume of receipt and payments between above mentioned related parties, the project has received more amounts in comparison done to related parties. The sale transaction is done on arms-length basis. More details are being worked out.

Audit-Re-Joinders

Transaction done on Arm-Length basis could not be verified due to non-availability of documents and records. All transactions reported were on the basis of analysis of SAP Data. Payments and adjustments with the related parties in stipulated period of time as stated in the IBC Act without any business dealing leads to Preferential Transactions.

20.1.4. ALLOTMENT OF FLATS TO NON-EV-IV VENDORS IN EV-II PROJECT

While reviewing the Sales & Allotment of Flats/Shops of Eco Village-II (Phase I & II) in between 26th March 2021 to 25th March 2-22, it was observed that 4 Flats whose total cost was Rs.1.96 Crores were allotted to Non-EV-II Vendors. Sampling Technique method is used to find out the sale of Flats to Non- EV-II Vendors in between 26th March 2021 to 25th March 2022.

Allotment of Flats/Shops against their payable balances to nullify their outstanding balances seems given preference over other Home Buyers. Giving preferences to these Vendors will cover as per clause 43(2) of IBC Act, 2016.

(All details are enclosed by way of Annexure 20.1.4.1)

It should be noted that as per clause 43(2) of IBC, 2016 “a corporate debtor shall be deemed to have given a preference if there is transfer of property of an interest thereof of the corporate debtor for the benefit of creditor and such transfer has the effect of putting such creditor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53”. Additionally, section 53(1) of IBC, 2016 states “debts owed to secured creditors shall be paid in priority to unsecured debts”.

Therefore, allotment of flat to Non-EV-II Vendors in EV-II Project was not in line with the “order of priority as set out in Section 53 of the IC, 2016. Further another important ingredient to categorize the payment as preferential as if the same under Section 43(4) of the IBC Act has been deemed to be given at the relevant time. This transaction was entered 2021-22 and the CIRP of the Corporate Debtor was initiated on 25.03.2022 thus they satisfy the provisions under Section 43(4)(b) of the IBC Act and prima facie, these transactions appear to be preferential in nature.

MANAGEMENT RESPONSE

Yes, the referred transaction was done to settle off the dues of supplier/service providers including Sahberi-Land which was part of the same project before the order of quashing land/disputes against their outstanding.

Note:-

Points reported under Section 43 (Preferential Transactions of IBC Act were based after analysis of SAP Data and the records, data, information, documents, explanations etc. as stated in Section 11 of the Report. The availability of any further documents, data, records, details, information etc. May result in a different and additional findings and comments in our report and might change in the interpretation & analysis which can be conclusive in nature.

20.5.1 ROUTING OF CASH COLLECTION FROM HOME BUYERS IN A COLLECTION ACCOUNT MANTAINED IN SAP

While going through the Books of Accounts, it was observed that CD had collected the cash from various Home buyers of Eco Village-II(Phase-I) in lieu of interest charges, Cancellation Charges, Admin Charges etc. in between April 2010 to October 2016 amount to Rs. 33,62,46.986. Cash collected from these home buyers were parked in Collection Account (GL Code 2205524). Later on, collected cash from Home Buyers were adjusted in Construction Expenses. No justification and reasons along with the documents were provided for such collection, routing of cash in a collection account other than Cash Account and its adjustment in Construction Expenses.

(All Details are enclosed by way of Annexure 20.5.1.1, 20.5.1.2, 20.5.1.3)

MANAGEMENT RESPONSE

The cited amount was collected from the customers during demonization period. Since all amount received from the customers could not be deposited in bank. Hence it was decided by the management to pay it off to service provider against their services or goods and the same was properly accounted and disclosed in the books.

20.5.2 CASH PAYMENT TO VENDORS

While going through the books of accounts, it was observed that CD had made payment of Rs. 3.37 Crores in cash to 64 parties on 28-12-2016. No justification and proper reasoning along with documents were provided for verification against making payments to 64 Vendors.

(All details are enclosed by way of Annexure 20.5.2.1)

MANAGEMENT RESPONSE

The cited amount was collected from the customers during demonization period. Since all amount received from the customers could not be deposited in bank. Hence it was decided by the management to pay it off to service provider against their services or goods and the same was properly accounted and disclosed in the books.

AUDIT-REJOINDERS

These amounts are collected from home buyers was in between 2010 to October 2016. In India Demonization taken place on 8th November, 2016. Amounts were paid in cash to these Service Vendors against supply of Goods & Services.

**20.5.3 REFLECTING HUGE CASH BALANCE AS ON 25TH MARCH 2022
IN PETTY CASH**

While reviewing the Petty Cash Book (GL Code -2205510), it was observed that CD had collected cash from various Home Buyers amounting to Rs. 13.11 Crores in between 01st April, 2009 to 25th March, 2022 out of which Rs. 5.27 Crores were expensed off in making payments to vendors and towards expenses and Rs. 144 Crores was deposited into Bank Accounts.

It was also observed Rs. 2.28 Crores was paid against Construction Expenses in between 2015-16 to 2017-18 and Rs. 2.32 Crores was against wages in between 2010-11 to 2014-15 for which no documents and records were provided to us for verification.

(All Details are enclosed by way of Annexure -20.5.3.1)

MANAGEMENT RESPONSE

The ledger balance was required to be judged with Head office payments as well. Since it is judged at project level – resulting cash was reflected otherwise accounts balance is nil-cash remittance was made against the operational expenses related with project only.

AUDIT-REJOINDERS

Transactional Auditors are not allowed to access the Head Office (Business Area 1001) Ledgers as it was beyond the scope of work, as stated in the Engagement Letter provided by RP. Balances reported were on the basis of figures showing in SAP for Eco Village II & IV as on Audit Period Date.

20.5.4 FUNDS TRANSFERRED TO OTHER PROJECTS OF SUPERTECH LIMITED OR TO ITS GROUP COMPANIES FROM ESCROW ACCOUNT OF ECO VILLAGE-II

While reviewing the Union Bank Escrow Account of Eco Village-II (Phase I&II) having GL Code No. 2206411 & 2206412 for the period 1st April 2010 to 25th May, 2022, it was observed that Payments of Rs. 419.94 Crores have been made for meeting the expenditure of other projects of Supertech Limited (Plant code 1000) against which amounting to Rs. 109.57 Crores was received back from these projects. The summary of Payment and receipt are as under:-

Sl. No.	Business Area	Site Name	Total Payment	Receipt	Net
1.	1001	NCR Supertech Limited	1,78,13,26,600	1,00,81,64,244	2,99,20,26,640
2.	1016	Eco Village-1, Sec-1, G.Noida	57,59,85,663	56,13,004	57,03,72,659
3.	1024	Cape Town, HG-1, Sec.74, Noida	32,39,74,574	13,77,233	32,25,97,341
4.	1025	Oxford Square	27,44,74,059	10,49,213	27,34,24,846
5.	1027	North Eye, Sec. 74, Noida	26,24,41,969	3,32,49,216	22,91,92,753
6.	1023	Upcountry, Yamuna Expressway	23,80,45,200	90,00,000	22,90,45,200
7.	1008	Czar Suites	11,97,72,848	1,22,93,625	10,74,79,223
8.	1029	ORB Project, Sec 74 Noida	11,93,59,721	27,30,348	11,66,29,373
9.	1014	Eco Citi, Sec. 137, Noida	9,80,29,558	1,69,573	9,78,59,985
10.	1013	Meerut Sports City	6,41,02,054	5,41,062	6,35,60,992
11.	1012	Green Village, Meerut	6,34,77,390	-	6,34,77,390
12.	1032	Araville, Sec. 79, Noida	6,20,45,038	1,97,77,581	4,22,67,457
13.	1007	Livingston	5,07,77,612	-	4,22,67,457
14.	1031	The Romano, Sec. 118, Noida	4,97,16,424	1,04,000	4,96,12,424
15.	1005	Emerald Court, Noida	4,22,70,442	11,71,362	4,10,99,080
16.	1038	Hues-I	1,93,51,383	4,87,894	1,88,63,489
17.	1009	34 Pavillion, Noida	1,65,56,514	11,563	1,65,44,951
18.	1011	Shopprix Mall Meerut	1,22,28,956	-	1,22,28,956
19.	1035	River City, Pant Nagar	1,01,66,698	-	1,01,66,698
20.	1041	Supertech University	31,94,870	-	31,94,870
21.	2001	Sec 62	28,10,396	-	28,10,396
22.	1051	Sports City-Greater Noida	24,89,472	-	24,89,472
23.	1030	Upgrade Shopprix Mall, Sec. 61 Noida	21,70,000	-	21,70,000

24.	1003	Palm Green, Moradabad	12,16,663	-	12,16,663
25	1002	Palm Green, Meerut	10,76,057	-	10,76,057
26.	1006	Icon-2	5,83,138	-	5,83,138
27.	1042	Doon Square	5,60,987	-	5,60,987
28.	1037	MICSA-Bangalore	5,14,657	-	5,14,657
29.	1033	Country Inn Meerut	4,83,079	-	4,83,079
30.	1039	Residential Township	1,94,031	-	1,94,031
	Total		4,19,93,96,033	1,09,57,39,918	3,10,36,56,115

On analyzing the following ledgers, it was also observed that CD was regularly using the Funds of Eco Village-II (Phase-I&II) received from Home Buyers or banks to pay the creditors or to meet out the expenses of other projects of Supertech Limited or vice versa which tantamount indicates towards the diversion of siphoning of funds. No justification and proper reasoning along with the documents were provided for verification against utilization of funds of Eco Village-II in other projects.

(All details are enclosed by way of Annexure – 20.5.4.1)

Management Response

The auditors have not considered all the payments made for the Project Eco-Village 2. There are total payments of Rs.14618626742 for project Eco-Village 2 (Details enclosed herewith). As informed, there are payments made for Project Eco Village 2 from other projects which need to be considered to arrive at the correct picture. Accordingly, the computation will undergo change. Further it is also not out of place to mention here that as per ledger dump, there are total expenses incurred on the Project Eco-Village 2, Rs. 20,792,628,603.41 (details enclosed) and allocation of corporate expenses since 2010 on Project Eco-Village 2 amounting Rs. 296.86 crores (based on area under development). Once, these expenses are considered on the Project the correct picture will reflect. We request to review in light of our submissions.

Audit Rejoinders

Resolution Professional has given mandate for Transactional Audit of Eco Village-II & IV. Making of payments related to Project Eco-Village 2 from other projects could not be verified due to having scope limitations. The management has provided the MIS of Supertech Limited according to which total 1984 crores was incurred by Head Office on all the projects in between FY 2009-2022. Out of Rs. 1984 crores amount, 296.86 crores were allocated to Eco Village-2 &4 by Head Office on the basis of total saleable area of all projects of Supertech Limited.

Allocation of Rs.1984 crores which was incurred by company on various projects could not be verified due to inherent limitations as stated in various phases of the report.

20.5.5 UTILISATION OF TERM LOAN FOR PURCHASE OF LAND

While reviewing the Books of Accounts for the said period, it was observed that CD had utilized an amount of Rs. 37.88 Crores from the disbursed Term Loan for the purchase of Land in the name of M/s ASP Sarin Reality Private Limited and M/s Revital Reality Private Limited. The CD vide its letters dated 08th November, 2013 and 30th December 2013 had requested the Bank for the disbursement of Term Loan to meet the Expenses for the Project of Eco Village-II.

The CD had not provided the End use of Term Loan sanctioned by the Banks and did not provide any clarifications \ justifications along with the supporting documents and records for the purchase of Land from the Term Loan sanctioned for Eco Village 2 & 4 for other projects of Supertech or for its Group Companies.

(All Details are enclosed by way of Annexure – 20.5..5.1)

MANAGEMENT RESPONSE

CD has already spent 490.89 on the Eco Village-2 including promoters' contribution of Rs. 240 Crores as per CA certificate dated 16th November 2013 issued by Ashu Gupta & Associates, Chartered Accountants. Since CD has spent higher percentage in their share, the same was withdrawn on disbursement of Term Loan Subsequently.

20.5.13 COLLECTION OF IFMS FROM HOME BUYERS BOOKED AS SALES

IFMS stands for interest free maintenance security charges. It is an additional charge given by the property buyers to the builders & developers until the formation of the residents' welfare association (RAWs) for maintenance, upkeep, security purposes, and developmental projects.

IFMS is a non-refundable charge that is diluted as soon as the welfare association is formed. It is one-time payment (including taxes) that is usually categorized into hidden charges. An 18% GST is levied at the time of payment. The IFMS in real estate is no fixed. It differs from one property to another. For instance, it will be different for commercial properties compared to residential properties. The only constant factor in it is GST of 18%.

While reviewing the Price List provided by CD, Sales Report extracted from SAP and Price List uploaded on the website of Eco-village II (Phase I & II), it was observed that IFMS was collected from Home Buyers which is charged as per Sq Ft of Super Area of Flat/Shops. Summary for total IFMS to be collected on Sold Flats & Shops are as follows:-

Super Area	Nature	No. of Flats	IFMS Rate	IFMS Amount
851	Flats	681	50	2,89,76,550
890	Flats	2368	50	10,53,76,000
910	Flats	2	50	91,000
985	Flats	1	50	49,250
988	Flats	2	50	98,800
990	Flats	1	50	49,500
998	Flats	1	50	49,500
1080	Flats	503	50	2,71,62,000
1100	Flats	183	50	1,00,65,000
1106	Flats	1113	50	6,15,48,900
1126	Flats	7	50	3,94,100
1175	Flats	180	50	1,05,75,000
1232	Flats	38	50	23,40,800
1267	Flats	128	50	81,08,800
1375	Flats	77	50	52,93,750
1387	Flats	1	50	69,350
1424	Flats	93	50	66,21,600
1464	Flats	244	50	1,71,60,800
1485	Flats	2	50	1,49,500
1508	Flats	3	50	1,50,800
1545	Flats	156	50	1,20,51,000
1577	Flats	1	50	78,850
1660	Flats	28	50	23,24,000
1718	Flats	78	50	67,00,200
1906	Flats	82	50	78,14,600

145	Shops	1	50	7,250
200	Shops	2	50	20,000
218	Shops	1	50	10,900
223	Shops	1	50	11,150
239	Shops	1	50	11,950
253	Shops	1	50	12,650
269	Shops	3	50	40,350
270	Shops	1	50	13,500
278	Shops	1	50	13,900
290	Shops	1	50	14,500
337	Shops	1	50	16,850
338	Shops	2	50	33,800
339	Shops	1	50	16,950
350	Shops	1	50	17,500
356	Shops	1	50	17,800
369	Shops	1	50	18,450
373	Shops	1	50	18,650
391	Shops	9	50	1,75,950
394	Shops	21	50	4,13,700
398	Shops	1	50	19,900
401	Shops	11	50	2,29,550
440	Shops	1	50	22,000
450	Shops	1	50	22,500
470	Shops	1	50	23,500
664	Shops	16	50	5,31,200
668	Shops	1	50	33,400
1009	Shops	1	50	50,450
2275	Shops	1	50	1,13,750
10568	Shops	1	50	5,28,400
		6058		31,64,50,500

From above summary it was observed that IFMS collected from the Home Buyers was shown as part of other charges in Sales Report later on which was shown as Sales in Books of Accounts.

IFMS has to be shown as funds in the Books of Accounts of Supertech Limited which has to be transferred to RWA after its formations. This IFMS can't be used for any purpose by Builders in any of the ways.

Treating Rs. 31.65 Crores of IFMS as a part of Sales and not showing as funds in the books of Supertech Limited would leads to the presentation of incorrect picture to Home Buyers which tantamount to **diversion & siphoning of funds.**

(All details are enclosed by way of Annexue -20.5.13.1 & 20.5.13.2)

MANAGEMENT RESPONSE

In the given observation we have re-visited the fact and observed that money have been received on accounts of IFMS Rs. 6.40 Crores and one time lease rent is Rs. 3.61 Crore only. Since these are the routine operational expense which is incorrect by company in routine as revenue expenditure. Hence money received from the customer on accounts of maintenance is being treated as part of revenue at any point of time.

20.6 RED FLAGS

Analysis & observation reported in Red Flag were based upon the Analysis of SAP Data & the documents/data/records/information etc. provided by the CD or RP either in the form of Physical Documents, Excel Sheet, Word Files etc. as stated in Section 11 of the Report and on that basis some of the transaction were noticed which is required to be reported here:-

20.6.1 ANALYSIS OF COLLECTION OF AMOUNTS FROM THE HOME BUYERS

Collection from Home Buyers were analysed on the basis of Claim Sheet provided for verification by RP & CD.

EV-II (PHASE I)

S.No.	Booked Units	% of Amt Received	Unit Cost	Amount Received	Balance Receivable
1	9	0%	4,26,06,865	--	4,26,06,865
2	2	1-10%	3,31,58,116	30,97,253	3,00,60,863
3	6	11-20%	2,97,87,021	42,38,876	2,55,48,145
4	2	21-30%	1,34,71,141	33,90,628	1,00,80,513
5	29	31-40%	13,31,12,458	5,01,25,346	8,29,87,111
6	17	41-50%	8,19,70,791	3,88,96,018	4,30,74,774
7	7	51-60%	3,84,52,885	2,01,34,529	1,83,18,356
8	38	61-70%	19,25,67,905	13,08,60,187	6,17,07,718
9	46	71-80%	20,78,73,732	15,89,73,176	4,89,00,556
10	506	81-90%	1,63,04,21,663	1,43,24,34,835	19,79,86,828
11	628	91-99%	1,60,48,55,934	1,52,13,65,274	8,34,90,660
12	3900	100%	9,71,82,14,459	9,71,82,14,448	11
	5190		13,72,64,92,970	13,08,17,30,570	64,47,62,400

From above table the booking position of the Project Eco Village –II (Phase –I) where it was observed that there were 9 Units from which 0% Payment was received and 56 Units from which less than 50% was received till 25th March, 2022.

EV-II (PHASE II)

S.No.	Booked Units	% of Amt Received	Unit Cost	Amount Received	Balance Receivable
1	11	0%	5,34,08,587	--	5,34,08,587
2	23	1-10%	9,83,59,914	80,84,478	9,02,75,436
3	32	11-20%	12,30,75,357	1,99,84,335	10,30,91,022
4	72	21-30%	25,81,45,680	6,03,56,126	19,77,87,554
5	74	31-40%	30,67,90,129	11,20,64,975	19,47,25,153
6	72	41-50%	27,40,11,518	12,86,89,924	14,53,21,594
7	142	51-60%	55,44,06,752	31,94,36,649	23,49,70,103
8	52	61-70%	22,58,74,962	15,05,94,511	7,52,80,452
9	85	71-80%	35,50,60,789	27,16,16,894	8,34,43,895
10	246	81-90%	1,09,41,53,121	95,94,87,464	13,46,65,657
11	47	91-99%	18,66,59,551	17,66,35,167	1,00,24,384
12	12	100-100%	5,80,85,676	5,80,85,676	-
	868		3,58,80,30,035	2,26,50,36,199	1,32,29,93,837

On similar basis of analysis of the booking position of the Project Eco Village-II (Phase-II) where it was observed that there were 11 Units from which 0% Payment was received and 273 Units from which less than 50% of payment was received till 25th March, 2022.

Non-Receiving & Short receiving of amount from home buyers indicates towards the Red Flag on which no clarification was provided.

20.6.1 ANALYSIS OF COLLECTION OF AMOUNTS FROM THE HOME BUYERS

Collection from Home Buyers were analysed on the basis of Claim Sheet provided for verification by RP & CD.

EV-II (PHASE I)

S.No.	Booked Units	% of Amt Received	Unit Cost	Amount Received	Balance Receivable
1	9	0%	4,26,06,865	--	4,26,06,865
2	2	1-10%	3,31,58,116	30,97,253	3,00,60,863
3	6	11-20%	2,97,87,021	42,38,876	2,55,48,145
4	2	21-30%	1,34,71,141	33,90,628	1,00,80,513
5	29	31-40%	13,31,12,458	5,01,25,346	8,29,87,111
6	17	41-50%	8,19,70,791	3,88,96,018	4,30,74,774
7	7	51-60%	3,84,52,885	2,01,34,529	1,83,18,356
8	38	61-70%	19,25,67,905	13,08,60,187	6,17,07,718
9	46	71-80%	20,78,73,732	15,89,73,176	4,89,00,556
10	506	81-90%	1,63,04,21,663	1,43,24,34,835	19,79,86,828
11	628	91-99%	1,60,48,55,934	1,52,13,65,274	8,34,90,660
12	3900	100%	9,71,82,14,459	9,71,82,14,448	11
	5190		13,72,64,92,970	13,08,17,30,570	64,47,62,400

From above table the booking position of the Project Eco Village –II (Phase –I) where it was observed that there were 9 Units from which 0% Payment was received and 56 Units from which less than 50% was received till 25th March, 2022.

EV-II (PHASE II)

S.No.	Booked Units	% of Amt Received	Unit Cost	Amount Received	Balance Receivable
1	11	0%	5,34,08,587	--	5,34,08,587
2	23	1-10%	9,83,59,914	80,84,478	9,02,75,436
3	32	11-20%	12,30,75,357	1,99,84,335	10,30,91,022
4	72	21-30%	25,81,45,680	6,03,56,126	19,77,87,554
5	74	31-40%	30,67,90,129	11,20,64,975	19,47,25,153
6	72	41-50%	27,40,11,518	12,86,89,924	14,53,21,594
7	142	51-60%	55,44,06,752	31,94,36,649	23,49,70,103
8	52	61-70%	22,58,74,962	15,05,94,511	7,52,80,452
9	85	71-80%	35,50,60,789	27,16,16,894	8,34,43,895
10	246	81-90%	1,09,41,53,121	95,94,87,464	13,46,65,657
11	47	91-99%	18,66,59,551	17,66,35,167	1,00,24,384
12	12	100-100%	5,80,85,676	5,80,85,676	-
	868		3,58,80,30,035	2,26,50,36,199	1,32,29,93,837

On similar basis of analysis of the booking position of the Project Eco Village-II (Phase-II) where it was observed that there were 11 Units from which 0% Payment was received and 273 Units from which less than 50% of payment was received till 25th March, 2022.

Non-Receiving & Short receiving of amount from home buyers indicates towards the Red Flag on which no clarification was provided.

20.6.4 PAYMENT TO VENDORS OF OTHER PROJECTS FROM ESCROW ACCOUNT OF ECO VILLAGE II

While reviewing the Union Bank Escrow Account of Eco Village –II (Phase I & II) having GL Code No. 2206411 & 2206412 for the period 1st April 2010 to 25th May, 2022, it was observed that Rs.239.53 Crores was utilised in making the payments to various vendors of Supertech Limited or of its Group Companies.

It is also observed that Rs. 191.55 Crores was used in FY 2013-14, Rs. 78.56 Crores in 2014-15 &Rs. 7.20 Crores in 2015-16. It's to be noted that Union Bank had sanctioned a Term Loan of Rs. 150 Crores in the FY 2013-14.

On analysing the following ledgers, it was also observed that CD was regularly using the Funds of Eco Village-II (Phase I & II) received from Home Buyers or banks to pay the creditors or to meet out the expenses of other projects of Supertech Limited or vice versa which indicates towards RED Flag.

(All Details are enclosed by way of Annexure -20.6.4.1 & 20.6.4.2)

20.6.14 INVITATION OF TENDERS FOR ECO VILLAGE-II (PHASE I & II) FROM THE VENDORS & CONTRACTORS

While reviewing the Vendors, it was observed that the Company had not followed the bidding process. CD had never invited the tenders for big contracts awarded to various Vendors/Contractors/Raw Material Suppliers etc. It was also noticed that small-small work orders were issued from time to time which was awarded to all contractors.

On such issues when discussed with the Management, it was informed that these Vendors, Contractors, Raw Material Suppliers etc. were attached with Supertech Limited for with its Subsidiaries. All Project Contracts are awarded to them only.

On Scrutiny of Vendor Ledger extracted from SAP, it was observed that Rs. 1137.21 Crores have been paid to 1557 Vendors, Rs. 1039.29 Crores were paid to 243 vendors i.e., almost 91.39% of total payment made to these vendors.

Management had booked Total Expenses for the project aggregating to RS.1994.80 Crores for Eco Village-II (Phase I & Phase II) against which total payments were made was of Rs.1137.21 Crores against Construction Expenses and Rs.211.68 Crores against Finance Charges. Total Vendors outstanding as on 25th March 2022 was around Rs.

During the reviewing the vendors it was observed that Management had paid Rs. 72.69 Crores to the following parties namely as

Code	Vendor Name	Amount
200346	Vishnu Buildtech Pvt. Ltd.	56,08,54,908.00
200727	VEGATECH PROJECTS PVT. LTD.	15,69,39,209.00
202743	VAIDIK BRICKS PRIVATE LIMITED	7,14,285.00
202790	VAIDIK BRICKS PRIVATE LIMITED	84,02,608.00
	Total	72,69,11,010.00

Which belonged to same Promoter i.e., Ravi Prakash Sharma, Sunita Dabas, Narender Kumar. It is also surprising to note that these Companies are having paid up capital of Rs.1 Lacs and does not have any type of Charge against 3 Companies & they are providing services in Eco village where payment is made to these

following parties is of Rs.72.69 Crores which seems to be doubtful in nature. Management had not provided any documents, data, information, records etc. except 3 Bills of Vishnu Buildtech which can justify the expenses booked by Company are genuine in nature and all these 3 Companies are not Shell Companies.

(All Details are enclosed by way of Annexure 20.6.14.1 to 20.6.14.9)

Requested the Management to provide the List of Purchase Invoices along with all requisite documents. Due to non-availability of requisite documents for verification, the nature of transactions indicating RED FLAG.

20.6.21 ANALYSIS OF BROKERAGE/COMMISSION PAID TO BROKERS OR UNDERWRITERS

To review and to analyse the Brokerage/Commission paid to Underwriters or Brokers requested the CD and RP to produce list of documents such as

- ✓ List of Brokers and Underwriter who were on panel of Supertech Limited
- ✓ List of Channel Partners who were authorized to sell the Eco Villae-II (Phase- I & II) Flats/Shops
- ✓ MOU/Agreements with Brokers and Underwriters or Channel Partners
- ✓ Revised Agreement of Brokers and Underwriters in between 1st April 2009 to 25th March 2022.
- ✓ Bills/Invoices raised by the Brokers from time to time
- ✓ Calculations of Brokerage/Commission
- ✓ TDS Amount Deducted on Brokerage/Commission paid to Vendors
- ✓ Inputs claimed by Supertech Limited on GST/Service Tax on the invoices of Brokers/Underwriters/Channel Partners

In order to analyse the Brokerage/Commission paid to Brokers/Underwriters/Channel Partners, following data were extracted from the SAP.

- ✓ Brokerage Expenses Booked in Eco Village-II
- ✓ Sales Report
- ✓ Brokerage Report

From the requisite documents, Management had provided only 6 MOUs/Agreements of Brokers/Underwriters i.e. also for a very specific period not for the whole period as stated above.

Out of that, MOU of Investor Clinic was analysed and reported in this Transactional Audit Report.

Following are the observations in regards to Brokerage/Commission given as below :-

1. The Company had paid brokerage of Rs.78.49 Crores to 280 Brokers/Underwriters/Channel Partner in between 1st April 2009 to 25th March 2022 for the both Phases of Eco Village-II. The Company paid brokerage in ranging between 10.00% to 83.66% on the higher side.

(All details are enclosed by way of Annexure – 20.5.21.1)

2. Further, it was observed that out of 280 Brokers entities, 10 Brokers were paid around Rs. 56.56 Crores out of Rs. 78.49 Crores approximately 72.06% of total Brokerage Expenses. Details of such Brokers given below:

Broker No.	Broker	Total Cost of Flats	Total Amount collected from Buyers	Brokerage Expenses as per SAP	No. of Flats Sold
304974	INVESTORS CLINIC INFRATECH PRIVATE	2,87,46,06,286	1,68,22,53,474	23,32,19,996	495
303126	INVESTORS CLINIC	1,06,70,02,436	1,06,58,97,238	44,55,620	520
303137	PRITHVEE PROP MART PVT. LTD.	1,33,44,47,939	1,35,31,95,933	9,85,26,235	557
303192	UNICORN REAL ESTATE PVT. LTD.	91,21,98,846	92,95,67,141	8,28,17,321	456
303246	RAJ LAXMI REALTORS PRIVATE LTD.	45,03,72,759	47,45,36,301	3,77,44,837	216
307703	PROPSHOP	81,81,35,775	13,36,74,847	3,04,19,530	90
305138	HELIOS DEVELOPERS	22,26,95,965	18,48,38,770	2,27,70,801	56
305626	SUPERDIRECT REAL ESTATE PVT. LTD.	47,54,82,103	47,02,27,088	2,25,31,737	139
305583	GARG REALTORS	12,62,05,657	12,61,54,308	1,17,37,143	35
303244	ALLCHECKDEAL S INDIA PRIVATE LTD.	15,43,63,533	15,87,15,589	1,00,99,472	80
302136	STAR ESTATES	-	-	1,12,65,150	-
		6,94,65,11,293	6,57,90,60,687	56,55,87,842	2,644

(All Details are enclosed by way of Annexure -20.5.21.2)

3. Further, it was also observed that Rs. 2.60 Crores of Brokerage/Commission paid to 37 Brokers who did not have sold any flat/shop in Eco Village-II (Phase I & II). Details of such cases are give below:-

Broker No.	Broker	Total Cost of Flats	Total Amount collected from Buyers	Brokerage Expenses as per SAP	No. of Flats Sold
302136	Star Estates	-	-	1,12,65,150.00	-
306798	Joginder Singh	-	-	72,26,152.00	-
303929	Swastik Realtors	-	-	16,99,620.00	-
500046	D S Home Construction Pvt. Ltd.	-	-	10,00,000.00	-
303652	Chhaya Builders	-	-	7,50,000.00	-
304274	Ram Kumar Agarwal	-	-	7,00,000.00	-
303333	Five Elements	-	-	4,00,000.00	-
304272	Ram Chand Garg	-	-	3,00,000.00	-
312753	Nitin Kumar	-	-	2,61,810.00	-
305658	Synopsis Innovation Pvt. Ltd.	-	-	2,40,000.00	-
311278	Roma Ventures	-	-	2,35,513.56	-
305905	NCR Realty	-	-	2,00,000.00	-
307298	Bcube IT Service Pvt. Limited	-	-	1,77,999.00	-
307146	Luxmidas Infratech Pvt. Ltd.	-	-	1,71,325.00	-
308811	Mithlesh	-	-	1,39,552.00	-
307432	Maxine Wellness India Private Limit	-	-	1,05,465.00	-
307176	Universal Infracon	-	-	94,571.00	-
306536	Himalaya Realty	-	-	90,550.00	-
308954	Zuhaib Ahmad	-	-	89,420.00	-
310159	Alabhya Singh	-	-	85,000.00	-
303528	Krishna Estate	-	-	77,034.00	-
307096	Abhishek Kumar Rai	-	-	68,530.00	-
307244	Meenakshi Singh	-	-	65,006.00	-
305997	Go Realty Mart India Pvt. Ltd.	-	-	64,804.00	-
307809	Varun Thukral	-	-	61,677.00	-
305994	Devesh Kumar	-	-	56,746.00	-
304495	Chopra Group	-	-	49,750.00	-
303475	Alpine Realtech Pvt Ltd	-	-	46,978.00	-
308869	Anjali Tandon	-	-	43,450.00	-
307418	Vikas Tyagi	-	-	40,635.00	-
303504	Property Point	-	-	34,238.00	-
308388	Hans Raj Karanger	-	-	33,397.00	-
307810	Shailendra Kumar	-	-	32,239.00	-
307860	Abadhesh Rusia	-	-	31,934.00	-
308105	Krishna Lal Pal	-	-	30,936.00	-
310161	Rajeev Kumar	-	-	27,902.00	-
306525	Aanchal Investment Solution	-	-	22,250.00	-
Total		-	-	2,60,19,634	

(All Details are enclosed by way of Annexure -20.5.21.2)

In the absence requisite documents the genuineness of making payment to Brokers can,t be determined and analysed. The reason for making higher level of brokerage and concentration with 10 firms was also not clarified by the Management.

20.6.22 EXPENSES

100

While reviewing the Books of Accounts extracted from AAP, it was observed that CD had incurred of Rs.1970.53 Crores of Expenses in the Project of Eco Village – II (Phase I & II) in between 01st April 2009 to 25th March, 2022. Summary of Expenses are given below:

EXPENSE HEAD	AMOUNT
CONSUMPTION OF MATERIAL	3,81,83,63,432
CONSTRUCTION EXPENSES	11,21.52,82.782
ADMINISTRATION EXPENSES	66,48,62,670
FINANCIAL EXPENSES	2,11,68,95,502
SELLING EXPENSES	1,8899,84,189
	19,70,53,88,575

Bifurcation of Head Wise Expenses incurred in between 01-04-2009 to 25-03-2022 are

(Enclosed by way of Annexure 20.6.22.1 to 20.6.22.5)

In the absence of Documents, Data, Agreements, Records, Information's, Explanation's etc. and other related data, expenses could not be verified. It's very difficult to comment upon the Expenses booked by the Management and the identity of the vendors.

MANAGEMENT RESPONSE

Although detailed trial for every year starting from the 2010 to 2022 have already been shared to audit team to judge the detailed expenditure years wise. Hence auditors' contention is absolutely wrong. To ease out the same, the cited information is further provided.

AUDIT RE-JOINDERS

Contention of CD is not acceptable. Being merely providing of trial balance from 2010-2022 will not able to reach at conclusion on the genuineness of expenses without any documents, data, records etc. which was not provided by the CD.

EMPLOYEE BENEFIT EXPENSES**20.6.23 CASES WHERE FLATS WERE ALLOTTED WITHOUT RECEIPT OF ANY AMOUNT FROM HOME BUYERS**

While reviewing the Sales Ledger extracted from SAP for the period 1st April 2009 to 25th March, 2022 of Eco Village-II, it was observed that there are 20 Home Buyers to whom the Flats/Shops were allotted without receiving any Payment. Most of these allotments were made in the between September 2021 to 25th March, 2022.

(All details are enclosed by way of Annexure 20.6.23.1)

Requested the Management to provide the Customer Files of all these cases where few of them have been provided management for verification. On the verification of Customer Files provided by management it was observed that only Allotments Letters were enclosed. No other documents were enclosed in the Customer Files which can support their Sale. Total Cost of these Flats/Shops wre around Rs.8.61 Crores. Without any supporting documents and clarifications of justifications from CD, it is very difficult to comment on the possibilities of the genuineness of byers and transactions.

MANAGEMENT RESPONSE

The cited booking was concluded in the process to settle the dues of vendor/service provide in the mid of financial year 2021-22 but at the closing year March-22 the IBC were in-forced-reason being the proper fund settlement was stopped – the same could not be accounted till date. But booking is still live and confirmed to the customers. Hence it is clarified that – money shall be received in due course under the close monitoring of IRP

20.6.24 ANALYSIS OF BSP WITH PRICE LIST

Basic Selling Price Charged to Homebuyers of Eco Village-II (Phase I & II) was compared with few of the Price Lists provided by the CD. Management always revised Basic Selling Price from time to time depends upon the Real Estate Market Conditions. Sales Teams were not allowed to Sale and Flats/Shops below the Basic Selling Price.

Sales Team have provided the Price List in between September 2020 to March 2022 on the basis of which BSP was compared as Price List. Difference of Rs.3.92 Crores was observed in 37Cases where BSP is Charged Less than Price List which is Loss to Eco Village-II Project. These prices are before offering and discounts to Home Buyers.

All details are enclosed by way of Annexure 20.6.24.1)

Management had not provided any single documents or records or even the Customer Files on the basis of which BSP was charged from Home Buyers below the Price List. On assumption basis might the preferences were given to these particular Homebuyers in Rates for which Approvals are required from Management which was also not provided for verification.

MANAGEMENT RESPONSE

Necessary instruction for revision in basic sales prices is circulated from time to time but due to existing market scenario and other several forces of obligation need to meet out without hampering the overall sales operation – management is always open to encourage business by enhancing the corporate discount to achieve the business target. There may be several deals in kind of corporate which results lower BSP to attract more bookings.