

**BEFORE THE NATIONAL COMPANY LAW APPELLATE  
TRIBUNAL, NEW DELHI**

**I.A. NO. \_\_\_\_\_ OF 2023**

**IN**

**COMPANY APPEAL (AT) (INSOLVENCY) NO. 406 OF 2022**

**IN THE MATTER OF:**

**RAM KISHOR ARORA  
SUSPENDED DIRECTOR OF  
SUPERTECH LIMITED**

**...APPELLANT**

**VERSUS**

**UNION BANK OF INDIA & ANR.**

**...RESPONDENTS**

**AND IN THE MATTER OF:**

**L&T FINANCE LIMITED**



**...APPLICANT**

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**AJAY BHARGAVA/ WAMIKA TREHAN/ MAITHILI MOONDRA**  
**[D/186/1997(R)]/ [D/2176/2014]/ [R/2051/2018]**  
**SIDDHANT KUMAR**  
**[D/1572/2020]**  
**KHAITAN & CO LLP**  
**ADVOCATES FOR THE APPLICANT**  
**MAX TOWERS, 7<sup>TH</sup> FLOOR,**  
**SECTOR 16B, NOIDA**  
**GAUTAM BUDDH NAGAR - 201 301**  
**PH.: 8826307196/ 9953771820**  
**EMAIL: [maithili.moondra@khaitanco.com](mailto:maithili.moondra@khaitanco.com)**

**PLACE: NEW DELHI**  
**DATE: 29 MARCH 2023**

**BEFORE THE NATIONAL COMPANY LAW APPELLATE  
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**I.A. NO. \_\_\_\_\_ OF 2023**

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**...APPLICANT**

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**[D/186/1997(R)]/ [D/2176/2014]/ [R/2051/2018]**  
**SIDDHANT KUMAR**  
**[D/1572/2020]**  
**KHAITAN & CO LLP**  
**ADVOCATES FOR THE APPLICANT**  
**MAX TOWERS, 7<sup>TH</sup> FLOOR,**  
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...APPELLANT

VERSUS

UNION BANK OF INDIA & ANR.

...RESPONDENTS

AND IN THE MATTER OF:

L&T FINANCE LIMITED

...APPLICANT

MEMO OF PARTIES

IN THE MATTER OF:

1. **RAM KISHOR ARORA**  
SUSPENDED DIRECTOR OF  
SUPERTECH LIMITED

ADDRESS: C-10, SECTOR- 36,  
UTTAR PRADESH- 201301

...APPELLANT

VERSUS

2. **UNION BANK OF INDIA**  
HAVING ITS REGISTERED OFFICE AT:  
M-93, CONNAUGHT PLACE, NEW DELHI -

...RESPONDENT NO. 1

3. **MR. HITESH GOEL**  
INTERIM RESOLUTION PROFESSIONAL  
M/S SUPERTECH LIMITED  
BUILDING NO. 10, TOWER C, 8<sup>TH</sup> FLOOR,  
DLF CYBER CITY, PHASE-II, GURUGRAM,  
HARYANA- 122002

E-mail: [hiteshgoel@kpmg.com](mailto:hiteshgoel@kpmg.com); [irpsupertech@kpmg.com](mailto:irpsupertech@kpmg.com)

...RESPONDENT NO. 2

AND

IN THE MATTER OF:

4. **L&T FINANCE LIMITED**  
THROUGH AUTHORISED REPRESENTATIVE  
MR. RUCHIR JAUHARI

HAVING ITS REGISTERED OFFICE AT:

7<sup>TH</sup> FLOOR, TECHNOPOLIS, A-WING, PLOT NO. 4,  
BLOCK-BP, SECTOR- V, SALT LAKE, KOKLATA,  
WEST BENGAL, PIN- 700091

ALSO, AT:

6<sup>th</sup> FLOOR DCM BUILDING,  
BARAKHAMBA ROAD,  
CONNAUGHT PLACE, NEW DELHI,  
DELHI- 110001

...APPLICANT

*Ajay*

*Maithili*

**AJAY BHARGAVA / WAMIKA TREHAN / MAITHILI MOONDRA**  
[D/186/1997(R)] / [D/2176/2014] / [R/2051/2018]

**KHAITAN & CO LLP**  
**ADVOCATES FOR THE APPLICANT**  
**MAX TOWERS, 7<sup>TH</sup> FLOOR,**  
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**...RESPONDENTS**

**AND IN THE MATTER OF:**

**L&T FINANCE LIMITED**

**...APPLICANT**

**SYNOPSIS**

That the instant Application is being preferred by L&T Finance Limited (“**Applicant**”) seeking *inter alia* necessary directions to the Interim Resolution Professional/ Respondent No. 2 for admitting the claims of the Applicant in total amounting to INR 630,04,98,903 (Indian Rupees Six Hundred and Thirty Crores Four Lakhs Ninety-Eight Thousand Nine Hundred and Three only). The Applicant is a NBFC, providing a wide range of financial products and services across rural, housing and infrastructure finance sector.

That the Applicant had extended several loans in favour of Supertech Limited i.e. the Corporate Debtor herein. That various loans were also extended by the Applicant, whereby the Corporate Debtor had stood as guarantor and executed Deeds of Corporate Guarantee in favour of the Applicant and Security Trustees in terms of which the payment, repayment or reimbursement of the principal amount of the loans, interest thereon and the moneys due and payable by the Borrowers were secured.



That on 29 March 2022, Respondent No. 2 made a Public Announcement calling upon the creditors to submit their claims to the Respondent No. 2 on or before 08 April 2022. In view thereof, the Applicant in the capacity of Financial Creditor duly submitted their claims in total amounting to INR 19,630,000,000 to Respondent No. 2.

Vide an email dated 16 November 2022, Respondent No. 2 apprised the Applicant that after due verification and reconciliation of claims and the supporting documents, the Applicant's claim of INR 18,957,734,490 has been duly admitted. That the Respondent No. 2 failed to provide any explanation/ reasoning for not admitting the remainder portion of the Applicant's claim amounting to INR 672,265,510.

That to the utter shock and surprise of the Applicant, Respondent No. 2 vide an email dated 19 December 2022, arbitrarily reversed the earlier admission of the Applicant's legal and legitimate claim of INR 1,895,77,34,490 and out of this admitted amount baselessly rejected the Applicant's claim of INR 630,04,98,903. Respondent No. 2 cited the reason that since Deeds of Corporate Guarantee have not been invoked, Respondent No. 2 is rejecting the claims of the Applicant pertaining to the loan transactions with Poise Realtech Private Limited and Ajnara India Limited, and IVR Prime Developers.

That the said rejected claims pertain to the loans extended by the Applicant to two borrowers namely Poise Realtech Private Limited and Ajnara India Limited and IVR Prime Developers, whereby the Corporate Debtor had duly executed Deeds of Corporate Guarantee in favour of the Applicant for securing the aforesaid loans. That under both the loans, the default in paying the amount due had already occurred as on the insolvency commencement date. That the Applicant issued an email dated 30 December 2022 responding to the email dated 19 December 2022, *inter alia* objecting to the rejection of its claims amounting to INR 630,04,98,903 and

requesting for admission of the said claim amount. Various correspondences were exchanged between the Applicant and the Respondent No 2.

While placing reliance on various precedents and provisions of the Insolvency and Bankruptcy Code, 2016 and relevant regulations, it is submitted that even claims for unmatured debts of an insolvent Corporate Debtor can be filed to the IRP by means of Form C in accordance with Regulation 8 of the CIRP Regulations and that the IRP cannot reject them solely on the ground that the claims are unmatured.

It is further reiterated that Respondent No. 2 had already admitted the claims of the Applicant vide an email dated 16 November 2022 and thereafter rejected the claims vide emails dated 19 December 2022 and 03 January 2023 without any explanation or reasoning, whatsoever. It is submitted that without any change in the scenario, circumstances or facts, the IRP cannot review or change his decision after already admitting the claims and also communicating the fact of such admission, and hence, the aforesaid conduct of Respondent No. 2 makes it clear and evident that that Respondent No. 2 is acting in a *malafide manner*.

The Applicant submits that it is one of the largest financial creditors of the Corporate Debtor and the Respondent No.2's *malafide conduct* would have a grave and irreparable impact on the Applicant. Hence, the present Application.

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**AND IN THE MATTER OF:**

**L&T FINANCE LIMITED**

**...APPLICANT**

**LIST OF DATES**

S.NO.	DATE	PARTICULARS
1.	2017-2018	Multiple loan agreements entered into between the Applicant and the Corporate Debtor, whereby the Corporate Debtor had stood as guarantor and executed Deeds of Corporate Guarantee in favour of the Applicant and Security Trustees in terms of which the payment, repayment or reimbursement of the principal amount of the loans, interest thereon and the moneys due and payable by the Borrowers were secured.
2.	25 March 2022	Corporate Insolvency Resolution Process in respect of Supertech Limited was initiated by the Hon'ble National Company law Tribunal, New Delhi, Bench – VI and

		Respondent No. 2 was appointed as the Interim Resolution Professional
3.	29 March 2022	Respondent No. 2 made a Public Announcement calling upon the creditors to submit their claims to the Respondent No. 2 on or before 08 April 2022.
4.	08 April 2022	Applicant in the capacity of Financial Creditor duly submitted their claims in total amounting to INR 19,630,000,000 to Respondent No. 2.
5.	16 November 2022	Vide an email, Respondent No. 2 apprised the Applicant that after due verification and reconciliation of claims and the supporting documents, the Applicant's claim of INR 18,957,734,490 has been duly admitted. The Respondent No. 2 failed to provide any explanation/ reasoning for not admitting the remainder portion of the Applicant's claim amounting to INR 672,265,510.
6.	01 December 2022	Applicant issued an email seeking discussion on the amount admitted and Respondent No. 2 also issued an email on the same date agreeing for a discussion. Respondent No. 2 also requested the Applicant to share detailed excel sheet of the Applicant's working claims.
7.	06 December 2022	Applicant issued an email requesting Respondent No. 2 to explain the reason for not considering delayed payment interest and other charges. On the same date, Respondent No. 2 requested the Applicant to share the detailed excel sheet

		based on which claims had been filed by the Applicant.
8.	15 December 2022 and 19 December 2022	Respondent No. 2 sought copies of Corporate Guarantee Invocation notices with regards to loan transactions with Poise Realtech Private Limited and Ajnara & IVR Prime Developers.
9.	19 December 2022	Applicant issued a reply and apprised Respondent No. 2 that Deeds of Corporate Guarantee have not been invoked with regards to loan transactions with Poise Realtech Private Limited and Ajnara & IVR Prime Developers. The Applicant also mentioned that invocation of Deeds of Corporate Guarantee is not a prerequisite for filing and admission of claims against the Corporate Debtor where it is a Corporate Guarantor.
10.	19 December 2022	Vide an email, Respondent No. 2 arbitrarily reversed the earlier admission of the Applicant's legal and legitimate claim of INR 1,895,77,34,490 and out of this admitted amount baselessly rejected the Applicant's claim of INR 630,04,98,903. Respondent No. 2 cited the reason that since Deeds of Corporate Guarantee have not been invoked, Respondent No. 2 is rejecting the claims of the Applicant pertaining to the loan transactions with Poise Realtech Private Limited and Ajnara India Limited, and IVR Prime Developers.

11.	30 December 2022	Applicant issued an email responding to the email dated 19 December 2022, <i>inter alia</i> objecting to the rejection of its claims amounting to INR 630,04,98,903 and requesting for admission of the said claim amount.
12.	03 January 2023	Respondent No. 2 again issued a frivolous response to the email dated 30 December 2022 issued by the Applicant
13.	05 January 2023	Vide an email, the Applicant issued a response to Respondent No. 2's email dated 03 January 2023
14.	29 March 2023	Aggrieved by the illegal rejection of Applicant's claim by Respondent No. 2, the Applicant is preferring the present Application.

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...APPLICANT

---

APPLICATION UNDER RULE 11 READ WITH RULE 31 OF THE  
NATIONAL COMPANY LAW APPELLATE TRIBUNAL RULES,  
2016, ON BEHALF OF THE APPLICANT SEEKING DIRECTIONS  
TO THE INTERIM RESOLUTION PROFESSIONAL / RESPONDENT  
NO. 2

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MOST RESPECTFULLY SHEWETH:

1. That the instant Application is being preferred by L&T Finance Limited under Rule 11 read with Rule 31 of the National Company Law Appellate Tribunal Rules, 2016 seeking *inter alia* necessary directions to the Interim Resolution Professional/ Respondent No. 2 for admitting the claims of the Applicant in total amounting to INR 630,04,98,903 (Indian Rupees Six Hundred and Thirty Crores Four Lakhs Ninety-Eight Thousand Nine Hundred and Three only).

2. That the Applicant vide its Resolution dated 16 December 2021 read with the Schedule of Post Approval Delegation of Creditor Related Powers dated 18 October 2019, read with Section E, S.No.2 of the “Post Approval Delegation of Credit Related Powers” (“**DOP**”), read with Letter of Authority dated 06 December 2021 have authorised Mr. Ruchir Jauhari to represent the Applicant in its legal proceedings and to sign all the requisite documents including the present Application. In view thereof, Mr. Ruchir Jauhari, being authorized by the said Resolution read with DoP and Letter of Authority, has signed, verified, and instituted the instant Application on behalf of the Applicant. Copy of the Resolution, DoP, and Letter of the Authority is annexed herewith and marked as **Annexure A-1**.

**I. BACKGROUND OF THE APPLICANT AND BRIEF DETAILS OF THE FINANCIAL TRANSACTION BETWEEN THE APPLICANT AND THE CORPORATE DEBTOR**

3. The Applicant is a company incorporated under the provisions of the Companies Act, 1956, and is registered as a non-banking financial company (“**NBFC**”) with the Reserve Bank of India. True copy of the Certificate of Incorporation of the Applicant is annexed herewith and marked as **Annexure A-2**. True copy of the Applicant’s Certificate of Registration as NBFC is annexed herewith and marked as **Annexure A-3**.
4. The Applicant was incorporated in 1993 and is one of India’s leading NBFCs. The Applicant provides a wide range of financial products and services across rural, housing, and infrastructure finance sector.
5. That the Applicant had extended several loans in favour of Supertech Limited i.e. the Corporate Debtor herein. That various loans were also extended by the Applicant, whereby the Corporate Debtor had stood as guarantor and executed Deeds of Corporate Guarantee in favour of the Applicant and



Security Trustees in terms of which the payment, repayment or reimbursement of the principal amount of the loans, interest thereon and the moneys due and payable by the Borrowers were secured. A brief snapshot indicating details of the said loan transactions with the Corporate Debtor is outlined below:

<b>S. NO.</b>	<b>BORROWER</b>	<b>NAME OF THE PROJECT</b>	<b>TYPE OF FACILITY</b>
1.	Supertech Limited	Eco village I; North eye, Capetown; Crown tower; Upcountry	Term Loan
2.	Poise Realtech Private Limited	Up Country and Capetown	Corporate Guarantee
3.	Perpendicular Construction Private Limited	Eco-Village-II, III & Golf Country	Corporate Guarantee
4.	Coast Realtors Private Limited	Radiant Tower	Corporate Guarantee
5.	Brownish Reality Private Limited	Eco-Village-I	Corporate Guarantee
6.	Coast Town Planners Private Limited	North Eye	Corporate Guarantee
7.	Mabsoot Buildhomes India Private Limited	North Eye	Corporate Guarantee
8.	Ajnara and IVR Prime Developers	Ajnara Ambrosia and Ajnara Panorama	Corporate Guarantee

That the Applicant craves leave of this Hon'ble Tribunal to place on record the aforesaid Loan Agreements and Deeds of Corporate Guarantee if so, directed at a later stage.

6. It is submitted that the Application pertains to the baseless and arbitrary rejection of the Applicant's claims in respect of transactions mentioned at sl. 2 and sl. 8 in the above table.
7. For the sake of brevity and to avoid prolixity, the Applicant is not advertent to minute details of the said loan agreements and Deeds of Corporate Guarantee, however, the Applicant craves leave of this Hon'ble Tribunal to do so as and when necessary and in the event directed by this Hon'ble Tribunal.
8. The captioned Appeal has been filed by the Appellant against the order dated 25 March 2022 ("**Admission Order**") passed in CP (IB) 204/ND/2021 by the Hon'ble National Company law Tribunal, New Delhi, Bench – VI ("**Ld. Adjudicating Authority**"). In terms of the Admission Order, Corporate Insolvency Resolution Process ("**CIRP**") in respect of Supertech Limited ("**Corporate Debtor**") was initiated and Mr Hitesh Goel/ Respondent No. 2 was appointed as the Interim Resolution Professional ("**IRP**") in respect of the Corporate Debtor. A copy of the Admission Order is annexed hereto and marked as **Annexure A- 4.**
9. That on 29 March 2022, Respondent No. 2 made a Public Announcement calling upon the creditors to submit their claims to the Respondent No. 2 on or before 08 April 2022. In view thereof, the Applicant in the capacity of Financial Creditor duly submitted their claims in total amounting to INR 19,630,000,000 (Indian Rupees One Thousand Nine Hundred and Sixty-Three Crores Only) to Respondent No. 2. Copy of Form Cs submitted by the Applicant are annexed herewith and marked as **Annexure A-5 (Colly).**

10. Vide an email dated 16 November 2022, Respondent No. 2 apprised the Applicant that after due verification and reconciliation of claims and the supporting documents, the Applicant's claim of INR 18,957,734,490 (Indian Rupees One Thousand Eight Hundred Ninety-Five Crores Seventy-Seven Lakhs Thirty-Four Thousand Four Hundred and Ninety only) has been duly admitted. It is pertinent to mention that the Respondent No. 2 failed to provide any explanation/ reasoning for not admitting the remainder portion of the Applicant's claim amounting to INR 672,265,510 (Indian Rupees Sixty-Seven Crores Twenty-Two Lakhs Sixty-Five Thousand Five Hundred and Ten only). Copy of the email dated 16 November 2022 is annexed herewith and marked as **Annexure A-6**.
11. That in view of the aforesaid erroneous rejection of the Applicant's claims, the Applicant issued an email dated 01 December 2022 seeking discussion on the amount admitted and Respondent No. 2 also issued an email on the same date agreeing for a discussion. Respondent No. 2 also requested the Applicant to share detailed excel sheet of the Applicant's working claims. Thereafter, the Applicant issued an email dated 06 December 2022 requesting Respondent No. 2 to explain the reason for not considering delayed payment interest and other charges. On the same date i.e. 06 December 2022, Respondent No. 2 requested the Applicant to share the detailed excel sheet based on which claims had been filed by the Applicant. Copies of emails dated 01 December 2022 and 06 December 2022 are annexed herewith and marked as **Annexure A-7 (colly)**.
12. Thereafter, vide emails dated 15 December 2022 and 19 December 2022, Respondent No. 2 sought copies of Corporate Guarantee Invocation notices with regards to loan transactions with Poise Realtech Private Limited and Ajnara & IVR Prime Developers. That on 19 December 2022, the

Applicant issued a reply and apprised Respondent No. 2 that Deeds of Corporate Guarantee have not been invoked with regards to loan transactions with Poise Realtech Private Limited and Ajnara & IVR Prime Developers. The Applicant also mentioned that invocation of Deeds of Corporate Guarantee is not a prerequisite for filing and admission of claims against the Corporate Debtor where it is a Corporate Guarantor. Copies of the emails dated 15 December 2022 and 19 December 2022 are annexed herewith and marked as **Annexure A-8 (Colly)**.

13. That to the utter shock and surprise of the Applicant, Respondent No. 2 vide an email dated 19 December 2022, arbitrarily reversed the earlier admission of the Applicant's legal and legitimate claim of INR 1,895,77,34,490 (Indian Rupees One Thousand Eight Hundred Ninety-Five Crores Seventy-Seven Lakhs Thirty-Four Thousand Four Hundred and Ninety only) and out of this admitted amount baselessly rejected the Applicant's claim of INR 630,04,98,903 (Indian Rupees Six Hundred and Thirty Crores Four Lakhs Ninety-Eight Thousand Nine Hundred and Three only). The Respondent No. 2 cited the reason that since Deeds of Corporate Guarantee have not been invoked, Respondent No. 2 is rejecting the claims of the Applicant pertaining to the loan transactions with Poise Realtech Private Limited and Ajnara India Limited, and IVR Prime Developers. That Respondent No. 2 erroneously placed reliance on the judgment passed by this Hon'ble Tribunal in ***IDBI Trusteeship Services Limited v. Mr. Abhinav Mukherji & Ors., C.A. (AT) (INS.) No. 356 of 2022*** ("IDBI Trusteeship") while illegally rejecting the claims of the Applicant. Copy of the email dated 19 December 2022 is annexed herewith and marked as **Annexure A- 9**. Copy of the judgment passed by this Hon'ble Tribunal in IDBI

Trusteeship is annexed herewith and marked as **Annexure A-10**.

14. That the said rejected claims pertain to the loans extended by the Applicant to two borrowers namely Poise Realtech Private Limited and Ajnara India Limited and IVR Prime Developers, whereby the Corporate Debtor had duly executed Deeds of Corporate Guarantee in favour of the Applicant for securing the aforesaid loans. That under both the loans, the default in paying the amount due had already occurred as on the insolvency commencement date. In fact, CIRP has already been initiated against Ajnara India Limited i.e. the principal borrower in one of the loan transactions. That the Loan Agreements and Deed of Corporate Guarantee executed with regards to loan transaction with Poise Realtech Private Limited are annexed herewith and marked as **Annexure A- 11 (colly)** and **Annexure A- 12**. That the Loan Agreement and Deed of Corporate Guarantee executed with regards to the loan transaction with Ajnara India Limited are annexed herewith and marked as **Annexure A- 13** and **Annexure A- 14**.
15. That the Applicant issued an email dated 30 December 2022 responding to the email dated 19 December 2022, *inter alia* objecting to the rejection of its claims amounting to INR 630,04,98,903 (Indian Rupees Six Hundred and Thirty Crores Four Lakhs Ninety-Eight Thousand Nine Hundred and Three only) and requesting for admission of the said claim amount. The Applicant also drew the attention of Respondent No. 2 to the order of the Hon'ble Supreme Court dated 12 September 2022 passed in the appeal challenging the judgment passed in IDBI Trusteeship (*Civil Appeal No. 6268 of 2022*). The Applicant further mentioned that in *IDBI Trusteeship*, the Appeal was dismissed by this Hon'ble Tribunal on the ground that the Appellant had acted hand-in-glove with the Borrower to the detriment of homebuyers and also on the ground that

the Appellant is a 'related party' of the Corporate Debtor, and hence, the Appellant would be in the position to control the affairs of the Corporate Debtor. In the instant matter, the Applicant is/has nowhere even remotely acted in concert with the Borrowers and it is an undisputed fact that the Applicant is not a related party of either the Corporate Debtor or the Corporate Guarantor and that only creditor-surety relationship exists between the Applicant and the Corporate Guarantor. Therefore, in view of the aforesaid, the facts of *IDBI Trusteeship* are different and cannot be applied to the instant matter. While placing reliance on ***Axis Bank Limited v. Edu Smart Services Private Limited, Company Appeal (AT) (Insolvency) No. 302 of 2017*** ("Axis Bank"), the Applicant further mentioned that it is not necessary that all the claims as are submitted by the Creditor should be a claim matured on the date of initiation of Resolution Process/admission, even in respect of a debt, which is due in future on its maturity, the 'Financial Creditor' or 'Operational Creditor' or 'Secured Creditor' or 'Unsecured Creditor' can file such claim. Therefore, the definition of 'Claim' as defined under Section 3(6) of the Code ought to be read along with Section 13 read with Section 15 of the Code while admitting claims. That the Applicant diligently pointed out to Respondent No. 2 that it is a settled legal position that claims can be admitted even in cases where Deeds of Corporate Guarantee have not been invoked. However, to no avail. Copy of the email dated 30 December 2022 issued by the Applicant is annexed herewith and marked as **Annexure A-15**. Copy of the order dated 12 September 2022 passed by the Hon'ble Supreme Court is annexed herewith and marked as **Annexure A-16**. Copy of the judgment passed by this Hon'ble Tribunal in *Axis Bank* is annexed herewith and marked as **Annexure A-17**.

16. Thereafter, Respondent No. 2 again issued a frivolous response dated 03 January 2023 to the email dated 30 December 2022 issued by the Applicant, whereby Respondent No. 2 *inter alia* erroneously mentioned that the judgment passed in *Axis Bank* has been distinguished by the Hon'ble Supreme Court in ***Ghanshyam Mishra v. Edelweiss Asset Reconstruction Company Limited, (2021) 9 SCC 657*** ("**Ghanshyam Mishra**"). Respondent No. 2 also erroneously relied upon the judgment passed by the Hon'ble Supreme Court in ***Swiss Ribbons Private Limited and Another v. Union of India & Others (2019) 4 SCC 17*** ("**Swiss Ribbons**"). Copy of the email dated 03 January 2023 is annexed herewith and marked as **Annexure A- 18**. Copy of the judgment passed by the Hon'ble Supreme Court in *Ghanshyam Mishra* is annexed herewith and marked as **Annexure A- 19**. Copy of the judgment passed by the Hon'ble Supreme Court in *Swiss Ribbons* is annexed herewith and marked as **Annexure A-20**.
17. That upon receiving the shocking response of Respondent No. 2, the Applicant duly issued a response dated 05 January 2023 vide an email, whereby the Applicant categorically mentioned that Respondent No. 2's interpretation of the judgments passed in ***Ghanshyam Mishra*** and ***Swiss Ribbons*** is utterly erroneous, and the Applicant reiterated that the ***IDBI Trusteeship***, on facts, cannot be applicable to the instant case. The Applicant further mentioned that 3(6) of the Code defines the term 'claim', whereby sub-section (6)(ii) provides that claim means that the right to payment exists in case of a breach of contract, even if the claim is unmatured. In view thereof, the Applicant requested Respondent No. 2 that the claims which are unmatured also have to be admitted by the Interim Resolution Professional, as were already admitted by Respondent No. 2, and that it is not mandatory to invoke Deeds of Corporate Guarantee. Copy of the response dated

05 January 2023 along with the covering email is annexed herewith and marked as **Annexure A- 21**.

18. It is humbly reiterated that the facts of *IDBI Trusteeship* cannot be applied to the present case. It is further submitted in *Axis Bank*, this Hon'ble Tribunal had held that for the creditor to lodge its claim with the Interim Resolution Professional, it is not necessary that the Creditor should have invoked the corporate guarantee prior to initiation of CIRP of Corporate Guarantor. This Hon'ble Tribunal further rejected the arguments that for such a claim to be admitted, the Creditor is required to serve a demand notice on the Corporate Guarantor or the creditor's debt has to be due and payable. This Hon'ble Tribunal held that the claim of the Creditor should be as on the date of initiation of the CIRP (date of order of admission and moratorium) and any person who has a right to claim payment, as defined under Section 3(6) of the Code, is supposed to file the claim whether matured or unmatured. The question as to whether there is a default or not is not to be seen. It is pertinent to note that an appeal challenging the said judgment, was dismissed by the Hon'ble Supreme Court vide an order dated 23 January 2019. Copy of the order dated 23 January 2019 is annexed herewith and marked as **Annexure A- 22**.
19. It is further submitted that in *Ghanshyam Mishra*, the Hon'ble Supreme Court did not distinguish or overrule the judgment passed in *Axis Bank*, as baselessly averred by the Respondent, and merely noted that, "*the said case, on facts, would not be applicable to the case at hand*". The Hon'ble Supreme Court further laid down why facts of *Axis Bank* cannot be applied in *Ghanshyam Mishra*. Relevant paragraphs of the judgment passed in *Ghanshyam Mishra* are reproduced hereinunder for reference:



*“127. It is to be noted, that in the appeal before NCLAT, the EXIM Bank as well as Axis Bank had taken steps immediately after the claim of said Banks on the basis of corporate guarantee came to be rejected by RP/CoC. After rejection of the claim, said Banks had filed an application under Section 60(5) before NCLT. On NCLT rejecting the said claim, those Banks had approached NCLAT in appeals, which were allowed and the order, as stated hereinabove, was passed.*

*128. In the present case, the claim of EARC was rejected on 22.1.2018. Instead of challenging the said rejection, EARC participated in the proceedings and was one of the resolution applicants. Not only that, in the first round, it was a successful bidder being ranked H1 bidder. However, since in the negotiations it failed to satisfy CoC, fresh bids were invited from the resolution applicants, which had submitted their EOI. In the 12<sup>th</sup> meeting of CoC held on 25.4.2018, the resolution plan of GMSPL was approved by 89.23% of the voting shares. Only thereafter, EARC filed two applications; one challenging the approval of resolution plan of GMSPL by CoC and another challenging rejection of its claims by RP/CoC.*

*129. It could thus be clearly seen, that EARC was taking chances. After rejection of its claim, it did not choose to challenge the same by an application under Section 60(5) but waited till the decision of CoC. During this period, it was actually pursuing its resolution plan. Only after its resolution plan was not approved and the resolution plan of GMSPL was approved, it filed the aforesaid two applications. Apart from that, as already observed hereinabove, in the resolution plan of EARC itself, it has provided for extinguishment of all claims not forming part of resolution plan.”*

In the present case, the Applicant is also immediately approaching this Hon'ble Tribunal seeking admission of its claims. That the Applicant has not submitted any resolution plan or is taking chances for getting its resolution plan approved.

20. It is further submitted portion of the judgment passed by the Hon'ble Supreme Court in *Swiss Ribbons* i.e. being relied upon by Respondent No. 2, cannot be applied here, as the observations contained therein, pertained to the requirement of "default" having occurred for initiation of insolvency proceedings under Sections 7 and 9 of the Code and did not pertain to the submissions/ determination of claims submitted to the IRP under section 13 of the Code. Therefore, the reasoning provided by Respondent No. 2 for rejecting the claims of the Applicant is untenable and baseless.
21. It is reiterated that in terms of Section 3(6)(ii) of the Code, the right to payment exists in case of a breach of a contract, even if the claim is unmatured. That section 3(6) of the Code is reproduced hereinunder:
- “(6) “claim” means –
- (a) *a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured, or unsecured;*
- (b) **right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;**
22. Upon perusal of pertinent findings in the *Axis Bank* as well as provisions of the Code and relevant regulations, even claims for unmatured debts of an insolvent Corporate Debtor can be filed to the IRP by means of Form C in accordance with Regulation 8 of the CIRP Regulations and that the IRP cannot reject them solely on the ground that the claims are immature.

23. It is further reiterated that Respondent No. 2 had already admitted the claims of the Applicant vide an email dated 16 November 2022 and thereafter rejected the claims vide emails dated 19 December 2022 and 03 January 2023 without any explanation or reasoning, whatsoever. It is submitted that without any change in the scenario, circumstances or facts, the IRP cannot review or change his decision after already admitting the claims and also communicating the fact of such admission, and hence, the aforesaid conduct of Respondent No. 2 makes it clear and evident that that Respondent No. 2 is acting in a *malafide manner*.
24. In view of the aforesaid and the settled legal position, unmatured claims of the Applicant ought to be collated, considered, and admitted by Respondent No. 2, and that it is not mandatory to invoke Deeds of Corporate Guarantee for submitting and consequently, admitting the unmatured claims of the Financial Creditor. Any other inference and/ or interpretation would lead to the absurd conclusion that a Financial Creditor would have no remedy left against a Corporate Guarantor who on one hand would be protected from any legal action owing to the effect of section 14 of the Code and on the other hand the Financial Creditor's claims and its "right to payment" emanating from a Corporate Guarantee would also be rejected. It is submitted that it could not have been the intention of the legislature that claims of

creditors against Guarantors would be rendered extinguished in perpetuity the moment insolvency proceedings are initiated against such guarantors. Hence, it is humbly submitted that Respondent No. 2 should be directed to admit the claims of the Applicant.

25. The Applicant submits that it is one of the largest financial creditors of the Corporate Debtor and the Respondent No.2's *malafide conduct* would have a grave and irreparable impact on the Applicant.
26. Furthermore, allowing the present Application shall cause no prejudice to the parties involved in the present proceedings. However, if the claims of the Applicant are not admitted, it would cause serious prejudice to the Applicant.
27. In the background of the abovementioned facts of the present case, the Applicant has no other alternate and/or efficacious remedy other than before this Hon'ble Tribunal under Section 60(5)(a) and (b) of the Code. Therefore, the Applicant herein prays before this Hon'ble Tribunal to implead the Applicant and pass necessary directions prayed hereinbelow.
28. That this Hon'ble Tribunal has the jurisdiction to adjudicate upon the present Application under Section 60(5)(a) and (b) of the Code, being the Adjudicating Authority in respect of the CIRP of the Respondent/ Corporate Debtor.

29. That the Applicant has duly made the payment of the filing fees for filing the present Application.
30. The instant application is being made *bona fide* and in the interest of justice.
31. Should the prayer of the Applicant not be granted, it will cause immense prejudice, hardship, and grave irreparable harm to the Applicant.

### **PRAYER**

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

- (a) Allow the present Application and direct the Respondent No. 2 to admit the claims of the Applicant amounting to INR 630,04,98,903 (Indian Rupees Six Hundred and Thirty Crores Four Lakhs Ninety-Eight Thousand Nine Hundred and Three only); and

- (b) Pass any other order(s)/direction(s)/relief(s) which the Hon'ble Tribunal may deem fit in the present facts and circumstances.

*Rachin Jain*  
  
 APPLICANT

*Ajay*

THROUGH:

*Maithili*

AJAY BHARGAVA/ WAMIKA TREHAN/ MAITHILI MOONDRA  
 [D/186/1997(R)]/ [D/2176/2014]/ [R/2051/2018]  
 SIDDHANT KUMAR  
 [D/1572/2020]

KHAITAN & CO LLP  
 ADVOCATES FOR THE APPLICANT  
 MAX TOWERS, 7<sup>TH</sup> FLOOR,  
 SECTOR 16B, NOIDA  
 GAUTAM BUDDH NAGAR - 201 301  
 PH.: 8826307196/ 9953771820  
 EMAIL: [maithili.moondra@khaitanco.com](mailto:maithili.moondra@khaitanco.com)

PLACE: NEW DELHI

DATE: 29 MARCH 2023

**DECLARATION BY THE APPLICANT**

The applicant(s) above named hereby solemnly declare(s) that nothing material has been concealed or suppressed and further declare(s) that the enclosures and typed set of material papers relied upon and filed herewith are true copies of the original(s)/fair reproduction of the originals / true translation thereof.

Verified at New Delhi on this 29<sup>th</sup> day of March 2023

*Maithili*

COUNSEL FOR THE APPLICANT

*Rachin Jain*  


APPLICANT

## VERIFICATION

I, Mr Ruchir Jauhari, s/o late Mr Om Prakash Jauhari, aged about 44 years, presently at New Delhi, r/o 14/304 Eastend Apartments, Mayur Vihar Phase 1 Ext, New Delhi 110096, the Authorised Representative of the Applicant do hereby verify that nothing material has been concealed or suppressed from the present Application and further declare that the enclosures relied upon and filed herewith are true copies of the originals or fair reproductions of the originals or true translations thereof.

APPLICANT

Ruchir Jauhari



PLACE: NEW DELHI

DATE: 29 MARCH 2023

ATTESTED  
  
NOTARY PUBLIC DELHI

29 MAR 2023

BEFORE THE NATIONAL COMPANY LAW APPELLATE  
TRIBUNAL, NEW DELHI

I.A. NO. \_\_\_\_\_ OF 2023

IN

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

**IN THE MATTER OF:**

RAM KISHOR ARORA  
SUSPENDED DIRECTOR OF  
SUPERTECH LIMITED

...APPELLANT

VERSUS

UNION BANK OF INDIA & ANR.

...RESPONDENTS

**AND IN THE MATTER OF:**

L&T FINANCE LIMITED

...APPLICANT

**AFFIDAVIT ON BEHALF OF THE APPLICANT**

I, Ruchir Jauhari, aged about 44 years, s/o late Mr. Om Prakash Jauhari, r/o 14/304 Eastend Apartments, Mayur Vihar Phase- 1 Extension, New Delhi, do hereby solemnly affirm and state as under:-

1. That I am the Authorised Representative of the Applicant in the present Application and am well conversant with the facts and circumstances of the present case and as such competent to affirm this affidavit.
2. That I have read and understood the contents of the accompanying Application, which has been prepared under my instructions and I state that the said contents are true and correct to the best of my knowledge and belief, based on the



Ruchir Jauhari



records maintained by the Applicant being made available to me.

- 3. That the annexures annexed to the present Application are true and copies of their respective originals.

*Ruchin Jain*



**VERIFICATION**

Verified at New Delhi on this 29 March 2023, that the contents of the above affidavit are true and correct to my knowledge. No part of it is false and nothing material has been concealed there from.

*Ruchin Jain*



**ATTESTED**  
*[Signature]*  
 NOTARY PUBLIC DELHI

29 MAR 2023

ANNEXURE A-1

**CERTIFIED TRUE COPY OF THE RESOLUTION PASSED BY THE BOARD OF DIRECTORS OF L&T FINANCE LIMITED AT ITS MEETING HELD ON OCTOBER 18, 2019 AT 8<sup>TH</sup> FLOOR, BRINDAVAN, C.S.T ROAD, KALINA, SANTACRUZ (EAST), MUMBAI – 400 098**

**CONSIDERING AND APPROVING THE SCHEDULE OF POST APPROVAL DELEGATION OF CREDIT RELATED POWERS:**

**“RESOLVED THAT** in supersession of the resolution passed by the Board of Directors at its meeting held on October 21, 2016, the revised Schedule of Post Approval Delegation of Credit Related Powers (“DOP”) as placed before the Board (including any changes done pursuant to the delegated authority) be and is hereby approved.

**RESOLVED FURTHER THAT** the Chairperson, Manager and Chief Risk Officer of the Company, be and are hereby authorised jointly to make necessary modifications to the DOP from time to time as may be deemed necessary.

**RESOLVED FURTHER THAT** any one Director, Manager, Company Secretary, Ms. Apurva Rathod, Mr. Yashesh Bhatt and Mr. Ankit Sheth be and are hereby severally authorised to do all such acts, deeds, matters and things as may deemed necessary or expedient to give effect to this resolution and for matters connected therewith or incidental thereto.”

**For L&T Finance Limited**

*Savita*  
**Savita Kodain**  
 Authorised Signatory  
 Date: December 06, 2021  
 Place: Mumbai



**L&T Finance Limited**  
 Corporate Office Address  
 Brindavan, CST Road  
 Kalina, Santacruz (East)  
 Mumbai 400 098

**Registered Office**  
 7th Floor, Technopolis, A-Wing  
 Plot No. 4, Block - BP, Sector-V  
 Salt Lake, Kolkata 700 091  
 CIN: U65910WB1993FLC060810

**T +91 22 6212 5000**  
**F +91 22 6212 5553**  
**E [customercare@lifs.com](mailto:customercare@lifs.com)**

[www.lifs.com](http://www.lifs.com)

*Asst*  
**TRUE COPY**

### Schedule of Post Approval Delegation of Credit Related Powers

To enable efficient performance of operational tasks and in line with good corporate governance practices, it is imperative to have an effective Delegation of Powers. This Schedule of Delegation of Powers of L&T Finance Ltd. ("LTF" or "Company") would be reviewed and revised from time to time by Risk Department in consultation with Business Group (Business Group would mean relevant officials from the respective business units viz Infrastructure Finance (PFG), Real Estate Finance (RE) and Special Situation Group (SSG))

#### General Principles:

1. All the commitments for extending financial assistance entailing financial implications will be approved by the "Approving Authority" as per the Board approved Credit delegation / Credit Policy.
2. All approval and implementation processes will comply with applicable statutory and regulatory stipulations, and confirm to applicable internal policies and guidelines.
3. Any power that is exercisable by a delegated authority can also be exercised by a higher authority.
4. In the event, any of the Delegated Authority(ies) or designated officers as per this schedule are not available for an extended period of time, the designated officials can delegate the powers to officials of same/other group entities, upon approval of Immediate Supervisor of such Delegated Authority, to sign the documents/letters/memos as an Authorized Signatory for such period. Prior intimation will be given to the Credit Mid Office Group /Operations ("CMOG") in advance.
5. Requisite approval(s) can also be obtained from the delegated authority on email(s).
6. Reference to Regional Head in this schedule would also mean Zonal Head, Vertical Head, Division Head of the respective business group. For SSG, reference to Regional Head or Head Legal in this schedule would also mean employees in OL grade and above or SSG Head Legal respectively.
7. If any approval item is not specifically mentioned for a Business Group, similar clause for other groups may be referred to with corresponding authority, including as mentioned below (vice versa):

CE – Housing	CE-SSG
Business Head – PFG	CE- SSG
Regional Head / Business Head – RE/ Head-Portfolio Management – RE/ Head- Product & Strategy -RE	OL and above from SSG
Business Head - RE	Head- Debt Syndication
Head- Legal	Head Legal – SSG/ Head- Litigation

8. Manager, Company Secretary and Chief Risk Officer (CRO) would mean the Manager, the Company Secretary and the CRO of the Company as appointed by the Board.

October 2019



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Any post approval item not specifically covered in this Schedule will be referred to the CRO for recommending the appropriate authority/ approval. For the purpose of all approvals under the purview of this schedule, all matters to be approved by Chief Executive should be recommended by Head – Business and/ or Head Legal, as the case may be.

**Process for Modifications approval:**

Business Groups shall initiate the Memo/Note providing all the requisite details of the modification that would help the delegation holders in the decision making process and follow the processes as required under Standard Operating Procedures.

The respective Business Groups shall ensure that all the documents/letters/memos excluding the general correspondences are verified by CMOG for compliance of this delegation before implementation. All correspondences referencing legal rights of the Company have to be duly approved by legal officer(s) and accordingly confirmed to CMOG.

**The Schedule is divided into five sections:**

**Section A deals with matters which would be considered and approved by Approving Authority only.**

**Section B deals with matters which would be delegated to various executives as per the matrix listed therein.**

**Part- 1: PFG & SSG**

**Part- 2: RE**

**Section C deals with matters related to Debt Syndication transactions**

**Section D deals with specific matters related to SSG**

**Section E deals with specific matters related to Legal**



As per  
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Sr. No	Authorization Required	Amount / Incidence	Authority
9.	Appointment of Enforcement agency for SARFAESI Action/IRP under IBC/Receiver etc.		OL and above & Head – Legal
10.	SARFAESI - Authorised officer for specific case	A comprehensive Board Resolution authorizing all employees with designation of Chief Manager and above (OL grade and above) to be obtained.  The case specific Authorised Officer to be appointed from the above list only.	Group Head - Legal & Compliance
11.	Approval for fixing the reserve price for sale of property under public auction under SAFAESI Act or otherwise	Legal to ensure the valuation report is from the valuer as prescribed under relevant acts	OL and above & Head – Legal
12.	Approval for sale of assets	a. Pro-rata share in sale proceeds available to Company b. Part of sale proceeds to be utilized by the company	Business Head and Head Legal  Chief Executive
13.	Withdrawal of cases/ Consent to withdraw		Chief Executive

**SECTION E  
LEGAL RELATED AUTHORISATION**

Sr. No	Authorization Required	Amount / Incidence	Delegated Authority
<b>Authority for Initiating/defending Legal Proceedings By/Against the Company and Issue of Power of attorney:</b>			
1.	Representing Company in respect of any legal proceedings.		Any officer to be authorized by Head - Business / Head - Legal.
2.	To file and initiate all civil (including proceedings under Insolvency & Bankruptcy Code, 2016) and/ or criminal proceedings of any form whatsoever on behalf of the Company in the appropriate Court(s) and/ or any forum of judicature across the territory of Republic of India and/ or outside.		Any officer (FML II or Above) authorized by Head - Business / Head - Legal.

October 2019



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**TO WHOMSOEVER IT MAY CONCERN**

As per the "Post Approval Delegation of Credit Related Powers (Section E -sl no2)" approved pursuant to the resolution of the Board of Directors passed on October 18, 2019, Ramanand Pulavarti (Business Head- SSG) is empowered to authorize any officer to represent L&T Finance Limited in respect of any legal proceedings including signing any vakalatnama/ statement/ pleadings/ correspondence with court and other related legal matters.

In line with the above delegation of powers, I, Ramanand Pulavarti, hereby authorize the following Company officials:

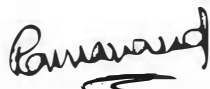
Sr. No	Name of the Company Official	Designation
1	Jay Bhupali	Chief Manager - Legal
2	Ruchir Jauhari	Zonal Head - North
3	Mayank Aggarwal	Chief Manager
4	Munish Garg	Team Leader

- i. To initiate, institute and file any legal proceedings on behalf of L&T Finance Limited ('Company') and to represent the Company before any court or legal, judicial and/or quasi judicial forum and/or Tribunal in respect of all the Facilities provided to M/s. Supertech Limited for all purposes and intents, in connection with the suit and/or proceedings including proceedings u/s 138 of Negotiable Instrument Act, instituted, initiated and filed and/or to be instituted, initiated and filed in respect of the said Facilities and to prefer or contest any appeal, review or revision or any other proceeding therefrom;
- ii. To appear for and prosecute and defend all actions and proceedings filed against the Company in relation to the said Facilities;
- iii. To sign and verify all Vakalatnamas, Plaints, Criminal Complaints, Petitions and other pleadings, affidavits, rejoinders, applications, appeals or other documents that may be required to be filed in any court or legal, judicial and/or quasi judicial forum and/or Tribunal.
- iv. To cause and tender evidence, both oral and documentary in the matter;
- v. To file an application for execution of a decree or order passed in the suit or such other legal proceeding and to sign and verify such application;

AND GENERALLY to do all such acts, deeds and things in the name and on behalf of the Company as the said Attorney may consider expedient for the aforesaid purpose.

This authorization is valid only for the aforesaid purpose(s) and till the employees concerned continue to be in the employment of the Company/Group Company or the authorization is revoked.

For,  
L&T Finance Limited



**Ramanand Pulavarti**  
Business Head- SSG  
December 06, 2021



**L&T Finance Limited**  
Correspondence Address  
Brindavan, CST Road,  
Kalina, Santacruz (East)  
Mumbai 400 098

**Registered Office**  
7th Floor, Technopolis, A-Wing  
Plot No 4, Block-BP, Sector-V  
Salt Lake, Kolkata 700 091  
CIN: U65910WB1993FLC060810

T +91 22 6212 5000  
E customercare@lifs.com

www.lifs.com

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ANNEXURE A-2



राज्यं नमो नमः  
Form I. R.

निगमन का प्रमाण-पत्र  
CERTIFICATE OF INCORPORATION

नं० 2160810 की तारीख 1993  
No. 2160810 of Date 1993

वे इसद्वारा प्रमाणित करता है कि राज

कम्पनी कानून 1956 (1956 का सं० 1) के अंतर्गत निगमित की गई है और वह  
कम्पनी परिचीनित है।

I hereby certify that *Abejay Finance*  
*Group Private Limited*  
(this day incorporated under the Companies Act, 1956 (No. 1 of 1956) and that the  
Company is limited.

मेरे द्वारा यह से राज सं० *Cateulla* की तारीख  
Given under my hand at *Cateulla* this *fourth*  
day of *November* One thousand nine hundred and *fourty* *three*

*[Signature]*  
Secretary of Companies

*U.B.*



1956 का सं० 1 / निगमन, सं० 21 - 20,000 - 15-1-92 - पारम्परिक  
1956 का सं० 1 / निगमन, सं० 21 - 20,000 - 15-1-92 - O.P.G.

FOR L&T FINANCE LIMITED  
Company Secretary

*TRUE COPY*



C. No. 21-60810

FRESH CERTIFICATE OF INCORPORATION CONSEQUENT ON CHANGE OF NAME

In the Office of the Registrar of Companies, ... [Under the Companies Act, 1956 (1 of 1956)]

IN THE MATTER OF APPEJAY FINANCE GROUP PRIVATE LIMITED

I hereby certify that ... which was originally incorporated on ... day of ... 1923 ... Limited having duly passed the necessary resolution in terms of section 23(1) of Companies Act, 1956, and the approval of the Central Government signified in writing having been accorded thereto in the Department of Company Affairs.

Regional Director ... this day of ... 1921 ... Limited and this certificate is issued pursuant to section 23(1) of the said Act.

Given under my hand at ... this day of February 1921 ... (One thousand nine hundred ...)



Signature of Registrar of Companies (L.N. SAXENA) A.R.O.C.

पहले पर कम्पनी का वह नाम लिखिए जो कि तारीखों से पूर्व था।
Give the name of the Company as existing prior to the change.
पहले पर कम्पनी (अर्थात्) का नाम लिखिए जिसके अन्तर्गत कम्पनी का मूलतः रजिस्ट्रीकरण और (गठन) किया गया था।
Give the name of the Act(s) under which the Company was originally registered and incorporated.
वे ० एच ० सी - ७
J.S.C.-7

FOR L&T FINANCE LIMITED
Company Secretary

TRUE COPY



भारत सरकार-कॉर्पोरेट कार्य मंत्रालय  
कम्पनी रजिस्ट्रार कार्यालय, बरिचम बंगाल

नाम परिवर्तन के पश्चात् नया निगमन प्रमाण-पत्र

कॉर्पोरेट पहचान संख्या : U65910WB1993PLC060810

नाम: APEEJAY FINANCE GROUP LTD

के सम्बन्ध में, मैं एमपेजया साधारण काला में, कि मेरा  
APEEJAY FINANCE GROUP LTD

जो मूल रूप से दिनांक चौदह सप्टेंबर उन्नीस सौ बिसासठ को कम्पनी अधिनियम, 1956 (1956 का 1) के अन्तर्गत भारत  
APEEJAY FINANCE GROUP LTD

के रूप में विभाजित की गई थी, ने कम्पनी अधिनियम, 1956 की धारा 21 की शर्तों के अनुसार विधिवत आवश्यक श्रुतिस्वरूप पारित करके मूल  
निश्चित रूप में यह श्रुतिस्वरूप पारित की गई भारत का अनुसंधान, कम्पनी अधिनियम, 1956 की धारा 21 के साथ धरित, भारत सरकार, कम्पनी कार्य  
विभाग, नई दिल्ली को अधिसूचना सं 301 का दिनांक 24.8.1985 एन.एन.एन. A15589914 दिनांक 12/07/2007 के द्वारा  
प्राप्त हो गया है, जहाँ कम्पनी का नाम अन्त परिवर्तित रूप में भारत  
FAMILY CREDIT LIMITED

हो गया है और यह प्रमाण-पत्र, कम्पनी अधिनियम की धारा 20(1) के अनुसार ही जारी किया गया है।

यह प्रमाण-पत्र, मेरे द्वारा प्राप्त की जायता से आज दिनांक बारह जुलाई दो हजार सात को जारी किया गया है।

GOVERNMENT OF INDIA - MINISTRY OF CORPORATE AFFAIRS  
Registrar of Companies, West Bengal

Fresh Certificate of Incorporation Consequent upon Change of Name

Corporate Identity Number : U65910WB1993PLC060810

In the matter of M/s APEEJAY FINANCE GROUP LTD

I hereby certify that APEEJAY FINANCE GROUP LTD which was originally incorporated on Twenty Fourth day of November Nineteen Hundred Ninety Three under the Companies Act, 1956 (No. 1 of 1956) as APEEJAY FINANCE GROUP LTD having duly passed the necessary resolution in terms of Section 21 of the Companies Act, 1956 and the approval of the Central Government signified in writing having been accorded thereto under Section 21 of the Companies Act, 1956, read with Government of India, Department of Company Affairs, New Delhi, Notification No. G.S.R 507 (E) dated 24/06/1985 vide SRN A15589914 dated 12/07/2007 the name of the said company is this day changed to FAMILY CREDIT LIMITED and this Certificate is issued pursuant to Section 23(1) of the said Act.

Given under my hand at Kolkata this Twelfth day of July Two Thousand Seven.



*(Signature)*  
(DEBASISH BANDOPADHYAY)  
अधीक्षक (रजिस्ट्रार) Registrar of Companies  
बरिचम बंगाल  
West Bengal

कम्पनी रजिस्ट्रार के कार्यालय अधिनियम में उल्लेख्य पता पर है।  
Mailing Address as per record available in Registrar of Companies office:

FAMILY CREDIT LIMITED  
APEEJAY HOUSE, C BLOCK, 8TH FLOOR, 15, PARK STREET,  
KOLKATA - 700016,  
West Bengal, INDIA

FOR L&T FINANCE LIMITED

*(Signature)*  
Company Secretary

TRUE COPY



सत्यमेव जयते  
**GOVERNMENT OF INDIA**  
 MINISTRY OF CORPORATE AFFAIRS

Registrar of companies, Kolkata  
 Nizam Palace, 2nd MSC Building 2nd Floor, Kolkata, West Bengal, India, 700020

Corporate Identity Number: U65910WB1993FLC060810

**SECTION 13(1) OF THE COMPANIES ACT, 2013**

**Certificate of Registration of the Special Resolution Confirming Alteration of  
 Object Clause(s)**

The shareholders of M/s FAMILY CREDIT LIMITED having passed Special Resolution in the Annual/Extra Ordinary General Meeting held on 07-04-2016 altered the provisions of its Memorandum of Association with respect to its objects and complied with the Section 13(1) of the Companies Act, 2013.

I hereby certify that the said Special Resolution together with the copy of the Memorandum of Association as altered has this day been registered.

Given under my hand at Kolkata this Twenty second day of June Two thousand sixteen.



**DIP NARAYAN CHOWDHURY**  
 Deputy Registrar of Companies  
 Registrar of Companies  
 RoC - Kolkata

Mailing Address as per record available in Registrar of Companies office:

**FAMILY CREDIT LIMITED**

TECHNOPOLIS, 7th Floor, A-Wing, Plot No. - 4,, Block - 6P, Sector - V, Salt  
 Lake, Kolkata, West Bengal, India, 700091



For L&T FINANCE LIMITED

*[Signature]*  
 Company Secretary

*[Signature]*  
**TRUE COPY**



सत्यमेव जयते  
GOVERNMENT OF INDIA  
MINISTRY OF CORPORATE AFFAIRS

Office of the Registrar of Companies  
Nizam Palace, 2nd MSO Building 2nd Floor, Kolkata, West Bengal, India, 700020

**Certificate of Incorporation pursuant to change of name**  
[Pursuant to rule 29 of the Companies (Incorporation) Rules, 2014]

Corporate Identification Number (CIN): U65910WB1993FLC060810

I hereby certify that the name of the company has been changed from FAMILY CREDIT LIMITED to L&T FINANCE LIMITED with effect from the date of this certificate and that the company is limited by shares.

Company was originally incorporated with the name Family Credit Limited.

Given under my hand at Kolkata this Seventeenth day of March two thousand seventeen.



**BIBEKANANDA MOHANTY**  
**REGISTRAR OF COMPANIES**  
Registrar of Companies  
RoC - Kolkata

Mailing Address as per record available in Registrar of Companies office:

L&T FINANCE LIMITED

TECHNOPOLIS, 7th Floor, A- Wing, Plot No. - 4,, Block - BP, Sector -V, Salt Lake, Kolkata, West Bengal, India, 700091



For L&T FINANCE LIMITED

  
Company Secretary

  
TRUE COPY

## भारतीय रिज़र्व बैंक

गैर-बैंकिंग पर्यवेक्षण विभाग

कोलकाता क्षेत्रीय कार्यालय

RESERVE BANK OF INDIA  
DEPARTMENT OF NON-BANKING SUPERVISION  
KOLKATA REGIONAL OFFICE



### पंजीकरण प्रमाण पत्र

### CERTIFICATE OF REGISTRATION

(जनता को जमागणियां स्वीकार करने के लिए वैध नहीं)  
(Not valid for accepting Public Deposits)

संख्या  
No. **B-05.06200**

भारतीय रिज़र्व बैंक अधिनियम, 1934 की धारा 45 डी के द्वारा भारतीय रिज़र्व बैंक को ब्रह्म शक्तियों का प्रयोग करने हुए एल एच टी फाइनेंस लिमिटेड (पूर्व नाम फामिली क्रेडिट लिमिटेड) को

दूसरी तरफ दी गयी शर्तों पर जनता से जमागणियां स्वीकार किये बिना गैर-बैंकिंग वित्तीय संस्था का कारोबार प्रारंभ करने / करते रहने के लिए यह

### पंजीकरण प्रमाण पत्र

जारी किया गया।

In exercise of the powers conferred on the Reserve Bank of India by Section 45 IA of the Reserve Bank of India Act, 1934  
**L & T FINANCE LIMITED**  
(Formerly Family Credit Limited)

is hereby granted

### Certificate of Registration

to commence / carry on the business of non-banking financial institution without accepting public deposits subject to the conditions given on the reverse.

में हस्ताक्षर के अधीन कोलकाता चैट्टी हजार सत्रह केही चार सौष को जारी किया गया।

this Fourth day of May, 2007 at Kolkata, Two Thousand Seventeen

In lieu of Cert. No. B.05.06200  
dated 03.09.2007 issued  
by RBI Kolkata R.O.

मोनिषा चक्रवर्ती Monisha Chakraborty

(महा प्रबंधक / उप महा प्रबंधक)

General Manager / Deputy-General Manager.



**L & T Finance Limited**  
(erstwhile known as Family Credit Limited)

*Wag*

Authorized Signatory

As per  
TRUE COPY

## शर्तें / Conditions

1. पंजीकरण प्रमाणपत्र अथवा उसकी प्रमाणित प्रतिलिपि आपकी कंपनी के पंजीकृत कार्यालय में तथा अन्य कार्यालयों, शाखाओं में, यदि कोई हों, प्रदर्शित की जाएगी।	1. The Certificate of Registration or a certified copy thereof shall be kept displayed at the Registered Office and other offices, branches, if any, of your company.
2. आपकी कंपनी को पंजीकरण प्रमाणपत्र भारतीय रिजर्व बैंक अधिनियम, 1934 के अध्याय III बी के अंतर्गत निर्धारित समस्त शर्तों एवं पैरामीटरों का निरंतर पालन करने वाले की शर्त के अधीन जारी किया जा रहा है।	2. The Certificate of Registration is issued to your company subject to your continued adherence to all the conditions and parameters stipulated under Chapter III B of the Reserve Bank of India Act, 1934.
3. आपकी कंपनी को बैंक द्वारा जारी तथा उस पर प्रचलित निर्देशों, दिशानिर्देशों / अनुदेशों, आदि की अपेक्षाओं का पालन करना होगा।	3. Your company shall be required to comply with all the requirements of the Directions, guidelines / instructions, etc. issued by the Bank and as applicable to it.
4. यदि आपकी कंपनी इच्छा या चोख रूप से विज्ञापनों आदि में यह दावेता चाहती है कि उसके पास भारतीय रिजर्व बैंक द्वारा जारी किया गया पंजीकरण प्रमाणपत्र है तो इस तरह के विज्ञापन में निम्नानुसार विवरण अनिवार्य रूप से शामिल किया जाना चाहिए :-  "कंपनी के पास भारतीय रिजर्व बैंक अधिनियम, 1934 की धारा 45 B के अंतर्गत भारतीय रिजर्व बैंक द्वारा जारी दिनांक _____ का वैध पंजीकरण प्रमाणपत्र है। तबही भारतीय रिजर्व बैंक कंपनी को वित्तीय सुदृढ़ता की वर्तमान स्थिति अथवा कंपनी द्वारा दिये गये किसी विवरण अथवा स्टेटेमेंट अथवा अन्य की गयी किसी रूप की सत्यता के लिए और कंपनी द्वारा स्वचालितियों की अद्यतनता / देयताओं के प्रत्येक के लिए कोई जिम्मेदारी अथवा गारंटी स्वीकार नहीं करता।"	4. If your company desires to indicate directly or indirectly in any advertisement, etc. that the company is having a Certificate of Registration issued by the Reserve Bank of India, such advertisement should invariably contain a statement as under :  "The company is having a valid Certificate of Registration dated <u>May 06, 2017</u> issued by the Reserve Bank of India under Section 45 IA of the Reserve Bank of India Act, 1934. However, the RBI does not accept any responsibility or guarantee about the present position as to the financial soundness of the company or for the correctness of any of the statements or representations made or opinions expressed by the company and for repayment of deposits / discharge of liabilities by the company."
5. *आपकी कंपनी को जनता की जमापिशियां स्वीकार करने / रखने की अनुमति नहीं है।	5@.Your company is not allowed to accept / hold public deposits.
6. *आपकी कंपनी को जनता से क्लिहाल धोई भी जमापिशियां स्वीकार नहीं करनी चाहिए। दो वर्ष की अवधि तक परिचालन में रहने के बाद यदि कंपनी जनता से जमापिशियां जुटाना चाहे तो वह दो वर्ष के लेखा-परीक्षा गुण एवं और किसी मान्यता प्राप्त बाह्य निर्धारण एजेंसी से संबंधी जमापिशियां के लिए बाह्य निर्धारण (क्रेडिट रेटिंग) के साथ बैंक से अनुरोध कर सकती है। आपकी कंपनी हमारे निर्धारित अनुमोदन प्राप्त करने के बाद ही जनता की जमापिशियां स्वीकार करेगी।	6*.Your company must not accept any public deposits for the time being. After the company has been in operation for a period of two years, if it intends to raise public deposits, it may approach the Bank with the audited Balance Sheets for two years and a credit rating for fixed deposits from one of the recognised rating agencies. Your company will accept public deposits only after obtaining specific approval from us.
7. गैर बैंकिंग वित्तीय कंपनी के रूप में कारोबार शुरू करने की तारीख से बैंक को अवगत कराना चाये।	7. The date when your company has commenced business as a non-banking financial institution may be advised to the Bank.
@ इन शर्तों पर लागू, जिन्हें उनके बोर्ड के इस संकल्प के आधार पर पंजीकरण प्रमाणपत्र जारी किया गया है कि वे भारतीय रिजर्व बैंक की लिखित पूर्वानुमति के बिना जनता की जमापिशियां स्वीकार न करें।  * जनवरी 9, 1997 को या उसके बाद निर्मित नवी कंपनियों पर लागू।	@ Applicable to companies, to whom Certificate of Registration has been issued on the basis of their Board Resolution not to accept public deposits without prior written permission of RBI.  * Applicable to new companies incorporated on or after January 9, 1997

22483

**L & T Finance Limited**  
(erstwhile known as Family Credit Ltd)

  
Authorised Signatory

  
TRUE COPY

**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

IB-204/ND/2021





1



**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**

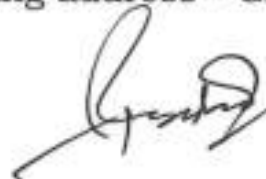
1. This is an application filed by Union of India to initiate corporate insolvency resolution process ("CIRP") against M/s Supertech Ltd. under Section 7 of the Insolvency and Bankruptcy Code 2016 ("the Code") for the alleged default on the part of the Respondent in settling an amount of Rs. 431,92,53,302 ( 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

  
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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

  
TRUE COPY





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

  
As per  
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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



Handwritten signature in blue ink, possibly reading 'RBS'.



Handwritten signature in blue ink, possibly reading 'Gandhi'.

TRUE COPY

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

  
As per  
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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

  
As per  
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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


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.

-sd-

(SHRI. RAHUL BHATNAGAR)

MEMBER (TECHNICAL)

-sd-

(SHRI. P.S.N. PRASAD)

MEMBER (JUDICIAL)

**FORM C  
SUBMISSION OF CLAIM BY FINANCIAL CREDITORS**

(Under Regulation 8 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)

April 08, 2022

From

L&T Finance Limited,

**Registered Office:** 15th Floor, PS SRIJAN Tech Park, Plot No 52, Block DN, Sector-V, Salt Lake City, Kolkata – 700 091, District 24-Parganas North

**Corporate Office:** Brindavan, CST Road, Kalina, Santacruz East, Mumbai, Maharashtra 400098

**Delhi Office:** 5th Floor DCM Building, Barakhamba Road, Connaught Place, New Delhi - 110001

To

The Interim Resolution Professional / Resolution Professional

**Mr. Hitesh Goel**

**KPMG Restructuring Services LLP, Building**

No.10, Tower C, 8th Floor, DLF Cyber City,

Phase II Gurgaon , Haryana , 122002

**Email id: hiteshgoel@kpmg.com**

**Subject: Submission of claim and proof of claim.**

Madam/Sir,

L&T Finance Limited, hereby submits this claim in respect of the corporate insolvency resolution process of Supertech Limited. The details for the same are set out below:

Relevant Particulars		
(1)	(2)	(3)
1.	Name of the financial creditor	<b>L&amp;T Finance Limited</b> (L&T Infrastructure Finance Company Limited and L&T Housing Finance Limited have since been merged with L&T Finance Limited. The merger orders are attached herewith)
2.	Identification number of the financial creditor (If an incorporated body, provide identification number and proof of incorporation. If a partnership or individual provide identification records* of all the partners or the individual)	CIN : U65910WB1993FLC060810  The Financial Creditor is a Company incorporated under the provisions of the Companies Act, 1956, and is registered as a non-banking financial company (“NBFC”) with the Reserve Bank of India

  
Ruchir Jambhavi

  
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		(“RBI”). True copy of the Certificate of Incorporation of the Applicant /Financial Creditor is annexed herewith and marked as <b>Annexure 1</b> . True copy of the Applicant /Financial Creditor’s Certificate of Registration as NBFC is annexed herewith and marked as <b>Annexure 2</b> .
3.	Address and email address of the financial creditor for correspondence	L&T Finance Limited, 4 <sup>th</sup> Floor Brindavan, CST Road, Kalina, Santacruz East, Mumbai, Maharashtra 400098.  <a href="mailto:jaybhupali@ltfs.com">jaybhupali@ltfs.com</a> <a href="mailto:aparna.rawat@ltfs.com">aparna.rawat@ltfs.com</a> <a href="mailto:ruchirjauhari@ltfs.com">ruchirjauhari@ltfs.com</a>
4.	Details of claim, if it is made against corporate debtor as principal borrower:  (i) Amount of claim	Rs 410,59,71,029/- (Rupees Four Hundred and Ten Crore Fifty Nine Lakh Seventy One Thousand Twenty Nine Only) As detailed in Statement of Account.
	(ii) Amount of claim covered by security interest, if any (Please provide details of security interest, the value of the security, and the date it was given) Please provide details of guarantee held, the value of the guarantee, and the date it was given)	Rs 410,59,71,029/- (Rupees Four Hundred and Ten Crore Fifty Nine Lakh Seventy One Thousand Twenty Nine Only) Details of Security given in Annexure [xx]
	(iii) Amount of claim covered by guarantee, if any	Rs 410,59,71,029/- (Rupees Four Hundred and Ten Crore Fifty Nine Lakh Seventy One Thousand Twenty Nine Only)
	(iv) Name and address of the guarantor(s)	Details of Guarantor given in Annexure 3&4
5.	Details of claim, if it is made against corporate debtor as guarantor:  (i) Amount of claim	NA



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	(ii) Amount of claim covered by security interest, if any (Please provide details of security interest, the value of the security, and the date it was given)	NA
	(iii) Amount of claim covered by guarantee, if any (Please provide details of guarantee held, the value of the guarantee, and the date it was given)	NA
	(iv) Name and address of the principal borrower	NA
6.	Details of claim, if it is made in respect of financial debt covered under clauses (h) and (i) of sub-section (8) of section 5 of the Code, extended by the creditor: (i) Amount of claim (ii) Name and address of the beneficiary	NA
7.	Details of how and when debt incurred	As provided in Annexure 3.
8.	Details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim	2,43,06,853 (Two Crore Forty Three Lakh Six Thousand Eight Hundred and Fifty Three) maintained as Debt Service Reserve.
9.	Details of the bank account to which the amount of the claim or any part thereof can be transferred pursuant to a resolution plan	L&T Finance 00600310037890 HDFC Bank – Gourd Floor Jehangir Building MG Road Fort Mumbai HDFC0000060

(Signature of financial creditor or person authorised to act on its behalf)

[Please enclose the authority if this is being submitted on behalf of the financial creditor]

Name in BLOCK LETTERS: **MR. RUCHIR JAUHARI**

Position with or in relation to creditor: **ZONAL HEAD- NORTH- REAL ESTATE FINANCE**

Address of person signing: 5th Floor DCM Building, Barakhamba Road, Connaught Place, New Delhi - 110001

\*PAN, passport, AADHAAR Card or the identity card issued by the Election Commission of India.

**DECLARATION**





I, **RUCHIR JAUHARI**, Zonal Head- North- Real Estate Finance currently residing at 14/304, Eastend Apartments, Mayur Vihar, Phase 1, extension, New Delhi 110 096 do hereby declare and state as follows: -

1. Supertech Limited, the corporate debtor was, at the insolvency commencement date, being the 25<sup>th</sup> day of March 2022, actually indebted to L&T Finance Limited for a sum of Rupees 410,59,71,029/- (Rupees Four Hundred and Ten Crore Fifty Nine Lakh Seventy One Thousand Twenty Nine Only);
2. In respect of my claim of the said sum or any part thereof, I have relied on the documents specified in Annexure 3 & 4.
3. The said documents are true, valid and genuine to the best of my knowledge, information and belief and no material facts have been concealed therefrom.
4. In respect of the said sum or any part thereof, neither I, nor any person, by my order, to my knowledge or belief, for my use, had or received any manner of satisfaction or security whatsoever, save and except the following: NIL.
5. I undertake to update my claim as and when the claim is satisfied, partly or fully, from any source in any manner, after the insolvency commencement date.
6. ~~I am~~ I am not a related party of the corporate debtor, as defined under section 5 (24) of the Code.
7. ~~I am eligible to join committee of creditors by virtue of proviso to section 21 (2) of the Code even though I am a related party of the corporate debtor.~~

Date: New Delhi  
Place: April 08, 2022



(Signature of the claimant)

#### VERIFICATION

I, **RUCHIR JAUHARI** the claimant hereinabove, do hereby verify that the contents of this proof of claim are true and correct to my knowledge and belief and no material fact has been concealed therefrom.

Verified at New Delhi on this 8<sup>th</sup> day of April 2022



(Signature of claimant)

Annexure 3



**Sl no 7 details of how and when the debt incurred**

**A. Rs 360 Crore Loan (Eco Village I Project):**

- i. That Supertech Limited availed loan, amounting to Rs 360 Crore (Rupees Three Hundred and Sixty Crore) (“**Loan**”) from L&T Finance Limited for the Purpose (as detailed in the Loan Agreement) related to Eco Village-1 Project on the terms and conditions contained in Sanction Letter dated February 23, 2017 & Loan Agreement dated March 20, 2017 (*A copy of the Sanction Letter dated February 23, 2017 & Loan Agreement dated March 20, 2017 is annexed herewith*);
- ii. The Loan is secured by securities as provided in the Loan Agreement and at Annexure 4.
- iii. As the Borrower failed to repay the amounts due the entire Loan was recalled on October 20, 2021 (*Copy of Recall Notice dated October 20, 2021 is annexed herewith*).

**B. Rs 650 Crore Loan (Capetown , North Eye, Crown Tower and Upcountry):**

- i. That Supertech Limited availed loan, amounting to Rs 650 Crore (Rupees Six Hundred and Fifty Crore Only) (“**Loan**”) from L&T Finance Limited for the Purpose (as detailed in the Loan Agreement) related to Capetown , North Eye and Upcountry Project on the terms and conditions contained in Sanction Letter(s) dated September 28, 2017 & Loan Agreement dated September 28, 2017 (*A copy of the Sanction Letter(s) dated September 28, 2017 & Loan Agreement dated September 28, 2017 is annexed herewith*);
- ii. The Loan is secured by securities as provided in the Loan Agreement and at Annexure 4.
- iii. As the Borrower failed to repay the amounts due the entire Loan was recalled on October 20, 2021 (*Copy of Recall Notice dated October 20, 2021 is annexed herewith*).

**C. Rs 25 Crore:**

- i. That Supertech Limited availed loan, amounting to Rs 25 Crore (Rupees Twenty Five Crore Only) (“**Loan**”) from L&T Finance Limited for the Purpose (as detailed in the Loan Agreement) on the terms and conditions contained in Sanction Letter(s) dated June 30, 2017 & Loan Agreement dated June 30, 2017 (*A copy of the Sanction Letter(s) dated June 30, 2017 & Loan Agreement dated June 30, 2017 is annexed herewith*);
- ii. The Loan is secured by securities as provided in the Loan Agreement and at Annexure 4.
- iii. As the Borrower failed to repay the amounts due the entire Loan was recalled on October 20, 2021 (*Copy of Recall Notice dated October 20, 2021 is annexed herewith*).

**D. Rs 21 Crore:**

- i. That Supertech Limited availed loan, amounting to Rs 21 Crore (Rupees Twenty One Crore Only) (“**Loan**”) from L&T Finance Limited for the Purpose (as detailed in the Loan Agreement) on the terms and conditions contained in Sanction Letter dated December 29,



2017 & Loan Agreement dated December 29, 2017 (*A copy of the Sanction Letter dated December 29, 2017 & Loan Agreement dated December 29, 2017 is annexed herewith*);

- ii. The Loan is secured by securities as provided in the Loan Agreement and at Annexure 4.
- iii. As the Borrower failed to repay the amounts due the entire Loan was recalled on October 20, 2021 (*Copy of Recall Notice dated October 20, 2021 is annexed herewith*).

**E. Rs 6.20 Crore:**

- i. That Supertech Limited availed loan, amounting to Rs 6.20 Crore (Rupees Six Crore Twenty lakh Only) (“**Loan**”) from L&T Finance Limited for the Purpose (as detailed in the Loan Agreement) on the terms and conditions contained in Sanction Letter dated August 03, 2018 & Loan Agreement dated August 31, 2018 (*A copy of the Sanction Letter dated August 03, 2018 & Loan Agreement dated August 31, 2018 is annexed herewith*);
- ii. The Loan is secured by securities as provided in the Loan Agreement and at Annexure 4.
- iii. As the Borrower failed to repay the amounts due the entire Loan was recalled on October 20, 2021 (*Copy of Recall Notice dated October 20, 2021 is annexed herewith*).



Pooja Jha  
L&T Finance Limited

**Security Details**

Handwritten signature and a stamp that says "TRUE COPY".

**A. Rs 360 Crore Loan**

Security	Documents
<p>The Loan together with all obligations and any other amounts due and payable to the Lender(s) under the Financing Documents, Default Interest, Additional Interest, premia on prepayment, any fee, costs, charges, expenses and other monies whatsoever stipulated in or payable under the Agreement or the other Financing Documents and all other amounts payable to the Lender(s) under the Financing Documents shall be secured by:</p> <p>(a) A first ranking charge/ assignment /mortgage /hypothecation in favour of the Lender(s) on the following:</p> <p>i. all the Borrower's immovable properties in relation to the Eco Village 1 Project being developed on a plot of land admeasuring approx. 1.79 (one point seven nine) lakhs sq. mts at Sector 02, Greater Noida West, Uttar Pradesh, having total saleable area of approximately 92.3 (ninety two point three) lakh sq.fts along with present and future construction thereon and as more particularly annexed in Schedule XI of the Loan Agreement ("<b>Mortgaged Properties</b>") excluding any Unit Sold and registered in relation to the Eco Village 1 Project and Units in relation to which the Customers have availed loans from any bank and financial institution</p> <p>ii. all the Borrower's movable properties and assets including movable plant and machinery, machinery spares, tools and accessories, furniture, fixtures, vehicles and all other movable assets, both present and future, in relation to the Eco Village 1 Project; and</p> <p>iii. all the Borrower's tangible and intangible assets, including but not limited to all the book debts, operating cash flows, all other current assets, receivables, commission, revenues of the Borrower of whatsoever nature, both present and future, in relation to the Eco Village 1 Project;</p> <p>(b) A first ranking charge by way of assignment or creation of charge in favour of the Lender(s) of:</p> <p>i. all the rights, title, interest, benefits, claims and demands whatsoever of the Borrower in the Project Documents, duly acknowledged and consented to by the relevant Contractors, all as amended, varied or supplemented from time to time; and</p> <p>ii. all Insurance Contracts and insurance proceeds;</p>	<ol style="list-style-type: none"> <li>1) Loan Agreement 20th March 2017</li> <li>2) Deed of Hypothecation dated 20th March 2017.</li> <li>3) Demand Promissory note 20th March 2017</li> <li>4) Security Trustee agreement 20th March 2017 with Vistra ITCL.</li> <li>5) Personal guarantee 20th March 2017 R.K.Arora, Mohit Arora, Sangita Arora (wife of R.K Arora).</li> <li>6) Directors Declaration dated 24th April 2017 of Supertech Limited</li> <li>7) MOE 24th April 2017 on land (Eco Village- 1)</li> <li>8) Declaration 24th April 2017 by Palash Building &amp; Memorandum of Entry. Original Escrow Agreement signed with Indusind Bank as Escrow Bank on March 20, 2017 July 12, 2017</li> <li>9) Amended &amp; Restated signed with Indusind Bank as Escrow Bank on July 12, 2017.</li> </ol>





<p>(c) First ranking mortgage/ charge / hypothecation/ Security Interest in favour of the Lender, in respect of the Escrow Account and all the sub accounts thereunder including the Debt Service Reserve account and other reserves, and all investments in respect thereof (in whatever form the same may be).</p> <p>(d) demand promissory notes and letter of continuity, executed by the Borrower in a format as agreed by the Lender(s).</p> <p>(e) Personal Guarantee from the Promoters.</p> <p>(f) A pledge of 100% (one hundred percent) of the fully paid up share capital of the Goodtime Builders Private Limited held. by the Borrower, such share being in dematerialised form and free from all kinds of encumbrances or restrictive <b>covenants</b>.</p> <p>(g) A pledge of 100% (one hundred percent) of the fully paid-up share capital of the Palash Building Solutions Private Limited held by the Borrower, such share being in dematerialised form and free from all kinds of encumbrances or restrictive <b>covenants</b>.</p> <p>(h) A first ranking charge by way of a mortgage over the immovable properties of Palash Building Solutions Private Limited, as more particularly set out in Schedule XII of the Loan Agreement in favour of the Lender(s).</p> <p>(i) A first ranking charge by way of a mortgage over the immovable properties of Goodtime Builders Private Limited, as more particularly set out in Schedule XIII of the Loan Agreement in favour of the Lender(s).</p> <p>(j) An undertaking from Palash Building Solutions Private Limited, <i>inter alia</i>, undertaking the creation of the security by way of a mortgage over the immovable properties of Palash Building Solutions Private Limited, as more particularly set out in Schedule XII of the Loan Agreement in favour of the Lender(s).</p> <p>(k) An undertaking from Goodtime Builders Private Limited, <i>inter alia</i>, undertaking the creation of the security by way of a mortgage over the immovable properties of Goodtime Builders Private Limited, as more particularly set out in Schedule XIII of the Loan Agreement in favour of the Lender(s).</p> <p>(Capitalised terms have meaning assigned to such term in the Loan Agreement)</p>	<p>10) Pledge agreement 30th May 2017 Supertech Limited and Ram Kishor Arora of 100% of shares of Palash Building Solutions Pvt Ltd</p> <p>11) 7) Pledge agreement 30th May 2017 by Supertech Limited and Mohit Arora of shares 100% of shares of Goodtimes Builders Private Limited</p>
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#### B. Security for Rs 650 Crore Loan

Security	Documents
<p>The Loan together with all obligations and any other amounts due and payable to the Lender(s) under the Financing Documents, Default Interest, Additional Interest, premia on prepayment, any fee; costs, charges, expenses and other monies whatsoever stipulated in or payable under</p>	<p>Sanction letters of Rs 600 Crore (LTIF) &amp; 50 Crore (LTF)</p>

  
 Ruchir Arora

  
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the Agreement or the other Financing Documents and all other amounts payable to the Lender(s) under the Financing Documents shall be secured by:

. Of the total approved land area of 2,09,271 sq. metres (collectively known as Capetown and Plot No: GH-01/A located at Sector 74, Noida), following shall be charged to Lender(s):

- (a) Exclusive First Charge by way of mortgage of the land, development rights, title and interest of the Borrower(s) in the Project "**Supertech capetown**" being developed on a plot of land admeasuring 2,09,271 sq. metre at Sector 74, NOIDA, having saleable area and details as mentioned below:

Total Units	Saleble Area in Sq ft	Unsold Area in Sq ft	Receivable from sold in Crs
<b>4,414</b>	<b>5,633,177</b>	<b>491,329</b>	<b>171</b>

- (b) Exclusive First Charge by way of mortgage of the land, development rights, title and interest of the Borrower(s) in the Project "**Supertech North Eye**" being developed on a plot of land admeasuring 2,09,271 sq. metre at Sector 74, NOIDA, having saleable area and details as mentioned below:

Type	Saleable Area in sq.ft	Unsold Area in sq.ft	Receivable from sold in Crs
NE Central	1296945	820095	121
NE Wings	464360	268520	50
East wings (Resi)	47670	47670	0
East wings Commercial)	26896	12900	5
West wings (Resi)	47670	47670	0
West wings(Commercial)	38453	23169	7
	<b>1921994</b>	<b>1220024</b>	<b>183</b>

- (c) Exclusive First Charge by way of mortgage of the land, development rights, tide and interest of the Borrower(s) in the Project "**Supertech Crown Tower**" being developed area and details as mentioned below:

Type	Total Units	Saleable Area in sq.ft	Unsold Area in sq.ft	Receivable from sold in Crs
CV8	199	185070	88350	17.2
CV9	199	185070	119040	16.7
CB4	149	161218	42198	11.6
	<b>547</b>	<b>531358</b>	<b>249588</b>	<b>45.5</b>

1. Loan Agreement dated 28th September 2017
2. Demand Promissory Note 28th September 2017
3. Personal Guarantee dated 28th September 2017 given by Mr. Ram Kishor Arora, Mohit Arora, Mrs. Sangita Arora
4. Corporate guarantees dated 28th September 2017 given by Supertech Infrastructure Private Limited, Supertech Limited
5. Security Trustee Agreement dated 28th September 2017 between Supertech Infrastructure Private Limited, Supertech Limited, Vistra and L&T Finance limited and L&T Infrastructure finance Limited
6. Declaration cum undertaking dated 28th September 2017 executed by Supertech Infrastructure Private Limited, Supertech Limited.
7. MOE dated 28th Sep 2017 (executed between Supertech Infrastructure Private Limited, Supertech Limited, Vistra
8. MOE 5th September 2018 executed between Supertech Infrastructure Private Limited, Supertech Limited, Vistra ( Land of Upcountry)
9. POA dated 28th September 2017 given by Supertech Limited

*Ruchir Jauhari*



As per COPY

(d) Exclusive First Charge by way of mortgage of the land, development rights, title and interest of the Borrower(s) in the following other areas being developed on a plot of land admeasuring 2,09,271 sq. metre at Sector 74, NOIDA, having saleable area and details as mentioned below:

Schools	37249
Offices	56371
Community (Coffee shops, Restaurants etc)	64797
Facility (Fine dining, Banquets)	43183
<b>Total</b>	<b>201600</b>

(e) The following projects area also being developed on the plot of land admeasuring 2,09,271 sq. metres at Sector 74, NOIDA, having saleable area and details as mentioned below (hereinafter referred as the "Detailed Asset") which have not been considered for the assessment:

1. The residential towers 'Opulent', 'Brilliant' and 'Radiant', totaling an aggregate of 2041472 sq. ft. of saleable area;
2. The residential towers 'Cape Castle 1' and 'Cape Castle 2,' totaling an aggregate of 488912 sq. ft. of saleable area;
3. Residential towers 'Cape Berry 5', 'Cape Berry 6' and 'Cape Silver 11' totaling an aggregate of 539000 sq. ft. of saleable area;
4. The identified commercial area totaling 47506 sq. ft. of saleable area in Central Wing (tower A) of North Eye tower on lower ground floor;
5. Higher Secondary School admeasuring 1,93,000 sq.ft;
6. 100 Bedded Hospital on area admeasuring 82,000 sq.ft.

However, specific NOC from Lender(s) will be required by any other lender/entity for creating charge on securities mentioned in clause (e), points (1.) to (6.) provided above.

(f) Exclusive First Charge by way of mortgage of the land, development rights, title and interest of the Borrower(s) in the Project "**Supertech Upcountry**" being developed on a plot of land admeasuring 407949.94 sq. metre TS-017 at Sector 17-A, Yamuna Expressway, having saleable area and details as mentioned below:

10. Pledge Agreement dated 28th September 2017 (Pledge of 88.86% share pledge of Supertech Infrastructure Private Limited)
11. Deed of Hypothecation dated 28th September 2017 executed between Supertech Infrastructure Private Limited, Supertech Limited and Vistra.
12. Escrow Agreement signed with HDFC Bank for Capetown.
13. Escrow Agreement signed with HDFC Bank for Crown Tower.
14. Escrow Agreement signed with HDFC Bank for North Eye.
15. Escrow Agreement signed with HDFC Bank for Upcountry

*Ruchir Jaiswal*  


*As per copy*

Project Name	Total Saleable Area in sq.ft (lacs)	Total Sold Area in sq.ft (lacs)	Total Sold Value in Rs. Cr	Collection Made till date in INR Cr	Unsold Area in Sq.ft
<b>Upcountry - Phase I</b>					
Plots	703800	682200	136.6	136.6	21600
Villas	887271	811465	180.5	163.6	75806
Gh	2077755	2071455	677.6	639.1	6300
Shop	4725	1260	1.2	1.2	1465

Project Name	Total Saleable Area in sq. ft	Unsold Area in sq. ft
<b>Upcountry - Phase II</b>		
Gh	1779260	1779260
Commercial - 8 Floors	420000	420000
Institutional - School	293219	293219

(g) First pari passu charge on the below mentioned areas already charged under inventory facility provided to Devya Propcon Pvt. Ltd.

Project Name	Total Saleable Area in sq. ft (lacs)	Total Sold Area in sq. ft (lacs)	Total Sold Value in Rs. Cr	Collection Made till date in INR Cr	Unsold Area in Sq. ft
Plots	0	0	0	0	0
Villas	274479	0			274479
Gh	1099465	25460	8.98	1.04	1074005
<b>Sub Total</b>	<b>5047495</b>	<b>3591840</b>	<b>1005</b>	<b>922</b>	<b>1455655</b>

(h) Exclusive Charge by way of mortgage of the land, development rights, title, receivables/future receipts of Pentagon M\_all, Haridwar owned by Supertech Infrastructure Pvt. Ltd. - on land parcel admeasuring 6.28 acres at Sector 12, SIDCUL Haridwar ("**Pentagon Mall**").\

(i) Exclusive charge on all movable and current assets including project receivables/future receipts pertaining to the Projects along with Escrow of the same (both present & future) excluding movable assets already hypothecated to other Banks/Financial Institution).

(j) Personal Guarantee of Mr. R.K. Arora, Mohit Arora and Sangita Arora.

(k) Corporate Guarantee of all landholding entities in relation to the Projects.

(l) Non Disposal Undertaking from shareholders of Supertech Limited for non-disposal of shares.

(m) 88.86 % share pledge of Supertech Infrastructure Private Limited.

(n) iDemand Promissory Notes from Supertech Limited and Supertech Infrastructure Private Limited.

*Ruchir Jauhari*



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**C. Security for Rs 25 Crore Loan**

<u>Security</u>	<u>Documents</u>
<p>The Outstanding Amount in connection with the Loan shall be duly secured by following in such form and manner as may be acceptable to the Lender(s):</p> <ol style="list-style-type: none"> <li>1. Exclusive charge through registered mortgage on hotel Country Inn &amp; Suites having 85rooms admeasuring built up area of approx. 183262.06 Sq. Ft situated at Sports Goods complex, Opposite.Dainik Jagran office, Major Dhayanchand Nagar, Hapur By-pass, DelhiMeerut road, Meer.ut (U.P.) owned by the Borrower together with all buildings and structures standing thereon, both present &amp; future on it (hereinafter referred to as "Property");</li> <li>2. Exclusive charge on all movable assets of the Borrower pertaining to the Property, both present &amp; future;</li> <li>3. Exclusive charge on the Debt Service Reserve Account ("DSRA");</li> <li>4. Unconditional and irrevocable Personal Guarantee of Mr. R K Arora and Mr. Mohit Arora</li> <li>5. Demand Promissory Note</li> </ol>	<ol style="list-style-type: none"> <li>1. Loan Agreement dated 30th June 2017</li> <li>2. Demand Promissory Note30th June 2017</li> <li>3. Personal Guarantee given by Mr. Ram Kishor Arora, Mohit Arora, Mrs. Sangita Arora.</li> <li>4. Security Trustee Agreement dated 13th Feb 2018 with Vistra ITCL</li> <li>6. Indenture of Mortgage dated July 26, 2018 executed by Supertech Limited in favour of Vistra for mortgage of Mall &amp; Hotel Country Inn &amp; Suits project</li> <li>7. Deed of Hypothecation dated 30th June 2017 executed between Supertech Limited and Vistra.</li> </ol>

**D. Security for Rs 21 Crore Loan**

Security	Documents
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<p>The Facility together with interest and other charges shall be secured by following:</p> <p>a) Creation of pledge over 51 % shares of M/s Supertech Realtors Pvt Ltd held by Supertech Ltd in DEMAT Form;</p> <p>b) Unconditional and irrevocable Personal Guarantee of Mr. R K Arora, Mr. Mohit Arora and Mrs Sangita Arora;</p> <p>c) Second charge over all movable and current assets including receivables/future receipts pertaining to the Project, both present and future;</p> <p>d) Demand Promissory Note</p>	<ol style="list-style-type: none"> <li>1. Loan Agreement dated 29th December 2017</li> <li>2. Demand Promissory Note 29th December 2017</li> <li>3. Personal Guarantee dated 29th December 2017 given by Mr. Ram Kishor Arora, Mohit Arora, Mrs. Sangita Arora</li> <li>4. PoA and pledge agreement dated 16th February 2018 of 51% shares of Supertech Realtor Private Limited held by Supertech Limited</li> <li>5. Security Trustee Agreement dated 16th Feb 2018 (Vistra)</li> <li>6. Deed of Hypothecation dated 29th June 2017 executed between Supertech Limited and Vistra.</li> </ol>
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**E. Security for Rs 6.20 Crore Loan**

Security	Documents
<p>Outstanding Amount in connection with the Loan shall be duly secured by way of exclusive charge in favour of the Lender by following n such form and manner as may be acceptable to the Lender:</p> <p>a) Extension of charge on Mortgaged Properties which shall be created within 30 days from the date of first disbursement. The same shall be perfected within 45 days from the date of first</p>	<p>Loan Agreement dated August 06, 2018</p> <p>2. Personal Guarantee given by Mr. Ram Kishor Arora, Mohit Arora, Mrs. Sangita</p>



<p>disbursement.</p> <p>b) Unconditional and irrevocable Personal Guarantee of Mr. R K Arora, Mr. Mohit Arora and Mrs Sangita Arora to be created within 7 days from the date of disbursement.</p> <p>c) Demand Promissory Note to be obtained upfront.</p>	<p>Arora - August 06, 2018</p> <p>3. Security Trustee Agreement dated December 13, 2018 [Vistra]</p> <p>4. Declaration cum undertaking dated January 28, 2019.</p> <p>5. MOE dated January 28, 2019 8.27acres at Sector -68 of Gurgaon -Manesar Urban Complex owned by ASP Sarin Reality Private Limited.</p> <p>6. Indenture of Mortgage dated July 26, 2018 by supertech limited i.r.o Hotel Country Inn &amp; Suits having 85 rooms situated at Sports Goods Complex, Opposite Dainik Jagran office, Hapur bypass road, Meerut (UP)</p>
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**F. Cross Collateralization of Security for 1) Rs 360 Crore Loan 2) Rs 650 Core Loan 3) Rs 25 Crore Loan 4) Rs 21 Crore Loan**

<b><u>Cross Collateralised Security Details</u></b>
<p style="text-align: center;"><b><u>October 2018</u></b></p> <p>1. Memorandum of Entry dated 27th October 2018 Mortgagor : Supertech Limited Property Mortgaged : All the part and parcel land comprised in Group Housing Plot No. GH-08 admeasuring 1,78,677 sq. mtrs at Sector - 01, Greater Noida, Distt. Gautam Budh Nagar, UP</p> <p>2. Declaration dated 27th October 2018;</p> <p>3. Memorandum of Entry dated 27th October 2018 Mortgagor : Palash Building Solutions Private Limited Property Mortgaged : Properties in Village Samaspur, New Delhi</p> <p>4. Declaration dated 27th October 2018</p>



5. Memorandum of Entry dated 27th October 2018  
Mortgagor : Supertech Infrastructure Private Limited  
Property Mortgaged : Plot No. C1 admeasuring 29934.50 sq. mtrs in Sector 12, IIE Haridwar, Uttarakhand
6. Declaration dated 27th October 2018
7. Memorandum of Entry dated 27th October 2018  
Mortgagor : Supertech Limited  
Property Mortgaged : Plot No. GH-01/ A admeasuring 2,00,000 sq. mtrs at Sector 74, Noida Distt.  
Gautam Budh Nagar, U. P
8. Declaration dated 27th October 2018
9. Memorandum of Entry dated 27th October 2018 Mortgagor : Supertech Limited  
Property Mortgaged : Plot No. TS - 01 admeasuring 407949.94 sq. mtrs situated at Sector 17A in Yamuna Expressway, Distt. Gautam Budh Nagar, U. P
10. Declaration dated 27th October 2018
11. Memorandum of Entry dated 27th October 2018  
Mortgagor : Goodtime Builders Private Limited
12. Property Mortgaged : 33 Bigha 12 Biswa land situated in Village Samaspur Khalsa, New Delhi  
Declaration dated 27th October 2018
13. Memorandum of Entry dated 27th October 2018  
Mortgagor : ASP Sarin Realty Private Limited  
Property Mortgaged : 8.27 Acres situated at Sector 68 HD Zone of Gurgaon Manesar Complex, Village Badshahpur, District Gurgaon  
Declaration dated 27th October 2018.

**May 2019**

- Deed of Hypothecation dated 14th May 2019  
Hypothecator : Supertech Limited  
Project : Radiant Towers owned by the Hypothecator located upon the land admeasuring 2,00,000 sq. meters and situated in Plot No. GH-01I A, Sector 74, Noida, District Gautam Budh Nagar, Uttar Pradesh
2. Power of Attorney dated 14th May 2019
3. Deed of Hypothecation dated 14th May 2019  
Hypothecators: *Mis.* ASP Sarin Realty Private Limited and *Mis* Attractive Impex Private Limited  
Project : Property means part and parcel of land admeasuring approximately 4.682 Acres and located at Sector 68, Village Badshahpur, District Gurugram, Haryana
4. Power of Attorney by ASP Sarin Realty Private Limited dated 14th May 2019
5. Power of Attorney by Attractive Impex Private Limited dated 14th May 2019
6. Deed of Hypothecation dated 14th May 2019  
Hypothecator : Supertech Limited  
Project : Property means part and parcel of land admeasuring approximately 10.00 Acres and located at Village Khanpur, Earlier Tehsil Gadarpur, District Udhampur, Uttarakhand
7. Power of Attorney dated 14th May 2019
8. Memorandum of Entry dated 14th May 2019 along with the title deeds attached in the annexures



Mortgagors : *Mis.* ASP Sarin Realty Private Limited and *Mis* Attractive Impex Private Limited  
 Property Mortgaged : Property means part and parcel of land admeasuring approximately 4.682 Acres and located at Sector 68, Village Badshahpur, District Gurugram, Haryana  
 9. Declaration dated 14th May 2019  
 10. Memorandum of Entry dated 14th May 2019 along with the title deeds attached in the annexures  
 Mortgagor : Supertech Limited  
 Property Mortgaged : Radiant Towers owned by the Mortgagor located upon the land admeasuring 2,00,000 sq. meters and situated in Plot No. GH-01 / A, Sector 74, Naida, District Gautam Budh Nagar, Uttar Pradesh  
 11. Declaration dated 14th May 2019  
 12. Memorandum of Entry dated 14th May 2019 along with the title deeds attached in the Annexure  
 Mortgagors : Supertech Limited  
 Property Mortgaged : Property means part and parcel of land admeasuring approximately 10.00 Acres and located at Village Khanpur, Earlier Tehsil Gadarpur, District Udhampur, Uttarakhand  
 13. Declaration dated 14th May 2019  
 Agreement to create mortgage by Supertech Limited (Mortgagor)  
 Property proposed to be mortgaged : Land admeasuring approximately 24 Thousand Square Meter and located at Crossing Republic, NH - 24 Ghaziabad, Uttar Pradesh  
 14. Agreement to create mortgage by Supertech Limited (Mortgagor)  
 Property proposed to be mortgaged : Land admeasuring approximately 35.46 Acres and located at Village Khanpur, Earlier Tehsil Gadarpur, District Udhampur, Uttarakhand

**G. Additional common security for 1) Rs 360 Crore Loan 2) Rs 650 Core Loan 3) Rs 25 Crore Loan 4) Rs 21 Crore Loan**


  
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Security	Documents
<p>1) Radiant Towers GH01/A, Sector 74, NOIDA, Gautambuddh Nagar, Uttar Pradesh owned by Supertech.</p> <p>2) 4.682 acres at Badshalpur District Guragram Haryana owned by ASP Sarin Realty Pvt Ltd &amp; Attractive Impex Pvt Ltd</p> <p>3) 10 acres Khanpur, gadapur, Udampur, Uttarakhand owned by Supertech.</p> <p>4) Agreement to Mortgage 24 thousand sq mts located Crossing republic at NH 24, ghaziabad Uttar Pradesh</p> <p>5) Agreement to Mortgage 35.46 acres Khanpur, gadapur, Udampur, Uttarakhand.</p>	<p>1. Deed of Hypothecation May 14, 2019 by Supertech Ltd for receivables /movables Radiant Towers GH01/A, Sector 74, NOIDA, Gautambuddh Nagar, Uttar Pradesh.</p> <p>2. PoA for above DoH</p> <p>3. Deed of Hypothecation May 14, 2019 by ASP Sarin Realty Pvt Ltd &amp; Attractive Impex Pvt Ltd for receivables /movables related to 4.682 acres at Badshalpur District Guragram Haryana</p> <p>4. PoA for above DoH</p> <p>5. Deed of Hypothecation May 14, 2019 by Supertech Ltd for receivables /movables related land admeasuring 10 acres Khanpur, gadapur, Udampur, Uttarakhand</p> <p>6. PoA for above DoH</p> <p>7. Declaration &amp; MoE dated May 14, 2019 of Supertech Ltd for Radiant Towers GH01/A, Sector 74, NOIDA, Gautambuddh Nagar, Uttar Pradesh.</p> <p>8. Declaration &amp; MoE of dated May 14, 2019 ASP Sarin Realty Pvt Ltd &amp; Attractive Impex Pvt Ltd for to 4.682 acres at Badshalpur District Guragram Haryana.</p> <p>9. Declaration &amp; MoE of dated May 14, 2019 Supertech for land admeasuring 10 acres</p>

  
 Puchin Jauhari

  
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	<p>Khanpur, gadapur, Udhampur, Uttarakhand</p> <p>10. Agreement to Mortgage by Supertech Limited of Land admeasuring 24 thousand sq mts located Crossing republic at NH 24, ghaziabad Uttar Pradesh</p> <p>Agreement to Mortgage by Supertech Limited of Land admeasuring 35.46 acres Khanpur, gadapur, Udhampur, Uttarakhand.</p>
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Ruchi Finance Ltd.

**FORM C**  
**SUBMISSION OF CLAIM BY FINANCIAL CREDITORS**

(Under Regulation 8 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)

April 08, 2022

From

L&T Finance Limited,

**Registered Office:** 15th Floor, PS SRIJAN Tech Park, Plot No 52, Block DN, Sector-V, Salt Lake City, Kolkata – 700 091, District 24-Parganas North

**Corporate Office:** Brindavan, CST Road, Kalina, Santacruz East, Mumbai, Maharashtra 400098

**Delhi Office:** 5th Floor DCM Building, Barakhamba Road, Connaught Place, New Delhi - 110001

To

The Interim Resolution Professional / Resolution Professional

**Mr. Hitesh Goel**

**KPMG Restructuring Services LLP, Building**

No.10, Tower C, 8th Floor, DLF Cyber City,

Phase II Gurgaon , Haryana , 122002

**Email id: hiteshgoel@kpmg.com**

**Subject: Submission of claim and proof of claim.**

Madam/Sir,

L&T Finance Limited, hereby submits this claim in respect of the corporate insolvency resolution process of Supertech Limited. The details for the same are set out below:

Relevant Particulars		
(1)	(2)	(3)
1.	Name of the financial creditor	<b>L&amp;T Finance Limited</b> (L&T Infrastructure Finance Company Limited and L&T Housing Finance Limited have since been merged with L&T Finance Limited. The merger orders are attached herewith)
2.	Identification number of the financial creditor (If an incorporated body, provide identification number and proof of incorporation. If a partnership or individual provide identification records* of all the partners or the individual)	CIN : U65910WB1993FLC060810  The Financial Creditor is a Company incorporated under the provisions of the Companies Act, 1956, and is registered as a non-banking financial company (“NBFC”) with the Reserve Bank of India


  
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		(“RBI”). True copy of the Certificate of Incorporation of the Applicant /Financial Creditor is annexed herewith and marked as <b>Annexure 1</b> . True copy of the Applicant /Financial Creditor’s Certificate of Registration as NBFC is annexed herewith and marked as <b>Annexure 2</b> .
3.	Address and email address of the financial creditor for correspondence	L&T Finance Limited, 4 <sup>th</sup> Floor Brindavan, CST Road, Kalina, Santacruz East, Mumbai, Maharashtra 400098.  <a href="mailto:jaybhupali@ltfs.com">jaybhupali@ltfs.com</a> <a href="mailto:aparna.rawat@ltfs.com">aparna.rawat@ltfs.com</a> <a href="mailto:ruchirjauhari@ltfs.com">ruchirjauhari@ltfs.com</a>
4.	Details of claim, if it is made against corporate debtor as principal borrower:	NA
	(i) Amount of claim	
	(ii) Amount of claim covered by security interest, if any (Please provide details of security interest, the value of the security, and the date it was given) Please provide details of guarantee held, the value of the guarantee, and the date it was given)	NA
	(iii) Amount of claim covered by guarantee, if any	NA
	(iv) Name and address of the guarantor(s)	NA
5.	Details of claim, if it is made against corporate debtor as guarantor:	Rupees 2,47,99,43,863/- (Rupees Two Forty Seven Crore Ninety Nine Lakh Forty Three Thousand Eight Hundred and Sixty Three Only)
	(i) Amount of claim	
	(ii) Amount of claim covered by security interest, if any (Please provide details of security interest, the value of the security, and the date it was given)	Rupees 2,47,99,43,863/- (Rupees Two Forty Seven Crore Ninety Nine Lakh Forty Three Thousand Eight Hundred and Sixty Three Only)

  
 Ruchir Jauhari

  
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		Details of security interest as detailed in Annexure 4
	(iii) Amount of claim covered by guarantee, if any (Please provide details of guarantee held, the value of the guarantee, and the date it was given)	Rupees 2,47,99,43,863/- (Rupees Two Forty Seven Crore Ninety Nine Lakh Forty Three Thousand Eight Hundred and Sixty Three Only)
	(iv) Name and address of the principal borrower	Poise Realtech Private Limited 201, 3 <sup>rd</sup> Floor, Sagar Plaza II, Plot No.27, Community Centre, Pitampura, New Delhi East, 110034
6.	Details of claim, if it is made in respect of financial debt covered under clauses (h) and (i) of sub-section (8) of section 5 of the Code, extended by the creditor: (i) Amount of claim (ii) Name and address of the beneficiary	NIL
7.	Details of how and when debt incurred	As provided in Annexure 3.
8.	Details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim	NIL
9.	Details of the bank account to which the amount of the claim or any part thereof can be transferred pursuant to a resolution plan	L&T Finance 00600310037890 HDFC Bank – Gourd Floor Jehangir Building MG Road Fort Mumbai HDFC0000060

(Signature of financial creditor or person authorised to act on its behalf)

[Please enclose the authority if this is being submitted on behalf of the financial creditor]

Name in BLOCK LETTERS: **MR. RUCHIR JAUHARI**

Position with or in relation to creditor: **ZONAL HEAD- NORTH- REAL ESTATE FINANCE**

Address of person signing: 5th Floor DCM Building, Barakhamba Road, Connaught Place, New Delhi - 110001

\*PAN, passport, AADHAAR Card or the identity card issued by the Election Commission of India.

 Ruchir Jauhari

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**DECLARATION**

I, **RUCHIR JAUHARI**, Zonal Head- North- Real Estate Finance, L&T Finance Limited currently residing at 14/304, Eastend Apartments, Mayur Vihar, Phase 1, extension, New Delhi 110 096 do hereby declare and state as follows: -

1. Supertech Limited, the corporate debtor was, at the insolvency commencement date, being the 25<sup>th</sup> day of March 2022, actually indebted to L&T Finance Limited for a sum of Rupees 2,47,99,43,863/- (Rupees Two Forty Seven Crore Ninety Nine Lakh Forty Three Thousand Eight Hundred and Sixty Three Only).
2. In respect of my claim of the said sum or any part thereof, I have relied on the documents specified in Annexure 3 & 4.
3. The said documents are true, valid and genuine to the best of my knowledge, information and belief and no material facts have been concealed therefrom.
4. In respect of the said sum or any part thereof, neither I, nor any person, by my order, to my knowledge or belief, for my use, had or received any manner of satisfaction or security whatsoever, save and except the following: NIL.
5. I undertake to update my claim as and when the claim is satisfied, partly or fully, from any source in any manner, after the insolvency commencement date.
6. ~~I am~~ I am not a related party of the corporate debtor, as defined under section 5 (24) of the Code.
7. ~~I am eligible to join committee of creditors by virtue of proviso to section 21 (2) of the Code even though I am a related party of the corporate debtor.~~

Date: April 08, 2022

Place: New Delhi

  
(Signature of the claimant)

**VERIFICATION**

I, **RUCHIR JAUHARI** on behalf of the claimant hereinabove, do hereby verify that the contents of this proof of claim are true and correct to my knowledge and belief and no material fact has been concealed therefrom.

Verified at New Delhi on this 8<sup>th</sup> day of April 2022

  
(Signature of claimant)

**Annexure 3****Sl no 7 details of how and when the debt incurred**

- i. That Poise Realtech Private Limited (Borrower) availed two loans, aggregating to Rs.325 Crore (Loan 1 of Rs. 200 Crore Only and Loan 2 of Rupees 125 Crore Only) (collectively “Loan”) from L&T Finance Limited (L&T Infrastructure Finance Company Limited and L&T Housing Finance Limited have since been merged with L&T Finance Limited) on the terms and conditions contained in Sanction Letters dated December 06, 2019 Loan Agreements dated December 10, 2019. (*Copies of the Sanction Letters dated December 06, 2019 and Loan Agreements dated December 10, 2019 are annexed herewith*)
- ii. For securing the repayment of the Loan, amongst other securities, Supertech Limited has given a Corporate Guarantee dated December 10, 2019 in favour of SBI Cap Trustee Company Limited (acting as a Security Trustee for the benefit of L&T Finance Limited) guaranteeing the repayment of the entire outstanding under the Loan. (*Copy of Corporate Guarantee dated December 10, 2019 is annexed herewith*).



P. S. Jadhav

Annexure 4(Loan 1 – Rs.200 Crore)

Security	Documents
<p>first <i>pari passu</i> charge on:</p> <p>(i) the land, development rights, title and interest of Supertech Limited on land admeasuring 100 Acres forming part of Project I (residential group housing project “Upcountry” located as sector 17A, Yamuna Expressway, UP consisting of total saleable area of 55,83,549 sq ft), owned by Supertech Limited;</p> <p>(ii) the land, development rights, title and interest of Supertech Limited on land admeasuring 49 Acres forming part of means Project II (Capetown Villas project located in Sector 74, Noida, Uttar Pradesh consisting of 35 villas and saleable area of 2,49,968 square feet and shall include all phases as applicable), owned by Supertech Limited;</p> <p>(iii) entire movable assets, including but not limited to, plant and machinery, machinery spares, tools and accessories, both present and future, pertaining to the Projects, by Supertech Limited;</p> <p>(iv) all the rights, title, interest, benefits, claims and demands whatsoever of Supertech Limited and the Borrower in, to and under the Project Documents (including but not limited to Insurance Contracts, insurance proceeds and the Clearances), duly acknowledged and consented to by the counterparties to the Project Documents (if such Project Document requires prior consent of such counterparties) before the creation of security as within-mentioned, all as amended, varied or supplemented from time to time.</p> <p>(v) all the rights, title, interest, benefits, claims and demands whatsoever in the Identified Inventory by DEVYA PROP CON PVT LTD and Supertech Limited;</p> <p>(vi) Projects Escrow Accounts, Debt Service Reserve and any monies deposited therein including Projects Receivable or any account in substitution thereof (including permitted investments in lieu thereof), subject to provisions of Applicable Law; and</p> <p>(vii) Identified Inventory Escrow Account and any monies deposited therein including Identified Inventory Receivables or any account in substitution thereof (including permitted investments in lieu thereof), subject to provisions of Applicable Law.</p> <p>(b) An exclusive pledge over 100% (one hundred percent) paid up equity shares of Borrower held by the Promoter and Mr. Pramod</p>	<p>Share pledge agreement of Poise Realtech pvt ltd dated 10/12/2019</p> <p>Deed of Guarantee by Supertech dated 10/12/2019</p> <p>Share pledge agreement of Devya Propcon Pvt ltd dated 10/12/2019.</p> <p>POA of share pledge agreement of Poise realtech pvt ltd</p> <p>Security trustee agreement dated 10/12/2019</p> <p>Letter of continuity and DPN dated 10/12/2019 for INR 200 Crore loan</p> <p>Letter of continuity and DPN dated 10/12/2019 for INR 125 Crore loan.</p> <p>Declaration Deed(s) by Supertech</p> <p>DOH by SUPEPRTECH LIMITED</p> <p>POA by SUPEPRTECH LIMITED for DOH</p> <p>DOH executed by Poise</p> <p>Memorandum of Entry(s)</p> <p>Escrow Account.</p>

<p>Kumar Gupta, in favour of the Security Trustee for the benefit of the Lenders.</p> <p>(c) An exclusive pledge over 100% (one hundred percent) paid up equity shares of DEVYA PROP CON PVT LTD in favour of the Security Trustee for the benefit of the Lenders.</p> <p>(d) Personal guarantee by the Promoter in favour of the Security Trustee for the benefit of the Lenders.</p> <p>(e) Corporate guarantee by SUPEPRTECH LIMITED in favour of the Security Trustee for the benefit of the Lenders.</p> <p>Capitalised Terms used herein shall have the meaning assigned to them in the Loan Agreement.</p>	
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**(Loan 2 – Rs.125 Crore)**

Security	Documents
<p>a) first <i>pari passu</i> charge on:</p> <p>(i) the land, development rights, title and interest of Supertech Limited on land admeasuring 100 Acres forming part of Project I (residential group housing project “Upcountry” located as sector 17A, Yamuna Expressway, UP consisting of total saleable area of 55,83,549 sq ft), owned by Supertech Limited;</p> <p>(ii) the land, development rights, title and interest of Supertech Limited on land admeasuring 49 Acres forming part of means Project II (Capetown Villas project located in Sector 74, Noida, Uttar Pradesh consisting of 35 villas and saleable area of 2,49,968 square feet and shall include all phases as applicable), owned by Supertech Limited;</p> <p>(iii) entire movable assets, including but not limited to, plant and machinery, machinery spares, tools and accessories, both present and future, pertaining to the Projects, by Supertech Limited;</p> <p>(iv) all the rights, title, interest, benefits, claims and demands whatsoever of Supertech Limited and the Borrower in, to and under the Project Documents (including but not limited to Insurance Contracts, insurance proceeds and the Clearances), duly acknowledged and consented to by the counterparties to the Project Documents (if such Project Document requires prior consent of such counterparties) before the creation of security as within-mentioned, all as amended, varied or supplemented from time to time.</p> <p>(v) all the rights, title, interest, benefits, claims and demands whatsoever in the Identified Inventory by DEVYA PROP CON PVT LTD and Supertech Limited;</p>	<p>Share pledge agreement of Poise Realtech pvt ltd dated 10/12/2019</p> <p>Deed of Guarantee by Supertech dated 10/12/2019</p> <p>Share pledge agreement of Devya Propcon Pvt ltd dated 10/12/2019.</p> <p>POA of share pledge agreement of Poise realtech pvt ltd</p> <p>Security trustee agreement dated 10/12/2019</p> <p>Letter of continuity and DPN dated 10/12/2019 for INR 200 Crore loan</p> <p>Letter of continuity and DPN dated 10/12/2019 for INR 125 Crore loan.</p> <p>Declaration Deed~ by Supertech</p> <p>DOH by SUPEPRTECH LIMITED</p>





<p>(vi) Projects Escrow Accounts, Debt Service Reserve and any monies deposited therein including Projects Receivable or any account in substitution thereof (including permitted investments in lieu thereof), subject to provisions of Applicable Law; and</p> <p>(vii) Identified Inventory Escrow Account and any monies deposited therein including Identified Inventory Receivables or any account in substitution thereof (including permitted investments in lieu thereof), subject to provisions of Applicable Law.</p> <p>(b) An exclusive pledge over 100% (one hundred percent) paid up equity shares of Borrower held by the Promoter and Mr. Pramod Kumar Gupta, in favour of the Security Trustee for the benefit of the Lenders.</p> <p>(c) An exclusive pledge over 100% (one hundred percent) paid up equity shares of DEVYA PROPON PVT LTD in favour of the Security Trustee for the benefit of the Lenders.</p> <p>(d) Personal guarantee by the Promoter in favour of the Security Trustee for the benefit of the Lenders.</p> <p>(e) Corporate guarantee by SUPEPRTECH LIMITED in favour of the Security Trustee for the benefit of the Lenders.</p> <p>Capitalised Terms used herein shall have the meaning assigned to them in the Loan Agreement.</p>	<p>POA by SUPEPRTECH LIMITED for DOH</p> <p>DOH executed by Poise</p> <p>Memorandum of Entry</p>
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 *Rudra Chauhan*

**FORM C**  
**SUBMISSION OF CLAIM BY FINANCIAL CREDITORS**

(Under Regulation 8 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)

April 08, 2022

From

L&T Finance Limited,

**Registered Office:** 15th Floor, PS SRIJAN Tech Park, Plot No 52, Block DN, Sector-V, Salt Lake City, Kolkata – 700 091, District 24-Parganas North

**Corporate Office:** Brindavan, CST Road, Kalina, Santacruz East, Mumbai, Maharashtra 400098

**Delhi Office:** 5th Floor DCM Building, Barakhamba Road, Connaught Place, New Delhi - 110001

To

The Interim Resolution Professional / Resolution Professional

**Mr. Hitesh Goel**

**KPMG Restructuring Services LLP, Building**

No.10, Tower C, 8th Floor, DLF Cyber City,

Phase II Gurgaon , Haryana , 122002

**Email id: hiteshgoel@kpmg.com**

**Subject: Submission of claim and proof of claim.**

Madam/Sir,

L&T Finance Limited, hereby submits this claim in respect of the corporate insolvency resolution process of Supertech Limited. The details for the same are set out below:

Relevant Particulars		
(1)	(2)	(3)
1.	Name of the financial creditor	<b>L&amp;T Finance Limited</b>
2.	Identification number of the financial creditor (If an incorporated body, provide identification number and proof of incorporation. If a partnership or individual provide identification records* of all the partners or the individual)	<p>CIN : U65910WB1993FLC060810</p> <p>The Financial Creditor is a Company incorporated under the provisions of the Companies Act, 1956, and is registered as a non-banking financial company (“NBFC”) with the Reserve Bank of India (“RBI”). True copy of the Certificate of Incorporation of the Applicant /Financial Creditor is annexed herewith and marked as <b>Annexure 1</b>. True copy of the Applicant</p>





		/Financial Creditor's Certificate of Registration as NBFC is annexed herewith and marked as <b>Annexure 2</b> .
3.	Address and email address of the financial creditor for correspondence	L&T Finance Limited, 4 <sup>th</sup> Floor Brindavan, CST Road, Kalina, Santacruz East, Mumbai, Maharashtra 400098.  <a href="mailto:jaybhupali@ltfs.com">jaybhupali@ltfs.com</a> <a href="mailto:aparna.rawat@ltfs.com">aparna.rawat@ltfs.com</a> <a href="mailto:ruchirjauhari@ltfs.com">ruchirjauhari@ltfs.com</a>
4.	Details of claim, if it is made against corporate debtor as principal borrower:	NA
	(i) Amount of claim	
	(ii) Amount of claim covered by security interest, if any (Please provide details of security interest, the value of the security, and the date it was given) Please provide details of guarantee held, the value of the guarantee, and the date it was given)	NA
	(iii) Amount of claim covered by guarantee, if any	NA
	(iv) Name and address of the guarantor(s)	NA
5.	Details of claim, if it is made against corporate debtor as guarantor:	Rupees 131,70,80,249/- (Rupees One Hundred and Thirty One Crore Seventy Lakh Eighty Thousand Two Hundred and Forty Nine Only)
	(i) Amount of claim	
	(ii) Amount of claim covered by security interest, if any (Please provide details of security interest, the value of the security, and the date it was given)	Rupees 131,70,80,249/- (Rupees One Hundred and Thirty One Crore Seventy Lakh Eighty Thousand Two Hundred and Forty Nine Only).  Details mentioned at Annexure 4 Part A and B
	(iii) Amount of claim covered by guarantee, if any (Please provide details of guarantee held, the value of the guarantee, and the date it was given)	Rupees 131,70,80,249/- (Rupees One Hundred and Thirty One Crore Seventy Lakh

  
 Ruchir Jauhari

  
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		Eighty Thousand Two Hundred and Forty Nine Only)
	(iv) Name and address of the principal borrower	Perpendicular Construction Private Limited C-45, 62, Noida Gautum Buddha Nagar 201307 Uttar Pradesh
6.	Details of claim, if it is made in respect of financial debt covered under clauses (h) and (i) of sub-section (8) of section 5 of the Code, extended by the creditor: (i) Amount of claim (ii) Name and address of the beneficiary	NIL
7.	Details of how and when debt incurred	As provided in Annexure 3.
8.	Details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim	NIL
9.	Details of the bank account to which the amount of the claim or any part thereof can be transferred pursuant to a resolution plan	L&T Finance 00600310037890 HDFC Bank – Gourd Floor Jehangir Building MG Road Fort Mumbai HDFC0000060

(Signature of financial creditor or person authorised to act on its behalf)

[Please enclose the authority if this is being submitted on behalf of the financial creditor]

Name in BLOCK LETTERS: **MR. RUCHIR JAUHARI**

Position with or in relation to creditor: **ZONAL HEAD- NORTH- REAL ESTATE FINANCE**

Address of person signing: 5th Floor DCM Building, Barakhamba Road, Connaught Place, New Delhi - 110001

\*PAN, passport, AADHAAR Card or the identity card issued by the Election Commission of India.



### DECLARATION

I, **RUCHIR JAUHARI**, Zonal Head- North- Real Estate Finance currently residing at 14/304, Eastend Apartments, Mayur Vihar, Phase 1, extension, New Delhi 110 096 do hereby declare and state as follows: -

1. Supertech Limited, the corporate debtor was, at the insolvency commencement date, being the 25<sup>th</sup> day of March 2022, actually indebted to L&T Finance Limited for a sum of Rupees 1317080249/- (Rupees One Hundred and Thirty One Crore Seventy Lakh Eighty Thousand Two Hundred and Forty Nine Only).
2. In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below:
  - a Sanction Letter dated January 09, 2020 for Rs 90 Crore Loan and August 06, 2020 for Rs 50 Crore Loan;
  - b Loan Agreement dated January 14, 2020 for Rs 90 Crore Loan And September 10, 2020 for Rs 50 Crore Loan;
  - c Corporate Guarantee dated January 14, 2020 for Rs 90 Crore Loan December 10, 2020 for Rs 50 Crore Loan given by Supertech Limited;
  - d Guarantee Invocation Notice dated December 16, 2021;&
  - e Statement of Account as on March 25, 2022 for the Loan availed by Perpendicular Construction Private Limited (Borrower)
  - f Copy of the Unattested Deed of Hypothecation and Power of Attorney dated January 14, 2020;
  - g Share Pledge Agreement dated January 14, 2020;
  - h Deed of Hypothecation and Power of Attorney dated February 11, 2021;
  - i Memorandum of Entry and Director's Declaration dated November 23, 2020;
  - j Memorandum of Entry and Director's Declaration dated November 23, 2020;
  - k the Deed of Hypothecation and Power of Attorney dated February 11, 2021;&
  - l Share Pledge Agreement(s) dated September 10, 2020
3. The said documents are true, valid and genuine to the best of my knowledge, information and belief and no material facts have been concealed therefrom.
4. In respect of the said sum or any part thereof, neither I, nor any person, by my order, to my knowledge or belief, for my use, had or received any manner of satisfaction or security whatsoever, save and except the following: NIL.
5. I undertake to update my claim as and when the claim is satisfied, partly or fully, from any source in any manner, after the insolvency commencement date.
6. ~~I am~~ I am not a related party of the corporate debtor, as defined under section 5 (24) of the Code.
7. ~~I am eligible to join committee of creditors by virtue of proviso to section 21 (2) of the Code even though I am a related party of the corporate debtor.~~

Date: April 08, 2022

Place: New Delhi


  
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(Signature of the claimant)

VERIFICATION

I, **RUCHIR JAUHARI** the claimant hereinabove, do hereby verify that the contents of this proof of claim are true and correct to my knowledge and belief and no material fact has been concealed therefrom.

Verified at New Delhi on this 8<sup>th</sup> day of April, 2022

  
(Signature of claimant)

**Annexure 3**

**Sl no 7 details of how and when the debt incurred**

- i. That Perpendicular Construction Private Limited (Borrower) availed loan, amounting to Rs 90 Crore and Rs 50 Crore (Rupees Ninety Crore and Rupees Fifty Crore Only) (collectively “Loan”) from the L&T Finance Limited on the terms and conditions contained in Sanction Letter dated January 09, 2020 for Rs 90 Crore Loan and August 06, 2020 for Rs 50 Crore Loan & Loan Agreement dated January 14, 2020 for Rs 90 Crore Loan And September 10, 2020 for Rs 50 Crore Loan. *(A copy of the Sanction Letter dated January 09, 2020 for Rs 90 Crore Loan and August 06, 2020 for Rs 50 Crore Loan and Loan Agreement dated January 14, 2020 for Rs 90 Crore Loan And September 10, 2020 for Rs 50 Crore Loan is annexed herewith)*
- ii. For securing the repayment of the Loan amongst other securities Supertech Limited has given a Corporate Guarantee dated January 14, 2020 for Rs 90 Crore Loan and December 10, 2020 for Rs 50 Crore Loan was executed in favour of SBICap Trusteeship Limited (acting as a Security Trustee for the benefit of L&T finance Limited) guaranteeing the repayment entire Outstanding under the Loan. *(Copy of Corporate Guarantee dated January 14, 2020 for Rs 90 Crore Loan December 10, 2020 for Rs 50 Crore Loan is annexed herewith).*
- iii. As the Borrower failed to repay the amounts due the entire Loan was recalled and Corporate Guarantee invoked vide the CG Invocation Notices dated December 16, 2021. *(Copy of CG Invocation Notice dated December 16, 2021 is annexed herewith).*



**Annexure 4-Part-A**  
**SI No. 5(ii) Amount of claim covered by security interest, if any**  
**(90 crores Loan)**

For securing the repayment of the 90 Crore Loan amongst other securities,

- i. Perpendicular Construction Private Limited (“**Borrower**”) has hypothecated its Project Documents, recivables, rights title and intererst in Escrow and Debt Service Reserve Account including all receivables and cash flows therein along with uncalled capital in favour of SBI Cap Trustee Company Ltd. (security trustee acting for and on behalf of the Financial Creditor) vide an Unattested Deed of Hypothecation read with Power of Attorney dated January 14, 2020. *t. (Copy of the Unattested Deed of Hypothecation and Power of Attorney dated January 14, 2020 is annexed herewith).*
- ii. The shareholders of the Borrower, i.e.Mr. Mohit and Rajat Arora has pledged 100% equity of the Borrower in favour of the Financial Creditor vide Share Pledge Agreement dated January 14, 2020. *(Copy of the Share Pledge Agreement dated January 14, 2020 is annexed herewith).*

**Annexure 4-Part-B**  
**SI No. 5(ii) Amount of claim covered by security interest, if any 50 crores Loan)**

For securing the repayment of the 50 Crore Loan amongst other securities,

- i. Perpendicular Construction Private Limited (“**Borrower**”) has hypothecated its right, title and interest in plant and machinery and escrow account and receivables, in favour of SBI Cap Trustee Company Ltd. (security trustee acting for and on behalf of the Financial Creditor) vide Deed of Hypothecation read with Power of Attorney dated February 11, 2021 *(Copy of the Deed of Hypothecation and Power of Attorney dated February 11, 2021 is annexed herewith).*


*Handwritten signature*  


- ii. Palash Building Solutions Pvt. Ltd. mortgaged (by way of deposit of title deeds) certain parcels of immovable properties situated at revenue estate of village Samaspur, New Delhi along with all the construction both present and future in favour of SBI Cap Trustee Company Ltd. (security trustee acting for and on behalf of the Financial Creditor) vide Memorandum of Entry and Director's Declaration dated November 23, 2020. *(Copy of the Memorandum of Entry and Director's Declaration dated November 23, 2020 is annexed herewith).*
- iii. Goodtime Builders Pvt. Ltd. mortgaged (by way of deposit of title deeds) certain parcels of immovable properties situated at revenue estate of village Samaspur, New Delhi along with all the construction both present and future in favour of SBI Cap Trustee Company Ltd. (security trustee acting for and on behalf of the Financial Creditor) vide Memorandum of Entry and Director's Declaration dated November 23, 2020. *(Copy of the Memorandum of Entry and Director's Declaration dated November 23, 2020 is annexed herewith).*
- iv. Goodtime Builders Pvt. Ltd. and Palash Building Solutions has hypothecated their right, title and interest in project documents, escrow account and receivables, in favour of SBI Cap Trustee Company Ltd. (security trustee acting for and on behalf of the Financial Creditor) vide Deed of Hypothecation read with Power of Attorney dated February 11, 2021 *(Copy of the Deed of Hypothecation and Power of Attorney dated February 11, 2021 is annexed herewith).*
- v. The Supertech Limited & other Shareholders of Borrower, Goodtime Builders Pvt. Ltd. and Palash Building Solutions Pvt Ltd the has pledged 100% equity of the Borrower, Goodtime Builders Pvt. Ltd. and Palash Building Solutions Pvt Ltd in favour of the Financial Creditor vide Share Pledge Agreement(s) dated September 10, 2020. *(Copy of the Share Pledge Agreement(s) dated September 10, 2020 are annexed herewith).*

  
Ruchin Jauhari

  
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vi.



**FORM C**  
**SUBMISSION OF CLAIM BY FINANCIAL CREDITORS**

(Under Regulation 8 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)

April 08, 2022

From

L&T Finance Limited,

**Registered Office:** 15th Floor, PS SRIJAN Tech Park, Plot No 52, Block DN, Sector-V, Salt Lake City, Kolkata – 700 091, District 24-Parganas North

**Corporate Office:** Brindavan, CST Road, Kalina, Santacruz East, Mumbai, Maharashtra 400098

**Delhi Office:** 5th Floor DCM Building, Barakhamba Road, Connaught Place, New Delhi - 110001

To

The Interim Resolution Professional / Resolution Professional

**Mr. Hitesh Goel**

**KPMG Restructuring Services LLP, Building**

No.10, Tower C, 8th Floor, DLF Cyber City,

Phase II Gurgaon , Haryana , 122002

**Email id: hiteshgoel@kpmg.com**

**Subject: Submission of claim and proof of claim.**

Madam/Sir,

L&T Finance Limited, hereby submits this claim in respect of the corporate insolvency resolution process of Supertech Limited. The details for the same are set out below:

Relevant Particulars		
(1)	(2)	(3)
1.	Name of the financial creditor	<b>L&amp;T Finance Limited</b> (L&T Infrastructure Finance Company Limited and L&T Housing Finance Limited have since been merged with L&T Finance Limited. The merger orders are attached herewith)
2.	Identification number of the financial creditor (If an incorporated body, provide identification number and proof of incorporation. If a partnership or individual provide identification records* of all the partners or the individual)	CIN : U65910WB1993FLC060810  The Financial Creditor is a Company incorporated under the provisions of the Companies Act, 1956, and is registered as a non-banking financial company (“NBFC”) with the Reserve Bank of India

  
*Ruchin Jauhari*

  
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		(“RBI”). True copy of the Certificate of Incorporation of the Applicant /Financial Creditor is annexed herewith and marked as <b>Annexure 1</b> . True copy of the Applicant /Financial Creditor’s Certificate of Registration as NBFC is annexed herewith and marked as <b>Annexure 2</b> .
3.	Address and email address of the financial creditor for correspondence	L&T Finance Limited, 4 <sup>th</sup> Floor Brindavan, CST Road, Kalina, Santacruz East, Mumbai, Maharashtra 400098.  <a href="mailto:jaybhupali@ltfs.com">jaybhupali@ltfs.com</a> <a href="mailto:aparna.rawat@ltfs.com">aparna.rawat@ltfs.com</a> <a href="mailto:ruchirjauhari@ltfs.com">ruchirjauhari@ltfs.com</a>
4.	Details of claim, if it is made against corporate debtor as principal borrower:	NA
	(i) Amount of claim	
	(ii) Amount of claim covered by security interest, if any (Please provide details of security interest, the value of the security, and the date it was given) Please provide details of guarantee held, the value of the guarantee, and the date it was given)	NA
	(iii) Amount of claim covered by guarantee, if any	NA
	(iv) Name and address of the guarantor(s)	NA
5.	Details of claim, if it is made against corporate debtor as guarantor:	Rupees 100,89,56,076/- (Rupees One Hundred Crores Eighty Nine Lakhs Fifty Six Thousand and Seventy Six Only)
	(i) Amount of claim	
	(ii) Amount of claim covered by security interest, if any (Please provide details of security interest, the value of the security, and the date it was given)	Rupees 100,89,56,076/- (Rupees One Hundred Crores Eighty Nine Lakhs Fifty Six Thousand and Seventy Six Only)

  
 Ruchir Jauhari

  
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		Details of Security in Annexure 4
	(iii) Amount of claim covered by guarantee, if any (Please provide details of guarantee held, the value of the guarantee, and the date it was given)	Rupees 100,89,56,076/- (Rupees One Hundred Crores Eighty Nine Lakhs Fifty Six Thousand and Seventy Six Only)
	(iv) Name and address of the principal borrower	Coast Realtors Private Limited A-8B, Second Floor Friends Colony East, New Delhi 110065
6.	Details of claim, if it is made in respect of financial debt covered under clauses (h) and (i) of sub-section (8) of section 5 of the Code, extended by the creditor: (i) Amount of claim (ii) Name and address of the beneficiary	NIL
7.	Details of how and when debt incurred	As provided in Annexure 3.
8.	Details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim	NIL
9.	Details of the bank account to which the amount of the claim or any part thereof can be transferred pursuant to a resolution plan	L&T Finance 00600310037890 HDFC Bank – Gourd Floor Jehangir Building MG Road Fort Mumbai HDFC0000060

(Signature of financial creditor or person authorised to act on its behalf)

[Please enclose the authority if this is being submitted on behalf of the financial creditor]

Name in BLOCK LETTERS: **MR. RUCHIR JAUHARI**

Position with or in relation to creditor: **ZONAL HEAD- NORTH- REAL ESTATE FINANCE**

Address of person signing: 5th Floor DCM Building, Barakhamba Road, Connaught Place, New Delhi - 110001

\*PAN, passport, AADHAAR Card or the identity card issued by the Election Commission of India.





**DECLARATION**

I, **RUCHIR JAUHARI**, Zonal Head- North- Real Estate Finance, L&T Finance Limited currently residing at 14/304, Eastend Apartments, Mayur Vihar, Phase 1, extension, New Delhi 110096, do hereby declare and state as follows: -

1. Supertech Limited, the corporate debtor was, at the insolvency commencement date, being the 25<sup>th</sup> day of March 2022, actually indebted to L&T Finance Limited for a sum of Rupees 100,89,56,076/- (Rupees One Hundred Crores Eighty Nine Lakhs Fifty Six Thousand and Seventy Six Only).
2. In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below:
  - a Sanction Letter dated December 27, 2019;
  - b Loan Agreement dated December 30, 2019;
  - c Corporate Guarantee dated Decemebr 30, 2019 given by Supertech Limited;
  - d Guarantee Invocation Notice dated December 15, 2021;
  - e Statement of Account as on March 25, 2022 for the Loan availed by Coast Realtors Private Limited (Borrower) Memorandum of Entry dated 31 May 2021 by Coast Realtors Private Limited in favour of Axis Trustee Services Limited;
  - f Declaration dated 31 May 2021 by Mr. Nitish Kumar Arora, authorised signatory of Coast Realtors Private Limited;
  - g Unattested Share Pledge Agreement dated 30 December 2019;&
  - h Deed of Hypothecation dated 30 December 2019.
3. The said documents are true, valid and genuine to the best of my knowledge, information and belief and no material facts have been concealed therefrom.
4. In respect of the said sum or any part thereof, neither I, nor any person, by my order, to my knowledge or belief, for my use, had or received any manner of satisfaction or security whatsoever, save and except the following: NIL.
5. I undertake to update my claim as and when the claim is satisfied, partly or fully, from any source in any manner, after the insolvency commencement date.
6. ~~I am~~ / I am not a related party of the corporate debtor, as defined under section 5 (24) of the Code.
7. ~~I am eligible to join committee of creditors by virtue of proviso to section 21 (2) of the Code even though I am a related party of the corporate debtor.~~

Date: April 08, 2022

Place: New Delhi

  
(Signature of the claimant)

**VERIFICATION**

I, **RUCHIR JAUHARI** the claimant hereinabove, do hereby verify that the contents of this proof of claim are true and correct to my knowledge and belief and no material fact has been concealed therefrom.

Verified at New Delhi on this 8<sup>th</sup> day of April 2022

  
(Signature of claimant)

\*\*\*

**Annexure 3**

**Sl no 7 Details of How and When the Debt Incurred**

- i. That Coast Realtors Private Limited (“Borrower”) availed loan, amounting to Rs 100 Crore (Rupees One Hundred Crore Only) (“Loan”) from the L&T Finance Limited (erstwhile L&T Housing Finance Limited) on the terms and conditions contained in the Sanction Letter dated December 27, 2019 & Loan Agreement dated December 30, 2019. (A copy of the Sanction Letter dated December 27, 2019 Loan Agreement dated December 30, 2019 is annexed herewith)
- ii. For securing the repayment of the Loan amongst other securities, Supertech Limited had given a Corporate Guarantee dated Decemebr 30, 2019 which was executed in favour of Axis Trustee Services Limited (acting as a Security Trustee for the benefit of L&T Finance Limited (erstwhile L&T Housing Finance Limited)) guaranteeing the repayment of the entire Outstanding under the Loan. *(Copy of Corporate Guarantee dated Decemebr 30, 2019 is annexed herewith).*
- iii. As the Borrower failed to repay the amounts due, the entire Loan was recalled and Corporate Guarantee invoked vide the CG Invocation Notice dated December 15, 2021. *(Copy of CG Invocation Notice dated December 15, 2021 is annexed herewith).*

  
Ruchir Jauhari

Annexure 4Security Details

S.No.	Document	Security
1.	Memorandum of Entry dated 31 May 2021 by Coast Realtors Private Limited in favour of Axis Trustee Services Limited	All unsold inventory (80 flats and villas), which have been acquired by the Borrower in the project titled "Radiant Tower" admeasuring 3,37,280 (Three lakh Thirty-Seven Thousand Two Hundred and Eighty) sq. ft. located in Sector 74, Noida, Uttar Pradesh along with present and future construction thereon.
2.	Declaration dated 31 May 2021 by Mr. Nitish Kumar Arora, authorised signatory of Coast Realtors Private Limited	All unsold inventory (80 flats and villas), which have been acquired by the Borrower in the project titled "Radiant Tower" admeasuring 3,37,280 (Three Lakh Thirty-Seven Thousand Two Hundred and Eighty) sq. ft. located in Sector 74, Noida, Uttar Pradesh, India along with present and future construct on thereon.
3.	Unattested Share Pledge Agreement dated 30 December 2019	Exclusive charge over the Pledged Shares representing 100% (one hundred percent) fully paid up share capital (with voting rights) of the Coast Realtors Private Limited by Nitish Kumar Arora and Govind Singh Bisht in favour of the Axis Trustee Services Limited
4.	Deed of Hypothecation dated 30 December 2019	Coast Realtors Private Limited hypothecates, assigns, conveys and charge in favour of Axis Trustee Services Limited (for the benefit of the Secured Parties) all rights, title, interest, benefit, claims and demands whatsoever of the Borrower, in, to, under and/or in respect of the Project Documents in relation to the Mortgaged Properties.  All rights, title, interest, benefit claims and demands whatsoever of the Escrow Account and Debt Service Reserve account



Ruchin Chauhan

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		<p>all amounts owing to, and received by, the Borrower and all rights, title, interest, benefits, claims and demands whatsoever of the Borrower in, to or in respect of all amounts owing to, and received by, the Borrower for the Mortgaged Properties, both present and future including Borrower's uncalled capital, which description shall include all properties of the above description whether presently in existence or acquired hereafter</p>
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Panch Finance Ltd.  
Panch Finance Ltd.

**FORM C**  
**SUBMISSION OF CLAIM BY FINANCIAL CREDITORS**

(Under Regulation 8 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)

April 08, 2022

From

L&T Finance Limited,

**Registered Office:** 15th Floor, PS SRIJAN Tech Park, Plot No 52, Block DN, Sector-V, Salt Lake City, Kolkata – 700 091, District 24-Parganas North

**Corporate Office:** Brindavan, CST Road, Kalina, Santacruz East, Mumbai, Maharashtra 400098

**Delhi Office:** 5th Floor DCM Building, Barakhamba Road, Connaught Place, New Delhi - 110001

To

The Interim Resolution Professional / Resolution Professional

**Mr. Hitesh Goel**

**KPMG Restructuring Services LLP, Building**

No.10, Tower C, 8th Floor, DLF Cyber City,

Phase II Gurgaon , Haryana , 122002

**Email id: hiteshgoel@kpmg.com**

**Subject: Submission of claim and proof of claim.**

Madam/Sir,

L&T Finance Limited, hereby submits this claim in respect of the corporate insolvency resolution process of Supertech Limited. The details for the same are set out below:

Relevant Particulars		
(1)	(2)	(3)
1.	Name of the financial creditor	<b>L&amp;T Finance Limited</b> (L&T Infrastructure Finance Company Limited and L&T Housing Finance Limited have since been merged with L&T Finance Limited the merger orders are attached herewith)
2.	Identification number of the financial creditor (If an incorporated body, provide identification number and proof of incorporation. If a partnership or individual provide identification records* of all the partners or the individual)	CIN : U65910WB1993FLC060810  The Financial Creditor is a Company incorporated under the provisions of the Companies Act, 1956, and is registered as a non-banking financial company (“NBFC”) with the Reserve Bank of India

  
Ruchin Jaiswal

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		(“RBI”). True copy of the Certificate of Incorporation of the Applicant /Financial Creditor is annexed herewith and marked as <b>Annexure 1</b> . True copy of the Applicant /Financial Creditor’s Certificate of Registration as NBFC is annexed herewith and marked as <b>Annexure 2</b> .
3.	Address and email address of the financial creditor for correspondence	L&T Finance Limited, 4 <sup>th</sup> Floor Brindavan, CST Road, Kalina, Santacruz East, Mumbai, Maharashtra 400098.  <a href="mailto:jaybhupali@ltfs.com">jaybhupali@ltfs.com</a> <a href="mailto:aparna.rawat@ltfs.com">aparna.rawat@ltfs.com</a> <a href="mailto:ruchirjauhari@ltfs.com">ruchirjauhari@ltfs.com</a>
4.	Details of claim, if it is made against corporate debtor as principal borrower:	NA
	(i) Amount of claim	
	(ii) Amount of claim covered by security interest, if any (Please provide details of security interest, the value of the security, and the date it was given) Please provide details of guarantee held, the value of the guarantee, and the date it was given)	NA
	(iii) Amount of claim covered by guarantee, if any	NA
	(iv) Name and address of the guarantor(s)	NA
5.	Details of claim, if it is made against corporate debtor as guarantor:	
	(i) Amount of claim	Rupees 197,47,85,711/- (Rupees One Hundred and Ninety Seven Crore Forty Seven Lakh Eighty Five Thousand Seven Hundred and Eleven Only)
	(ii) Amount of claim covered by security interest, if any (Please provide details of security interest, the value of the security, and the date it was given)	Rupees 197,47,85,711/- (Rupees One Hundred and Ninety Seven Crore Forty Seven Lakh Eighty Five

  
 Ruchir Jauhari

  
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		Thousand Seven Hundred and Eleven Only). Details of Security are provided in Annexure 4.
	(iii) Amount of claim covered by guarantee, if any (Please provide details of guarantee held, the value of the guarantee, and the date it was given)	Rupees 197,4,785,711/- (Rupees One Hundred and Ninety Seven Crore Forty Seven Lakh Eighty Five Thousand Seven Hundred and Eleven Only)
	(iv) Name and address of the principal borrower	Brownish Realty Private Limited C-45, 62, Noida Gautum Buddha Nagar 201307
6.	Details of claim, if it is made in respect of financial debt covered under clauses (h) and (i) of sub-section (8) of section 5 of the Code, extended by the creditor: (i) Amount of claim (ii) Name and address of the beneficiary	NIL
7.	Details of how and when debt incurred	As provided in Annexure 3.
8.	Details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim	NIL
9.	Details of the bank account to which the amount of the claim or any part thereof can be transferred pursuant to a resolution plan	L&T Finance 00600310037890 HDFC Bank – Gourd Floor Jehangir Building MG Road Fort Mumbai HDFC0000060

(Signature of financial creditor or person authorised to act on its behalf)

[Please enclose the authority if this is being submitted on behalf of the financial creditor]

Name in BLOCK LETTERS: **MR. RUCHIR JAUHARI**

Position with or in relation to creditor: **ZONAL HEAD- NORTH- REAL ESTATE FINANCE**

Address of person signing: 5th Floor DCM Building, Barakhamba Road, Connaught Place, New Delhi - 110001

\*PAN, passport, AADHAAR Card or the identity card issued by the Election Commission of India.

 Ruchir Jauhari

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**DECLARATION**

I, **RUCHIR JAUHARI**, Zonal Head- North- Real Estate Finance currently residing at 14/304, Eastend Apartments, Mayur Vihar, Phase 1, extension, New Delhi 110 096 authorised signatory for L&T Finance Limited do hereby declare and state as follows: -

1. Supertech Limited , the corporate debtor was, at the insolvency commencement date, being the 25<sup>th</sup> day of March 2022, actually indebted to L&T Finance Limited for a sum of Rupees 197,47,85,711/- (Rupees One Hundred and Ninety Seven Crore Forty Seven Lakh Eighty Five Thousand Seven Hundred and Eleven Only).
2. In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below:
  - a Sanction Letter dated January 08, 2020;
  - b Loan Agreement dated January 14, 2020;
  - c Corporate Guarantee dated January 14, 2020 given by Supertech Limited;
  - d Guarantee Invocation Notice dated December 16, 2021 &
  - e Statement of Account as on March 25, 2022 for the Loan availed by Brownish Realty Private Limited (Borrower).
  - f Memorandum of Entry dated January 01, 2021
  - g Share Pledge Agreement dated January 14, 2020
  - h Deed of Hypothecation Dated January 14, 2020
3. The said documents are true, valid and genuine to the best of my knowledge, information and belief and no material facts have been concealed therefrom.
4. In respect of the said sum or any part thereof, neither I, nor any person, by my order, to my knowledge or belief, for my use, had or received any manner of satisfaction or security whatsoever, save and except the following: NIL.
5. I undertake to update my claim as and when the claim is satisfied, partly or fully, from any source in any manner, after the insolvency commencement date.
6. I am / I am not a related party of the corporate debtor, as defined under section 5 (24) of the Code.
7. ~~I am eligible to join committee of creditors by virtue of proviso to section 21 (2) of the Code even though I am a related party of the corporate debtor.~~

Date: April 08, 2022

Place: New Delhi



(Signature of the claimant)

**VERIFICATION**

I, **RUCHIR JAUHARI on behalf of L&T Finance Limited** the claimant hereinabove, do hereby verify that the contents of this proof of claim are true and correct to my knowledge and belief and no material fact has been concealed therefrom.

Verified at New Delhi on this 8<sup>th</sup> day of April 2022



(Signature of claimant)

[Note: In the case of company or limited liability partnership, the declaration and verification shall be made by the director/manager/secretary/designated partner and in the case of other entities, an officer authorised for the purpose by the entity.]

  
Ruchir Jauhari

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**Annexure 3****Sl no 7 details of how and when the debt incurred**

- i. That Brownish Realty Private Limited (Borrower) availed loan, amounting to Rs 185 Crore (Rupees One Hundred and Eighty Five Crore Only) (“Loan”) from the L&T Finance Limited on the terms and conditions contained in Sanction Letter dated January 08, 2020 & Loan Agreement dated January 14, 2020. *(A copy of the Sanction Letter dated January 08, 2020 and Loan Agreement dated January 14, 2020 is annexed herewith)*
- ii. For securing the repayment of the Loan amongst other securities, Supertech Limited has given a Corporate Guarantee dated January 14, 2020 executed in favour of SBICap Trustee Company Limited (acting as a Security Trustee for the benefit of L&T Finance Limited) guaranteeing the repayment of the entire Outstanding under the Loan. *(Copy of Corporate Guarantee dated January 14, 2020 is annexed herewith).*
- iii. As the Borrower failed to repay the amounts due, the entire Loan was recalled and Corporate Guarantee invoked vide the CG Invocation Notice dated December 16, 2021. *(Copy of CG Invocation Notice dated December 16, 2021 is annexed herewith).*



Annexure 4Security Details

<u>Sl No</u>	<u>Document</u>	<u>Security</u>
1.	Memorandum of Entry dated January 01, 2021	All unsold inventory (flats and villas), which have been acquired by the Borrower in the project titled " <b>Eco Village I</b> ", admeasuring 7,09,561 (seven lakh nine thousand five hundred and sixty one) sq. ft., located at Sector-01, Noida Extension, Greater Noida, Uttar Pradesh along with present and future construction thereon, more particularly described in the MoE
2.	Share Pledge Agreement dated January 14, 2020	exclusive charge over the shares representing 100% (one hundred percent) fully paid up share capital (with voting rights) of the Brownish realty Pvt ltd
3.	Deed of Hypothecation Dated January 14, 2020	Exclusive First charge on all rights, title, interest, benefit, claims, demands and benefits to all monies receivable thereunder (both present and future) of the Borrower, in, to, under and/or in respect of the Project Documents, to which the Borrower is a party, all as varied, amended and supplemented from time to time; all the rights, title, interest, benefits, claims and demands whatsoever of the Borrower in the Clearances relating to the Project; all the rights, title, interest, benefits, claims and demands whatsoever of the Borrower in any letter of credit, contractor's guarantee, liquidated damages, guarantee or performance bond provided by any party to the Project Documents, and the Clearances to the extent capable of assignment hereto including without limitation, the right to compel performance thereunder, and to substitute, or to be substituted for, the Borrower thereunder, to further assign any of the Project Documents and the Clearances to any person and to commence and conduct either in the name of the Borrower or in its own name or otherwise any proceedings against any person in respect of any breach of the Contracts and/or the Clearances, all the rights, title, interest, benefits, claims and demands whatsoever of the Borrower in any letter of credit, guarantees, performance bonds and liquidated damages provided by any party to the Project Documents, which description shall include all properties of the above description whether presently in existence or acquired hereafter (collectively, the " <b>First Hypothecated Property</b> "); (b) all rights, title, interest, benefits, claims and demands whatsoever (both present and future) of the Borrower in, to, under and inrespect of the Escrow Account together with any investments of the Borrower that may be permitted by the



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		<p>Lenders, Debt Service Reserve and all other assets and securities which represent all amounts in the Escrow Account and all the moneys, securities, instruments, investments and other properties deposited in, credited to or required to be deposited in or credited to or lying to the credit of the Escrow Accounts or liable to be credited to the Escrow Accounts in relation to the Project (hereinafter referred to as the "<b>Charged Accounts</b>") and all the moneys lying to the credit of such Charged Accounts or liable to be credited to such Charged Accounts in relation of the Project, which description shall include all properties of the above description whether presently in existence or acquired hereafter (collectively, the "<b>Second Hypothecated Property</b>"); and</p> <p>(c) all amounts owing to, and received by, the Borrower and all rights, title, interest, benefits, claims and demands whatsoever of the Borrower in, to or in respect of the Project Receivables and all amounts owing to, and received by, the Borrower for the Project, both present and future including Borrower's uncalled capital, which description shall include all properties of the above description whether presently in existence or acquired hereafter (collectively, the "<b>Third Hypothecated Properties</b>").</p>
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**FORM C**  
**SUBMISSION OF CLAIM BY FINANCIAL CREDITORS**

(Under Regulation 8 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)

April 08, 2022

From

L&T Finance Limited,

**Registered Office:** 15th Floor, PS SRIJAN Tech Park, Plot No 52, Block DN, Sector-V, Salt Lake City, Kolkata – 700 091, District 24-Parganas North

**Corporate Office:** Brindavan, CST Road, Kalina, Santacruz East, Mumbai, Maharashtra 400098

**Delhi Office:** 5th Floor DCM Building, Barakhamba Road, Connaught Place, New Delhi - 110001

To

The Interim Resolution Professional / Resolution Professional

**Mr. Hitesh Goel**

**KPMG Restructuring Services LLP, Building**

No.10, Tower C, 8th Floor, DLF Cyber City,

Phase II Gurgaon , Haryana , 122002

**Email id: hiteshgoel@kpmg.com**

**Subject: Submission of claim and proof of claim.**

Madam/Sir,

L&T Finance Limited, hereby submits this claim in respect of the corporate insolvency resolution process of Supertech Limited. The details for the same are set out below:

Relevant Particulars		
(1)	(2)	(3)
1.	Name of the financial creditor	<b>L&amp;T Finance Limited</b> (L&T Infrastructure Finance Company Limited and L&T Housing Finance Limited have since been merged with L&T Finance Limited. The merger orders are attached herewith)
2.	Identification number of the financial creditor (If an incorporated body, provide identification number and proof of incorporation. If a partnership or individual provide identification records* of all the partners or the individual)	CIN : U65910WB1993FLC060810  The Financial Creditor is a Company incorporated under the provisions of the Companies Act, 1956, and is registered as a non-banking financial company (“NBFC”) with the Reserve Bank of India





		(“RBI”). True copy of the Certificate of Incorporation of the Applicant /Financial Creditor is annexed herewith and marked as <b>Annexure 1</b> . True copy of the Applicant /Financial Creditor’s Certificate of Registration as NBFC is annexed herewith and marked as <b>Annexure 2</b> .
3.	Address and email address of the financial creditor for correspondence	L&T Finance Limited, 4 <sup>th</sup> Floor Brindavan, CST Road, Kalina, Santacruz East, Mumbai, Maharashtra 400098.  <a href="mailto:jaybhupali@ltfs.com">jaybhupali@ltfs.com</a> <a href="mailto:aparna.rawat@ltfs.com">aparna.rawat@ltfs.com</a> <a href="mailto:ruchirjauhari@ltfs.com">ruchirjauhari@ltfs.com</a>
4.	Details of claim, if it is made against corporate debtor as principal borrower:	NA
	(i) Amount of claim	
	(ii) Amount of claim covered by security interest, if any (Please provide details of security interest, the value of the security, and the date it was given) Please provide details of guarantee held, the value of the guarantee, and the date it was given)	NA
	(iii) Amount of claim covered by guarantee, if any	NA
	(iv) Name and address of the guarantor(s)	NA
5.	Details of claim, if it is made against corporate debtor as guarantor:	Rupees 247,55,35,096/- (Rupees Two Hundred and Forty Seven Crores Fifty Five Lakhs Thirty Five Thousand and Ninety Six only)
	(i) Amount of claim	
	(ii) Amount of claim covered by security interest, if any (Please provide details of security interest, the value of the security, and the date it was given)	Rupees 247,55,35,096/- (Rupees Two Hundred and Forty Seven Crores Fifty Five Lakhs Thirty Five Thousand and Ninety Six only)

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Ruchir Jauhari  
L&T Finance Limited



		Details of Security in Annexure 4
	(iii) Amount of claim covered by guarantee, if any (Please provide details of guarantee held, the value of the guarantee, and the date it was given)	Rupees 247,55,35,096/- (Rupees Two Hundred and Forty Seven Crores Fifty Five Lakhs Thirty Five Thousand and Ninety Six only)
	(iv) Name and address of the principal borrower	Coast Town Planners Private Limited A-8B, Second Floor Friends Colony East, New Delhi 110065
6.	Details of claim, if it is made in respect of financial debt covered under clauses (h) and (i) of sub-section (8) of section 5 of the Code, extended by the creditor: (i) Amount of claim (ii) Name and address of the beneficiary	NIL
7.	Details of how and when debt incurred	As provided in Annexure 3.
8.	Details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim	NIL
9.	Details of the bank account to which the amount of the claim or any part thereof can be transferred pursuant to a resolution plan	L&T Finance 00600310037890 HDFC Bank – Gourd Floor Jehangir Building MG Road Fort Mumbai HDFC0000060
(Signature of financial creditor or person authorised to act on its behalf) [Please enclose the authority if this is being submitted on behalf of the financial creditor]		
Name in BLOCK LETTERS: <b>MR. RUCHIR JAUHARI</b>		
Position with or in relation to creditor: <b>ZONAL HEAD- NORTH- REAL ESTATE FINANCE</b>		
Address of person signing: 5th Floor DCM Building, Barakhamba Road, Connaught Place, New Delhi - 110001		

\*PAN, passport, AADHAAR Card or the identity card issued by the Election Commission of India.

**DECLARATION**

I, **RUCHIR JAUHARI**, Zonal Head- North- Real Estate Finance L&T Finance Limited currently residing at 14/304, Eastend Apartments, Mayur Vihar, Phase 1, extension, New Delhi 110 096 do hereby declare and state as follows: -

1. Supertech Limited , the corporate debtor was, at the insolvency commencement date, being the 25<sup>th</sup> day of March 2022, actually indebted to L&T Finance Limited for a sum of Rupees 247,55,35,096/- (Rupees Two Hundred and Forty Seven Crores Fifty Five Lakhs Thirty Five Thousand and Ninety Six Only).
2. In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below:
  - a Sanction Letter dated December 18, 2019;
  - b Loan Agreement dated December 30, 2019;
  - c Corporate Guarantee dated Decemeber 30, 2019 given by Supertech Limited;
  - d Guarantee Invocation Notice dated December 15, 2021;
  - e Statement of Account as on March 25, 2022 for the Loan availed by Coast Town Planners Private Limited (Borrower);
  - f Memorandum of Entry dated 31 May 2021;
  - g Declaration dated 31 May 2021 by Mr. Nitish Kumar Arora, authorised signatory of Coast Town Planners Private Limited;
  - h Share Pledge Agreement dated 30 December 2019 ;&
  - i Unattested Deed of Hypothecation dated 30 December 2019.
3. The said documents are true, valid and genuine to the best of my knowledge, information and belief and no material facts have been concealed therefrom.
4. In respect of the said sum or any part thereof, neither I, nor any person, by my order, to my knowledge or belief, for my use, had or received any manner of satisfaction or security whatsoever, save and except the following: NIL.
5. I undertake to update my claim as and when the claim is satisfied, partly or fully, from any source in any manner, after the insolvency commencement date.
6. ~~I am~~ I am not a related party of the corporate debtor, as defined under section 5 (24) of the Code.
7. ~~I am eligible to join committee of creditors by virtue of proviso to section 21 (2) of the Code even though I am a related party of the corporate debtor.~~

Date: April 04, 2022

Place: New Delhi

  
 (Signature of the claimant)

VERIFICATION

  
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I, **RUCHIR JAUHARI** the claimant hereinabove, do hereby verify that the contents of this proof of claim are true and correct to my knowledge and belief and no material fact has been concealed therefrom.

Verified at New Delhi on this 8<sup>th</sup> day of April 2022

  
(Signature of claimant)

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**Annexure 3****Sl no 7 details of how and when the debt incurred**

- i. That Coast Town Planners Private Limited (Borrower), availed loan, amounting to INR 215 Crore (Rupees Two Hundred and Fifteen Crores Only) (“**Loan**”) from L&T Finance Limited on the terms and conditions contained in Sanction Letter dated December 18, 2019 & Loan Agreement dated December 30, 2019. *(A copy of the Sanction Letter dated December 18, 2019 Loan Agreement dated December 30, 2019 is annexed herewith)*
- ii. For securing the repayment of the Loan amongst other securities Supertech Limited had given a Corporate Guarantee dated Decemeber 30, 2019 was executed in favour of Axis Trustee Services Limited (acting as a Security Trustee for the benefit of L&T finance Limited) guaranteeing the repayment entire Outstanding under the Loan. *(Copy of Corporate Guarantee dated Decemeber 30, 2019 is annexed herewith).*
- iii. As the Borrower failed to repay the amounts due the entire Loan was recalled and Corporate Guarantee invoked vide the CG Invocation Notice dated December 15, 2021. *(Copy of CG Invocation Notice dated December 15, 2021 is annexed herewith).*



Ruchir Jauhari

**Annexure 4**  
**Security Details**

<b>S.No.</b>	<b>Document</b>	<b>Security</b>
1.	Memorandum of Entry dated 31 May 2021	All unsold inventory (258 flats and villas), which have been acquired by the Borrower in the project titled "Northeye" admeasuring 4,36,696 (Four Lakh Thirty-Six Thousand Six Hundred and Ninety-Six) sq. ft. located in Sector 74, Noida, Uttar Pradesh, India along with present and future construction thereon,
2.	Declaration dated 31 May 2021 by Mr. Nitish Kumar Arora, authorised signatory of Coast Town Planners Private Limited	All unsold inventory (258 flats and villas), which have been acquired by the Borrower ip the project titled "Northeye" admeasuring 4,36,696 (Four Lakh Thirty-Six Thousand Six Hundred and Ninety-Six) sq. ft. located in Sector 74, Noida, Uttar Pradesh, India along with present and future construction thereon,
3.	Share Pledge Agreement dated 30 December 2019	Exclusive charge over the Pledged Shares representing 100% (one hundred percent) fully paid up share capital (with voting rights) of Coast Town Planners Private Limited Nitish Kumar Arora and Amrish Kumar Chauhan in favour of the Axis Trustee Services Limited
4.	Unattested Deed of Hypothecation dated 30 December 2019	Coast Town Planners Private Limited hypothecates, assigns, conveys and charge in favour of Axis Trustee Services Limited (for the benefit of the Secured Parties) all rights, title, interest, benefit, claims and demands whatsoever of the Borrower, in, to, under and/or in respect of the Project Documents in relation to the Mortgaged Properties  All rights, title, interest, benefit, claims and demands whatsoever of the Escrow Account and Debt Service Reserve account

  
 Amrish Chauhan

  
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		all amounts owing to, and received by, the Borrower and all rights, title, interest, benefits, claims and demands whatsoever of the Borrower in, to or in respect of all amounts owing to, and received by, the Borrower for the Mortgaged Properties, both present and future including Borrower's uncalled capital, which description shall include all properties of the above description whether presently in existence or acquired hereafter
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**FORM C**  
**SUBMISSION OF CLAIM BY FINANCIAL CREDITORS**

(Under Regulation 8 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)

April 08, 2022

From

L&T Finance Limited,

**Registered Office:** 15th Floor, PS SRIJAN Tech Park, Plot No 52, Block DN, Sector-V, Salt Lake City, Kolkata – 700 091, District 24-Parganas North

**Corporate Office:** Brindavan, CST Road, Kalina, Santacruz East, Mumbai, Maharashtra 400098

**Delhi Office:** 5th Floor DCM Building, Barakhamba Road, Connaught Place, New Delhi - 110001

To

The Interim Resolution Professional / Resolution Professional

**Mr. Hitesh Goel**

**KPMG Restructuring Services LLP, Building**

No.10, Tower C, 8th Floor, DLF Cyber City,

Phase II Gurgaon , Haryana , 122002

**Email id: hiteshgoel@kpmg.com**

**Subject: Submission of claim and proof of claim.**

Madam/Sir,

L&T Finance Limited, hereby submits this claim in respect of the corporate insolvency resolution process of Supertech Limited. The details for the same are set out below:

Relevant Particulars		
(1)	(2)	(3)
1.	Name of the financial creditor	<b>L&amp;T Finance Limited</b> (L&T Infrastructure Finance Company Limited and L&T Housing Finance Limited have since been merged with L&T Finance Limited the merger orders are attached herewith)
2.	Identification number of the financial creditor (If an incorporated body, provide identification number and proof of incorporation. If a partnership or individual provide identification records* of all the partners or the individual)	CIN : U65910WB1993FLC060810  The Financial Creditor is a Company incorporated under the provisions of the Companies Act, 1956, and is registered as a non-banking financial company (“NBFC”) with the Reserve Bank of India

  
Ruchin Jha

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		("RBI"). True copy of the Certificate of Incorporation of the Applicant /Financial Creditor is annexed herewith and marked as <b>Annexure 1</b> . True copy of the Applicant /Financial Creditor's Certificate of Registration as NBFC is annexed herewith and marked as <b>Annexure 2</b> .
3.	Address and email address of the financial creditor for correspondence	L&T Finance Limited, 4 <sup>th</sup> Floor Brindavan, CST Road, Kalina, Santacruz East, Mumbai, Maharashtra 400098.  <a href="mailto:jaybhupali@ltfs.com">jaybhupali@ltfs.com</a> <a href="mailto:aparna.rawat@ltfs.com">aparna.rawat@ltfs.com</a> <a href="mailto:ruchirjauhari@ltfs.com">ruchirjauhari@ltfs.com</a>
4.	Details of claim, if it is made against corporate debtor as principal borrower:	NA
	(i) Amount of claim	
	(ii) Amount of claim covered by security interest, if any (Please provide details of security interest, the value of the security, and the date it was given) Please provide details of guarantee held, the value of the guarantee, and the date it was given)	NA
	(iii) Amount of claim covered by guarantee, if any	NA
	(iv) Name and address of the guarantor(s)	NA
5.	Details of claim, if it is made against corporate debtor as guarantor:	Rupees 245,24,89,015/- (Rupees Two Hundred and Forty Five Crore, Twenty Four lakh Eighty Nine Thousand and Fifteen Only)
	(i) Amount of claim	
	(ii) Amount of claim covered by security interest, if any (Please provide details of security interest, the value of the security, and the date it was given)	Rupees 245,24,89,015/- (Rupees Two Hundred and Forty Five Crore, Twenty Four lakh Eighty Nine Thousand and Fifteen Only. Details of Security are at Annexure 4

  
 Ruchir Jauhari

  
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	(iii) Amount of claim covered by guarantee, if any (Please provide details of guarantee held, the value of the guarantee, and the date it was given)	Rupees 245,24,89,015/- (Rupees Two Hundred and Forty Five Crore, Twenty Four lakh Eighty Nine Thousand and Fifteen Only.
	(iv) Name and address of the principal borrower	Mabsoot Buildhomes India Private Limited having its registered office at A-SB, Second Floor Friends Colony East, New ~Delhi 110065.
6.	Details of claim, if it is made in respect of financial debt covered under clauses (h) and (i) of sub-section (8) of section 5 of the Code, extended by the creditor: (i) Amount of claim (ii) Name and address of the beneficiary	NIL.
7.	Details of how and when debt incurred	As provided in Annexure 3.
8.	Details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim	NIL
9.	Details of the bank account to which the amount of the claim or any part thereof can be transferred pursuant to a resolution plan	L&T Finance 00600310037890 HDFC Bank – Gourd Floor Jehangir Building MG Road Fort Mumbai HDFC0000060

(Signature of financial creditor or person authorised to act on its behalf)

[Please enclose the authority if this is being submitted on behalf of the financial creditor]

Name in BLOCK LETTERS: **MR. RUCHIR JAUHARI**

Position with or in relation to creditor: **ZONAL HEAD- NORTH- REAL ESTATE FINANCE**

Address of person signing: 5th Floor DCM Building, Barakhamba Road, Connaught Place, New Delhi - 110001

\*PAN, passport, AADHAAR Card or the identity card issued by the Election Commission of India.

 Ruchir Jauhari

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**DECLARATION**

I, **RUCHIR JAUHARI**, Zonal Head- North- Real Estate Finance currently residing at 14/304, Eastend Apartments, Mayur Vihar, Phase 1, extension, New Delhi 110 096 do hereby declare and state as follows: -

1. Supertech Limited , the corporate debtor was, at the insolvency commencement date, being the 25<sup>th</sup> day of March 2022, actually indebted to L&T Finance Limited for a sum of Rupees 245,24,89,015/- (Rupees Two Hundred and Forty Five Crore, Twenty Four lakh Eighty Nine Thousand and Fifteen Only)
2. In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below:
  - a Sanction Letter dated December 18 2019;
  - b Loan Agreement dated December 30, 2019;
  - c Corporate Guarantee dated December 30, 2019 given by Supertech Limited;
  - d Guarantee Invocation Notice dated December 15, 2021;
  - e Statement of Account as on March 25, 2022 for the Loan availed by Mabsoot Buildhomes India Private Limited
  - f Unattested Deed of Hypothecation dated December 30, 2019;
  - g Share Pledge Agreement dated December 30, 2019; &
  - h Memorandum of Entry recording Mortgage by Deposit of Title Deeds dated May 31,2021.
3. The said documents are true, valid and genuine to the best of my knowledge, information and belief and no material facts have been concealed therefrom.
4. In respect of the said sum or any part thereof, neither I, nor any person, by my order, to my knowledge or belief, for my use, had or received any manner of satisfaction or security whatsoever, save and except the following: NIL.
5. I undertake to update my claim as and when the claim is satisfied, partly or fully, from any source in any manner, after the insolvency commencement date.
6. ~~I am~~ I am not a related party of the corporate debtor, as defined under section 5 (24) of the Code.
7. ~~I am eligible to join committee of creditors by virtue of proviso to section 21 (2) of the Code even though I am a related party of the corporate debtor.~~

Date: April 08, 2022

Place: New Delhi

  
(Signature of the claimant)

**VERIFICATION**

I, **RUCHIR JAUHARI** the claimant hereinabove, do hereby verify that the contents of this proof of claim are true and correct to my knowledge and belief and no material fact has been concealed therefrom.

Verified at Delhi on this 8th day of April , 2022

  
(Signature of claimant)

**Annexure 3**

**Sr no 7 details of how and when the debt incurred**

- i. That Mabsot Buildhomes India Private Limited (“**Borrower**”), availed loan, amounting to INR 215 Crore (Rupees Two Hundred and Fifteen Crores) (“**Loan**”) from the L&T Finance Limited on the terms and conditions contained in Sanction Letter dated December 18, 2019 & Loan Agreement dated December 30, 2019. *(A copy of the Sanction Letter December 18, 2019 dated Loan Agreement dated December 30, 2019 is annexed herewith)*
- ii. For securing the repayment of the Loan amongst other securities Supertech Limited had given a Corporate Guarantee dated December 30, 2019 was executed in favour of Axis Trustee Services Limited (acting as a Security Trustee for the benefit of L&T finance Limited) guaranteeing the repayment entire Outstanding under the Loan. *(Copy of Corporate Guarantee Dated December 30, 2019 is annexed herewith).*
- iii. As the Borrower failed to repay the amounts due the entire Loan was recalled and Corporate Guarantee invoked vide the CG Invocation Notice dated December 15, 2021. *(Copy of CG Invocation Notice December 15, 2021 is annexed herewith).*

  
Ruchir Jauhari

Annexure 4

Sr No	Document	Security
1	Unattested Deed of Hypothecation dated December 30, 2019	<p>All rights, title, interest, benefit claims and demands whatsoever of the Borrower, in, to, under and,/or in respect of the Project Documents in relation to the Mortgaged Properties (including any contractor guarantees, liquidated damages, performance bonds, termination payments and letters of credit that may be provided by any counter party to the Project Documents) in relation to the Mortgaged Properties, and the Clearances, licenses, permits, approvals, consents hereto in respect of the Mortgaged Properties (to the extent capable of assignment under Applicable Law and the satisfaction of the Lender(s) including, without limitation, the right to compel performance thereunder, and to substitute, or to be substituted for, the Borrower thereunder, and to commence and conduct either in the name of the Borrower or in its own name or otherwise any proceedings against any Person in respect of any breach of the Project Documents in relation to the Mortgaged Properties, all their contracts and agreements relating to the Mortgaged Properties. All licences, permits, approvals, assignments, concessions, consents and the Clearances to the extent capable of assignment under Applicable Law and, including without limitation, rights and benefits to all amounts owing to, or received by, the Borrower and all claims thereunder and all other claims of the Borrower under or in any proceedings against all or any such Persons and together with the right to further assign any of the Project Documents in relation to the Mortgaged Properties, all their contracts and agreements relating to the Mortgaged Properties all licences, permits, approvals, assignments, concessions, consents and the Clearances to the extent capable of assignment to any Person which description shall include all properties of the above description whether presently in existence or acquired hereafter (collectively, the “First Hypothecated Property”);</p> <p>all rights, title, interest benefit claims and demands whatsoever of the Escrow Account and Debt Service Reserve account including without limitation all rights, title, interest, benefit, claims and demands whatsoever of the Escrow Account and Debt Service Reserve account including all operating cash flows and Receivables from the Mortgaged Properties and all other assets and securities which represent all amounts on such accounts and all the moneys, securities, instruments, investments, and other properties deposited in, credited to or required to be deposited in or credited to or lying to the credit of the Escrow Account and Debt Service Reserve account or liable to be credited to such accounts, (all these accounts are collectively referred to as the “Charged Accounts”) and all the moneys lying to the credit of such Charged Accounts or liable to be credited to such Charged Accounts, which description shall include all properties of the above description whether presently in existence or acquired hereafter (collectively, the “Second Hypothecated Property”);</p>

  
 PwC Finance Limited  
 PwC Finance Limited

  
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		all amounts owing to, and received by, the Borrower and all rights, title, interest, benefits, claims and demands whatsoever of the Borrower in, to or in respect of all amounts owing to, and received by, the Borrower for the Mortgaged Properties, both present and future including Borrower's uncalled capital, which description shall include all properties of the above description whether presently in existence or acquired hereafter (collectively, the Third Hypothecated Property")
2	Share Pledge Agreement dated December 30, 2019	Exclusive charge over the pledged shares representing 100% (one hundred percent) fully paid up share capital (with voting rights) of the Borrower.
3	Memorandum of Entry recording Mortgage by Deposit of Title Deeds dated May 31, 2021	All Unsold inventory (624 flats & villas) which have been acquired by the Borrower in the Project titled "Northeye" with total super area admeasuring 3,70,913 sq.ft located in Plot no GH-01, Sector 74, Noida, Uttar Pradesh India along with present and future construction thereon.

  
 Rudin Jauhari

**FORM C**  
**SUBMISSION OF CLAIM BY FINANCIAL CREDITORS**  
 (Under Regulation 8 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)

April 18, 2022

From

L&T Finance Limited,

**Registered Office:** 15th Floor, PS SRIJAN Tech Park, Plot No 52, Block DN, Sector V, Salt Lake City, Kolkata – 700 091, District 24-Parganas North

**Corporate Office:** Brindavan, CST Road, Kalina, Santacruz East, Mumbai, Maharashtra 400098

**Delhi Office:** 5th Floor DCM Building, Barakhamba Road, Connaught Place, New Delhi - 110001

To

The Interim Resolution Professional / Resolution Professional

**Mr. Hitesh Goel**

**KPMG Restructuring Services LLP, Building**

No.10, Tower C, 8th Floor, DLF Cyber City,

Phase II Gurgaon , Haryana , 122002

**Email id: hiteshgoel@kpmg.com**

**Subject: Submission of claim and proof of claim.**

Madam/Sir,

L&T Finance Limited, hereby submits this claim in respect of the corporate insolvency resolution process of Supertech Limited. The details for the same are set out below:

Relevant Particulars		
(1)	(2)	(3)
1.	Name of the financial creditor	<b>L&amp;T Finance Limited</b>
2.	Identification number of the financial creditor (If an incorporated body, provide identification number and proof of incorporation. If a partnership or individual provide identification records* of all the partners or the individual)	CIN : U65910WB1993FLC060810  The Financial Creditor is a Company incorporated under the provisions of the Companies Act, 1956, and is registered as a non-banking financial company ("NBFC") with the Reserve Bank of India ("RBI"). True copy of the Certificate of Incorporation of the Applicant /Financial Creditor is annexed herewith and marked as <b>Annexure 1</b> . True copy of the Applicant

*Rupendra Kumar*  


*Asst*  
**TRUE COPY**

		/Financial Creditor's Certificate of Registration as NBFC is annexed herewith and marked as <b>Annexure 2</b> .
3.	Address and email address of the financial creditor for correspondence	L&T Finance Limited, 4 <sup>th</sup> Floor Brindavan, CST Road, Kalina, Santacruz East, Mumbai, Maharashtra 400098.  <a href="mailto:jaybhupali@ltfs.com">jaybhupali@ltfs.com</a> <a href="mailto:aparna.rawat@ltfs.com">aparna.rawat@ltfs.com</a> <a href="mailto:rachirjauhari@ltfs.com">rachirjauhari@ltfs.com</a>
4.	Details of claim, if it is made against corporate debtor as principal borrower:	NA
	(i) Amount of claim	
	(ii) Amount of claim covered by security interest, if any (Please provide details of security interest, the value of the security, and the date it was given) Please provide details of guarantee held, the value of the guarantee, and the date it was given)	NA
	(iii) Amount of claim covered by guarantee, if any	NA
	(iv) Name and address of the guarantor(s)	NA
5.	Details of claim, if it is made against corporate debtor as guarantor:	Rupees 3820555042 /- (Rupees Three Hundred Eighty Two Crores Five Lacs Fifty Five Thousand and Forty Two Only)
	(i) Amount of claim	
	(ii) Amount of claim covered by security interest, if any (Please provide details of security interest, the value of the security, and the date it was given)	Rupees 3820555042 /- (Rupees Three Hundred Eighty Two Crores Five Lacs Fifty Five Thousand and Forty Two Only) Details mentioned at Annexure 4
	(iii) Amount of claim covered by guarantee, if any (Please provide details of guarantee held, the value of the guarantee, and the date it was given)	Rupees 3820555042 /- (Rupees Three Hundred Eighty Two Crores Five Lacs Fifty Five Thousand and Forty Two Only)

Rachir Jauhari



As per  
TRUE COPY

	(iv) Name and address of the principal borrower	1. Ajnara India Ltd. D-247/26, Sector 63, Noida, Uttar Pradesh-201301 ("Ajnara") 2. IVR Prime Developers Pvt. Ltd., M-22/3RT, Vijaya Nagar Colony, Hyderabad, Telangana-500057 ("IVR")
6.	Details of claim, if it is made in respect of financial debt covered under clauses (h) and (i) of sub-section (8) of section 5 of the Code, extended by the creditor: (i) Amount of claim (ii) Name and address of the beneficiary	As above at sl no 5.
7.	Details of how and when debt incurred	As provided in Annexure 3.
8.	Details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim	NIL
9.	Details of the bank account to which the amount of the claim or any part thereof can be transferred pursuant to a resolution plan	L&T Finance 00600310037890 HDFC Bank – Gourd Floor Jehangir Building MG Road Fort Mumbai HDFC0000060

*Ruchir Jauhari*

(Signature of financial creditor or person authorised to act on its behalf)

[Please enclose the authority if this is being submitted on behalf of the financial creditor]

Name in BLOCK LETTERS: **MR. RUCHIR JAUHARI**

Position with or in relation to creditor: **ZONAL HEAD- NORTH- REAL ESTATE FINANCE**

Address of person signing: 5th Floor DCM Building, Barakhamba Road, Connaught Place, New Delhi - 110001

\*PAN, passport, AADHAAR Card or the identity card issued by the Election Commission of India.

*Ruchir Jauhari*



*As per*  
**TRUE COPY**



**DECLARATION**

I, **RUCHIR JAUHARI**, Zonal Head- North- Real Estate Finance currently residing at 14/304, Eastend Apartments, Mayur Vihar, Phase 1, extension, New Delhi 110 096 do hereby declare and state as follows. -

1. Supertech Limited, the corporate debtor was, at the insolvency commencement date, being the 25<sup>th</sup> day of March 2022, actually indebted to L&T Finance Limited for a sum of Rupees 3820555042 /- (Rupees Three Hundred Eighty Two Crores Five Lacs Fifty Five Thousand and Forty Two Only).
2. In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below:
  - a Sanction Letters dated May 26, 2017;
  - b Loan Agreement dated June 09, 2017;
  - c Corporate Guarantee dated June 09, 2017 given by Supertech Limited;
  - &
  - d Statement of Account as on March 25, 2022 for the Loan availed by Ajnara and IVR (Borrowers)
3. The said documents are true, valid and genuine to the best of my knowledge, information and belief and no material facts have been concealed therefrom.
4. In respect of the said sum or any part thereof, neither I, nor any person, by my order, to my knowledge or belief, for my use, had or received any manner of satisfaction or security whatsoever, save and except the following: NIL.
5. I undertake to update my claim as and when the claim is satisfied, partly or fully, from any source in any manner, after the insolvency commencement date.
6. I am / I am not a related party of the corporate debtor, as defined under section 5 (24) of the Code.
7. ~~I am eligible to join committee of creditors by virtue of proviso to section 21 (2) of the Code even though I am a related party of the corporate debtor.~~

Date:  
Place:

*Ruchir Jauhari*  
(Signature of the claimant)

**VERIFICATION**

I, **RUCHIR JAUHARI** the claimant hereinabove, do hereby verify that the contents of this proof of claim are true and correct to my knowledge and belief and no material fact has been concealed therefrom.

Verified at ... on this ..... day of ....., 20....

*Ruchir Jauhari*  
(Signature of claimant)



[Note: In the case of company or limited liability partnership, the declaration and verification shall be made by the director/manager/secretary/designated partner and in the case of other entities, an officer authorised for the purpose by the entity.]

*Asst*  
**TRUE COPY**

**Annexure 3**

**Sl no. 7 details of how and when the debt incurred**

- i. That Ajnara and IVR (Borrowers):  
availed loan amounting to Rs 350 Crore (Rupees Three Hundred and Fifty Crores Only) ("Loan") from L&T Finance Limited on the terms and conditions contained in Sanction Letters dated May 26, 2017 & Loan Agreement dated June 09, 2017 (*A copy of the Sanction Letters dated May 26, 2017 and Loan Agreement dated June 09, 2017 is annexed herewith*).
- ii. For securing the repayment of the Loan amongst other securities Supertech Limited has given a Corporate Guarantee dated June 09, 2017 executed in favour of the Financial Creditor guaranteeing the repayment entire Outstanding under the Loan. (*Copy of Corporate Guarantee dated June 09, 2017 is annexed herewith*).

**Annexure 4**

**Sl No. 5(ii) Amount of claim covered by security interest, if any**

For securing the repayment of the Loan amongst other securities,

- i. Ajnara has hypothecated its Project Documents, rights title and interest in Escrow and Debt Service Reserve Account including all project receivables and cash flows therein in favour of the Financial Creditor vide an Unattested Deed of Hypothecation read with Power of Attorney dated June 09, 2017. (*Copy of the Unattested Deed of Hypothecation and Power of Attorney dated June 09, 2017 is annexed herewith*).

  
Ruchi Jain

- ii. Ajnara has pledged 50% equity of IVR in favour of the Financial Creditor vide Share Pledge Agreement dated October 25, 2017. *(Copy of the Share Pledge Agreement dated October 25, 2017 is annexed herewith).*
- iii. Achal Infrastructure Pvt. Ltd. mortgaged (by way of deposit of title deeds) certain parcels of immovable properties admeasuring 67 Bigha 10 Biswa (appx. 16.67 Acres) situated at revenue estate of Village Asalatpur Khawad, Tehsil Najafgarh (Palam), New Delhi together with all buildings and structures (attached thereto future and present) in favour of Vistra ITCL India Ltd. (security trustee acting for and on behalf of the Financial Creditor) vide Memorandum of Entry and Director's Declaration dated July 02, 2020. *(Copy of the Memorandum of Entry and Director's Declaration dated July 02, 2020 is annexed herewith).*
- iv. Ajnara mortgaged (by way of deposit of title deeds) a plot of land admeasuring 85391 Sq.mts. situated at Plot No. GH—04, Sector 22-A, at Yamuna Expressway Industrial Development Area, District Gautam Budh Nagar, Uttar Pradesh together with all buildings and structures (attached thereto future and present) in the Project Ajnara Panorama in favour of Vistra ITCL India Ltd. (security trustee acting for and on behalf of the Financial Creditor) vide Memorandum of Deposit of Title Deeds and Director's Declaration dated July 02, 2020. *(Copy of the Memorandum of Entry and Director's Declaration dated July 02, 2020 is annexed herewith).*
- v. Achal Infrastructure Pvt. Ltd. has hypothecated its fixed assets, current assets, receivables, TDR, Escrow Accounts, debt service reserve account and assignment of rights, title and interest in the project documents pertaining to its project at Najafgarh (pls refer point iii above), in favour of Vistra ITCL India Ltd. (security trustee acting for and on behalf of the Financial Creditor) vide Unattested Amended and Restated Deed of

  
Ruchin Jaiswal

*As per*  
**TRUE COPY**

Hypothecation read with Power of Attorney dated July 02, 2020 (*Copy of the Deed of Hypothecation and Power of Attorney dated July 02, 2020 is annexed herewith*).

- vi. Ajanara has hypothecated its fixed assets, current assets, receivables, TDR, Escrow Accounts, debt service reserve account and assignment of rights, title and interest in the project documents pertaining to its project at Ajanara Ambrosia (residential project at GH-01, Sector 18, Noida, UP), in favour of Vistra ITCL India Ltd. (security trustee acting for and on behalf of the Financial Creditor) vide Unattested Amended and Restated Deed of Hypothecation read with Power of Attorney dated July 02, 2020 (*Copy of the Deed of Hypothecation and Power of Attorney dated July 02, 2020 is annexed herewith*).

A handwritten signature in blue ink, "Rishu Jaiswal", is written over a circular purple stamp. The stamp contains the text "Vistra Finance Limited" around the top edge and "187\*" at the bottom.

**Maithili Moondra**

**From:** CIRP Supertech Non Eco-Village 2 <cirpsupertech.nonev2@gmail.com>  
**Sent:** 16 November 2022 20:45  
**To:** jaybhupali@ltfs.com  
**Cc:** Hitesh Goel; teamsupertech  
**Subject:** L&T Housing Finance Limited (LTHF) - Financial Creditor Claim update

Dear Ma'am/Sir,

This is to inform you that the Corporate Insolvency Resolution Process ("**CIRP**") has been initiated against M/s. Supertech Limited ("**Supertech**", "**Corporate Debtor**", "**CD**") under the provisions of Insolvency and Bankruptcy Code, 2016 ("**IBC**") by an order of National Company Law Tribunal, New Delhi – Bench VI, dated March 25, 2022 ("**Admission order**", "**Insolvency Commencement Date**").

It is further pertinent to bring it to your knowledge that while directing initiation of the CIRP, the Hon'ble NCLT appointed the undersigned as the Interim Resolution Professional (hereinafter, "**IRP**") for the Corporate Debtor in terms of the provisions of the IBC.

On October 14th 2022, Ld. NCLAT passed an order that:

"2. ....The IRP is to receive the claims and verify the same. The projects are many but looking into the facts of the present case, the verifications need to be completed by the IRP and the Status Report regarding the claims may be submitted by the next date."

Please note that in furtherance to the claim verification process, against the claim submitted by you for INR **19,635,316,080** we are admitting INR **18,957,734,490** after verifying and reconciling your claim and supporting documents with the books of the Corporate Debtor.

Name of Borrower	Project Name	Type of Facility	Amount claimed	Amount of claim admitted
Supertech Limited	Eco village I; North eye, Capetown; Crown tower; Upcountry	Term Loan	4,105,971,029	3,744,127,210
<b>Total (A)</b>			<b>4,105,971,029</b>	<b>3,744,127,210</b>
Poise Realtech Pvt. Ltd	Up Country & Capetown	Corporate Guarantee	2,479,943,863	2,390,641,134
Perpendicular Construction Pvt Ltd	Eco-Village-II, III & Golf Country	Corporate Guarantee	1,317,080,249	1,285,873,611
Coast Realtors Pvt Ltd	Radiant Tower	Corporate Guarantee	1,008,956,076	984,691,720
Brownish Reality Pvt Ltd	Eco-Village-I	Corporate Guarantee	1,974,785,711	1,922,464,610
Coast Town planners Pvt ltd	North Eye	Corporate Guarantee	2,475,535,096	2,416,508,664
Mabsoot Buildhomes India Pvt Ltd	North Eye	Corporate Guarantee	2,452,489,015	2,392,872,500
Ajnara & IVR Prime developers	Ajnara Ambrosia Ajnara Panorama	Corporate Guarantee	3,820,555,040	3,820,555,040
<b>Total (B)</b>			<b>15,529,345,051</b>	<b>15,213,607,280</b>
<b>Grand Total (A+B)</b>			<b>19,635,316,080</b>	<b>18,957,734,490</b>

For any queries, you may email us or contact the undersigned.

Mr. Brijesh Manglunia +91-9757479757  
 Mr. Rohit Soni + 91-9617208822

Kind Regards,

**Authorized representative**

For or on behalf of Hitesh Goel

**Interim Resolution Professional of Supertech Limited**

Insolvency Professional Registration no.: IBBI/IPA-001/IP-P01405/2018-2019/12224  
 AFA Certificate Number: AA1/12224/02/160223/103895 (Valid till 16 February 2023)

Registered Address: -  
 C4/1002 The Legend Apartments,  
 Sector 57, Gurgaon,

*Asst*  
**TRUE COPY**

Haryana ,122011

E-mail: [iphiteshgoel@gmail.com](mailto:iphiteshgoel@gmail.com)

Correspondence Address:

Supertech Limited

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

Sector - 96, Noida, Gautam Buddha Nagar,

Uttar Pradesh – 201303

E-mail: [cirpsupertech.nonev2@gmail.com](mailto:cirpsupertech.nonev2@gmail.com)

*Asl*  
**TRUE COPY**

Your cooperation in the above matter would be highly appreciated.

**Regards,**  
**IRP team**

**ANNEXURE A-7 (COLLY)**

On Thu, Dec 1, 2022 at 2:43 PM <[cirpsupertech.nonev2@gmail.com](mailto:cirpsupertech.nonev2@gmail.com)> wrote:

Dear Gaurav,

Please find attached files for your reference and then let's have a discussion. Additionally, we request you to share detailed excel working of your claims.

Regards,

IRP Team

---

**From:** Gaurav Luhadia <[gauravluhadia@ltfs.com](mailto:gauravluhadia@ltfs.com)>

**Sent:** Thursday, December 1, 2022 1:20 PM

**To:** [cirpsupertech.nonev2@gmail.com](mailto:cirpsupertech.nonev2@gmail.com)

**Cc:** Ruchir Jauhari <[ruchirjauhari@ltfs.com](mailto:ruchirjauhari@ltfs.com)>; Aparna Rawat <[aparna.rawat@ltfs.com](mailto:aparna.rawat@ltfs.com)>; Jay Bhupali <[jaybhupali@ltfs.com](mailto:jaybhupali@ltfs.com)>; Hitesh Goel <[iphiteshgoel@gmail.com](mailto:iphiteshgoel@gmail.com)>; teamsupertech <[teamsupertech@alvarezandmarsal.com](mailto:teamsupertech@alvarezandmarsal.com)>

**Subject:** Re: L&T Housing Finance Limited (LTHF) - Financial Creditor Claim update

131

Dear Sir,

We wish to have further discussion on the amount that has been approved as per trail mail

----- Forwarded message -----

From: **CIRP Supertech Non Eco-Village 2** <[cirpsupertech.nonev2@gmail.com](mailto:cirpsupertech.nonev2@gmail.com)>

Date: Wed, 16 Nov 2022 at 8:44 PM

Subject: [REDACTED] Financial Limited (TFUE) Financial Control System



**Maithili Moondra**

---

**From:** CIRP Supertech Non Eco-Village 2 <cirpsupertech.nonev2@gmail.com>  
**Sent:** 06 December 2022 12:26  
**To:** Gaurav Luhadia  
**Cc:** Ruchir Jauhari; Aparna Rawat; Jay Bhupali; Hitesh Goel; teamsupertech  
**Subject:** Re: L&T Housing Finance Limited (LTHF) - Financial Creditor Claim update

Dear Gaurav,

We had provisionally admitted the amounts as per the balance in the books of account. For us to verify further, we will again request you to please share the detailed excel working based on which the claims have been filed by your goodself.

This will help us in understanding your calculation and reconcile the claim amounts better. It would be highly appreciated if the same could be shared by today EOD.

**Regards,  
 IRP team**

On Tue, Dec 6, 2022 at 9:42 AM Gaurav Luhadia <[gauravluhadia@ltfs.com](mailto:gauravluhadia@ltfs.com)> wrote:

Hi,  
 Can you help us understand the reason for not considering delayed payment interest and other charges in your working

On Mon, Dec 5, 2022 at 4:25 PM CIRP Supertech Non Eco-Village 2 <[cirpsupertech.nonev2@gmail.com](mailto:cirpsupertech.nonev2@gmail.com)> wrote:  
 Dear Gaurav,

Request you to please share the details by EOD today for us to complete our reconciliation and share the status ahead.

Your cooperation in the above matter would be highly appreciated.

**Regards,  
 IRP team**

On Thu, Dec 1, 2022 at 2:43 PM <[cirpsupertech.nonev2@gmail.com](mailto:cirpsupertech.nonev2@gmail.com)> wrote:

Dear Gaurav,

Please find attached files for your reference and then let's have a discussion. Additionally, we request you to share detailed excel working of your claims.

Regards,

IRP Team

---

**From:** Gaurav Luhadia <[gauravluhadia@ltfs.com](mailto:gauravluhadia@ltfs.com)>  
**Sent:** Thursday, December 1, 2022 1:20 PM  
**To:** [cirpsupertech.nonev2@gmail.com](mailto:cirpsupertech.nonev2@gmail.com)  
**Cc:** Ruchir Jauhari <[ruchirjauhari@ltfs.com](mailto:ruchirjauhari@ltfs.com)>; Aparna Rawat <[aparna.rawat@ltfs.com](mailto:aparna.rawat@ltfs.com)>; Jay Bhupali <[jaybhupali@ltfs.com](mailto:jaybhupali@ltfs.com)>; Hitesh Goel <[iphiteshgoel@gmail.com](mailto:iphiteshgoel@gmail.com)>; teamsupertech <[teamsupertech@alvarezandmarsal.com](mailto:teamsupertech@alvarezandmarsal.com)>  
**Subject:** Re: L&T Housing Finance Limited (LTHF) - Financial Creditor Claim update

*Asst*  
 TRUE COPY

**Maithili Moondra**

**From:** CIRP Supertech Non Eco-Village 2 <cirpsupertech.nonev2@gmail.com>  
**Sent:** 15 December 2022 22:22  
**To:** Gaurav Luhadia  
**Cc:** Ruchir Jauhari; Aparna Rawat; Jay Bhupali; Hitesh Goel; teamsupertech  
**Subject:** Re: L&T Housing Finance Limited (LTHF) - Financial Creditor Claim update

Dear Gaurav,

We request you to share with us a copy of the Corporate Guarantee Invocation notice by **EOD tomorrow** for the following loan arrangement(s):

Name of Borrower	Project Name	Type of Facility	Amount claimed
Poise Realtech Pvt. Ltd	Up Country & Capetown	Corporate Guarantee	2,479,943,863
Ajnara & IVR Prime developers	Ajnara Ambrosia Ajnara Panorama	Corporate Guarantee	3,820,555,040

For or on behalf of,

**Hitesh Goel**

**Interim Resolution Professional of Supertech Limited**

Insolvency Professional Registration no.: IBBI/IPA-001/IP-P01405/2018-2019/12224  
 AFA Certificate Number: AA1/12224/02/160223/103895 (Valid till 16 February 2023)

**Registered Address:**

C4/1002 The Legend Apartments,  
 Sector 57, Gurgaon,  
 Haryana ,122011  
 E-mail: [iphiteshgoel@gmail.com](mailto:iphiteshgoel@gmail.com)

**Correspondence Address:**

Supertech Limited  
 21st-25th Floor, E-Square, Plot No. C2,  
 Sector - 96, Noida, Gautam Buddha Nagar,  
 Uttar Pradesh – 201303

E-mail: [cirpsupertech.nonev2@gmail.com](mailto:cirpsupertech.nonev2@gmail.com)

On Tue, Dec 6, 2022 at 12:26 PM CIRP Supertech Non Eco-Village 2 <[cirpsupertech.nonev2@gmail.com](mailto:cirpsupertech.nonev2@gmail.com)> wrote:  
 Dear Gaurav,

We had provisionally admitted the amounts as per the balance in the books of account. For us to verify further, we will again request you to please share the detailed excel working based on which the claims have been filed by your goodself.

This will help us in understanding your calculation and reconcile the claim amounts better. It would be highly appreciated if the same could be shared by today EOD.

**Regards,  
 IRP team**

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Hi,  
 Can you help us understand the reason for not considering delayed payment interest and other charges in your

*Asst*  
**TRUE COPY**

**Maithili Moondra**

working

On Mon, Dec 5, 2022 at 4:25 PM CIRP Supertech Non Eco-Village 2 <[cirpsupertech.nonev2@gmail.com](mailto:cirpsupertech.nonev2@gmail.com)> wrote:  
Dear Gaurav,

*Asl*  
**TRUE COPY**

**Maithili Moondra**

**From:** Gaurav Luhadia <gauravluhadia@lfs.com>  
**Sent:** 19 December 2022 10:58  
**To:** CIRP Supertech Non Eco-Village 2  
**Cc:** Ruchir Jauhari; Aparna Rawat; Jay Bhupali; Hitesh Goel; teamsupertech  
**Subject:** Re: L&T Housing Finance Limited (LTHF) - Financial Creditor Claim update

Dear Team,

We have not recalled the Loans of Poise and Ajnara therefore there is no CG invocation of Supertech. However, as informed by our legal team CG invocation is not a prerequisite for filing and admission of claim amounts against Supertech Limited where it is a guarantor.

On Mon, Dec 19, 2022 at 10:02 AM CIRP Supertech Non Eco-Village 2 <[cirpsupertech.nonev2@gmail.com](mailto:cirpsupertech.nonev2@gmail.com)> wrote:  
 Dear team,

Request you to kindly share the below mentioned details latest by **EOD today** for us to complete our reconciliation and share the status ahead.

Your cooperation in the above matter would be highly appreciated.

For or on behalf of,

**Hitesh Goel**

**Interim Resolution Professional of Supertech Limited**

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

AFA Certificate Number: AA1/12224/02/160223/103895 (Valid till 16 February 2023)

**Registered Address:**

C4/1002 The Legend Apartments,  
 Sector 57, Gurgaon,  
 Haryana ,122011  
 E-mail: [iphiteshgoel@gmail.com](mailto:iphiteshgoel@gmail.com)

**Correspondence Address:**

Supertech Limited  
 21st-25th Floor, E-Square, Plot No. C2,  
 Sector - 96, Noida, Gautam Buddha Nagar,  
 Uttar Pradesh – 201303

E-mail: [cirpsupertech.nonev2@gmail.com](mailto:cirpsupertech.nonev2@gmail.com)

On Thu, Dec 15, 2022 at 10:22 PM CIRP Supertech Non Eco-Village 2 <[cirpsupertech.nonev2@gmail.com](mailto:cirpsupertech.nonev2@gmail.com)> wrote:  
 Dear Gaurav,

We request you to share with us a copy of the Corporate Guarantee Invocation notice by **EOD tomorrow** for the following loan arrangement(s):

Name of Borrower	Project Name	Type of Facility	Amount claimed
Poise Realtech Pvt. Ltd	Up Country & Capetown	Corporate Guarantee	2,479,943,863
Ajnara & IVR Prime developers	Ajnara Ambrosia Ajnara Panorama	Corporate Guarantee	3,820,555,040

For or on behalf of,

**Hitesh Goel**

**Interim Resolution Professional of Supertech Limited**

*Hitesh Goel*  
 TRUE COPY

**Maithili Moondra**

---

**From:** CIRP Supertech Non Eco-Village 2 <cirpsupertech.nonev2@gmail.com>  
**Sent:** 19 December 2022 12:42  
**To:** Gaurav Luhadia  
**Cc:** Ruchir Jauhari; Aparna Rawat; Jay Bhupali; Hitesh Goel; teamsupertech  
**Subject:** Re: L&T Housing Finance Limited (LTHF) - Financial Creditor Claim update  
**Attachments:** IDBI TRUSTEESHIP SERVICES LIMITED VS ABHINAV MUKHERJI (NCLAT 2022)- para 29- Uninvoked Corporate Guarantee as on date of filing .pdf

Dear Gaurav,

Thank you for your email.

Based on the above information, as the loan has not been recalled for, and the Corporate Guarantee has also not been invoked, we would like to bring to your information that as per the recent NCLAT's judgment in the matter of **IDBI Trusteeship Services Limited Vs Mr. Abhinav Mukherji & Ors.** dated July 12, 2022, it has been held that the claim amounts in the CIRP of the 'Corporate Debtor' as a 'Corporate Guarantor' on the basis of the deed of guarantee, which was never invoked as on the date of filing of the claims, cannot be accepted by the Resolution Professional. Judgment for the same is attached herewith for your perusal.

Therefore, the above amounts of INR **630,04,98,903** relating to Corporate Guarantees relating to Poise Realtech Private limited and Anjara & IVR Prime developers will be not admissible.

Do let us know in case of any queries.

For or on behalf of,

**Hitesh Goel**

**Interim Resolution Professional of Supertech Limited**

Insolvency Professional Registration no.: IBBI/IPA-001/IP-P01405/2018-2019/12224  
AFA Certificate Number: AA1/12224/02/160223/103895 (Valid till 16 February 2023)

**Registered Address:**

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Sector 57, Gurgaon,  
Haryana ,122011  
E-mail: [iphiteshgoel@gmail.com](mailto:iphiteshgoel@gmail.com)

**Correspondence Address:**

Supertech Limited  
21st-25th Floor, E-Square, Plot No. C2,  
Sector - 96, Noida, Gautam Buddha Nagar,  
Uttar Pradesh – 201303

E-mail: [cirpsupertech.nonev2@gmail.com](mailto:cirpsupertech.nonev2@gmail.com)

On Mon, Dec 19, 2022 at 11:00 AM Gaurav Luhadia <[gauravluhadia@lts.com](mailto:gauravluhadia@lts.com)> wrote:

Dear Team,

We have not recalled the Loans of Poise and Ajnara therefore there is no CG invocation of Supertech. However, as informed by our legal team CG invocation is not a prerequisite for filing and admission of claim amounts against Supertech Limited where it is a guarantor.

On Mon, Dec 19, 2022 at 10:02 AM CIRP Supertech Non Eco-Village 2 <[cirpsupertech.nonev2@gmail.com](mailto:cirpsupertech.nonev2@gmail.com)> wrote:

Dear team,

Request you to kindly share the below mentioned details latest by **EOD today** for us to complete our reconciliation and share the status ahead.

Your cooperation in the above matter would be highly appreciated.



For or on behalf of,

**Hitesh Goel**

**Interim Resolution Professional of Supertech Limited**

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

AFA Certificate Number: AA1/12224/02/160223/103895 (Valid till 16 February 2023)

**Registered Address:**

C4/1002 The Legend Apartments,

Sector 57, Gurgaon,

Haryana ,122011

E-mail: [iphiteshgoel@gmail.com](mailto:iphiteshgoel@gmail.com)

**Correspondence Address:**

Supertech Limited

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

Sector - 96, Noida, Gautam Buddha Nagar,

Uttar Pradesh – 201303

E-mail: [cirpsupertech.nonev2@gmail.com](mailto:cirpsupertech.nonev2@gmail.com)

On Thu, Dec 15, 2022 at 10:22 PM CIRP Supertech Non Eco-Village 2 <[cirpsupertech.nonev2@gmail.com](mailto:cirpsupertech.nonev2@gmail.com)> wrote:

Dear Gaurav,

We request you to share with us a copy of the Corporate Guarantee Invocation notice by **EOD tomorrow** for the following loan arrangement(s):

Name of Borrower	Project Name	Type of Facility	Amount claimed
Poise Realtech Pvt. Ltd	Up Country & Capetown	Corporate Guarantee	2,479,943,863
Ajnara & IVR Prime developers	Ajnara Ambrosia Ajnara Panorama	Corporate Guarantee	3,820,555,040

For or on behalf of,

**Hitesh Goel**

**Interim Resolution Professional of Supertech Limited**

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

AFA Certificate Number: AA1/12224/02/160223/103895 (Valid till 16 February 2023)

**Registered Address:**

C4/1002 The Legend Apartments,

Sector 57, Gurgaon,

Haryana ,122011

E-mail: [iphiteshgoel@gmail.com](mailto:iphiteshgoel@gmail.com)

**Correspondence Address:**

Supertech Limited

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

Sector - 96, Noida, Gautam Buddha Nagar,

Uttar Pradesh – 201303

E-mail: [cirpsupertech.nonev2@gmail.com](mailto:cirpsupertech.nonev2@gmail.com)

On Tue, Dec 6, 2022 at 12:26 PM CIRP Supertech Non Eco-Village 2 <[cirpsupertech.nonev2@gmail.com](mailto:cirpsupertech.nonev2@gmail.com)> wrote:

Dear Gaurav,

*Asst*  
**TRUE COPY**

We had provisionally admitted the amounts as per the balance in the books of account. For us to verify further, we will again request you to please share the detailed excel working based on which the claims have been filed by your goodself.

This will help us in understanding your calculation and reconcile the claim amounts better. It would be highly appreciated if the same could be shared by today EOD.

**Regards,  
IRP team**

On Tue, Dec 6, 2022 at 9:42 AM Gaurav Luhadia <[gauravluhadia@lts.com](mailto:gauravluhadia@lts.com)> wrote:

Hi,

Can you help us understand the reason for not considering delayed payment interest and other charges in your working

On Mon, Dec 5, 2022 at 4:25 PM CIRP Supertech Non Eco-Village 2 <[cirpsupertech.nonev2@gmail.com](mailto:cirpsupertech.nonev2@gmail.com)> wrote:  
Dear Gaurav,

Request you to please share the details by EOD today for us to complete our reconciliation and share the status ahead.

Your cooperation in the above matter would be highly appreciated.

**Regards,  
IRP team**

On Thu, Dec 1, 2022 at 2:43 PM <[cirpsupertech.nonev2@gmail.com](mailto:cirpsupertech.nonev2@gmail.com)> wrote:

Dear Gaurav,

Please find attached files for your reference and then let's have a discussion. Additionally, we request you to share detailed excel working of your claims.

Regards,

IRP Team

---

**From:** Gaurav Luhadia <[gauravluhadia@lts.com](mailto:gauravluhadia@lts.com)>

**Sent:** Thursday, December 1, 2022 1:20 PM

**To:** [cirpsupertech.nonev2@gmail.com](mailto:cirpsupertech.nonev2@gmail.com)

**Cc:** Ruchir Jauhari <[ruchirjauhari@lts.com](mailto:ruchirjauhari@lts.com)>; Aparna Rawat <[aparna.rawat@lts.com](mailto:aparna.rawat@lts.com)>; Jay Bhupali <[jaybhupali@lts.com](mailto:jaybhupali@lts.com)>; Hitesh Goel <[jphiteshgoel@gmail.com](mailto:jphiteshgoel@gmail.com)>; teamsupertech <[teamsupertech@alvarezandmarsal.com](mailto:teamsupertech@alvarezandmarsal.com)>

**Subject:** Re: L&T Housing Finance Limited (LTHF) - Financial Creditor Claim update

Dear Sir,

We wish to have further discussion on the amount that has been approved as per trail mail

----- Forwarded message -----

From: **CIRP Supertech Non Eco-Village 2** <[cirpsupertech.nonev2@gmail.com](mailto:cirpsupertech.nonev2@gmail.com)>

Date: Wed, 16 Nov 2022 at 8:44 PM

*Asst*  
**TRUE COPY**

Subject: L&T Housing Finance Limited (LTHF) - Financial Creditor Claim update

To: <[jaybhupali@lths.com](mailto:jaybhupali@lths.com)>

Cc: Hitesh Goel <[iphiteshgoel@gmail.com](mailto:iphiteshgoel@gmail.com)>, teamsupertech <[teamsupertech@alvarezandmarsal.com](mailto:teamsupertech@alvarezandmarsal.com)>

Dear Ma'am/Sir,

This is to inform you that the Corporate Insolvency Resolution Process ("**CIRP**") has been initiated against M/s. Supertech Limited ("**Supertech**", "**Corporate Debtor**", "**CD**") under the provisions of Insolvency and Bankruptcy Code, 2016 ("**IBC**") by an order of National Company Law Tribunal, New Delhi – Bench VI, dated March 25, 2022 ("**Admission order**", "**Insolvency Commencement Date**").

It is further pertinent to bring it to your knowledge that while directing initiation of the CIRP, the Hon'ble NCLT appointed the undersigned as the Interim Resolution Professional (hereinafter, "**IRP**") for the Corporate Debtor in terms of the provisions of the IBC.

On October 14th 2022, Ld. NCLAT passed an order that:

"2. ....The IRP is to receive the claims and verify the same. The projects are many but looking into the facts of the present case, the verifications need to be completed by the IRP and the Status Report regarding the claims may be submitted by the next date."

Please note that in furtherance to the claim verification process, against the claim submitted by you for INR **19,635,316,080** we are admitting INR **18,957,734,490** after verifying and reconciling your claim and supporting documents with the books of the Corporate Debtor.

Name of Borrower	Project Name	Type of Facility	Amount claimed	Amount of claim admitted
Supertech Limited	Eco village I; North eye, Capetown; Crown tower; Upcountry	Term Loan	4,105,971,029	3,744,127,210
<b>Total (A)</b>			<b>4,105,971,029</b>	<b>3,744,127,210</b>
Poise Realtech Pvt. Ltd	Up Country & Capetown	Corporate Guarantee	2,479,943,863	2,390,641,134
Perpendicular Construction Pvt Ltd	Eco-Village-II, III & Golf Country	Corporate Guarantee	1,317,080,249	1,285,873,611
Coast Realtors Pvt Ltd	Radiant Tower	Corporate Guarantee	1,008,956,076	984,691,720
Brownish Reality Pvt Ltd	Eco-Village-I	Corporate Guarantee	1,974,785,711	1,922,464,610
Coast Town planners Pvt Ltd	North Eye	Corporate Guarantee	2,475,535,096	2,416,508,664
Mabsoot Buildhomes India Pvt Ltd	North Eye	Corporate Guarantee	2,452,489,015	2,392,872,500
Ajnara & IVR Prime developers	Ajnara Ambrosia Ajnara Panorama	Corporate Guarantee	3,820,555,040	3,820,555,040
<b>Total (B)</b>			<b>15,529,345,051</b>	<b>15,213,607,280</b>
<b>Grand Total (A+B)</b>			<b>19,635,316,080</b>	<b>18,957,734,490</b>

For any queries, you may email us or contact the undersigned.

Mr. Brijesh Manglunia +91-9757479757

Mr. Rohit Soni + 91-9617208822

Kind Regards,

**Authorized representative**

For or on behalf of Hitesh Goel

**Interim Resolution Professional of Supertech Limited**

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

*Asst*  
**TRUE COPY**



AFA Certificate Number: AA1/12224/02/160223/103895 (Valid till 16 February 2023)

Registered Address: -

C4/1002 The Legend Apartments,

Sector 57, Gurgaon,

Haryana ,122011

E-mail: [iphiteshgoel@gmail.com](mailto:iphiteshgoel@gmail.com)

Correspondence Address:

Supertech Limited

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

Sector - 96, Noida, Gautam Buddha Nagar,

Uttar Pradesh – 201303

E-mail: [cirpsupertech.nonev2@gmail.com](mailto:cirpsupertech.nonev2@gmail.com)

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Jay Bhupali  
Chief Manager, Legal - Special Situation Group  
L&T Financial Services

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A handwritten signature in blue ink is written over a purple stamp that reads "TRUE COPY".

**National Company Law Appellate Tribunal**  
**Principal Bench, New Delhi**

**COMPANY APPEAL (AT) (INSOLVENCY) No. 356 of 2022**

(Arising out of Order dated 14<sup>th</sup> March, 2022 passed by National Company Law Tribunal, New Delhi Bench – II, in IA No. 1610/2020 & IA No. 4130/2020 in C.P. (IB) No.- 894/ND/2019).

**IN THE MATTER OF:**

**IDBI Trusteeship Services Limited**

A Trusteeship Company having its registered office at 1009, Ansal Bhawan, KG Marg, New Delhi – 110001.

**...Appellant**

**Versus**

**1. Mr. Abhinav Mukherji**

R/o D-85, Panchseel Enclave,  
New Delhi – 110017.

**...Respondent No. 1**

**2. Mr. Manoj Kumar Singh**

**(Erstwhile IRP of Palm Developers Pvt. Ltd.)**

**Now Replaced by Mr. Krit Narayan Mishra**

**(RP of Palm Developers Pvt. Ltd.**

**Vide Order 13/07/2022 of NCLT Delhi Bench-II)**

(Registration No. IBBI/IPA/IP-P00441/2017-18),  
Having office at C-3, Ashoka Apartments,  
Plot No. 8, Sector-12, Dwarka,  
New Delhi – 110078.

**...Respondent No. 2**

**3. ECL Finance Limited**

R/o Upper Ground Floor, Mercantile House,  
15 Kasturba Gandhi Marg,  
New Delhi – 110001.

**...Proforma Respondent  
No. 3**

**For Appellants:**

**Dr. Abhishek Manu Singhvi, Sr. Advocate with  
Mr. Gaurav Mitra, Mr. Dev Roy, Himanshi  
Rajput, Mr. Atul Sharma and Mr. Aditya  
Vashisth, Advocates.**

**For Respondent No.1:**

**Mr. Abhijeet Sinha and Mr. Raghavendra M.  
Bajaj, Advocate for R-1.**

**For IRP:**

**Mr. Milan Singh Negi, Advocate for New IRP.**

*As per*  
**TRUE COPY**

**WITH**  
**COMPANY APPEAL (AT) (INSOLVENCY) No. 358 of 2022**

(Arising out of Order dated 14<sup>th</sup> March, 2022 passed by National Company Law Tribunal, New Delhi Bench – II, in IA No. 1610/2020 & IA No. 4130/2020 in C.P. (IB) No.- 894/ND/2019).

**IN THE MATTER OF:**

**1. ECL Finance Limited**

R/o Upper Ground Floor, Mercantile House,  
15 Kasturba Gandhi Marg, New Delhi – 110001.

**...Appellant No. 1**

**2. Assets Care & Reconstruction Enterprises Ltd. (ACRE)**

(Asset Reconstruction Company established under the provisions of SARFAESI Act, 2002)  
R/o 2<sup>nd</sup> Floor, Mohandev Building,  
Tolstoy Marg, New Delhi – 110001.

**...Appellant No. 2**

**Versus**

**1. Mr. Abhinav Mukherji**

R/o D-85, Panchseel Enclave,  
New Delhi – 110017.

**...Respondent No. 1**

**2. Mr. Manoj Kumar Singh  
(Erstwhile IRP of Palm Developers Pvt. Ltd.)  
Now Replaced by Mr. Krit Narayan Mishra  
(RP of Palm Developers Pvt. Ltd.)  
Vide Order 13/07/2022 of NCLT Delhi Bench-II)**

(Registration No. IBBI/IPA/IP-P00441/2017-18),  
Having office at C-3, Ashoka Apartments,  
Plot No. 8, Sector-12, Dwarka,  
New Delhi – 110078.

**...Respondent No. 2**

**3. IDBI Trusteeship Services Limited**

A Trusteeship Company having its registered office at 1009, Ansal Bhawan, KG Marg, New Delhi – 110001.

**...Respondent No. 3**

**For Appellants:**

**Mr. Ramji Srinivasan, Sr. Advocate with Mr. Gaurav Mitra, Mr. Dev Roy, Mr. Atul Sharma, Ms. Renuka Iyer, Mr. Aditya Vashisth and Ms. Himanshi Rajput, Advocates.**

**For Respondent No.1: Mr. Abhijeet Sinha and Mr. Raghavendra M. Bajaj, Advocate for R-1.**

**For IRP: Mr. Milan Singh Negi, Advocate for New IRP.**

## **J U D G E M E N T**

**[Per; Shreesha Merla, Member (T)]**

1. The present Appeals filed under Section 61(1) of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as 'The Code') challenge the Impugned Order dated 14/03/2022 passed by the Learned Adjudicating Authority (National Company Law Tribunal, New Delhi Bench – II) in I.A. No. 1610/2020 and in I.A. No. 4130/2020 filed in C.P. (IB) No. 894/ND/2019, whereby, the Adjudicating Authority, on an Application filed by a Homebuyer/Mr. Abhinav Mukherji has allowed the Application and held that '*IDBI Trusteeship Services Limited*' and '*ECL Finance Ltd.*'/the Appellants are not 'Financial Creditors' and also observed that the Appellants are 'Related Parties' to the 'Corporate Debtor'. *ECL Limited* is arrayed as Appellant No. 1 and '*Assets Care & Reconstruction Enterprises Ltd.*' as Appellant No. 2 in *Comp. App. (AT) (Ins.) No. 358 of 2022*. Since both these Appeals deal with common facts and challenge a common Impugned Order, they are being disposed of by this Common Order.

2. Facts in brief are that the Appellant/IDBI was appointed as a Debenture Trustee for the benefit of the Holders of certain Debentures issued by M/s. Saha Infratech Pvt. Limited (Issuer/Principal Borrower) vide Debenture Trustee Agreement dated 18/05/2016. The first Respondent Mr. Abhinav Mukherjee is the Homebuyer of the 'Corporate Debtor' having Claim of Rs.2,94,43,634/-; the second Respondent Mr. Krit Narayan Mishra is the RP of the 'Corporate Debtor', appointed vide letter dated 13/07/2021 in I.A.

1742/2021 replacing the erstwhile IRP, Mr. Manoj Kumar Singh. Appellant/*M/s. ECL Finance Limited* is the original Debenture Holder which has executed the Assignment Agreement dated 27/03/2020 whereby all rights in regard to the Financial Assistance were assigned in favour of Assets Care and Reconstruction Enterprise Limited ('ACRE'). While so, in June 2016, Saha Infratech with a view to augment their resources issued 110 Non-Convertible Debentures having a face value of Rs.1Crore/- each for an aggregate amount of Rs.110Crores/- and appointed the Appellant/IDBI to act as a Trustee for the Holders of the Debentures. At the request of the Issuer/'*Palm Developers Private Limited*' (hereinafter referred to as the 'Corporate Debtor') and their Promoters, Debenture Holders agreed to subscribe to the Debentures and a Debenture Trust Deed dated 01/07/2016 was executed amongst the Principal Borrower, the 'Corporate Debtor' (Corporate Guarantor) and the Appellant (Debenture Trustee) including the promoters. As per the terms of the Trust Deed a part of the Debenture Subscription amount was to be used for funding the construction of the 'Project Encore', being developed by the 'Corporate Debtor'. The Debenture Holder as on date has made a subscription of the first tranche of the Debentures i.e., 110 amounting to Rs.110Crores/-. The second tranche has not been subscribed yet. Under the terms of the Debenture Trust Deed, payment of interest and all other accounts on the respective due dates was secured by an irrevocable Corporate Guarantee of the 'Corporate Debtor', executed vide Guarantee Agreement dated 02/07/2016.

**3.** Additionally, the 'Corporate Debtor' executed and delivered a Demand Promissory Note, a Deed of Hypothecation, Mortgage Agreement on the properties of 'Project Encore', and Revenue Escrow Agreement in respect of

the entire receivables of the 'Project Encore' all dated 02/07/2016 in favour of the Appellants to secure the due performance of the terms and conditions of the Trust Deed. It was averred that the Principal Borrower and the Obligors committed defaults in performance of the terms of the Debenture Trust Deed, but the Appellants in utmost good faith continued with the Debentures with the hope that the Issuers/Obligors shall rectify the default in a timely manner. Despite repeated requests, as the defaults continued, the Appellants vide Letters dated 30/10/2018, 08/01/2019, 02/04/2019 exchanged communication with the Issuer and the Obligors and the Corporate Guarantor highlighting the defaults and asking them to rectify the same.

4. On 27/01/2020, CIRP against the 'Corporate Debtor' was initiated and Moratorium was issued. On 31/01/2020, the IRP made Public Announcement and on 10/02/2020 within the stipulated time frame, the Appellant submitted its 'Form C' showing default from the Year 2017 and claiming an amount of Rs.1,26,96,88,698/- as against the Principal and Interest 'due and payable' as on 27/01/2020. It was averred that on 20/02/2020, the IRP constituted the CoC and the Appellant was made a member thereof; that subsequently, on 25/02/2020, the first Respondent filed I.A. 1610/2020 praying *inter alia* the following reliefs:

- (a) Rejections of the claim of the Appellants as accepted by the IRP of the 'Corporate Debtor'.
- (b) Reconstituting of the CoC after exclusion of the Appellants.
- (c) Restraining the Appellants from exercising any voting right in the CoC of the 'Corporate Debtor'.

While issuing Notice in I.A. 1610/2020, the Adjudicating Authority vide Order dated 28/02/2020 directed the erstwhile IRP to restrain from holding any Meeting of CoC till the constitution of CoC was ascertained.

5. The erstwhile IRP in his Reply to the Application I.A. 1610/2020 denied the allegation made by the first Respondent and challenge the said Application on maintainability and submitted that on seeking legal opinion from his Counsel M/s. Dua Associates, the Claims of the Appellants and the third Respondent were admitted in accordance with Section 21(1) of the Code. The Adjudicating Authority vide Order dated 07/09/2020 modified the earlier Order dated 28/02/2020 to the extent that the erstwhile IRP was allowed to proceed in the matter in accordance with the provisions of the Code but was restrained from declaring the status of the Appellants until further Orders.

6. While so, on an Application, filed by IDBI, bearing IA No. 1742/2021, the Adjudicating Authority appointed Mr. Krit Narayan Mishra new IRP on 13/07/2021. Based on the Reply filed by the new IRP, the Articles of Association (AoA) of the 'Corporate Debtor', the terms of the Guarantee Deed, the Adjudicating Authority observed as follows:

*"39. On perusal of the Articles of Association (AOA) of the corporate debtor, we observe the part II of the Articles have overriding effect over the part I Articles and in case of conflict between the two, part II shall prevail over the part I. And the clause referred to supra shows that the corporate debtor shall not take any decision without prior written approval of the debenture holders. We further observe that as per clause 7.1 of AOA, in the event of default both the debenture holders and lender have right to appoint their Nominee Director on the Board of the Company.*

*40. The Respondent No. 2 and 3 in their written submissions have contended that though there is a provision but the respondents have not appointed*

*Comp. (AT) (Insolvency) Nos. 356 & 358 of 2022*

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*their nominee Director, which would be evident from the MCA date. As it is seen that part II of the Article of Association of the corporate debtor clearly says that in case of conflict between the two, part II shall prevail over the part I, which shows that Director, or Manager of the corporate debtor cannot take any decision without the written approval of the debenture holders. In other words, the debenture holder will actively participate in the policy making process of the corporate debtor. Therefore, we have not even an iota of doubt that the Respondents no. 2 and 3 are not in a position to have control over the policy decisions of the corporate debtor and on the composition of the board of directors. As per the definition of related party, what is required to be established is, whether a person is in a position to control the composition of the Board of Directors and it is not necessary that he/they is/are the director(s) of the corporate debtor or not. Hence, we are unable to accept the contention of the Respondent no. 2 and 3 that they have not nominated any Director as yet and they are not in a position to take part in the policy making process.*

*41. For the reasons discussed above, we are of the considered view that in terms of the AOA, since the Respondents no. 2 and 3 are in a position to have control over the policy decisions of the corporate debtor and on the composition of the board of directors, hence they are related parties in terms of Section 5(24) of the IBC, 2016.*

*42. At this juncture, we would also like to refer to the arguments advances on behalf of the Ld. Counsels appearing for the Respondent no. 2 and 3 that the verification of the claims can be made by the IRP only and Adjudicating Authority is not required to interfere.*

*43. We are unable to accept this contention of the Respondent no. 2 and 3 as the duty of the IRP is only to verify the claims and in case, if any error has been committed by the IRP, the Adjudicating Authority is empowered under Section 60(5) of the IBC, 2016 to rectify such an error.*

*44. Apart from that, it is also an admitted fact that the Guarantee was invoked on 07.04.2020 i.e., after the initiation of the CIRP on 27.01.2020.*

*45. Therefore, the Ld. Counsel appearing for the Applicant has rightly submitted that the deed of guarantee was invoked after the initiation of CIRP.*



Therefore, in terms of the moratorium declared under Section 14 of the IBC, 2016, the amount claimed by the Respondent No. 3 is not liable to be admitted.

46. At this juncture, we would also like to refer to the contention of Respondent No. 2 and 3 that the Applicant has no locus standi to raise this issue. As we have also referred to the additionally reply filed by the IRP, therefore, on the request of IRP, this Adjudicating Authority is empowered to invoke section 60(5) IBC 2016 and consider whether the Respondent No. 2 and 3 are the Financial Creditor or not?

47. Hence, we find, no force in the contentions raised on behalf of the Ld. Counsels appearing for the Respondent No. 2 and 3, that the application is not maintainable.

48. In sequel to the above, we are of the considered view that the Respondents No. 2 and 3 can be treated as 'creditors' but they shall not be treated as 'Financial Creditors' under Chapter II, Section 5(7) of the IBC, 2016. Hence, we have no option but to hold that the Respondents no. 2 and 3 are not the Financial Creditors and the admission of claims of the Respondents no. 2 and 3 as 'Financial Creditor' is contrary to the provisions of law. Accordingly, in terms of this order, the IRP/RP is directed to revise the claims of Respondents no. 2 and 3 and reconstitute the CoC.

49. So far as the prayer of the applicant regarding the acceptance of interest is concerned, the IRP/RP is directed to examine the same on merit and in accordance with the provisions of law.

50. Accordingly, in terms of aforementioned order, the IA 1610/2020 stands disposed of."

(Emphasis Supplied)

**7. Submissions of the Learned Sr. Counsel appearing on behalf of the Appellants:**

- Learned Sr. Counsel Dr. Singhvi contended that the Adjudicating Authority has wrongly relied on the ratio of the Judgment of the Hon'ble Supreme Court in 'Anuj Jain (IRP of Jaypee Infratech Ltd.)'

Comp. (AT) (Insolvency) Nos. 356 & 358 of 2022

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(Supra) observing that the essentials of a 'Financial Debt', in particular, the 'pre-requisite of disbursal' is not satisfied in this case and therefore the Appellant is not a 'Financial Creditor' of the 'Corporate Debtor'. It is submitted that the Adjudicating Authority misrepresented 'Anuj Jain' case, overlooking para 43 of the Judgement which clearly states that 'Financial Debt includes liability arising out of a guarantee'. Learned Counsel placed reliance on the Judgement of this Tribunal in 'Ascot Realty Private Limited Vs. Ajay Kumar & Ors.', (2020) SCC OnLine NCLAT 732, wherein it was held that for initiation of Insolvency Proceedings against the Corporate Guarantor, the element for disbursal of 'Time Value of Money' is not required. It was argued that 'Anuj Jain (IRP of Jaypee Infratech Ltd.)' (Supra) does not apply to the situation wherein claim is filed against the Corporate Guarantor/Obligors when CIRP is already initiated and pending.

- It is strenuously contended by Dr. Singhvi that the Clauses in the Articles of Association (AoA) are restrictive covenants included as a means to protect and preserve the huge amount of loans. Clause 5.4 of the AoA demonstrates that the Appellant does not have any hold over the composition of the Board of Directors; the only restrictive Clause with respect to change in the Board of Directors is '*the Company showing a change in the composition of the Board of Company accept in accordance with the terms of the Articles of Debenture Trust Deed*'.
- It was submitted that the Appellants neither had power to appoint or alter the Directors of the Company. The power to appoint the nominee

Director and an observer only arises on the occurrence of the 'event of default' and that such power which is contingent upon occurrence of event of default, was never exercised by the Appellant.

- In order of the entity to be termed as a 'Related Party', actual participation in the policy making process of the 'Corporate Debtor' ought to have been established. It was argued that Section 5(24)(i)(m) of the Code specifically states the person ought to be associated with the 'Corporate Debtor' and must have actual participation in the policy making process of the 'Corporate Debtor'. Dr. Singhvi placed reliance on the ratio of the Hon'ble Supreme Court in '*Arcelormittal India Pvt. Ltd.*' Vs. '*Satish Kumar Gupta & Ors.*', (2019) 2 SCC 1, in which the Hon'ble Apex Court has observed that 'control' in the context of the 'Related Party', as defined under Section 5(21) of the Code, means a *de facto* control and will only include positive control and does not include mere power to restrict.
- It was submitted by the Learned Sr. Counsel that the default occurred prior to the initiation of the CIRP of the 'Corporate Debtor' as evidenced by the letters of default issued by the Respondent to the Principal Borrowers and the Obligors dated 02/04/2019 and 26/09/2019 which are much prior in time to the date of initiation of the CIRP.
- The only basis of arriving at the conclusion by the Adjudicating Authority that there has been 'no default' is a settlement made by the first Respondent that as per the information received by the Applicant, the Issuer of the Debentures continued to service the Debentures and therefore there is no default in servicing the interest due on the

Debentures. It was strenuously contended that the Adjudicating Authority has failed to appreciate that filing of 'Claims' under the Code is governed by Section 3(6), Section 13(1)(b), Section 15(1)(c) and Section 18(1)(b) of the Code and none of these Sections mandate any pre-requisite of default.

- Pre-conditions such as 'existence of default' is only to be satisfied when the Petition under Section 7 of the Code has been filed by a 'Financial Creditor'. It was further submitted that the Adjudicating Authority has erroneously applied the ratio of the Judgement in '*Laxmi Pat Surana Vs. Union of India & Anr.*', (2021) 8 SCC 481, on the premise that 'default is a pre-requisite for filing of a Claim'. This Tribunal in '*Axis Bank Vs. EDU Smart Services Pvt. Ltd. & Anr.*', *Company Appeal (AT) (Insolvency) No. 302 of 2017* and '*Andhra Bank Vs. M/s. F.M. Hammerle Textiles Ltd.*', *Company Appeal (AT) (Insolvency) No. 61 of 2018*, has held that even unmature and future debts are 'debts' for the purpose of filing of Claims.
- It was strenuously contended by Dr. Singhvi that the first Respondent being a single allottee and not represented by an 'Authorised Representative' ('AR'), had no *locus standi* to challenge the Claim of a separate 'Financial Creditor' already verified and admitted by the erstwhile IRP. The Adjudicating Authority has no *Suo Moto* powers under Section 60(5) of the Code to reverse or recall the decision of the erstwhile IRP and the sole Application filed was by a sole allottee with vested interest. It was submitted that bestowing powers on stakeholders to challenge the claims of competing stakeholders will lead to flood gates being opened and defeat the finality and certainty

to the decisions of the RP of verifying, collating and admitting Claims under Section 18(b) of the Code and Regulation 13(1) of the CIRP Regulations.

- The first Respondent has 4.43% of the Voting Shares in the CoC and not being represented by (AR) cannot challenge the 'Claims' of the Appellants being 'Financial Creditors' already verified and admitted by the erstwhile IRP.
- The Adjudicating Authority vide Order dated 21/10/2021, dismissed the Impleadment Application filed by 'Ashray Social Welfare Association' bearing I.A. No. 2366/2021 in the pending I.A. No. 2275/2021 filed by the Appellant, on the ground of no *locus standi* as the Association had not filed the said Application through the 'AR'.
- Being the original lender, the Appellant has disbursed the amount of Rs.90Crores/- in terms of the Facility Agreement which is clearly shown in the Balance Sheet of the Borrowers/Saha Infratech for the FY 2018-19 and as such the debt of the Appellant is clearly acknowledged beyond doubt by the Borrower.
- It is also evident from the Auditor's Report and Forensic Audit Report that the allegations with regard to fraud are against the Management of the Borrower/Saha Infratech and the 'Corporate Debtor' and by no stretch of imagination, can these allegations be made against the Appellant and even if such allegations are proven to be correct, then the Appellant being a *bona fide* lender could also be an affected party who has lent a substantial sum of money.
- Learned Counsel for the Appellants in support of their submissions placed reliance on the following Judgements:

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<b>Sr. No.</b>	<b>Judgements</b>	<b>Relevant Paras</b>
1.	<i>'Arcelor Mittal India Pvt. Ltd. Vs. Satish Kumar Gupta &amp; Ors.'</i> (2019) 2 SCC 1.	Paras 51-54
2.	<i>'Ebix Singapore Pvt. Ltd. Vs. 'CoC Educomp Solutions Ltd.'</i> (2022) 2 SCC 401.	Para 101
3.	<i>'Ascot Realty Pvt. Ltd. Vs. Ajay Kumar Agarwal &amp; Ors.'</i> (2020) SCC OnLine NCLAT.	Paras 21-24, 28-30
4.	<i>'Axis Bank Ltd. Edusmart Vs. Services Pvt. Ltd.'</i> , Company Appeal (AT) (Insolvency) 302 of 2017.	Paras 36, 45, 46 49-51
5.	<i>'Andhra Bank Vs. M/s. FM Hammerle Textile Ltd.'</i> (2018) SCC OnLine NCLAT 883.	Paras 10-11
6.	<i>'State Bank of India Vs. Mr. Animesh Mukhopadhyay'</i> , (2021) SCC OnLine NCLAT 30.	Para 14
7.	<i>'State Bank of India Vs. Athena Energy'</i> (2020) SCC OnLine NCLAT 774.	Paras 16-19
8.	<i>'Edelweiss Asset Reconstruction Company Ltd. Vs. Gwalior Bypass Projects'</i> , Company Appeal (AT) (Ins) No. 1186 of 2019.	Paras 8-9
9.	<i>'Aashray Social Welfare Society Order in IDBI Trusteeship Services Ltd. Vs. Saha Infratech Pvt. Ltd.'</i> , (IB) 1781 (ND)/2018.	Paras 20-23
10.	<i>'Phoenix ARC Pvt. Ltd. Vs. Spade Financial Services Ltd. &amp; Ors.'</i> , (2021) 3 SCC 475.	Paras 103-104
11.	<i>'Sai Peace and Prosperity Apartment Buyers Association Vs. ASK Investment Managers Pvt. Ltd.'</i> , Company Appeal (AT) (Ins) No. 252/2020.	Para 34

**8. Submissions of the Learned Counsel appearing on behalf of the first Respondent/Homebuyer:**

- Learned Counsel Mr. Abhijit Sinha submitted that the first Respondent is a 'Financial Creditor' as defined under Section 5 (8)(f), Explanation (i) of the Code and holds 4.43% of the Voting Shares in the CoC of the 'Corporate Debtor'. It is strenuously argued that even a single Homebuyer in his role as a 'Financial Creditor' has the locus to challenge the admission of claims by the RP. The 'AR' has only a limited role of representing the 'Financial Creditor' in class in the CoC Meetings and vote on their behalf, therein as per Section 21(6)(A) of the Code. The AR does not have any duty/obligations to represent the Homebuyers before the Adjudicating Authority. The AR receives his fees for attending the Meeting of the CoC. There is no provision in the Code which prevents a single 'Financial Creditor' from challenging the illegal inclusion, of the claim, if any, of another creditor.
- The Hon'ble Supreme Court in '*Phoenix ARC Pvt. Ltd. Vs. Spade Financial Services Ltd. & Ors.*', (2021) 3 SCC 475, has held that 'Financial Creditor' forming part of the CoC must be heard during such proceedings determining the status of other Financial Creditor's.
- There is no amount due to the Appellants from the Principal Borrower and hence there is no basis to file any 'Claim' in the CIRP of the Corporate Guarantor. The Appellant is the Trustee of the Debenture of Rs.100Crores/- issued by Saha Infratech which are held by ECL. The said Debentures have not been issued by PDPL and the amount of Rs.110Crores/- have also not been disbursed to PDPL. The Appellant also filed its claim in the CIRP on Saha Infratech which claim has not

been accepted by the IRP of Saha Infratech as the Appellant owes Rs.12,60,77,970/- to Saha Infratech and PDPL cannot in any event be saddled with any liability on account of the Corporate Guarantee which had illegally executed to secured redemption of Debentures issued by Saha Infratech. The Principal Borrower for default for far lesser amount then what it has claimed.

- The third Respondent/ECL continued to disburse the amount to the Principal Borrower despite 'default' committed and interest and other parties in terms of the Debentures not having been paid. The defaults were committed from the Year 2017 itself to ECL has been continuing to disburse the loans to Saha Infratech till October, 2019. The Learned Counsel has drawn our attention to the dates and the amounts disbursed which is detailed as follows:

<b>Date</b>	<b>Amount Disbursed (in Rs.)</b>
07.11.2017	50,00,00,000
23.11.2017	10,00,00,000
15.02.2018	8,00,00,000
23.03.2018	7,00,00,000
23.05.2018	7,00,00,000
01.03.2019	2,00,00,000
24.10.2019	25,00,000
<b>Total</b>	<b>84,25,00,000</b>

- It is submitted that the Appellant and ECL are the alter egos of the Promoters of the 'Corporate Debtor' and are hand in glove with the Promoters which is evident from the fact that the erstwhile RP had been suspended for two years by the IBBI for failing to proceed with the CIRP of the 'Corporate Debtor' since he had refused to constitute the CoC and adhere to the timelines in the CIRP process till ECL and Appellant were made part of the CoC. This stand of the erstwhile RP



only helped the Promoters of the 'Corporate Debtor' to the detriment of the interest of the Homebuyers. Vide Order dated 17/01/2022, the Adjudicating Authority has held that the IRP was in contempt of the directions passed in the Order dated September 2020. In the Order dated 08/04/2022 passed by the IBBI it was observed that the erstwhile IRP has erroneously constituted the COC by including the guarantee holders i.e., ECL and Appellant whose guarantee has not yet been invoked.

- The Resolution Professional has appointed an Auditor for the performance of conducting the Forensic Audit Account and the said Report stated that the Appellant was fraudulently used as a vehicle to transfer funds from Saha Infratech Companies controlled by the Promoters of the 'Corporate Debtor' without any amount coming into it for its own use and the 'Corporate Debtor' was fraudulently made to mortgage its assets in favour of ECL and the Appellant for such round tripping of funds.
- The non-reporting of the fraud committed by the Promoters of the 'Corporate Debtor' to SEBI, the continued disbursement of finance to Saha Infratech despite the defaults, together with the fact that the 'Corporate Debtor' was used as a vehicle to transfer funds from Saha Infratech to other Companies controlled by the Promoters and 'Corporate Debtor' shows their collusion and hence they are nothing but alter egos of the Promoters of the 'Corporate Debtor'.
- Learned Counsel Mr. Sinha submitted that the Appellant is a 'Related Party' of the 'Corporate Debtor' and a bare reading of the AoA of the 'Corporate Debtor' shows that the Debenture Holder, of the

Debentures issued by Saha Infratech, can control the composition of the Board of Directors of the 'Corporate Debtor' and all decisions taken in the Meeting of the Board of Directors are subject to the confirmation of the Debenture Holders and the Lender. The Debenture Holders is not only participating in the policy making process of the 'Corporate Debtor' but control each and every facet of the business of the 'Corporate Debtor'.

- As per Clauses 5.4 and 7 of the AoA, the Debenture Holders not only formulated the Business Plan of the 'Corporate Debtor' but also control the Sales of Inventory, Bank Account, Salary and Remuneration of the Key Managerial Personnel of the 'Corporate Debtor'. The 'control' is to such an extent that the 'Corporate Debtor' required the express approval of the Appellant before entering into any Builder Buyer Agreement with any prospective customer.
- Learned Counsel placed reliance on Clause 5.4 of the AoA and also Clause 24(4) of the sanctioned letter dated 13/06/2017 in support of his argument that ECL also had the power to execute Sale Deeds for all the units to be sold in the project being developed by the 'Corporate Debtor'.
- The Shareholders of the 'Corporate Debtor' have given an irrevocable Power of Attorney (PoA) to the Appellant for conducting all business activities on behalf of itself. ECL, the Debenture Holder is a selling partner of the 'Corporate Debtor' as it has the controlling power to appoint Real Estate Agents, on behalf of the 'Corporate Debtor' for sale of specific residential units/inventory totaling to 1,77,900 square fts. saleable areas in various projects of the 'Corporate Debtor'.

- As per the requirements of Section 5(24)(i) of the Code what has to be seen is only whether the person is in a position to control and there is no requirement under the law to verify if that person has actually exercised any control or not. Any person who can control the composition of the Board of Directors or corresponding governing body of the 'Corporate Debtor' will be a 'Related Party' and therefore the Debenture Holder and the Lenders by virtue of such control are 'Related Parties' of the 'Corporate Debtor'.
- Clause 24(23) and Clause 24(24) of the sanctioned letter, Clauses 7.1, 7.2 of the AoA and Clause 6.8 of the Facility Agreement evidence the control which the Appellant and ECL had over the functioning of the 'Corporate Debtor'.
- It is submitted that ECL had positive control over the 'Corporate Debtor' and in support of his contention, the Learned Counsel relied on Clause 21 of the sanctioned letter, Schedule 1 to Amendment 1 of the Debenture Trust Deed, Clauses 14(12) and Clause 14(34) of Schedule 1 to Amendment No. 1 dated 16/10/2017 to the Debenture Trust Deed, Clause 24 of the sanctioned letter, Clause 4.1 of the AoA and the PoA executed on 22/09/2017.
- The Appellants are a 'Related Party' under Section 5(24)(m)(iii) of the Code since the authorised signatory of the Appellant was an employee of Saha Infratech immediately prior to joining the services of the Appellant.
- As per the ratio of the Hon'ble Apex Court in '*Arcelor Mittal India Pvt. Ltd.*' (*Supra*), it was held that '*so long as a person or persons acting in concert, directly or indirectly can positively influence, in any manner,*  
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*management or policy decisions, they could be said to be in control*’. When the ‘Corporate Debtor’ itself was in dire need of funds to carry on the construction of ‘Project Encore’, yet it had transferred Rs.28Crores/- to ‘Related Parties’ of Saha Infratech at the instance of ECL. Such action demonstrates positive control apart from the fact that ECL had control over the entire Project Revenue Accounts including the payments made by the allottees of the ‘Corporate Debtor’ and the utilisation of revenue. ECL had sole control and the ‘Corporate Debtor’ itself did not have any signatories to such Bank Accounts. By virtue of the PoA, ECL had complete authority to represent the ‘Corporate Debtor’ and do anything on its behalf. ECL had the power to approve or modify and finalise the business Plans of the ‘Corporate Debtor’. ECL had complete control over the appointment and removal of Key Managerial Personnel. All decisions of the Board of Directors of the ‘Corporate Debtor’ were to be held only in the presence of an observer of ECL or such Meetings were rendered invalid.

- Lastly it was submitted by the Learned Counsel that the ‘Right to Payment’ from the ‘Corporate Debtor’ did not accrue as admittedly the Guarantee Deed was not invoked prior to the CIRP date. Learned Counsel placed reliance on the Judgement of the Hon’ble Apex Court in ‘*Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited*’, (2021) 9 SCC 657, in support of his argument that there cannot be any invocation of guarantee post-commencement of CIRP and that of the coming into effect of the Order of Moratorium, or prior transactions entered into by the ‘Corporate

Debtor' stand frozen and no fresh liability can be fastened. Hence it is argued that the Appellant cannot make a 'Claim' in the CIRP on the basis of the Guarantee Deed which was never involved prior to the commencement of the CIRP of the 'Corporate Debtor' on 27/01/2020. Admittedly no notice which was mandatory in terms of Clause 2.1(ii) of the Guarantee Deed was issued to the 'Corporate Debtor' by the Appellant for the amount claimed in Form-C.

- Learned Counsel also fairly conceded that the ratio of '*Anuj Jain (IRP of Jaypee Infratech Ltd.) (Supra)*' may not be strictly applicable to the facts of this case as in the Guarantee Deed in almost all cases, the disbursement may not be directly to the 'Corporate Debtor'.
- Even after the Admission Order was passed, the Appellants were in collusion with the IRP. The Adjudicating Authority had clearly directed the erstwhile IRP to proceed with the CIRP vide Order dated 07/09/2020, however the said IRP refused to proceed till the Appellants would be made part of the CoC. It was strenuously contended that since the Appellants are perpetrators of fraud and are 'Related Parties' of the Promoters of the 'Corporate Debtor', their inclusion in the CoC would be illegal and detrimental to the interest of all the Homebuyers.
- Learned Counsel in support of his contention placed reliance on the following Judgements:

**Sr. No.****Judgements**

1. '*Phoenix ARC Pvt. Ltd. Vs. Spade Financial Services Ltd. & Ors.*', (2021) 3 SCC 475.
2. '*Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited*' (2021) 9 SCC 657.

3. *'P. Mohanraj & Ors. Vs. Shah Brothers Ispat Private Limited', (2021) 6 SCC 258.*
4. *'Rajendra K. Bhutta Vs. Maharashtra Housing & Area Development Authority & Anr.', (2020) 13 SCC 208.*

**9. Submissions of the Learned Counsel appearing on behalf of the second Respondent/IRP of the 'Corporate Debtor':**

- It is submitted that vide Order dated 13/07/2021 Mr. Manoj Kumar Singh, the erstwhile IRP was removed on an Application preferred before the IBBI and the present IRP was appointed.
- It is submitted that on his appointment, the IRP observed that ECL Finance Limited and IBBI Trusteeship Services Limited (Appellant) were the Holders of Corporate Guarantee executed by the 'Corporate Debtor' for Financial Assistance rendered to Saha Infratech and on admitting these Appellants in the CoC, they would hold about 88% Voting Shares. It is submitted that for a 'Financial Creditor'/Guarantee Holder to claim against a Corporate Guarantor, the existence of default is a must. In the absence of any default on part of the Principal Borrower no liability can be fastened upon the Corporate Guarantor and placed reliance on the Judgment of the Hon'ble Supreme Court in '*Laxmi Pat Surana*' (*Supra*).

**Assessment:**

**10.** The main issues which arise in these Appeals are:

- (a) Whether the Adjudicating Authority was right in applying the ratio of '*Anuj Jain (IRP of Jaypee Infratech Ltd.)*' (*Supra*) to the facts of the attendant case and holding that the Appellants are not 'Financial Creditors' in view of the fact that there was no 'direct disbursal' of amount to the 'Corporate Debtor'/Guarantor.

- (b) Whether an individual Homebuyer has the locus to challenge the admission of a Claim of another Creditor/‘Financial Creditor’. Whether the filing of the said Application had to be done through the ‘Authorized Representative’ (AR) only.
- (c) Whether the Appellant can make a ‘Claim’ on the basis of the ‘Guarantee Deed’ which was never invoked pre-commencement of the CIRP, and remained uninvoked even as on the date of filing of the ‘Claim’, thereby meaning that ‘Right to Payment’ has not yet accrued.
- (d) Whether the Appellants are ‘Related Parties’ of the ‘Corporate Debtor’. Whether the Appellants were in a ‘position’ to ‘control’ the affairs of the ‘Corporate Debtor’, to fall within the ambit of the definition of ‘Related Party’ as defined under Section 5(24) of the Code.

**11.** At the outset, we address ourselves to the first issue raised by the Appellants that the Adjudicating Authority has erroneously relied on the Judgement of the Hon’ble Supreme Court in ‘Anuj Jain’ Case and held that there was no direct disbursement of amount by ECL to the ‘Corporate Debtor’ and hence the amount involved is not a ‘Financial Debt’ as defined under Section 5(8) of the Code. This Tribunal is of the considered view that ECL, being the original lender had disbursed the amount in terms of the Facility Agreement entered into and the disbursement of ‘debt’ is essentially to the Issuer/Borrower and not to the ‘Corporate Guarantor’ i.e., ‘Palm Developers’. By providing Corporate Guarantee, ‘Palm Developers’ has agreed to incur the ‘debt’, if ‘due and payable’. A Guarantee is included as one of the illustrations which specifies the definition of ‘Financial Debt’ under Section 5(8)(i) of the Code. This Tribunal in ‘Ascot Realty Private Limited’ (*Supra*) has held that for initiation of Insolvency Proceedings against

the Corporate Guarantor, the element of disbursal for 'Time Value of Money' is not required. We are of the considered view that despite the fact that there was no direct disbursal of amount to the Corporate Guarantor, any amounts released to the Issuer/Principal Borrower and not to the Corporate Guarantor does constitute 'Financial Debt' as defined under Section 5(8) of the Code and it cannot be said that such amounts do not have consideration for 'Time Value of Money'. In the facts of the attendant case, it has to be only seen whether there was a 'default' and the amounts are 'due and payable' as on the date of filing of the 'Claim'.

12. Therefore, we hold that the ratio of '*Anuj Jain*' (*Supra*) is not applicable to the facts of the attendant case on hand.

**Locus of the 'Individual Homebuyer'/'Financial Creditor' to challenge the constitution of the CoC:**

13. Learned Sr. Counsel Mr. Gourav Mitra argued that a single Homebuyer cannot challenge whether the Appellants can be treated as 'Financial Creditors' or not. It was submitted that reliance cannot be placed on '*Phoenix Arc Pvt. Ltd.*' Vs. '*Spade Financial Services Ltd. & Ors.*' (2021) 3 SCC 475, as the Hon'ble Supreme Court in that judgement has held that AAA & Spade are backdoor entrants and are to be removed from the CoC. That ratio cannot be applied in this case as the Appellants are not related parties and did not contemplate any backdoor entry. Mr. Mitra argued that a lone Homebuyer cannot challenge the constitution of the CoC and placed reliance on Sections 25(a) and 21(6)(a)(b) in support of his contention that only an 'Authorized Representative' should represent the Homebuyer. Merely because the inclusion of the Appellants would reduce the voting percent, a single Homebuyer cannot decide the status of the CoC.



It is argued that this would constitute a serious conflict of interest and that any such challenge by a single Homebuyer would open the Pandora's Box. Learned Sr. Counsel for IDBI, Dr. Singhvi also submitted that a single Homebuyer constituting miniscule voting share filed I.A. 1610/2020 and the Adjudicating Authority has ordered that the Appellant IDBI is not a 'Financial Creditor' and cannot be a member of the CoC. Learned Sr. Counsel Mr. Ramji Srinivasan appearing for ECL further contended that a single Homebuyer does not have the locus to challenge the constitution of the CoC.

**14.** Recently this Tribunal in 'Aashray Social Welfare Society & Ors.' Vs. 'Saha Infratech Pvt. Ltd. & Ors.', Comp. (AT) (Ins) No. 904 of 2021 has discussed in detail the role of 'Authorized Representative' ('AR') and whether the Homebuyers/Welfare Society representing the Homebuyers have a right to be heard/impleaded and observed as follows:

*"12. The statutory scheme as is reflected from Section 21(6-A) and Section 25-A of the Code indicates that the Authorised Representative is chosen to represent the creditor in a class in the CoC. The Authorised Representative needs to attend the meeting of the CoC and vote on behalf of the Financial Creditor to the extent of voting share of the Financial Creditor. The Adjudicating Authority in its order has referred to Regulation 16A Subregulation (5) of the CIRP Regulations, 2016. Regulation 16A deals with the Authorised Representative. Regulation 16A provides for procedure of choosing an Authorised Representative of creditors of the respective class. The Sub-regulation 16A(5) contains a clarifications, which is to the following effect:-*

*"16A(5). The interim resolution professional or the resolution professional, as the case may be, shall provide an updated list of creditors in each class to the respective authorised representative as and when the list is updated. Clarification: The authorised representative shall have no role*

*in receipt or verification of claims of creditors of the class he represents.”*

13. *The clarification under Regulation 16A(5) is that the Authorised Representative shall have no role in receipt or verification of claims of creditors of the class he represents. The Authorised Representative is to be chosen after claims of Financial Creditors in a class is submitted in Form-CA. The stage of choosing an Authorised Representative of a creditor in a class is much after receipt of a claim under Chapter IV of the Regulation and after verification of a claim under Regulation 13. After verification of claim under Regulation 13, list of creditors is made available for inspection by the person who have submitted proof of claim and is available for inspection by others as enumerated under Regulation 13. The clarification appended to Regulation 16A(5) is only clarification to the statutory scheme delineated under the Regulations and the Code that the Authorised Representative has no role in respect of verification of claim of a creditor in class. Can it be said that the Authorised Representative has no role in respect of verification of claims of creditors, therefore, the Financial Creditors in a class themselves have also no right with regard to receipt or verification of claims. The answer is obviously no. The Financial Creditor in class have every right to submit their claim giving proof of verification.*

14. *The mere fact that the Authorised Representative of a creditor in a class have no role in receipt and verification of the claim of the creditors, it cannot be held to mean that creditors in a class have no right with regard to receipt and verification of their claim. The clarification as contained in Regulation 16A(5) has been read by the Adjudicating Authority to an extent which it never meant. The conclusion recorded by the Adjudicating Authority in paragraph 23 on the basis of erroneous interpretation of Regulation 16A(5) resulted in a wrong conclusion that the creditors in a class have no role in receipt or verification of claims of creditors.*

15. *The present is a case where the question for consideration is the right of impleadment of Appellants in Applications filed by Respondent No. 2 and 3 challenging the rejection of their claim as Financial Creditors. The Appellants are also Financial Creditors in a class and they represent majority of the Homebuyers in class, as has been pleaded by the*

*Appellants. The Financial Creditors in a class, who at present consist of 99.85% of CoC, have every right to be heard in the Applications filed by Respondent No. 2 and 3 whose claim has been partly and fully rejected, respectively by the IRP. The Authorised Representative under the statutory scheme as noticed above is to represent the Financial Creditors i.e., Homebuyers in a class for a limited purpose i.e., for attending meetings of the CoC and voting on behalf of the Financial Creditors in a class. It cannot be said that since the Authorised Representative has not come up before the Adjudicating Authority for filing the impleadment application, the Appellants who themselves are Homebuyers have no right to participate in the adjudication initiated by filing applications by Respondent No. 2 and 3.*

*(Emphasis Supplied)*

**15.** Having regard to the aforementioned observations, the contention of the Appellants that the first Respondent/Homebuyer has only 4.43% of the Voting Share in the CoC and not represented through the Authorised Representative and hence has no locus to challenge the claim of the Appellants, is untenable. The Hon'ble Supreme Court in 'Phoenix Arc Pvt. Ltd.' Vs. 'Spade Financial Services Ltd. & Ors.' (2021) 3 SCC 475 has held that 'Financial Creditors' forming part of the CoC must be heard during proceedings which would establish the status of other 'Financial Creditors'. Keeping in view the principle laid down in 'Phoenix ARC Pvt. Ltd. (Supra)' and in 'Aashray Social Welfare Society & Ors.' (Supra) we are of the considered view that the first Respondent/Homebuyer has every right to be heard and has the locus to challenge the Claim of the Appellants.

**16.** Having held so, now we address ourselves to the contention of the first Respondent/Homebuyer that there is no 'default' as on the date of initiation of CIRP as the Corporate Guarantee was not invoked as on the date of commencement of CIRP, as on the date of filing of the 'Claim'.

17. The Learned Adjudicating Authority has held that as the Guarantee was invoked on 07/04/2020 i.e., after the initiation of CIRP on 27/01/2020, the amount claimed by the Appellants cannot be admitted in terms of the Moratorium declared under Section 14 of the Code. It is the case of the first Respondent/Homebuyer that the Appellants did not have any 'Right to Payment' as post-commencement of CIRP, there cannot be any invocation of Guarantee. Learned Counsel Mr. Sinha placed reliance on the Judgements of the Hon'ble Supreme Court in '*Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited*' (2021) 9 SCC 657, '*P. Mohanraj & Ors. Vs. Shah Brothers Ispat Private Ltd.* (2021) 6 SCC 258, and '*Rajendra K. Bhutta Vs. Maharashtra Housing & Area Development Authority & Anr.*' (2020) 13 SCC 208, in support of his argument that, on the coming into effect of the Order of Moratorium, all prior transactions entered into by the 'Corporate Debtor' stand frozen and no liability can be fastened. It was also contended by the Counsel that the Appellants cannot have any valid claim in the CIRP of the 'Corporate Debtor' as the liability of the 'Corporate Debtor'/Corporate Guarantor can never be more than that of the Principal Borrower. In Column 4 of Form-C, the Appellant had filed a claim of Rs.1,26,96,88,698/-. The Appellant has also filed a claim of Rs.1,30,96,46,399.24/- in the CIRP of the Principal Borrower/M/s. Saha Infratech. It was also submitted that RP of Saha Infratech has not accepted the Claim of the Appellant and has held that the Appellant in fact owes Rs.12,60,77,970/- to Saha Infratech. Hence, even as per the Guarantee Deed, 'Palm Developers' being the Corporate Guarantor cannot have any liability if the Principal Borrower itself has no liability towards the Appellant. It was further contended that as per the Appellant's own calculation the

amounts due as on 28/01/2020 from the Principal Borrower is only Rs.9,16,66,666/-. As the CIRP commencement date of the Corporate Guarantor is 27/01/2020, the overdue amount from the Principal Borrower should be lesser than Rs.9,16,66,666/- as on such date.

**18.** A perusal of the documents on record evidence that the Appellants had recalled the entire redemption amount with respect to the Debentures on 25/03/2020 after the CIRP commencement date of Palm Developers (27/01/2020) and Saha Infratech (28/02/2020). It is also an admitted fact that no Notice in terms of Clause 2.1(ii) of the Guarantee Deed was ever issued to the 'Corporate Debtor' for an amount of Rs.1,26,96,88,698/- by the Appellants. Dr. Singhvi appearing for IDBI contended that it is misleading to say that Clause 9.16 of the Agreement refers to only a tranche amount. It is submitted that 'Financial Debt' in favour of the Appellant is essentially the liability/obligation in respect of the Appellant's claim arising from and upon the failure of Saha/Principal Borrower to comply with the payments to be made as per the Debenture Trust Deed and also evident from the several defaults in respect of the failure in the payment of the amounts in relation to the Non-Convertible Debentures (NCDs). In terms of Clause 2.3.2 of the Guarantee Deed, the Guarantee was irrevocable and not subject to any prior Notice to demand upon or act against the Principal Borrower or issue any prior Notice to the Corporate Guarantor with regard to any default made by the Principal Borrower.

**19.** Section 3(6) of the Code defines 'Claim' as hereunder:

*"3(6) "claim" means—*

*(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;*

*(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;”*

**20.** Dr. Singhvi drew our attention to Clause 14.1 of the Debenture Trust Deed dated 01/07/2016, wherein it is stated that occurrence of one or more of the following events shall constitute a ‘Right Related Default’:

**“14. EVENT OF DEFAULT**

*14.1 Payment Related Default.*

*Occurrence of one or more of the following events shall constitute a "Payment Related Default":*

*(i) Default is committed in payment of the Interest, the Default Interest and, or, the Redemption Amounts in accordance with this Deed;*

*(ii) If any amount paid under the Transaction Documents (including any payment on a Interest Payment Date and, or, a Redemption Date) cannot be remitted and is not paid at the place and in the currency in which it is expressed to be payable;*

*(iii) Failure to redeem all and not less than all the Tranche 1 Debentures and, or, the Tranche 2 Debentures on the expiry of the respective Tenor by payment of the Redemption Amounts, in full, in accordance with this Deed;*

*(iv) Non-payment of amounts reimbursements/ fees including the fees payable to the Debenture Trustee, the Debenture Holders' Representatives, the Depository and the depositories agent, the Utilization Escrow Agent and the Project Revenue Escrow Agents and the credit rating agency and reimbursements/ payments to be made to the Debenture Trustee under the terms of this Deed (including as set forth in Section 15.2 hereto); and, or,*

*(v) Any shortfall or failure to maintain the requisite amounts towards the DSRA.”*

**21.** Default means non-payment of debt when whole or any part or instalment of the amount of debt has become ‘due and payable’ and is not

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paid by the Debtor or the 'Corporate Debtor' as the case maybe. The Learned Counsel relies on the letters dated 02/04/2019 and 26/09/2019 which communicate that there are amounts to be paid *by the Principal Borrower*. The issue which requires to be ascertained is whether these amounts were 'due and payable' as on the date of filing of the 'Claim' by the Appellants.

**22.** It is the case of the Respondents that despite multiple defaults on part of Saha, the Appellant/ECL continued to disburse further amounts and was evergreening the loans extended by it to Saha thereby facilitating payment of interest by Saha to itself so that loan account of Saha remains regular in its banks. The Respondent filed as statement to establish that an amount of Rs.84,25,00,000/- was disbursed by ECL even as on 24/10/2019 to Saha.

**23.** However, at this juncture, the moot question which falls for consideration is whether the 'Claims' of the Appellants can be admitted keeping in view that the Corporate Guarantee was never invoked pre-commencement of CIRP, or as on the date of filing of the Claim, especially having regard to the fact that the 'Corporate Debtor' is the 'Corporate Guarantor'. The fact which is to be kept in mind is that the Appellants have not preferred any Section 7 Applications, but have filed 'Claims' in the ongoing CIRP Proceedings of the Principal Borrower/Saha and the Corporate Guarantor/Palm Developers.

**24.** A few dates are also relevant here. Briefly put, the Section 9 Application preferred by an 'Operational Creditor' was admitted on 02/01/2020. The actual recall Notice was admittedly issued on 25/03/2020. The Public announcement was made on 31/01/2020. On 03/02/2020, a reminder letter was sent to Saha for payment of Rs.9,16,66,666/- against the NCDs. On 10/02/2020 ITSL and ECL

submitted Form C Claiming Rs.126,96,88,698/-, the debt incurred shown was when the NCDs were issued to Saha. The amount mentioned in the letter dated 16/12/2019 to 'Corporate Debtor' was Rs.9,16,66,666/-. On 17/02/2020, subsequent to CIRP commencement, Notice was issued by ECL and ITSL to Saha that as per RBI guidelines all accounts where loan repayment is overdue for more than 60 days, Appellants are required to disclose the same to RBI as 'Special Mention Account 2'. In their Reply dated 18/09/2020 to I.A. 1610/2020, ITSL and ECL took a stand that defaults were being committed since 2017 itself but that debentures were continued in good faith. On 16/05/2021 RP of Saha rejected the Appellants' claims and demanded that the Appellants owed Rs.12,60,77,970/- to Saha, the Principal Borrower. On 13/07/2021, on an Application filed by IBBI, I.A. 1742/2021, Adjudicating Authority has appointed Mr. Mishra as the new IRP who published the Forensic Audit Report on 12/03/2022.

**25.** Learned Counsel Dr. Singhvi has placed reliance on the Judgement of this Tribunal in '*Axis Bank Limited*' Vs. '*Edu Smart Services Pvt. Ltd.*', *Comp. App. (AT) (Ins) No. 302 of 2017*, wherein this Tribunal has held as follows:

*"54. Therefore, stand taken by the respondents that the claim has not been matured cannot be ground to reject the claim.*

*55. Section 25 provides the duties of Resolution Professional. As per Section 25(2)(e), the Resolution Professional is required to maintain an updated list of all the claims. Aforesaid fact also suggests that the maturity of a claim or default of debt are not the guiding factors to be noticed for collating or updating the claims. The latter can be looked from another angle. It is only in case of 'debt' and 'default', a 'Financial Creditor' or 'Operational Creditor', may file applications under Section 7 or 9. The 'Corporate Applicant' has also right to file application under Section 10 for initiation of Corporate Insolvency Resolution Process against itself if it has defaulted to*

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*pay the 'debt'. It does not mean that the persons whose debt has not been matured cannot file claim. The 'Financial Creditors' or 'Operational Creditors' or 'secured or unsecured creditors' all are entitled to file claim.*

*56. Therefore, we hold that maturity of claim or default of claim or invocation of guarantee for claiming the amount has no nexus with filing of claim pursuant to public announcement made under Section 13(1)(b) r/w Section 15(1)(c) or for collating the claim under Section 18(1)(b) or for updating claim under Section 25(2)(e). For the purpose of collating information relating to assets, finances and operations of Corporate Debtor or financial position of the Corporate Debtor, including the liabilities as on the date of initiation of the Resolution Process as per Section 18(1), it is the duty of the Resolution Professional to collate all the claims and to verify the same from the records of assets and liabilities maintained by the Corporate Debtor.”*

**26.** It is pertinent to mention that the aforementioned Judgement ‘*Axis Bank Limited*’ (*Supra*) relied heavily upon by the Appellants has been overruled by this Tribunal in the subsequent decision in the case of ‘*Edelweiss Asset Reconstruction Company Limited*’ Vs. ‘*Orissa Manganese and Minerals Ltd.*’, 2019 SCC OnLine NCLAT 764. Even ‘*Andhra Bank Vs. M/s. F.M. Hammerle Textiles Ltd.*’, (*Supra*) is not applicable in view of the subsequent decision. The Hon’ble Supreme Court in ‘*Ghanshyam Mishra and Sons Private Limited*’ Vs. ‘*Edelweiss Asset Reconstruction Company Limited*’, (2021) 9 SCC 657, (*Supra*), has addressed to this issue. It is pertinent to reproduce the relevant paras with respect to invocation of Corporate Guarantee as hereunder:

*“110. NCLT found that by email dated 6-1-2018 EARC had submitted its claim in Form "C" for an amount of Rs 648,89,62,395. In response to the said email, RP sought a clarification as to whether the corporate guarantee had been invoked by the applicant. RP had not received any response till 21-2-2018 from EARC. Despite repeated requests made by RP, EARC did not respond to the query made by RP. **From the record placed before NCLT, it was***

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**clear that EARC had not invoked the corporate guarantee. NCLT therefore posed a question to itself, as to whether an uninvoked corporate guarantee could be considered as matured claim of the applicant.** NCLT found that once the moratorium was applied under Section 14 of the I&B Code, EARC was prevented from invoking the corporate guarantee. NCLT further found that the OMMML's guarantee had not been invoked by EARC till the date of completion of CIRP process and once the moratorium was imposed, it could not invoke the corporate guarantee. NCLT therefore found that there is no illegality or irregularity in not admitting the claim of EARC.

.....

124. Shri Bhushan, learned counsel appearing on behalf of EARC, strongly relying on the judgment of NCLAT dated 14-8-2018 passed in *Export Import Bank of India v. JEKPL (P) Ltd.* Resolution Professional, submits that NCLAT itself in the said case had held that invocation of corporate guarantee has no nexus with filing of the claim pursuant to public announcement made under Section 13(1)(b) read with Section 15(1)(c) of the I&B Code and also for collating the claim under Section 18(1)(b) or for updating claim under Section 25(2)(e). He submits that civil appeal challenging the said judgment and order has been dismissed by this Court vide order dated 23-1-2019.

125. He submits that NCLAT itself in the said Export Import Bank of India case had directed EXIM Bank and Axis Bank to be treated as "financial creditors" and had further directed them to be given representation on CoC. He submits that, however, in the present case, NCLAT has taken a contrary view. He therefore submits that in the alternative this Court should direct RP/CoC to treat EARC as a "financial creditor" and give it representation on CoC and take a decision in accordance with law.

126. We find that the said case, on facts, would not be applicable to the case at hand. No doubt that the appeal filed against the judgment and order of NCLAT dated 14-8-2018 has been dismissed by this Court on 23-1-2019. However, it is a settled law that dismissal of a special leave petition/appeal does not amount to affirmation of the view taken in the judgment impugned in the special leave petition/appeal. It will

also be relevant to refer to the order passed by this Court dated 23-1-2019 while dismissing the appeal, which reads thus:

*(Atyant Capital India Fund I case, SCC OnLine SC paras 3-5)*  
*"Civil Appeal No. 10134 of 2018*

3. *We have heard the learned counsel for the parties and perused the relevant material on record.*

4. *The civil appeal is dismissed.*

5. *It will be open for the appellant to urge all points as may be available to it in law before the appropriate forum, if so advised."*

*It will thus be clearly seen that this Court in Atyant Capital Fund I case while dismissing the appeal has reserved the liberty to the appellant to urge all points as may be available to it in law before the appropriate forum.*

127. *It is to be noted that in the appeal before NCLAT, EXIM Bank as well as Axis Bank had taken steps immediately after the claim of the said Banks on the basis of corporate guarantee came to be rejected by RP/CoC. After rejection of the claim, the said Banks had filed an application under Section 60(5) before NCLT. On NCLT rejecting the said claim, those Banks had approached NCLAT in appeals which were allowed and the order, as stated hereinabove, was passed.*

.....

133. *We are therefore of the considered view that the appeal deserves to be allowed by expunging SCC OnLine NCLAT paras 28, 42, 43, 51 and 52 from the judgement of NCLAT dated 23-4-2019. It is ordered accordingly. The judgement and order passed by NCLT dated 22-6-2018 is upheld. No costs."*

*(Emphasis Supplied)*

**27.** It is seen from the aforementioned Judgement that an uninvoked Corporate Guarantee cannot be considered as a 'Matured Claim'. In para 133 of the aforementioned Judgement the Hon'ble Supreme Court has upheld the finding of the Adjudicating Authority that once the moratorium was applied

under Section 14 of the Code, a Corporate Guarantee cannot be invoked. Though this is a case where the Resolution Plan has been approved, the fact remains that the Principle that a Corporate Guarantee cannot be invoked once the CIRP has commenced and that an uninvoked Corporate Guarantee as on date of filing of the Claim, cannot be considered as 'Matured Claim' has been laid down by the Hon'ble Supreme Court.

**28.** We also place reliance on the observations of the Hon'ble Supreme Court in para 38 of '*Swiss Ribbons Pvt. Ltd. & Anr.*' Vs. '*Union of India & Ors.*', (2019) 4 SCC 17, in which it is stated as follows:

*"38. In this context, it is important to differentiate between "claim", "debt" and "default". Each of these terms is separately defined as follows:-*

*3. Definitions- in this Code, unless the context otherwise requires- xxx*

*(6) "claim" means –*

*(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;*

*(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured; xxxxxxx*

*(11) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt:*

*(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be; xxxxx*

*Whereas a "claim" gives rise to a "debt" only when it becomes "due", a "default" occurs only when a "debt" becomes "due and payable" and is not paid by the debtor. It is for the reason that a financial creditor has*

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*to prove "default" as opposed to an operational creditor who merely "claims" a right to payment of a liability or obligation in respect of a debt which may be due. When this aspect is borne in mind, the differentiation in the triggering of insolvency resolution process by financial creditors Under Section 7 and by operational creditors Under Sections 8 and 9 of the Code becomes clear."*

*(Emphasis Supplied)*

**29.** It is clear from the observations made by the Hon'ble Supreme Court in the aforementioned Judgement '*Swiss Ribbons Pvt. Ltd. & Anr.*' (*Supra*) that a 'Claim' gives rise to a debt only when it becomes due. A 'Claim' is wider in its scope than debt. A claim may be due or may not be due, but a debt must be a claim which is due. A complete mechanism has been provided in IBC, 2016 as to how and when claims become 'due and payable' and debt owed. In the instant case, the CIRP commencement date of the 'Corporate Debtor' is 27/01/2020 and the Appellant had recalled the entire redemption amount with respect to debentures on 25/03/2020 subsequent to the initiation of CIRP. The Adjudicating Authority recorded that the Corporate Guarantee was invoked on 07/04/2020. **The claims were filed by the Appellants on 10/02/2020.** This Tribunal is of the earnest view that the Appellants cannot Claim the amounts in the CIRP of the 'Corporate Debtor' who is a 'Corporate Guarantor' on the basis of the Deed of Guarantee which was never invoked as on the date of filing of the Claims. The record also does not show that any Notice in terms of Clause 2.1(ii) of the Deed of Guarantee was ever issued to the 'Corporate Debtor'. We do not find any substance in the argument of the Appellant Counsel that no such Notice is required to be issued as invocation of Guarantee is not a pre-condition to file

a 'Claim'. The Deed of Guarantee stipulates such a notice to be issued which was never sent as the Deed was never invoked prior to CIRP filing of Form C.

**30.** In '*SBI Vs. Orrisa Manganese & Minerals Ltd.*' dated 22/06/2018, EARC (Edelweiss Asset Reconstruction Co. Ltd.) filed an Application before the Adjudicating Authority, (NCLT) Kolkata in CA(IB) 470/KB/2018 in CP (IB) No. 371/KB/2017 challenging the decision of the RP in not admitting the claim of the Applicant. In this case, the 'Corporate Debtor' had executed a guarantee securing loan received by APNRL which has been given by India Infrastructure Finance Company Ltd. (IIFCL). The Corporate Guarantee executed by the 'Corporate Debtor' was in favour of IIFCL, which assigned its rights to the Applicant, who filed their Form C *but have not invoked the Corporate Guarantee*. The Adjudicating Authority has categorically held that the Applicant was prevented from invoking Corporate Guarantee during Moratorium and that RP has rightly rejected the Claim as the Corporate Guarantee was not invoked. In an Appeal preferred by Edelweiss Asset Reconstruction Company Ltd. (EARC), NCLAT reversed its decision passed in '*Axis Bank*' (*Supra*) and has held that on declaration of moratorium, it was not open to EARC to invoke the Corporate Guarantee and held that the IRP has rightly not accepted the claim of the Appellant/EARC. As the Resolution Plan was already approved in that case, the Hon'ble Supreme Court in '*Ghanshyam Mishra and Sons Private Limited*' (*Supra*) in paragraph 133 has also closed the right of EARC in terms of taking any further action. Therefore, we are of the view that the ratio of the Hon'ble Supreme Court in '*Ghanshyam Mishra and Sons Private Limited*' (*Supra*), is squarely applicable to the facts of this case and hence we are of the considered view that when the 'Corporate Debtor' is a 'Guarantor' and when the 'Corporate Guarantee'

has never been invoked prior to the commencement of the CIRP, as on the date of filing of the Claims, the 'Right to Payment' has not accrued.

**31.** Additionally, IBBI vide Order dated 08/04/2022, in the matter of Erstwhile IRP, suspended his services for two years and made observations in its 'Analysis & Findings' in paras 4.10 and 4.13 and finally held that the IRP failed to conduct the CIRP as per the provisions of the Code. It was observed that *'since the Corporate Guarantees were not invoked yet and the two Corporate Guarantors were not eligible to join the CoC, a CoC could have been constituted with the remaining members and claims of homebuyers verified, but the IRP took advantage of his own mistake wrongly including the two Corporate Guarantor in the CoC and delayed the CIRP by 309 days'*.

**32.** It is the further case of the first Respondent that the RP of the Principal Borrower has not admitted the claims of the Appellants. A perusal of the email dated 16/05/2021 addressed by the IRP of the Principal Borrower to IDBI shows rejection of the Claim of IDBI on the ground of being a 'Related Party' and that an amount of Rs.12,60,77,970/- is recoverable from them. When the Appellants' Claim has been rejected in the CIRP of the Principal Borrower, the onus is on the Appellants to substantiate how their claims can be 'admitted' in the CIRP of the 'Corporate Guarantor' when they have not even invoked the Guarantee prior to CIRP commencement, or as on the date of filing of Form C, which they have failed to discharge.

**Issue of 'Related Party':**

**33.** Now we address to the contention raised by the Learned Counsel Mr. Sinha that the Appellants are 'related Parties' of the 'Corporate Debtor' as defined under Section 5(24) of the Code.

**34.** It is submitted by Dr. Singhvi that the power contingent upon occurrence of 'Event of Default' was never exercised by the Appellant in the present case and as such the Appellant could not in any manner be said to be a 'Related Party' under Section 5(24) of the Code. Learned Counsel placed reliance on the ratio of the Hon'ble Supreme Court in in '*Arcelor Mittal India Pvt. Ltd.*' (*Supra*), to buttress his contention that 'control' would only include 'positive control' and does not include mere 'Power to Restrict'. In the instant case, Restrictive Clauses in the AoA are only to ensure that the Borrowing Company does not attempt to siphon off in any way the assets based on which the loan was advanced. Though we find force in the submissions of Dr. Singhvi that Clause 9 refers to 'Event of Default' and the occurrences thereunder, it is relevant to peruse the other Clauses of **all** the Agreements to understand the nature and scope of 'Control' which the Appellants can exercise over the 'Corporate Debtor'.

**35.** Learned Counsel Mr. Ramji Srinivasan strongly contended that there is absolutely no evidence available on record that the Appellants had participated in the policy making process; that the erstwhile IRP sought legal opinion from Ms. Dua Associates and only then admitted the Claims of the Appellant; that the Clauses in the AoA are Restrictive Covenants included as a mean to protect and preserve the huge amounts of loans advance to Saha Infratech; Clause 5.4 of the AoA clearly demonstrates that the Appellants do not have any power over the constitution of the Board of Directors.

**36.** Learned Sr. Counsel Mr. Ramji Srinivasan contended that mere management of an Escrow Account does not construe 'control'. Every Bank has an Escrow Account only to ensure that amounts are not siphoned off



mortgager releasing the mortgage on the production of an NOC is only to ensure the recovery of money lent. The right to nominate a Director does not mean positive control of the Board but can be interpreted only as some sort of 'Financial Discipline'.

**37.** It is the main case of the first Respondent/Homebuyer that the Appellants are 'related Parties' of the 'Corporate Debtor' as defined under Section 5(24)(m)(h)(i) of the Code on account of their controlling powers over the operations of the 'Corporate Debtor' in the following manner:

- Control over the decisions of the Board of Directors.
- Final say in any decision at a Board Meeting or at a shareholders meeting or on any other matter in the event of a deadlock.
- Control over the appointment and removal of key managerial personnel of the 'Corporate Debtor'.
- Control over the approval and modifications of the business plans of the 'Corporate Debtor'.
- Control over the modalities of sale of units in the projects.
- Control over the sale of units to prospective customers and registration of units before the Registrar.
- Control over all revenue and other accounts of the 'Corporate Debtor'.
- Selling partner of the 'Corporate Debtor'.

**38.** It is strenuously contended that as per the requirements of Section 5(24) of the Code, what has to be seen is only whether the person is in a 'position' to control and there is no requirement under the law to verify if that person has actually exercised control or not. Learned Counsel argued that the observations made by the Hon'ble Supreme Court in '*Arcelor Mittal*

*India Pvt. Ltd.’ Vs. ‘Satish Kumar Gupta & Ors.’ (2019) 2 SCC 1* that ‘so long as a person or persons acting in concert, directly or indirectly, can positively influence, in any manner, management or policy decisions, they could said to be in control’ is applicable to the facts of this case and hence it is not necessary to show whether or not the entity exercised actual control or not.

**39.** It is contended that the Appellant was not merely a lender, but also the Debenture Holder and a selling partner of the ‘Corporate Debtor’ having the controlling power to appoint Real Estate Agents/Distribution Agents on behalf of the ‘Corporate Debtor’ for sale of specific residential units totaling to 1,77,900 sq. ft. saleable area in various projects of the Promoters of the ‘Corporate Debtor’ ECL had the power to decide the manner in which the ‘Corporate Debtor’ would sell its units and the power to appoint a developer/contractor of its choice if the ‘Corporate Debtor’ has failed to meet its deadlines. ECL had control not only over the Escrow accounts but also over the project revenue amounts including the payments made by the allottees.

**40.** At this juncture, we find it fit to reproduce Section 5(24) of the Code, which relates to the definition of ‘Related Party’ under the Code:

*“5(24) “related party”, in relation to a corporate debtor, means—*

*(a) a director or partner of the corporate debtor or a relative of a director or partner of the corporate debtor;*

*(b) a key managerial personnel of the corporate debtor or a relative of a key managerial personnel of the corporate debtor;*

*(c) a limited liability partnership or a partnership firm in which a director, partner, or manager of the corporate debtor or his relative is a partner;*

(d) a private company in which a director, partner or manager of the corporate debtor is a director and holds along with his relatives, more than two per cent. of its share capital;

(e) a public company in which a director, partner or manager of the corporate debtor is a director and holds along with relatives, more than two per cent. of its paid-up share capital;

(f) anybody corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;

(g) any limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;

(h) any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act;

(i) a body corporate which is a holding, subsidiary or an associate company of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary;

(j) any person who controls more than twenty per cent. of voting rights in the corporate debtor on account of ownership or a voting agreement;

(k) any person in whom the corporate debtor controls more than twenty per cent. of voting rights on account of ownership or a voting agreement;

(l) any person who can control the composition of the board of directors or corresponding governing body of the corporate debtor;

(m) any person who is associated with the corporate debtor on account of—

(i) participation in policy making processes of the corporate debtor; or

(ii) *having more than two directors in common between the corporate debtor and such person; or*

(iii) *interchange of managerial personnel between the corporate debtor and such person; or*

(iv) *provision of essential technical information to, or from, the corporate debtor;.....”*

*(Emphasis Supplied)*

**41.** The Hon’ble Supreme Court in ‘*Arcelor Mittal India Pvt. Ltd. Vs. Satish Kumar Gupta & Ors.*’, (2019) 2 SCC 1 has discussed in detail and made the following observations with respect to ‘control’ and the ‘power’ to direct the management and policies of a person or entity, whether through ownership of Voting Securities, by contract, or otherwise:

**“48.** *The expression "management" would refer to the de jure management of a corporate debtor. The de jure management of a corporate debtor would ordinarily vest in a Board of Directors, and would include, in accord with the definitions of "manager" \*managing director" and officer" in Sections 2(53), 2(54) and 2(59) respectively of the Companies Act, 2013, the persons mentioned therein.*

**49.** *The expression "control" is defined in Section 2(27) of the Companies Act, 2013 as follows:*

**“2. (27)** *"control" shall include the right to appoint majority of the Directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;"*

**50.** *The expression "control" is therefore defined in two parts. The first part refers to de jure control, which includes the right to appoint a majority of the Directors of a company. The second part refers to de facto control. So long as a person or persons acting in concert, directly or indirectly, can positively influence, in any manner, management or policy decisions, they could be said to be "in control". A management*

decision is a decision to be taken as to how the corporate body is to be run in its day-to-day affairs. A policy decision would be a decision that would be beyond running day-to-day affairs i.e. long-term decisions. So long as management or policy decisions can be, or are in fact, taken by virtue of shareholding, management rights, shareholders agreements, voting agreements or otherwise, control can be said to exist.

**51.** Thus, the expression "control", in Section 29-N(c), denotes only positive control, which means that the mere power to block special resolutions of a company cannot amount to control. "Control" here, as contrasted with "management", means de facto control of actual management or policy decisions that can be or are in fact taken. A judgment of the Securities Appellate Tribunal in **Subhkam Ventures (I) (P) Ltd. v. SEBI**, made the following observations qua "control" under the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997, wherein "control" is defined in Regulation 2(1)(e) in similar terms as in Section 2(27) of the Companies Act, 2013. The Securities Appellate Tribunal held: (SCC OnLine SAT para 6)

"6...The term control has been defined in Regulation 2(1)(c) of the Takeover Code to "include the right to appoint majority of the Directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their Shareholding or management rights or Shareholders agreements or voting agreements or in any other manner". This definition is an inclusive one and not exhaustive and it has two distinct and separate features: (i) the right to appoint majority of Directors or, (ii) the ability to control the management or policy decisions by various means referred to in the definition. This control of management or policy decisions could be by virtue of shareholding or management rights or shareholders agreement or voting agreements or in any other manner. This definition appears to be similar to the one as given in Black's Law Dictionary (Eighth Edn.) at p. 353 where this term has been defined as under:

'Control--The direct or indirect power to direct the management and policies of a person or entity, whether through ownership of voting

securities, by contract, or otherwise; the power or authority to manage, direct, or oversee.

Control, according to the definition, is a proactive and not a reactive power. It is a power by which an acquirer can command the target company to do what he wants it to do. Control really means creating or controlling a situation by taking the initiative. Power by which an acquirer can only prevent a company from doing what the latter wants to do is by itself not control. In that event, the acquirer is only reacting rather than taking the initiative. It is a positive power and not a negative power. In a board managed company, it is the board of Directors that is in control. If an acquirer were to have power to appoint majority of Directors, it is obvious that he would be in control of the company but that is not the only way to be in control. If an acquirer were to control the management or policy decisions of a company, he would be in control. This could happen by virtue of his shareholding or management rights or by reason of shareholders agreements or voting agreements or in any other manner. The test really is whether the acquirer is in the driving seat. To extend the metaphor further, the question would be whether he controls the steering, accelerator, the gears and the brakes. If the answer to these questions is in the affirmative, then alone would he be in control of the company. In other words, the question to be asked in each case would be whether the acquirer is the driving force behind the company and whether he is the one providing motion to the organization. If yes, he is in control but not otherwise. In short control means effective control."

**52.** We think that these observations are apposite, and apply to the expression "control" in Section 29-A(c).

**53.** Section 29-A(c) speaks of a corporate debtor "under the management or control of such person". The expression "under" would seem to suggest positive or proactive control, as opposed to mere negative or reactive control. This becomes even clearer when clause (g) of Section 29-A is read, wherein the expression used is "in the management or control of a corporate debtor" as, entering into preferential, undervalued, extortionate credit, or fraudulent transactions. It is thus clear that in the expression "management or control", the two words take colour from each other, in which case the principle of *noscitur a sociis* must also be held to apply. Thus viewed, what is referred to in clauses (c) and (g) is de

*jure or de facto proactive or positive control, and not mere negative control which may Now from an expansive reading of the definition of the word "control" contained in Section 2(27) of the Companies Act, 2013, which is inclusive and not exhaustive in nature.*

**54.** *In a recent judgment delivered by one of us (Nariman, J.) in Chintalapati Srinivasa Raju v. SEBI, this Court after referring to the definition of "control" in the SEBI Regulations, held on facts that an executive Director, on a fixed monthly salary, post-resignation, cannot be held to be a person exercising "control" within the meaning of the SEBI Regulations. This Court referred to with approval the following test laid down in SEBI v. Kishore R. Ajmera: (SCC p. 383. para 26)*

*"26. It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate acts and circumstances surrounding the events on which the charges allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion."*

*(Emphasis Supplied)*

**42.** On the touchstone of the aforementioned observations of the Hon'ble Supreme Court and the definition of 'Related Party' as defined under Section 5(24) of the Code, this Tribunal finds it relevant to peruse the Clauses of the 'Sanction letter', the 'Articles of Association', the 'Facility Agreement' and that of the 'Builder Buyer Agreement' to assess the true nature of relationship between the parties and if there was any 'positive control' by the Appellants over the affairs of the 'Corporate Debtor'.

43. Clauses 23 & 24 of the Sanction letter read as follows:

**“Special Conditions**

23. The Lender shall have absolute right to appoint a director on the Board of the Borrower and/or the other Security Provider(s) any time, and such Nominee Director shall not incur any liability and shall be indemnified by the Borrower. Such nominee director shall be member of all the committees appointed by the Board of Directors of the Borrower/Security Provider(s).

24 The Lender shall have right to appoint an Observer on the Board of Borrower and/or management of the Security Providers. The Borrower and/or Security Providers shall forward a copy of all the notices/resolution/agenda of the respective Board meetings to such Observer.”

(Emphasis Supplied)

44. Clause 7.1 of the Articles of Association (AoA) refers to the powers of the Appellant/ECL Finance to resolve any deadlock in the Board/Shareholder Meetings, if required:

“7.1 Without prejudice to the other rights of the Debenture Holders and the lenders under these Articles and the loan documentation and debenture trust deed and under applicable Laws, the Debenture Holders and/or the lenders shall upon occurrence of an event of default have the right to appoint a nominee director on the Board of the Company. The Promoters of the Company shall take all necessary steps, including passing necessary resolutions at the Board and Shareholder meetings and filing necessary forms with the RoC, to enable the Debenture Holders and/or the lenders to exercise the aforesaid right. Notwithstanding anything contained in these Articles and, or, in the Transaction Documents, the Promoters and the Company shall in the event there is a deadlock on any matter/decision at a board meeting and, or, at a shareholders meeting amongst the directors or the Promoters, such matter/decision shall be referred to the nominee director of the Debenture Holders and/or the lenders and, or, to the Debenture Holders or the lenders for final decision. Any decision by such director of the Debenture Holders and/or the lenders and, or, the Debenture Holders and/or the



*lenders shall be final and binding on the Promoters of the Company.”*

**45.** Regarding the contention of Learned Counsel Mr. Sinha that ECL had complete control over the appointment and removal of Key Managerial personnel, it is pertinent to see the relevant clauses of the ‘Facility Agreement’ which are detailed as hereunder:

**“6.8 MANAGEMENT**

*6.8.12 Unless the Lender otherwise agree in writing the Borrower and the Obligors shall not remove any person, by whatever name called, exercising substantial powers of management of the affairs of the Borrower and/or Obligors at the time of execution of the Facility Agreement.*

*6.8.13 The Borrower and the Obligors shall, as and when required by the Lender appoint and change to the satisfaction of the Lender, suitable technical, financial and executive staff of proper qualifications and experience for the key posts, in case the Borrower and the Obligors fail to adhere to Business Plan and meet the requirement of Project Milestone as provided in this Agreement. The terms of such appointments, including any changes therein, shall be subject to prior approval of the Lender.*

*6.8.14 The Lender shall have the right to appoint, whenever they consider necessary, any person, firm, company or association of persons engaged in technical, management or any other consultancy business to inspect and examine the working of the Borrower and/or Obligors and projects and to report to the Lender. The Lender shall have the right to appoint, whenever it consider necessary, any chartered accounts/cost accountants as auditors for carrying out any specific assignment(s) or to examine the financial or cost accounting system and procedures adopted by the Borrower and/or Obligors for its/their working or as concurrent or for conducting a special audit of the Borrower. The costs, charges and expenses including professional fees and travelling and other expenses of such consultants or auditors shall be payable by the Borrower and/or Obligors.”*

**46.** It is vehemently contended by the first Respondent Counsel that the power of ECL is stretched to such a vast extent that finalization of all 'Business Plans' had to be only with the approval of ECL.

**47.** The Debenture Trust Deed was amended on 16/10/2017 and Schedule I of the first Amendment reads as hereunder:

***"10. Business Plan, Project Cost and Quarterly Budget Approval Mechanism***

*5) The Debenture Trustee/ Monitoring Agent may approve the Quarterly Construction Budget or may advise the Issuer and/ or Security Providers to make modification as mutually decided. The Issuer and/ or Security Providers will revise/ modify the respective Quarterly Construction Budget if so advised by the Debenture Trustee/ Monitoring Agent. The Quarterly Construction Budget once approved by the Debenture Trustee/ Monitoring Agent ("Approved Quarterly Construction Budget") shall be applicable to for the quarter for which the same is approved and the amount from the Escrow Account to meet the construction cost shall during such quarter will be released as per the Approved Quarterly Construction Budget subject to availability of the amount in the Escrow Accounts. The Debenture Trustee/ Monitoring Agent may in suitable circumstances and at the request of the Issuer and/or Security Providers approve such modification/ revisions in the respective Approved Quarterly Construction Budget as may be deemed necessary by the Debenture Trustee/ Monitoring Agent."*

**48.** It is seen from Clause 21 of the Sanction Letter that ECL had the controlling power to appoint Real Estate Agent/Distribution Agent on behalf of the 'Corporate Debtor' for sale of specific residential units/inventory totaling to 1,77,9000 sq. ft. saleable area in various projects of the promoters. Clause 21 of the Sanction Letter reads as follows:

*"21 Pre-disbursement Conditions x The Borrower and Security Providers shall have executed distribution agreement for appointment of real estate agent/distribution agent with an entity recommended by the Lender for sale of specific residential units/inventory total admeasuring 1,77,900 sq. ft.*

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*saleable area (spread across projects, as per the provision of RERA and for compliance thereof.”*

**49.** Further, the Power of Attorney executed on 22/09/2017, rendered ECL the following powers:

- “1. To deal with all the government authorities including Greater NOIDA Industrial Development Authority/local authority involved in the constructions of the Project on our behalf;*
- 2. To give instructions to the Escrow Agent/Bank with respect to deposits pertaining to various receivables of the Project;*
- 3. To communicate with the purchasers and give instructions to the purchasers with respect to the deposit of payment/s to be made to the Company in respect of the units/flats in the Project, in the escrow accounts with the Escrow Bank/Agent;*
- 4. To deal with the matters related to the construction of the Project i.e. raw materials, payment of the suppliers, obtaining clearances from the appropriate authorities, appointing labors for the construction of the Project etc. on our behalf;*
- 5. To construct and to deal with the construction of the Project or to assign someone for the completion of the Project on our behalf;*
- 6. To file or to defend any suit in the court of law or any other appropriate forum on our behalf;*
- 7. To appoint any Advocate, Chartered Accountant or any other professional as may be on our behalf;*
- 8. To deal with all the banks and to open any bank account as maybe required on our behalf;*
- 9. To sign, execute and deliver the letters and all other deeds and document in respect of the flats and give/receive all documents on our behalf as we would have done;*
- 10. To apply to any competent/relevant authority, if necessary, for obtaining and/or renewal of the permissions, pertaining to the said property/said flats and for the purpose to sign, execute, affirm declare such applications, forms, declarations and papers as may be from time to time be required;*
- 11. To appear either personally or through an Advocate or Chartered Accountant to make representations if required before any such authority to obtain its permission;*
- 12. To deal with the purchasers of the said flats, both existing and future;*
- 13. To deal with the contractors, suppliers etc. to the Project, by whatever name called, for any matter*

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*whatsoever, the Attorney deems fit, for giving effect to these presents;*

*14. To apply for and obtain Income Tax Certificate under the provisions of the Income Tax Act for registration of any document(s) executed by the said Attorney pursuant to these presents if required;*

*15. To commence and prosecute or appear in and defend all suits, actions and proceedings arising out of or in respect of all or any of the matters aforesaid and if the said Attorney shall think fit to compromise, conclude and submit to Arbitration all and every or any differences or disputes which shall or may arise in reference to the mater aforesaid;*

*16. To do or cause to be done or execute or cause to be executed all other acts, deeds and things which may be deemed to be necessary or proper or expedient for purposes of the said flats;*

*17. To appoint from time to time one or more Attorneys or Attorney under him with the same or limited powers and remove such substitute or substitutes at our discretion; and*

*18. To sub-delegate the power given to them by this Power of Attorney to any individual or organization as may deem fit.”*

*(Emphasis Supplied)*

**50.** It is vehemently contended by Learned Counsel Mr. Sinha that the Forensic Audit Report in its findings has reported that the ‘Corporate Debtor’/‘Corporate Guarantor’ was fraudulently used as a vehicle to transfer funds from Saha Infratech to Abet Buildcon Pvt. Ltd. and Elicit Real Tech Pvt. Ltd. which are companies controlled by the Promoters of the ‘Corporate Debtor’ and over which ECL has complete charge of their Assets, Project Revenue, Land etc. In their Rejoinder to the Counter Affidavit filed by the second Respondent, relevant portions of the Report have been extracted and is strongly relied upon by the first Respondent and the same is being reproduced as hereunder:

*“We have observed that SIPL had used PDPL as an intermediary for transferring funds to Elicit Realtech Pvt. Ltd. and Abet Buildcon Pvt. Ltd. The amount of funds received from SIPL is Rs. 2800.00 Lakhs which*

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has been shown as “Unsecured Loan” in books of PDPL and PDPL has given these funds to Abet Buildcon Pvt Ltd. and Elicit Realtech Pvt. Ltd. amounting to Rs. 1400.00 Lakhs each and have shown it as Loans and Advances in the books of accounts. These amounts were never going to be received by the company and have not been received back by the company (Refer section 9.0 of Banking for detailed discussion). RP should file application for Rs. 2800.00 Lakhs to recover this amount of Rs. 1400.00 Lakhs each from Abet Buildcon Pvt. Ltd. and Elicit Realtech Pvt. Ltd.

It has been observed that companies i.e. Palm Developers Pvt. Ltd. assets were mortgaged for the purpose of loan taken by Saha Infratech Private Limited. However, no loan has been received for the project of PDPL. PDPL has just been used as an intermediary to transfer the funds from Saha Infratech Private Limited to its related parties. This is a clear case of Fraudulent Transaction as company never had the intention to complete the project of “Meghdutam Encore”, it had started the project only for the purpose of defrauding the home buyers and mortgaging it for taking loan from financial creditors in the name of Saha Infratech Private Limited which would then be used in its related parties just to rotate the funds and not to use it for construction of the project. This is the reason projects were shut down incomplete. RP should file application in NCLT for cancelling this mortgage. The amount of mortgage created by the company amounts to Rs. 25000.00 Lakhs for loan for its related parties. (Rs. 16000.00 Lakhs relates to IDBI Trusteeship Services Limited and Rs. 9000.00 Lakhs relates to ECL Finance Limited).

So, RP should file application in NCLT totaling Rs. 28322.50 Lakhs under section 66 “Fraudulent Trading and Wrongful doing” as per IBC 2016.”

(Emphasis Supplied)

**51.** In the terms and conditions of the Facility Agreement, under the caption ‘Special Conditions’ Clause 24(4) it is clearly stated that ‘The Borrower shall execute irrevocable Power of Attorney authorizing representatives of Lender to execute the sale deed and represent on behalf of

the Borrower and Security Providers before the Registrar on its behalf to register the Sale Deed for units to be sold in each of its Projects’.

**52.** On a pointed query from the bench, Learned Sr. Counsel Dr. Singhvi submitted that the Appellant had never exercised this power and was never a participant in the execution of Sale Deeds of the Homebuyers. Be that as it may, the fact to be seen is whether the Appellants have the ‘ability to control’ and are in a ‘position to Control’.

**53.** Clause 4.1 of the AoA shows that the Project revenue including the payments made by the allottees of the ‘Corporate Debtor’ is in direct and complete control of the Appellant/ECL:

*“4.1 PDPL Revenue Escrow Accounts and PDPL Operating Accounts*

*SIPL shall ensure that:*

*(i) all Encore Designated Cash Flows shall be directly deposited into an escrow account of the Company ("PDPL Revenue Escrow Account")*

*(ii) the PDPL Revenue Escrow Account shall at all times be operated with the instructions of the Debenture Trustee (acting on the instructions of the Debenture Holders). SIPL and, or, the Promoters shall not have any signatory or any other right to give instructions to the PDPL Revenue Escrow Agents in any manner whatsoever.”*

*(Emphasis Supplied)*

**54.** This Clause 4.1 of the AoA refers to ‘PDPL Revenue Escrow Accounts and PDPL operating Accounts’ establishes that ECL had control over the entire Project Revenue Accounts and therefore the submission of the Learned Appellant Counsels that Appellants had no positive control but only a Restrictive one is unsustainable. Controlling the Revenue Escrow Accounts to involvement in the execution of sale deeds of the sale of units to

allottees show that the Debenture Holders were in a 'position to control'. The requirements under Section 5(24) under the provisions of the Code does not anywhere provide that such control should actually be *exercised*. Even otherwise, the Forensic Audit Report filed, specifically notes that the 'Corporate Debtor' was transferring amounts received from Saha to other related parties of Saha.

**55.** Being in charge of the Escrow Accounts, empowered under Clause 1.1 of AoA whereby and whereunder, the Revenue Escrow Account shall be *operated* with the instructions of the Debenture Trustee (acting on the instructions of the Debenture Holders) and having executed an irrevocable Power of Attorney to deal with all Banks etc., it cannot be said that the Appellants were neither in the knowledge of the transfers nor were they exercising any 'control'. Viewed from any angle, the AoA and the aforementioned powers conferred under Clause 4.1 of the AoA, cannot be only 'Restrictive Powers'. The Hon'ble Supreme Court in '*Arcelor Mittal India Pvt. Ltd.*' (*Supra*), has referred to the definitions of 'Control' as defined in Black' Law Dictionary – 'Control is the direct or indirect power to direct the management and policies of a person or entity, whether through ownership of voting securities, by contract, or otherwise. The power or authority to manage, direct or oversee.'

**56.** The first part of the term 'Control' refers to '*de jure*' control, which includes the right to appoint directors of the Company. The second part of the expression 'Control' refers to '*de facto*' control, whereby, person/body corporate directly or indirectly can positively influence in any manner, the management or policy decisions. Any decision which has a long term effect, for formulation of Business Plans, comes within the purview of policy

making. The argument that the Clauses with respect to 'Business Plans' and any substantial/important charges requiring the approval of the Debenture Holders, is only 'restrictive' and does not construe 'positive control' is untenable. We are of the view that the irrevocable PoA executed in favour of the Debenture Holders suggests Positive and proactive control as the Appellants are in a position to take proactive decisions regarding the rights of the 'Corporate Debtor'.

**57.** Additionally, Clause 7.2 of the Articles of Association specifies that all decisions of the Board of Directors of the 'Corporate Debtor' are subject to the approval of the Debenture Holder as can be seen from Clause 7.2 of the Articles of Association:

*"7.2 The Promoters shall and shall cause the Company to provide the Debenture Holders with the notice for all the meetings of the Board and the Shareholders of the Company including for the adjourned meetings with the same notice period as provided to the Board and the Shareholders of the Company along with the agenda and all other documents/ details as provided to the Board and the Shareholders of the Company. The Debenture Holders shall have the right to appoint an observer who shall be entitled to attend the meetings of the Board and the Shareholders. In the event any of the meetings are held or any resolutions are passed by the Board and the Shareholders in the absence of the observer appointed by the Debenture Holders, except where a leave of absence by the observer was obtained and noted and save and except where prior written consent of the Debenture Holders has been obtained for the matter to be discussed during the meetings, the said meeting shall be deemed to be invalidly held and the resolution passed by the Board and the Shareholders shall be held to be invalid and shall not be implemented by the Company. Further, if a resolution of the Board and the Shareholders is approved through postal ballot or without a physical meeting the resolution shall not be valid unless the same has been approved in writing by the Debenture Holders."*

(Emphasis Supplied)



**58.** This shows that meetings held in the absence of the observer appointed by the Debenture holder, would be rendered invalid. Clause 6.8, 6.8.12, 6.8.13, 6.1.14 of the Facility Agreement further fortifies that the Appellants had the power and position to control the appointment and removal of marginal personnel. Though some of the Clauses relied upon by the Learned Counsel Mr. Sinha, are to be exercised in the event of default, the fact remains that the terms and conditions and clauses of the Sanction letter, Facility Agreement, Article of Association, the amended Debenture Trust Deed, read together, all establish that the Appellants had the 'Ability and the Power and Position to Control'.

**59.** The Adjudicating Authority has reproduced the said Clause 5.4 of the Articles of Association of the 'Corporate Debtor' in the Impugned Order and observed that Part II of the AoA overrides Part I and that Part II specifies that a Director or Manager cannot take any decision without the written approval of the Debenture Holders which construes that they have a role in the policy making process and that whether the nominee Director was actually appointed or not (the Appellants have the power to appoint a Nominee Director) is immaterial, as the definitions of 'Related Party' is only to see whether a person is in a position to control the composition of Board of Directors and is not necessary that he/she/they are actually the directors of the 'Corporate Debtor'.

**60.** We are of the view that the Articles of Association point out that decisions regarding important matters ought to be taken only by the affirmative role of the Appellants. The Adjudicating Authority has gone through the Articles of Association as well as the conduct of the

management of the 'Corporate Debtor' and held that the ECL and IDBI are related parties of the 'Corporate Debtor' by virtue of their *inter se* management participation. Examining the influence and inter-relationship between the parties, we are of the considered view that the Appellants have the trappings of 'Related Party' on account of the various clauses of the Agreements and AoA, which gives them a participatory role in the Corporate Debtor's policies. The purpose of excluding a related party of a 'Corporate Debtor' from the CoC is to obviate conflicts of interest which are likely to arise in the event that a related party is allowed to become a part of the CoC. The Hon'ble Supreme Court has held in a catena of Judgements that exclusion under the first proviso to Section 21(2) of the Code was related not to the debt itself, but to the relationship existing between the related party 'Financial Creditor' & 'Corporate Debtor'. The contention of Dr. Singhvi that the Appellants constitute more than 80% Voting Share of the CoC and hence injustice would be done, if they are not included has to be decided within the framework of the provisions of the Code and the material on record evidences that the Appellant falls within the ambit of the definition of 'Related Party' and according to Section 21(2) of the Code, a Related Party even if it is a 'Financial Creditor' of the 'Corporate Debtor', will have no right of representation, participation or voting in a meeting of CoC. Further, the question of 'Voting Share' arises only when the Appellants are declared 'Financial Creditors' and made part of the CoC.

**61.** The RP in his Affidavit stated that the CoC has been constituted and the Report filed with the Adjudicating Authority on 18/02/2022 and that all 'Claims' have been verified and admitted. Last date for submission as per EoI was 17/12/2021 and the last date for submission of the Resolution Plan was 04/02/2022 which was extended to 18/02/2022 after approval of CoC. It is stated that Plans from four Proposed Resolution Applicants were received which were tabled before the CoC in their ninth Meeting dated 11/03/2022 and the proposed Resolution Applicants have presented their Plans to the CoC.

**62.** Keeping in view the Clauses of the Sanction Letter, the Facility Agreement, the amended Debenture Trust Deed, the AoA, this Tribunal is of the earnest view that the ratio of the Hon'ble Supreme Court in in '*Arcelor Mittal India Pvt. Ltd.*' (*Supra*), regarding 'Control' is squarely applicable to the facts of this case, as we hold that the Appellants do have 'Positive Powers' and are in a position to directly and indirectly Control the management and the policy decisions of the 'Corporate Debtor' and hence we do not find any illegality in the Impugned Order passed by the Adjudicating Authority affirming the decision of the RP in deleting the Appellants from being part of the CoC as stipulated for under Section 21(2) of the Code.

**63.** Though we do not agree with the Learned Adjudicating Authority regarding the applicability of the ratio of '*Anuj Jain*' (*Supra*) to the facts of this case, for all the other aforementioned reasons, these Appeals are dismissed. No order as to costs.

**64.** I.A. No. 1118 of 2022 in *Comp. App. (AT) (Ins) No. 356 of 2022*, preferred by three allottees in the Project 'Meghdutam Encore' developed by the 'Corporate Debtor', seeking impleadment in the subject Appeals, is dismissed accordingly.

**[Justice Ashok Bhushan]  
Chairperson**

**[Ms. Shreesha Merla]  
Member (Technical)**

**NEW DELHI  
12<sup>th</sup> July, 2022**  
*Himanshu*



सत्यमेव जयते

**INDIA NON JUDICIAL**

**Government of National Capital Territory of Delhi**

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Purchased by	: POISE REALTECH PRIVATE LIMITED
Description of Document	: Article 5 General Agreement
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: POISE REALTECH PRIVATE LIMITED
Second Party	: OTHERS
Stamp Duty Paid By	: POISE REALTECH PRIVATE LIMITED
Stamp Duty Amount(Rs.)	: 500 (Five Hundred only)



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*This stamp paper forms an Integral part of facility Agreement dated 10/12/2019*

For Poise Realtech Pvt. Ltd.

*[Signature]*  
**Authorized Signatory**



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For Poise Realtech Pvt. Ltd.

*[Signature]*  
Authorized Signatory



*[Signature]*

DATED 10/12/2019

**FACILITY AGREEMENT**

**BY AND BETWEEN**

**POISE REALTECH PRIVATE LIMITED**  
as the Borrower

**AND**

**THE PERSONS SET FORTH IN SCHEDULE 1 B**  
as the Lenders



Cyril amarchand mangaldas  
advisors & solicitors

For Poise Realtech Pvt. Ltd.

*[Signature]*  
Authorized Signatory



*[Signature]*

*[Signature]*  
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(i)

For Poise Realtech Pvt. Ltd.

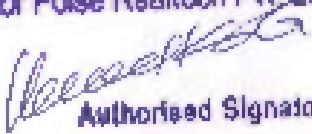

  
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For Poise Realtech Pvt. Ltd.



Authorized Signatory





For Polso Realtech Pvt. Ltd.

WAgg

## FACILITY AGREEMENT

WAgg  
Auth. Signatory

This FACILITY AGREEMENT (the "Agreement") is made on the 10th day of December, 2019 at New Delhi by and among:

1. THE PERSONS SET OUT IN SCHEDULE I A, (hereinafter referred as the "Borrower", which expression shall, unless it be repugnant to the subject or context thereof, be deemed to include its successors and permitted assigns) of the **FIRST PART**;

AND

2. THE PERSONS SET OUT IN SCHEDULE I B, in their capacity as the lender (hereinafter collectively and individually referred to as the "Lenders", which expression shall, unless repugnant to the subject or context thereof, be deemed to mean and include their respective successors, transferees, novatees and assigns) of the **SECOND PART**.

The Borrower and the Lenders shall hereinafter, where the context so permits, be referred individually as a "Party" and collectively as the "Parties".

## WHEREAS:

- (A) The Borrower is in the business of developing, constructing, implementing and setting up real estate projects.
- (B) The Borrower has requested the Lenders to make available to the Borrower a financial assistance aggregating to a sum of Facility (more particularly detailed in *Schedule I B* hereto) for the Purpose (*hereinafter defined*).
- (C) The Lenders based on the request and representation made by the Borrower under this Agreement and under other Financing Documents have agreed to make available the Facility to the Borrower (*to the extent of their respective Commitment as specified in Schedule I B*) on the terms of the Sanction Letter (*as defined in Schedule I B*) and on the terms and subject to the conditions of this Agreement and other Financing Documents.

NOW, THEREFORE, in consideration of the foregoing, the Borrower and the Lenders entering into this Agreement and other good and valid consideration, the receipt and adequacy of which are hereby expressly acknowledged, the Parties hereby agree as follows:

## 1. DEFINITIONS AND INTERPRETATION

## 1.1 Definitions

In this Agreement (including the recitals), unless there is anything repugnant to the subject, meaning or context thereof, the following terms, when capitalised, shall have the following meanings assigned to them:

For Polso Realtech Pvt. Ltd.

WAgg  
Auth. Signatory

WAgg  
Lender

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"Additional Interest Rate" with respect to each Lender shall mean the applicable Interest Rate for such Lender plus 2% (two percent) per annum, with monthly rests except any tax deducted as per Applicable Law, payable by the Borrower.

"Affiliate" in relation to a Person means,

- (a) being a corporate entity, shall mean any entity or Person, which controls, is controlled by, or is under the common control of such Person, whether directly or indirectly; or
- (b) being an individual, shall mean any relative or any other entity or Person, which is controlled by such Person or a relative of such individual (as defined under the Companies Act, 2013).

"Ajanta India Limited" or "AIL" shall mean a company having corporate identification number U01111DL1991PLC046358 and registered office at 502, 5th Floor, Sachdeva corporate Tower 17, Karkardooma community centre Delhi East Delhi-110092.

"Applicable Laws" means and include any statute, law, treaties, rule, regulation, ordinance, guideline, notification or any requirement, restriction, authorisation, order, directive, permit, judgment, decree, injunctions, writs or orders of any court of record having the force of law, or any interpretation of any of the foregoing by any Government Authority, whether in effect as on the date hereof or thereafter, and shall include any re-enactment, substitution or amendment thereof as may be in force and effect during the subsistence of this Agreement.


"Availability Period" in relation to:

- (a) Initial Disbursement shall mean a period of 90 (thirty) days from the date of this Agreement;
- (b) any other Disbursement pursuant to the provisions of this Agreement.

"Benchmark Rate" shall:

- (a) in relation to L&T Housing Finance Limited, be the PLR as specified by L&T Housing Finance Limited from time to time; and
- (b) in relation to the other Lenders (other than L&T Housing Finance Limited), be their respective MCLR, benchmark rate or PLR, as the case may be, as specified by such Lenders from time to time.

"Business Day" in relation to the making of any Disbursement, by a Lender, any day on which such Lender is required or authorized by law to be open for business in the place of its Lending Office; or in relation to all other matters, a day (other than a Saturday or Sunday on which banks are normally open for business in Mumbai/Delhi).

	
Borrower For Ajanta Realtech Pvt. Ltd.	Lender

*[Signature]*  
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"Clearances" shall mean any consent, license, approval, registration, permit or other authorisation of any nature which is required under Applicable Law to be granted by any statutory or regulatory authority or any Governmental Authority for the Projects, including:

- (a) for the incorporation of the Borrower and the Security Providers and fulfilling of its obligations under the Transaction Documents;
- (b) for the enforceability of any Transaction Documents and the making of any payments contemplated thereunder by the Borrower and the Security Provider; and
- (c) for all such other matters as may be necessary in connection with the Projects or the performance of the Borrower's or any Security Provider's obligations under any Transaction Document.

"Commitment(s)" shall:

- (a) with respect to a Lender, means the amount set forth against its name in Schedule I B of this Agreement; and
- (b) with respect to a New Lender, mean the amount novated or transferred to such New Lender in accordance with Section 20.6 (*Novation and Participation*) of this Agreement.

"Corporate Guarantor" shall mean STL.

"Customer(s)" means any Person purchasing the flats/units in the Projects and/ or Mortgaged Properties or entering into any other arrangement requiring such Person to make payments for purchasing the relevant flat/unit in the Projects and/ or Mortgaged Properties.

"Disbursement" means the act of Lenders of making available to the Borrower amounts of the Loan, subject to terms and conditions of this Agreement.

"Debt Service Reserve/ DSR" shall mean the monies, which are required to be created and maintained by the Borrower as per the terms detailed in Clause 12.17.3 herein;

"Disbursement Notice" shall mean the notice to be provided by the Borrower to the Lenders in the form set out in Exhibit I duly completed and in substance satisfactory to the Lender, together such other documents required by the Lender, in accordance with the terms and conditions of this Agreement.

"Due Date" means in respect of:

- (a) any Repayment Installment, the Repayment Dates;
- (b) any Interest, the Interest Payment Dates; and

For Poise Realtach Pvt. Ltd.

  
Authorized Signatory

  
Lender

- (c) any other amount payable under the Financing Documents, including in relation to an event of acceleration under Clause 15 (*Consequences of Event of Default*), the date on which such amount falls due in terms of the Financing Documents.

"**Devya Propcon Private Limited or DPPL**," shall mean a company having corporate identification number U70109UP2016PTC087122 and registered office at C-45, Sector 62 NOIDA Gautam Buddha Nagar UP 201307, India.

"**Development Management Agreement**" shall mean the development management agreement dated \_\_\_\_\_ entered into, *inter alia*, the Borrower, Supertech Limited and Ajnara India Limited, for *inter alia*, appointing the Borrower as the development manager in relation to the Projects, and as may be amended from time to time.

"**Escrow Accounts**" shall mean and include the Identified Inventory Escrow Account and Project I Escrow Account and Project II Escrow Account.

"**Escrow Agreements**" shall collectively mean and include the Identified Inventory Escrow Agreement and the Projects Escrow Agreements.

"**Escrow Banks**" shall collectively mean and include Identified Inventory Escrow Bank, Project I Escrow Bank and Project II Escrow Bank.

"**Event of Default**" shall mean occurrence of any one or more of the events of default as set out in Clause 14 (*Events of Defaults*) of this Agreement.




"**Existing Loan**" shall mean existing loan/liabilities of the Borrower, if any, as detailed in Schedule IV hereof.

"**Existing Lenders**" shall mean the Persons identified in Schedule IV, who have advanced Existing Loan to the Borrower.

"**Final Settlement Date**" shall mean the date on which all the Outstanding Amount shall have been irrevocably and unconditionally paid and discharged in full to the Lenders to the satisfaction of the Secured Parties.

"**Financial Indebtedness**" means any indebtedness whatsoever at any time for or in respect of monies borrowed, contracted or raised (whether or not for cash consideration) or liabilities contracted by whatever means (including under guarantees, indemnities, acceptance, credits, deposits, hire-purchase and leasing), *inter alia*, in respect of:

- (a) monies borrowed including any principal, interest, premium or other amount payable in relation thereto;
- (b) any amount raised under any acceptance credit, bill acceptance or bill endorsement facility or dematerialised equivalent;

<p>For Poise Realtech Pvt. Ltd.</p>  <p>Borrower Authorised Signatory</p>	 <p>Lender</p> 
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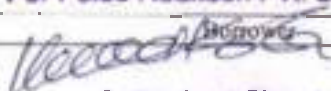

- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with IND AS, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);
- (h) shares which are expressed to be redeemable;
- (i) any guarantee, indemnity or counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;
- (j) any liabilities contracted by whatever means;
- (k) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (j) above;
- (l) any liabilities in pursuance to put options, shortfall undertakings and letters of comforts that may have been issued; and/ or
- (m) any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent.

"Financial Quarter" shall mean each calendar quarter commencing from April 1 to June 30, July 1 to September 30, October 1 to December 31 and January 1 to March 31 of each Financial Year.

"Financial Year" means the accounting year of the Borrower commencing each year on April 1 and ending on the following March 31.

"Financing Documents" means:

- (a) this Agreement;
- (b) Escrow Agreements;
- (c) Security Documents;

<p>For Poise Realtech Pvt. Ltd.</p>  <p><b>Authorized Signatory</b></p>	
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- (d) Security Trustee Agreement; and
- (e) Such other agreements, instruments, undertakings, deeds, writings and other documents executed or entered into, or to be executed or entered into by the Borrower and/or any other Person in relation to or pertaining to the transactions contemplated by, or under this Agreement as amended from time to time and such other documents as may be assigned by the Lenders from time to time;

“Further Interest” have the meaning ascribed to the term in Clause 5.6.1 hereof.

“Further Interest Rate” with respect to each Lender shall mean the applicable Interest Rate for such Lender plus 2% (two percent) per annum.

“GOI” shall mean Government of India.

“Governmental Authority” means the GOI, or the government of any other state of India or any ministry, department, board, authority, instrumentality, agency, corporation (to the extent acting in a legislative, judicial or administrative capacity and not as a contracting party with the Borrower) or regulatory body exercising statutory powers under any Applicable Law under the direct or indirect control of the GOI or the Government or any subdivision of any of them or owned or controlled by the GOI, the Government or any of their subdivisions, or any court, tribunal or judicial body within India.

“IBC” shall mean Insolvency and Bankruptcy Code, 2016 along with applicable rules, regulation(s), notification(s) and circular(s) as amended from time to time.

“Identified Inventory” shall mean such identified units in Project I held by DPPL, as more particularly described in Schedule VIII Part B herein.


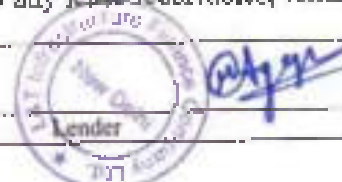
“Identified Inventory Escrow Account” shall mean account opened with the Escrow Bank, in accordance with the terms and conditions of the Identified Inventory Escrow Agreement.

“Identified Inventory Escrow Agreement” shall mean the agreement entered into by and between the DPPL, the Lender, Security Trustee (if any) and the Escrow Bank, in relation to *inter alia* the deposit of Identified Inventory Receivables and all the monies emanating from the Identified Inventory and its application as per the terms thereof.

“Identified Inventory Escrow Bank” shall mean HDFC bank having a branch office at Indira Park.

“Identified Inventory Receivables” shall mean any and all present and future returns on permitted investments, revenues and proceeds on account of sale, lease, lease receivable discounting, license, transfer, disposal or any other arrangement pertaining to the interest in the saleable area/ leasable area/ built up area/ land of the Identified Inventory including but not limited to any lease receivables, rental

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payments, lease rental discounting amounts, security deposits from tenants, development charges, infrastructure premium, advance bookings, earnest money, preferential location charges, parking charges, membership charges, external development charges, internal development charges, legal charges, floor rise and terrace charges, interest, transfer fees, charges, or any other applicable fee/ charge receivable from the sale/ lease, pre-sale, pre-launch of all or any part of the Identified Inventory, proceeds of insurance, book debts, present or future, any other cash inflows of the Borrower from the sale/ lease of any part of the Identified Inventory and all rights, title, interest, benefits, claims and demands of Identified Inventory.

"**Information Utilities**" shall mean an information collection body to be constituted under the provisions of IBC and as may be identified by the Lender.

"**Initial Disbursement Date**" shall mean date of the Initial Disbursement.

"**Interest**" has the meaning set out in Clause 5.1.1 (*Interest and Fees*) hereof.

"**Interest Payment Date**" shall mean, with respect to each Lender, the date that is specified against its name in Schedule I B of this Agreement.

"**Interest Period**" shall mean, in respect of a Loan shall mean:

- (a) in the first instance, the period commencing from the date of Disbursement and ending on (and excluding) the immediately following Interest Payment Date; and
- (b) subsequently, the period commencing on one Interest Payment Date and ending on (and excluding) the immediately following Interest Payment Date.

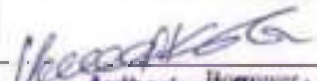

"**Interest Rate**" means the rate of interest to be paid by the Borrower to the Lender more particular described in Schedule I B hereof.

"**Interest Reset Date**" shall mean the first day of the subsequent month at the end of 24 (twenty four) months from the Initial Disbursement Date and every year thereafter or such other date on which the Spread is reset in accordance with Schedule I B.

"**Interest Tax**" shall mean any tax, fees or other statutory levy payable by the Lenders on any payments on interest payment but shall not include any tax on income of the Lenders.

"**Internal Rate of Return or IRR**" shall mean, the annual compounded rate of return on the Facility as cash in, after adjusting Interest and all such other amounts paid by the Borrower to the Lenders in accordance with this Agreement (including any amounts paid as undermification payments) as a cash out, in each case taking in account the dates on which monies are either cash in or cash out.

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**"Insurance Contract"** shall mean the insurance contracts and policies, in relation to the Projects, any substitutes therefor and any additional insurance contracts or policies required under any of the Transaction Documents.

**"Lender's Group Companies"** means any group company of the Lender.

**"Lending Confirmation Notice"** shall have its meaning specified in Clause 3.3.1(f) (*Procedure for Drawdowns*) of this Agreement




**"Loan"** means, as the context requires, any loans made or to be made under the Facility or the principal amount outstanding for the time being of the loans made under the Facility.

**"Material Adverse Effect"** shall mean the change or consequence of an event, circumstance, occurrence or condition which has caused, as of any date of determination, or could be expected to cause an adverse effect, as on any date of determination, in the sole opinion of the Lenders, on the following of the Borrower or Affiliate of the Borrower or group entity of the Borrower or the Obligor(s):

- (a) ability to make payments as and when due under the Transaction Documents or comply with its obligations under this Agreement or any Transaction Documents to which it is a Party;
- (b) the legality, validity, priority, enforceability or effectiveness of this Agreement or any other Transaction Documents or any Security thereunder;
- (c) the financial condition, operations, assets and property, liabilities or business prospects of the Borrower or Borrower's group companies including Promoter and the Guarantor;
- (d) the ability of the Borrower or the Security Providers to exercise or enforce any right, benefit, privilege or remedy under any Project Document or Clearances for the Projects;
- (e) the ability of the Borrower or the Security Provider to comply in all respects with the terms or conditions of any Clearances for the Projects; and/or
- (f) the legal character, ownership or control of the Borrower and/or the Affiliate of the Borrower and/or group entity of the Borrower and/or the Guarantor.

**"Marginal Cost of Fund based Lending Rate or MCLR"** shall mean the percentage rate per annum determined by the Lender(s) from time to time and announced or notified (including notification over its website) by the Lender(s) as its marginal cost of fund lending rate in accordance with the Master Direction – Interest Rates on Advances bearing RBI/DBR/2015-16/20 dated March 3, 2016, as may be amended, replaced or modified, from time to time.

**"Memorandum and Articles of Association"** shall mean the memorandum and articles of association of the Borrower, as may be amended or supplemented from time to time.

<p>For Poise Realtech Pvt. Ltd.</p>  <p>Borrower</p> <p>Authorized Signatory</p>	  <p>Lender</p>
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"Minimum Selling Price" shall mean:

- (j) In relation to Project I:
- (a) Rs. 3,200 per square feet for group housing units (except towers C1, C6, E4 and G2);
  - (b) Rs. 4,000 per square feet for villas;
  - (c) Rs. 3,500 per square feet for plots; and
  - (d) Rs. 7,500 per square feet for commercial units.

For C1, C6, E4 and G2 towers in Project I

- (a) Rs. 3,150 per square feet for 3.38,410 square feet saleable area; and
  - (b) Rs. 3,300 per square feet for remaining saleable area.
- (j) In relation to Project II, Rs. 10,000 (Rupees Ten Thousand) per square feet for the entire area.

"Moratorium Period" shall mean 36 (thirty six) months from the Initial Disbursement Date.

"Mortgaged Properties" shall have the meaning ascribed to the term in the memorandum of entry, and shall include such other additional properties agreed to be mortgaged for the benefit of the Lenders, in favour of the Security Trustee, from time to time.

"NOC" shall mean no objection certificate.

"Outstanding Amount" shall mean all amounts payable by the Borrower to the Lenders in relation to the Facility pursuant to the terms of this Agreement or any other Financing Document or Security Document, including, without limitation:

- (a) the principal amount of the Facility and the Interest payable in relation thereto, and all other obligations and liabilities of the Borrower, including Commitment fees, indemnities, expenses, fees, interest, Additional Interest, Further Interest, further interest and any charges that may be imposed or incurred under, arising out of or in connection with the Facility;
- (b) any and all sums advanced by the Lenders in order to preserve the Security Interest created/caused to be created by the Borrower in relation to the Facility; and
- (c) in the event of any proceeding for the collection or enforcement of the Outstanding Amount, after an Event of Default shall have occurred and be continuing, the expenses of retaking, holding, preparing for sale or lease, selling or otherwise disposing of or realizing the Security Interest created /

For Poise Realtech Pvt. Ltd.

  
Borrower  
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caused to be created by the Borrower, or of any exercise by the Lenders of their right under the relevant Transaction Documents, together with legal fees and court costs.

“Panel Valuer” means a recognized and reputable valuer duly licensed to practice in India acceptable to Lenders and appointed as valuer by the Borrower.

“Person” means any individual, corporation, partnership, (including, without limitation, association), joint stock company, trust, unincorporated organization or Governmental Authority or political subdivision thereof, international organisation, agency or authority (in each case, whether or not having separate legal personality) and shall include their respective successors and assigns and in case of an individual shall include his legal representatives, administrators, executors and heirs and in case of a trust shall include the trustee or the trustees for the time being.

“Permitted Security Interest” shall mean the following:

- (a) the Security Interest, charges and other liens or encumbrances created on the Security, in favour of or for the benefit of the Secured Parties, to secure the Facility;
- (b) the Security Interest, charges and other liens or encumbrances created on the Security, in favour of or for the benefit of the L&T Housing Finance Limited, to secure the Financial Indebtedness availed by the Borrower in relation to Projects;
- (c) any Security Interest created by the Borrower on the Security and offered to Existing Lenders in relation to the Financial Indebtedness detailed in Schedule IV hereof; and/or
- (d) any other Security Interest approved by the Lenders.

*Pranod* “Pranod Kumar Gupta” shall mean Mr. Pranod Kumar Gupta age \_\_\_\_\_, son of Ayan Prakash Gupta, having passport number \_\_\_\_\_, residing at 201, Sageji Plaza, P. Lamfura, New

“Prime Lending Rate” “PLR” means the percentage rate per annum decided by the Lenders from time to time and notified by the Lenders as its PLR and more particularly detailed in Schedule I B, hereinafter (for clarity, the PLR may fluctuate from time to time, as may be determined by the Lenders their absolute discretion).

“Prepayment Premium” shall mean 2% (two percent) of the amount of Loan being prepaid.

“Potential Event of Default” means any event or circumstance which would, with notice, lapse of time, the making of a determination or any combination thereof, become an Event of Default.

“Project I” means the residential group housing project ‘Upcountry’ located in sector 17A, Yamuna Expressway, U.P. consisting of total saleable area of 55,83,549

<p>For Poise Realtech Pvt. Ltd.</p> <p><i>[Signature]</i> Borrower</p>	<p style="text-align: center;">New Delhi Lender</p> <p style="text-align: right;"><i>[Signature]</i></p>
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For Poise Realtech Pvt. Ltd.  
*[Signature]*  
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square feet, as more particularly described in Schedule VIII Part A herein and shall include all phases as applicable.

"Project II" means Capetown Villas project located in Sector 74, Noida, Uttar Pradesh consisting of 35 villas and saleable area of 2,49,968 square feet and shall include all phases as applicable.

"Projects" shall collectively mean and include Project I and Project II.

"Projects Escrow Account" shall collectively mean and include Project I Escrow Account and Projects II Escrow Account.

"Project I Escrow Account" shall mean and include the escrow accounts opened with the Project I Escrow Bank, in accordance with the terms and conditions of the Project I Escrow Agreement.

"Project I Escrow Agreement" shall mean the Project I escrow agreement dated November 3, 2017, as amended from time to time, entered into by and between, *inter alia*, STL and Project I Escrow Bank.

"Project I Escrow Bank" shall mean HDFC Bank having its branch at Indraprastha

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"Projects II Escrow Account" shall mean and include the escrow account opened with the Project II Escrow Bank, in accordance with the terms and conditions of the Project II Escrow Agreement

"Project II Escrow Agreement" shall mean the Project II escrow agreement entered to be entered into by and between, *inter alia*, STL and Project II Escrow Bank.

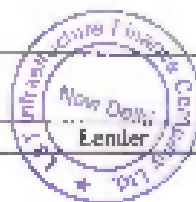
"Project II Escrow Bank" shall mean HDFC Bank

"Project I Documents" shall mean (a) the joint venture agreement (if any), (b) all deeds/ development agreements/ conveyance deeds/ lease deeds/ agreements in relation to the immovable properties pertaining to the Project I; (c) all contracts, writings entered into with any Governmental Authority in connection with the Project I; (d) the Insurance Contracts providing for insurance required by the Financing Documents; (e) documents reflecting Borrower's title to the fixed assets, easements, water rights and other documents analogous to the above; (f) all Clearances, contracts, agreements, and writings entered into or obtained by the Borrower in any manner connected with (i) the designing, construction, development, operation, management and/or maintenance in relation to the Project I; (ii) supply of material, spares, equipment, operation and maintenance services and other technical and specialized services for the operations and maintenance in relation to the Project I; and any other document(s) that may be designated as such by the Lender.

For Poise Realtech Pvt. Ltd.  
*Wadekar*  
Authorised Signatory

For Poise Realtech Pvt. Ltd.

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**"Project II Documents"** shall mean (a) the joint venture agreement (if any), (b) all deeds/ development agreements/ conveyance deeds/lease deeds/ agreements in relation to the immovable properties pertaining to the Project II; (c) all contracts, writings entered into with any Governmental Authority in connection with the Project II; (d) the Insurance Contracts providing for insurance required by the Financing Documents; (e) documents reflecting Borrower's title to the fixed assets, easements, water rights and other documents analogous to the above; (f) all Clearances, contracts, agreements, and writings entered into or obtained by the Borrower in any manner connected with (i) the designing, construction, development, operation, management and/or maintenance in relation to the Project II; (ii) supply of material, spares, equipment, operation and maintenance services and other technical and specialized services for the operations and maintenance in relation to the Project II; and any other document(s) that may be designated as such by the Lenders.

**"Project Documents"** means collectively, the Project I Documents and Project II Documents.

**"Project I Receivables"** means any and all present and future returns on permitted investments, revenues and proceeds on account of sale, lease, lease receivable discounting, license, transfer, disposal or any other arrangement pertaining to the interest in the saleable area/ leasable area/ built up area/ land of the Project I including but not limited to any lease receivables, rental payments, lease rental discounting amounts, security deposits from tenants, development charges, infrastructure premium, advance bookings, earnest money, preferential location charges, parking charges, membership charges, external development charges, internal development charges, legal charges, floor rise and terrace charges, interest, transfer fees, charges, or any other applicable fee/ charge receivable from the sale/ lease, pre-sale, pre-launch of all or any part of the Project I, proceeds of insurance, book debts, present or future, any other cash inflows of the Borrower from the sale/ lease of any part of the Project I and all rights, title, interest, benefits, claims and demands of Project I.

**"Project II Receivables"** shall mean any and all present and future returns on permitted investments, revenues and proceeds on account of sale, lease, lease receivable discounting, license, transfer, disposal or any other arrangement pertaining to the interest in the saleable area/ leasable area/ built up area/ land of the Project II including but not limited to any lease receivables, rental payments, lease rental discounting amounts, security deposits from tenants, development charges, infrastructure premium, advance bookings, earnest money, preferential location charges, parking charges, membership charges, external development charges, internal development charges, legal charges, floor rise and terrace charges, interest, transfer fees, charges, or any other applicable fee/ charge receivable from the sale/ lease, pre-sale, pre-launch of all or any part of the Project II, proceeds of insurance, book debts, present or future, any other cash inflows of the Borrower from the sale/ lease of any part of the Project II and all rights, title, interest, benefits, claims and demands of Project II.

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 For Project Director P/L	
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**"Project Receivables"** means collectively Project I Receivables and Project II Receivables.

**"Promoter"** means Mr. Vinod Kumar Gupta age 48, son of Gyan Prakash Gupta, having passport number Z2774264, residing at B-189, Vojna Vibur, Delhi-110092.

**"Repayment Cheques"** means the cheques issued by the Borrower or such other Person as may be accepted by the Lenders as per the terms detailed in Schedule III A hereof.

**"Repayment Schedule"** shall mean the schedule for Repayment of the Facility as set out in Schedule II of this Agreement.

**"RERA"** shall mean the Real Estate (Regulation and Development) Act, 2016 which came into force from May 1, 2017 and shall include all applicable rules, regulations and state amendments thereunder.

**"Secured Parties"** shall mean, the Lenders, the Security Trustee and such other Persons as may be identified by the Lenders, from time to time.

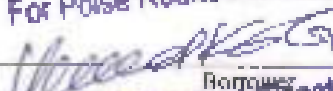


**"Security"** shall have the meaning ascribed to the term in Clause 10 hereof;

**"Security Documents"** shall, as required by the context, mean the Security Trustee Agreement, memorandum of entry, director's declaration, indenture of mortgage/mortgage deed, the deed of personal guarantee, deed of corporate guarantee and all such other documents in the opinion of Lenders which may be required for creating and perfecting the Security Interest over the Security in favour of the Security Trustee for the benefit of the Lender, in such form and manner satisfactory to the Lender.

**"Security Interest"** shall mean any mortgage, pledge, lien, equitable interest, assignment, conditional sales contract, hypothecation, right of other Persons, claim, encumbrance, title defect, title retention agreement, trust agreement, interest, option, commitment, restriction or limitation of any nature whatsoever, including restriction on use, voting rights, transfer, receipt of income or exercise of any other attribute of ownership, right of set-off, any arrangement (for the purpose of, or which has the effect of, granting security), any designation of loss payees or beneficiaries or any similar arrangement under or with respect to any insurance policy or any preference of one creditor over another arising by operation of law or any other Security Interest of any kind whatsoever, or any agreement, whether conditional or otherwise, to create any of the same.

**"Security Providers"** shall collectively mean Supertech Limited, DPPL and any other Person, required to create Security Interest to secure the Outstanding Amount, as per the terms and conditions of this Agreement.

**"Security Trustee"** shall mean SBICAP Trustee Company Limited or such Person, acting as security trustee, as may be identified by the Lenders and appointed as per the terms of the Security Trustee Agreement.

<p>For Pulse Realtech Pvt. Ltd.</p>  <p>Borrower Authorized Signatory</p>	  <p>Lender</p>
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"**Security Trustee Agreement**" shall mean an agreement dated on or about the date of this Agreement, entered/to be entered into between the Borrower, Lenders and Security Trustee, as may be extended, amended and restated or otherwise modified and in effect from time to time.

"**Shareholding Documents**" shall mean share purchase agreement (if any), shareholders agreement (if any) and such other documents evidencing and recording the ownership and rights of the shareholders of the Borrower.



"**Supertech Limited**" or "**STL**" shall mean an Indian company having corporate identification number U74899DL1995PLC074422 and registered office at 1114 HANMUND CHAMBERS ,11 FLOOR 89, NEHRU PLACE NEW DELHI DL 110019.

"**Taxes**" means any taxes including income tax, sales tax, stamp duty, customs and import duties, levy, impost, octroi, duty imposed and/or levied of any nature whatsoever, whether by the Government of India or any Governmental Authority and wherever and whenever charged, levied or imposed together with any interest and penalties in relation thereto within the Republic of India.

"**Transaction Documents**" means and includes the Project Documents, Security Documents and Financing Documents.

1.2 For the purpose of this Agreement, unless the context or meaning thereof otherwise requires, the principles of interpretation as set forth hereunder shall apply:



- (a) words importing a particular gender includes all genders.
- (b) 'Singular' includes plural, and vice versa.
- (c) A reference to:
  - (i) any Article, Clause or Schedule means an article, clause or a Schedule to this Agreement;
  - (ii) an Account includes a reference to any sub-account of that Account;
  - (iii) an 'amendment' includes a supplement, modification, unamendment, novation, accession, replacement or re-enactment and 'amended' is to be construed accordingly;
  - (iv) 'assets' include all properties whatsoever both present and future, (whether tangible, intangible or otherwise) (including intellectual property and intellectual property rights), investments, cash-flows, revenues, rights, benefits, interests and title of every description of the Borrower;
  - (v) 'authorization' or 'consent' or 'approval' or 'permission' includes a Clearance, resolution, licence, exemption, filing, registration, authorization, consent, approval, permission.

<p>For Pulse Realtech Pvt. Ltd.</p>  <p>Authorized Signatory</p>	
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- (vi) 'encumbrance' includes a mortgage, charge, lien, pledge, hypothecation, Security Interest or any lien or transfer/disposal of any nature or description whatsoever;
- (vii) an Article or Schedule or Annexure is, unless indicated to the contrary, a reference to an Article or Schedule or Annexure to this Agreement;
- (viii) The word 'includes' or 'including' are to be construed without limitation;
- (ix) an agreement shall include all schedules, annexures and exhibits of such agreement and all of such schedules, annexures and exhibits shall be deemed to be an integral part of such agreement;
- (x) any statute shall be construed as including all statutory provisions consolidating, amending or replacing such statute, now existing or in force hereafter;
- (xi) "Party" means a party to this Agreement and references to "Parties" shall be construed accordingly;
- (xii) a person shall include such person's successors and permitted assignees or transferees, unless otherwise indicated in this Agreement;
- (xiii) to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned from time to time;
- (xiv) a public organisation shall be regarded as including a reference to any successor to such public organisation or any organisation or entity which has taken over the functions or responsibilities of such public organisation;
- (xv) to a Government Authority shall be deemed to include a reference to any successor to such Government Authority or any organisation or entity which has taken over the functions or responsibilities of such Government Authority; and
- (xvi) reference to a 'month' or 'Month' shall mean a period beginning at 00:00 hours of the first day of the calendar month of a Gregorian Year and ending at 24:00 hours on the last day of such calendar month.




(d) headings and the use of bold typeface shall be ignored in its construction;

For Polse Realtch Pvt. Ltd.

 <b>Authorised Signatory</b> Borrower	
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- (e) any consent, approval, determination, waiver or finding to be given or made by any of the Secured Parties shall be made or given by such Secured Party in its sole discretion;
- (f) the words 'other', 'or otherwise' and 'whatsoever' shall not be construed *ejusdem generis* or be construed as any limitation upon the generality of any preceding words or matters specifically referred to;
- (g) all references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned from time to time;
- (h) words and abbreviations, which have, well known technical or trade/commercial meanings are used in this Agreement in accordance with such meanings;
- (i) any consent or waiver required to be provided by the Secured Parties or any of them shall mean the prior written consent or waiver of each of the Secured Parties or such of those who have given such consent or waiver;
- (j) where any action of the Secured Parties is subject to 'reasonability' under this Agreement or the other Financing Documents, such 'reasonability' shall be determined solely by such Secured Party(ies);
- (k) any determination with respect to the materiality or reasonableness of any matter including of any event, occurrence, circumstance, change, fact, information, document, authorization, proceeding, act, omission, claims, breach, default or otherwise shall be made by the Secured Parties, or any of them, at their sole discretion, which determination shall, in the absence of manifest error, be final and binding on all Parties;
- (l) 'repayment' includes 'redemption' and vice-versa and repaid, repayable, repay, redeemed, redeemable and redemption shall be construed accordingly;
- (m) a Potential Event of Default is 'continuing' if it has not been remedied or waived and an Event of Default is 'continuing' if it has not been waived;
- (n) all duties, obligations and covenants shall be performed by the Borrower jointly and severally and all undertakings, declarations, confirmations and indemnities given hereunder shall be deemed to be given by the Borrower, jointly and severally. The Lenders shall have the right to proceed against one or both of the Borrower in case of a default by one or both of the Borrower;
- (o) the words 'hereof', 'herein', and 'hereto' and words of similar import when used with reference to a specific Article in, or Schedule to, or Annexure to this Agreement shall refer to such Article in, or Schedule to, or Annexure to

For Police Record PVL Etc

 Authorized Signatory Borrower	 
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this Agreement, and when used otherwise than in connection with specific Articles or Schedules, or Annexures shall refer to this Agreement as a whole;

- (p) when any number of days is prescribed in any document, the same shall be reckoned exclusive of the first and inclusive of the last day unless the last day does not fall on a Business Day, in which case the last day shall be the next succeeding day which is a Business Day;
- (q) the rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof (rule of *contra proferantem*), shall not apply;
- (r) the Lenders shall have the undisputable sole and exclusive right to ascertain, assess, analyze and conclude on the existence of a Material Adverse Effect and such decision/conclusion by the Lenders shall be conclusive and binding;
- (s) any consent, approval, determination, waiver or finding to be given or made by any of the Secured Parties shall be made or given by such Secured Party in its sole discretion;
- (t) any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the relevant other component and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number);
- (u) this Agreement shall come into effect and be binding on the Agreement date as mentioned aforesaid. This Agreement shall remain in force until termination in accordance with this Agreement or until all the amounts due and payable to the Lenders under the Transaction Documents are fully paid by the Borrower.




## 2. THE FACILITY

### 2.1 Facility

The Borrower agrees to borrow, from the Lenders and the Lenders agree to lend and advance to the Borrower during the Availability Period, a rupee term loan assistance not exceeding Rs. 125,00,00,000 (Rupees One Hundred Twenty Five Crore only) (the "Facility") on the terms and conditions contained in this Agreement.

### 2.2 Purpose

- 2.2.1 The Borrower agrees that they shall apply the proceeds of each Disbursement only ~~For~~ ~~the~~ ~~purpose~~ ~~of~~ ~~the~~ ~~below~~:

 <b>Authorized Signatory</b> Borrower	 
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- (a) an amount aggregating to Rs. 75,00,00,000 (Rupees Seventy Five Crores) forming part of the Facility, towards acquisition of rights in Identified Inventory through repayment of existing liabilities against the Identified Inventory and payment towards adjustable security deposit for Development Management Agreement; and
- (b) an amount aggregating to Rs. 50,00,00,000 (Rupees Fifty Crores only) forming part of the Facility, towards construction cost and other costs in relation to the Project II being incurred by the Borrower.

2.2.2 The Borrower hereby agrees that any other use of the Facility shall require prior written consent of the Lenders.

### 2.3 Rights Several

The rights of each of the Secured Parties under the Financing Documents are separate and independent.

## 3. DISBURSEMENT MECHANISM

### 3.1 Availability

3.1.1 The Lenders may disburse the Facility during the Availability Period in one or multiple tranches or may be mutually agreed upon between the Parties and shall be subject to the satisfaction (or waiver) of each condition precedent set forth in Schedule III Part A (*Conditions Precedent to Initial Disbursement*), Schedule III Part B (*Conditions Subsequent to Initial Disbursement*) and III Part C (*Conditions Precedent to all Disbursements after the Initial Drawdown*) hereof, provided however, that, unless otherwise stated in Schedule III Part A (*Conditions Precedent to Initial Disbursement*), the conditions set forth in Schedule III Part B (*Conditions Subsequent to Initial Drawdown*), and III Part C (*Conditions Precedent to all Disbursements after the Initial Drawdown*) of this Agreement shall be required to be satisfied (or waived) only in connection with the Initial Drawdown.



3.1.2 Notwithstanding anything contained in this Agreement, the Borrower shall provide to the Lenders, in respect of all proposed Disbursements under this Agreement, a valid Disbursement Notice.

### 3.2 Mechanics for Requesting Disbursement

Subject to Clause 3.1 hereof, the Borrower may request a Disbursement under this Agreement by delivering to the Lenders, a Disbursement Notice with respect to each such Disbursement substantially in the form attached in Exhibit 2 hereto, no later than 1 (one) Business Days prior to the Initial Disbursement Date or the disbursement date, or such shorter period as may be acceptable to the Lenders, as the case may be.

### 3.3 Mechanics for Funding Disbursements

3.3.1 For ~~Prize Reeltech Pvt. Ltd.~~  
Procedure for Disbursement



 Authorized Signatory Borrower	
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- (n) Upon receipt of the Disbursement Notice from the Borrower, the Lenders shall review such Disbursement Notice and attachments thereto to determine whether all required documentation has been provided and whether all applicable conditions precedent pursuant to this Agreement under which such Disbursement is requested have been satisfied; and
- (b) Subject to Clause 3.2 (*Mechanics for Requesting Drawdowns*) and the other sub-sections of this Clause 3.3 (*Mechanics for Funding Drawdowns*) and satisfaction or waiver of all applicable conditions precedent and any other applicable provisions under this Agreement under which such Disbursement is requested, at such time all applicable conditions precedent set forth in Schedule III have been satisfied or waived by the Lenders the Disbursement under the Facility shall occur.
- (c) If in connection with any Disbursement, any Lender determines that any applicable condition precedent under Schedule III A (*Conditions Precedent to Initial Drawdown*) or Schedule III C (*Conditions Precedent to all Drawdowns after the Initial Drawdown*) (as applicable) has not been satisfied, such Lender shall notify the Borrower prior to the disbursement date that the Disbursement may not be made and shall give the reasons therefor (any such notice, is hereinafter referred to as an "Unsatisfied CP Notice"). The Unsatisfied CP Notice shall specify the conditions precedent which have not been satisfied. Upon issuing such Unsatisfied CP Notice, the Lenders shall not have any obligation to make the Disbursement requested under the related Disbursement Notice unless such Unsatisfied CP Notice is revoked under sub-clause (d) below.
- (d) At such time, if ever, the Lenders determines that the condition precedent to the Disbursement which had not been satisfied or has been satisfied or waived in accordance with the Financing Documents, the Lenders shall notify the Borrower in writing that the event giving rise to such Unsatisfied CP Notice no longer exists or has been waived. Further, where the Borrower provide the Lenders information as to the satisfaction of the condition precedent, which is the subject of such Unsatisfied CP Notice, the Unsatisfied CP Notice shall be treated as being revoked as and when communicated by the Lenders to the Borrower, unless none of the Lenders issues a fresh Unsatisfied CP Notice.

Upon the occurrence of any of the foregoing, such Unsatisfied CP Notice shall be treated as being revoked and the Lenders shall promptly notify the Borrower, whereupon the Lenders shall make the requested Disbursements under the Facility as may be applicable, as soon as practicable, after receipt of the Lending Confirmation Notice in accordance with sub-clause (f) below.

- (e) No Lender shall have any liability to the Borrower or any Affiliate thereof or any other Lender arising from the issuance of an Unsatisfied CP Notice, if such Lender issued the Unsatisfied CP Notice in good faith.

For Foire Realtech Pvt. Ltd.

 <b>Authorized Signatory</b> <small>BORROWER</small>	
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- (f) If the Lenders have not issued an Unsatisfied CP Notice pursuant to Clause 3.3.1(c) (*Procedure for Drawdowns*) and is satisfied that the conditions precedent to a Disbursement have been satisfied, or at such time as the Lender has issued a notice to the Borrower under Clause 3.3.1(d) (*Procedure for Disbursement*) and is otherwise satisfied that the conditions precedent to a Drawdown are satisfied or an Unsatisfied CP Notice is treated as being revoked pursuant to Clause 3.3.1(f) (*Procedure for Disbursement*) and the Lender is satisfied that the conditions precedent have been fulfilled, the Lender shall issue a notice confirming the Disbursement, (hereinafter the "**Lending Confirmation Notice**") in such form and manner as may be satisfactory to the Lenders and in their sole discretion.
- (g) On the proposed disbursement date following the issue of a Lending Confirmation Notice, the Lenders shall make available to the Borrower at the relevant Lender's "Lending Office" the relevant amount at par. The mode of disbursement specified above shall be at the option of the respective Lenders.

### 3.3.2 Drawstop Notices

- (a) In addition to the ability to issue an Unsatisfied CP Notice pursuant to Clause 3.3.1 (*Procedure for Disbursement*) and notwithstanding the issuance of any Lending Confirmation Notice by the Lender pursuant to Clause 3.3.1(g) (*Procedure for Disbursement*) in connection with any Disbursement, any Lender may, on the occurrence of an Event of Default or a Potential Event of Default issue a notice (a "**Drawstop Notice**") to the Borrower and the other Lenders that no Disbursement shall be made under any Disbursement Notice.
- (b) A Drawstop Notice issued pursuant to this Clause 3.3.2 shall remain in full force and effect until:
- (i) the Potential Event of Default or Event of Default which led to the issuance of such Drawstop Notice has been remedied by the Borrower or waived by the Lenders; or
  - (ii) the Lenders which issued such Drawstop Notice authorizes the Lenders to revoke such Drawstop Notice by sending notice of such revocation to the Borrower (which notice shall specify in reasonable detail the basis for such revocation and shall have attached thereto copies of relevant documentation supporting such revocation).
- (c) Upon the occurrence of any of the foregoing, such Drawstop Notice shall be treated as being revoked, whereupon the applicable Lenders shall make the requested Drawdowns as soon as practicable thereafter.

### 3.3.3 Reliance on Notices relating to Borrowing

For Poise Realtech Pvt. Ltd.

 <b>Authorized Signatory</b> Borrower	
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The Secured Parties shall be entitled (but not obliged) to rely and act upon any Disbursement Notice and any documentation or information provided in connection with a Disbursement Notice, which appears on its face to have been duly completed, genuine and properly signed by the Authorized Officer notwithstanding that such Disbursement Notice, documentation or information later on proves to be not genuine, not properly signed or otherwise incorrect in any respect.

3.3.4 Drawdown Notice Irrevocable

Each Disbursement Notice is irrevocable and shall commit the Borrower to borrow in accordance with such notice.

3.3.5 Mode of Disbursements

(a) All Disbursements by the Lenders to the Borrower under this Agreement shall be made through credit to the account designated by the Borrower in the Disbursement Notice and maintained with the bank acceptable to the Lenders (hereinafter referred to as "Designated Account").

(b) The Designated Account shall be used for all the Disbursement of the Facility made by the Lenders to the Borrower under this Agreement.

3.3.6 The Facility shall have a door to door tenor of 72 (seventy two) months.

3.3.7 The Borrower hereby agrees that unless the Lenders otherwise agrees, the Borrower's right to make Initial Disbursement from the Facility shall cease at the end of 90 (ninety) days from the date of execution of this Agreement.

3.3.8 The Facility shall be available to be withdrawn by the Borrower during the Availability Period subject to fulfillment of terms and conditions detailed in this Agreement.

4. **CANCELLATION OF THE FACILITY**

4.1 **Automatic Cancellation**

The undrawn Commitments under this Agreement shall be cancelled at the close of normal working hours on the last Business Day of the Availability Period unless otherwise agreed to by the Lenders in writing. The Borrower shall not cancel the Facility or any part thereof without the prior written approval of the Lenders.

4.2 **Cancellation by the Lenders**

4.2.1 The Borrower hereby agrees that the Lenders reserves the right, without assuming any liability, without providing any reasons and without any prior notice, to unconditionally revoke, cancel, alter, modify or change, at any time, the Facility at its sole discretion for any reason whatsoever, including but not limited to the following events:

(a) In case any part of the Facility is not utilized by the Borrower.

For Police Reserves Pvt. Ltd.

	
Authorized Signatory	

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- (b) Upon occurrence of an Event of Default (including Potential Event of Default).
- (c) Upon occurrence of a Material Adverse Effect.
- (d) In case of deterioration in the loan account in any manner whatsoever.
- (e) In case of any misrepresentation by the Borrower or any document or information furnished to the Lenders is found to be incorrect or untrue.
- (f) In case of any other development or situation which in the opinion of Lenders will be prejudicial or detrimental to the interest of the Lender.
- (g) In case of any misrepresentation by the Borrower or any document or any information is furnished to the Lenders is found to be not true or incorrect.

4.2.2 The Borrower hereby agrees that exercise by the Lenders of their right of suspension shall not preclude Lenders from exercising its/their right of cancellation, either for the same or any other reason specified in this Clause 4.2 and shall not limit any other provision of this Agreement. Upon any cancellation the Borrower shall pay to the Lenders all fees and other amounts accrued (whether or not then due and payable) under this Agreement up to the date of that cancellation.

#### 4.3 General Provisions for Cancellation



No amount of the Facility cancelled under this Agreement may subsequently be reinstated. No cancellation of the Facility is permitted except in accordance with the express terms of this Agreement.

## 5. INTEREST AND FEES

### 5.1 Interest

5.1.1 The Borrower shall pay to the Lenders, interest ("**Interest**") on their respective Loans at the Interest Rate as specified in Schedule 1 B of this Agreement for the Interest Period on each Interest Payment Date.

5.1.2 In case of a New Lender pursuant to any accession or novation and/or assignment in accordance with Clause 20.6 (*Novation and Participation*) who becomes a party to this Agreement, the Interest Rate of such New Lender shall be linked to the Benchmark Rate of the Lenders, however, the New Lender shall have an option to link to its respective Benchmark Rate on the expiry of 6 (six) months from the Initial Disbursement of the New Lender and their Spread shall be the difference between the Interest Rate and the Benchmark Rate as applicable, on the date of novation/assignment. Thereafter the Spread shall be reset in accordance with the provisions of this Agreement. The New Lender shall have the option to specify interest rate reset period in order to give effect to any change to the underlying Benchmark Rates, in line with the Applicable Laws. The Interest Rate of the New Lender shall not be lower than the Benchmark Rate and shall be in line with Applicable Laws.

<p>For Poise Realtech Pvt. Ltd.</p>  <p>Borrower</p> <p><b>Authorized Signatory</b></p>	
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- 5.1.3 On the reset of Spread pursuant to the provisions specified in Schedule I B, the Lenders shall notify the Borrower of such reset Interest Rate (the "**Reset Lending Rate**") within 15 (fifteen) days from the Interest Reset Date, and the Borrower shall, from the Interest Payment Date immediately following the Interest Reset Date, pay interest on all the existing Loans at the Reset Lending Rate.
- 5.1.4 The Parties agree and acknowledge that Lender at its sole discretion shall have option to increase IRR for the Facility up to 12% per annum, subject to covenants stipulated in this Agreement, and demand payments from the Borrower during the tenor of the Facility at its discretion to achieve the aforementioned IRR.
- 5.1.5 In the event of breach of the terms of the Financing Documents or during subsistence of an Event of Default, no benefit of reduction in Interest, as provided herein shall be passed by the Lenders to the Borrower, until the breach is cured by the Borrower. *Provided*, such breach shall not affect the Interest being paid by the Borrower, on the date of occurrence of such default.

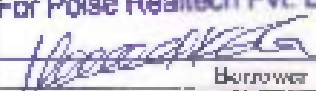

## 5.2 Interest Tax

The Borrower shall pay to the Lenders, in addition to the interest on the Loans payable as per this Clause 5, Interest Tax, service tax and all other imposts, duties, levies and taxes of whatever descriptions levied pursuant to any law or otherwise by statutory authority including the GOI or other authorities in connection with the Facility (as required under Applicable Law) including but not limited to stamp duties, professional fees, cost and charges for advocates, counsel fees for opinions, advice, creation of Security, investigation of title, protection of the Lenders' interests and other charges or surcharges levied by GOI or any other statutory authority in connection with the Facility, as applicable from time to time.

## 5.3 Additional Interest

Without prejudice to the obligations of the Borrower under this Agreement and the other Financing Documents, the Borrower shall pay additional interest (the "**Additional Interest**") at the Additional Interest Rate on the defaulted amount, for each day of delay beyond the Due Date, upon the occurrence of a default by the Borrower in payment of interest, installment of principal, or any other monies accruing due to such Lenders including all costs, charges, expenses due under this Agreement or any other Financing Document on the Due Date (whether at stated maturity, by acceleration, by mandatory prepayment in accordance with this Agreement or otherwise), such Additional Interest will be computed from the respective Due Date until the date on which the Borrower have repaid such amounts, to the satisfaction of the Lenders, and shall be payable on demand and if no demand is made then on the Interest Payment Date, immediately following the date of default.

*Provided however*, that the levy of Additional Interest under this Clause 5.3 of this Agreement shall not prevent the Lenders from declaring an Event of Default or exercise of any rights and remedies available to Lenders upon the occurrence of an Event of Default.

<p>For Poise Realtech Pvt. Ltd.</p>  <p>Borrower</p>	 <p>Lenders</p>
<p>Authorized Signatory</p>	

#### 5.4 Accrual

All interest accruing on amounts outstanding under the Facility shall be paid in arrears at the end of each Interest Period and shall accrue from day to day and be calculated on the basis of the actual number of days elapsed in a year of 365 (three hundred and sixty-five) days.


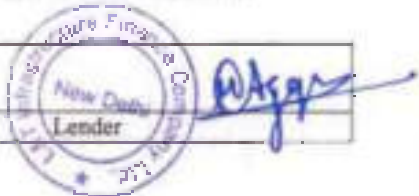
#### 5.5 General

- 5.5.1 The determination of the applicable Interest Rate by the Lender, from time to time, shall be final, conclusive and binding upon the Borrower without any demur or protest.
- 5.5.2 The Borrower acknowledges that any sums, interest, default amount including but not limited to the Additional Interest under Sections 5.4 (Additional Interest) and 5.6 (Further Interest) of this Agreement respectively are reasonable and represent a genuine pre-estimate of the loss incurred by the Lenders in the event of non-payment/non performance by the Borrower.
- 5.5.3 The Borrower acknowledges that the Facility provided under this Agreement is for a commercial transaction and waives any defense available under usury or other laws relating to the charging of interest.

#### 5.6 Further Interest

- 5.6.1 Without prejudice to the obligations of the Borrower under this Agreement and the other Financing Documents, the Borrower shall pay Further Interest (the "Further Interest") at Further Interest Rate, during the currency of the Facility, for the relevant period and for each default specified below:
- (a) Non adherence to the construction schedule as provided in Schedule V (*Construction Schedule*) hereof;
  - (b) Non achievement of sale of units and sales collections in the Projects as per Schedule VI (*Sales Schedule*) hereof;
  - (c) Non creation and perfection of Security Interest on the Security, pursuant to the provisions of this Agreement;
  - (d) Non closure of any existing escrow mechanisms or any retention account mechanism with the any of the existing lenders of the Borrower, if any, within the agreed timelines with the Lenders;
  - (e) Non-maintenance of DSR and not adhering to other covenants as per agreed provisions and/or breach or non-adherence of any term(s) contained in other Transaction Documents in relation to DSR, the Borrower shall (if the same may be levied by the Lenders as per their own discretion); and/or
  - (f) Breach of any terms and conditions of the Transaction Documents.

For Poisa Realtech Pvt. Ltd.

 Borrower <b>Authorized Signatory</b>	 New Capital Finance Co. Ltd. Lender
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- 5.6.2 The Further Interest payable at Further Interest Rate under as per this Clause 5.6.1 (*Further Interest*) shall be due and payable from the date of the occurrence of breach till such breach is cured to the satisfaction of the Lenders.
- 5.6.3 The applicable Further Interest over and above the Further Interest Rate, shall be payable on demand or, if not demanded, on each Interest Payment Date, falling after any such amount(s), in relation to which payment has not been made, has become due.
- 5.6.4 The Borrower hereby agrees that the obligation to pay the applicable Further Interest or Additional Interest shall neither be considered as a waiver of Event of Default nor shall absolve Borrower of its other obligations in respect of such default and/ or breach or non-adherence of the terms of Transaction Documents and the payment of said Further Interest, Additional Interest or Additional Fee shall be without prejudice to Lender's right to exercise all rights and remedies available to it under this Agreement and/ or any other Transaction Documents.
- 5.6.5 Notwithstanding anything contained in any of the Financing Documents, the Additional Interest, the Further Interest and Additional Fee when payable by the Borrower to the Lender, shall be independent of each other, unless as communicated at the sole and absolute discretion of the Lenders.
- 5.6.6 The Lenders shall have the right to exercise any or all rights available to it under the Transaction Documents including but not limited to levy Additional Interest or Further Interest or upon occurrence of an Event of Default and upon expiry of the cure period, if any, to recall all or part of the Facility and cancel undisbursed Facility.
- 5.6.7 Notwithstanding anything contained herein, the Lenders shall in their sole discretion shall be entitled to exercise any rights available them under the Transaction Documents including but not limited to levy of Additional Interest, Further Interest or Additional Fee mentioned herein, cancelling or calling back of the Facility (in part or full), after expiry of cure period, if applicable, upon occurrence of an Event of Default, the Lenders shall have the sole discretion in determining upon an Event of Default.




## 6. REPAYMENT

- 6.1 Upon expiry of the Moratorium Period, the Borrower agrees and undertakes to repay the Facility in 12 (twelve) structured quarterly instalments on the last day of each Financial Quarter, as provided under Schedule II hereof.
- 6.2 The first Repayment Installment for the Lenders shall be due on the First Repayment Date. All subsequent Repayment Installments shall be due on the successive Repayment Dates.
- 6.3 No amounts repaid under the Facility may be re-borrowed under the Financing Documents.

For Poise Realtech Pvt. Ltd.

 Authorized Signatory	
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- 6.4 The Borrower hereby agrees that the Interest Rate and other interest and charges (including Further Interest and any Additional Interest) shall be payable as per the terms of this Agreement during the tenor of the Facility, including during the Moratorium Period.
- 6.5 The Lenders may, wherever warranted, revise, vary or postpone the repayment of the principal amounts of the Facility or the balance outstanding for the time being or any Repayment Installment(s) of the said principal amounts of the Facility or any part thereof by giving prior notice to the Borrower on such terms and conditions as may be decided by it and the Borrower shall be deemed to have consented to the same.
- 6.6 If the Repayment Installment or an Interest Payment Date falls on public holiday, then such Repayment Installment shall be made on the first Business Day after that Repayment Date and the interest shall be paid on the date falling prior to the actual Interest Payment Date (and Interest Rate will be calculated up to the actual repayment date).
- 6.7 Repayment of the Facility would include all amounts actually received by the Lenders by any or all of the following modes:
- (a) Repayment by the Borrower of the Facility and interest thereon in accordance with the Repayment Schedule;
  - (b) Amounts received by the Lenders through electronic clearing service or on encashment of the post-dated cheques.
- 6.8 Notwithstanding anything contained herein, in the event of occurrence of Event of Default or Potential Event of Default or non-achievement of projected cash flows or deterioration or non-realisation of Project Receivables within reasonable time, the Lenders without prejudice to their other rights under the Transaction Documents shall have the right at any time and from time to time to review, accelerate and/or reschedule the Repayment terms of the Facility or of the Outstanding Amount thereof in such manner as Lenders may at their sole discretion deem fit. In such an event, without any demur or protest, the Borrower shall remit payment as per such revised Repayment Schedule as revised by the Lenders for the amount outstanding at such time.
- 6.9 The Repayment shall be made through the Escrow Accounts to be opened and established by the Borrower with the Escrow Banks in the name of the Borrower as per the terms and conditions contained in the Escrow Agreements. At any point of time if the proceeds lying to the credit of the Escrow Accounts are not sufficient to repay outstanding amount of the Loan on the Repayment Date, the Borrower undertakes to deposit, sufficient funds to meet the shortfall amount into the Escrow Accounts from their income other than the Project Receivables and Identified Inventory Receivables. In the event the Borrower fails to deposit sufficient funds in the Escrow Accounts to make good the shortfall, Lenders shall have a right to present the Repayment Cheques, of that month on the Due Date. The Parties agree

<p>For Poise Realtech Pvt. Ltd.</p>  <p>Borrower</p> <p><b>Authorised Signatory</b></p>	 
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that the Borrower shall make Repayment through such other sources and in such manner, which shall be with the prior written approval of the Lenders.

**7. PREPAYMENT**

**7.1 Prepayment from Project cash flow**

The Borrower hereby agrees and shall ensure that, any cash flow generated from the Projects and/or Identified Inventory, by way of any sale, allotment, booking or any other kind of alienation of interest in any units of the Projects or Identified Inventory, as the case may be, either directly or indirectly or any other mode of obtaining advance against transfer of rights in the land or construction thereon, be mandatorily credited into the respective Escrow Accounts and shall be available for the sole utilization by the Lenders towards prepayment of the Outstanding Amount (without payment of any prepayment charges) or such other revised rates as may be stipulated by the Lenders, from time to time. The amount prepaid as above will be adjusted towards the principal amount of the Loan in forward order of maturity or in the manner as determined by the Lenders.

**7.2 Prepayment through Re-Financing and Other Sources**

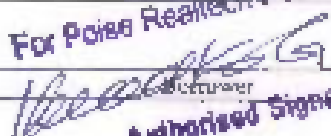

Subject to prior written consent of the Lenders, in the event Borrower prepays the Outstanding Amount (or any part thereof) by availing any re-financing Facility from any other bank, non-banking financial institution or financial institutions, from any cash flow received from inventory funding, bulk sale in the nature of loan (more than 10% of unsold stock of the Projects) and/or from any other sources, with a payment of Prepayment Premium. The Borrower shall provide a prior written notice of at least 15 (fifteen) Business Days to the Lenders, requesting the written consent for such prepayment provided in this Clause 7.2.

**7.3 Prepayment Upon Interest Rate Reset**

In the event upon reset of Interest Rate in accordance with this Agreement, is not acceptable to the Borrower, the Borrower may prepay the Outstanding Amount, either in full or in part thereof within 90 (ninety) days of such reset of Interest Rate, subject to the Borrower providing an irrevocable notice of prepayment to the Lenders within 30 (thirty) days from the date of communication of such reset of Interest Rate. Such notice shall, *inter alia*, specify the amount to be prepaid and the date of prepayment. No prepayment charges will be charged by the Lenders for such payments. However, till the time entire Outstanding Amount is paid to the Lenders to the satisfaction of the Lenders, the revised Interest Rate shall be payable by the Borrower.

**7.4 Prepayment in absence of Minimum Selling Price**

The Parties hereby agrees that in the event the sale of the unsold units is below the Minimum Selling Price after obtaining the prior written consent of the Lenders, the Borrower shall prepay the Loan to the extent of differential amount, without payment of any Prepayment Premium.

<p>For Poies Realtech Pvt. Ltd.                    Authorized Signatory</p>	 
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## 8. PAYMENT MECHANISM

### 8.1 Place

Except to the extent otherwise provided herein, all payments to be made by the Borrower or any other Person (as applicable) having obligations under the Transaction Documents, to the Lenders in terms of this Agreement or other Transaction Documents, shall be made directly to the Lenders at their respective Lending Offices or at such other place as may be specified by the Lenders by real time gross settlement/other mechanism for payment specified by the Lenders, in each case, through the Accounts in accordance with the Escrow Agreements.

### 8.2 Currency

Amounts payable to the Lenders under the Financing Documents shall be payable in Rupees.

### 8.3 Set-off and Counterclaim

All payments made by the Borrower shall be made without deduction (other than any tax deduction in accordance with Clause 20.14.3 (Taxes and Net Payments), set-off or counterclaim.




### 8.4 Non-Business Days

If a payment under this Clause 8.4 is due on a day, which is not a Business Day, the Due Date for that payment shall instead be the immediately preceding Business Day.

### 8.5 Appropriation of Payments

The Borrower's further agrees and confirm that anything contained herein or in any other documents or instructions in writing by the Borrower or unless otherwise agreed to by the Lenders, any payments due and payable under this Agreement and made by the Borrower or amount realized/received/recovered by the Lenders shall be appropriated towards such dues in the order they appear herein below:

- (a) Costs, charges, expenses and other monies;
- (b) Interest on costs, charges, expenses and other monies;
- (c) Additional Interest;
- (d) Further Interest;
- (e) Interest;
- (f) Prepayment Premium; and
- (g) Repayment Instalments.

<p>For Polse RealTech Pvt. Ltd.</p>  <p>Borrower</p> <p><b>Authorized Signatory</b></p>	 <p>Lender</p> 
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Notwithstanding anything contained in Clause 8.5 hereinabove, Lenders may, at their discretion, appropriate such payments towards the dues, if any, payable by the Borrower and/ or any of its group entities in respect of Financial Indebtedness availed/ to be availed by the Borrower and/ or any of its group entities from Lenders and/ or Lender's Group Companies in the order specified in the relevant loan agreement(s).

#### 8.6 Realisation at Par

All sums payable under this Agreement shall be so paid by the Borrower as to enable the Lenders to realise the monies at par on the Due Date.

### 9. CONDITIONS PRECEDENT & SUBSEQUENT

#### 9.1 Pre-disbursement Conditions

The Initial Disbursement under the Facility shall be made at the discretion of the Lenders subject to the Borrower, Promoter and the Corporate Guarantor, as the case may be complying with all the conditions to the satisfaction of the Lenders, as detailed in Part A of Schedule III, (*Conditions Precedent to Initial Disbursement*) or such other conditions as may be prescribed by the Lender.

#### 9.2 Post disbursement conditions

The obligations of Lenders to make further disbursement out of the Facility shall, *inter alia*, be subject to the Borrower and the Security Providers, as the case may be, complying with the conditions to the satisfaction of the Lender, as detailed in Schedule III Part B (*Conditions Precedent for Subsequent Disbursement*) or such other conditions as may be prescribed by the Lenders.

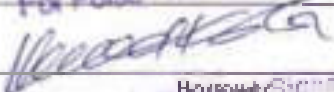

#### 9.3 Condition Precedent to all Disbursement after the Initial Disbursement

Any disbursement under the Facility shall be made at the discretion of the Lenders subject to the Borrower and the Security Providers, as the case may be, complying with all the conditions to the satisfaction of the Lenders, as detailed in Part C of Schedule III, (*Conditions Precedent for all Disbursement after the Initial Disbursement*)

### 10. SECURITY

#### 10.1 The Outstanding Amount shall be secured by the following:

- (a) a first *pari passu* charge on:
  - (i) the land, development rights, title and interest of Supertech Limited, on land admeasuring 100 Acres forming part of Project 1, owned by Supertech Limited,

<p>For Poise Realtech Pvt. Ltd.</p>  <p>Borrower's Signatory</p>	
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- (ii) the land, development rights, title and interest of Supertech Limited on land admeasuring 49 Acres forming part of Project II, owned by Supertech Limited;
  - (iii) entire movable assets, including but not limited to, plant and machinery, machinery spares, tools and accessories, both present and future, pertaining to the Projects, by Supertech Limited;
  - (iv) all the rights, title, interest, benefits, claims and demands whatsoever of Supertech Limited and the Borrower in, to and under the Project Documents (including but not limited to Insurance Contracts, insurance proceeds and the Clearances), duly acknowledged and consented to by the counterparties to the Project Documents (if such Project Document requires prior consent of such counterparties) before the creation of security as within-mentioned, all as amended, varied or supplemented from time to time.
  - (v) all the rights, title, interest, benefits, claims and demands whatsoever in the Identified Inventory by DPPL and Supertech Limited;
  - (vi) Projects Escrow Accounts, Debt Service Reserve and any monies deposited therein including Projects Receivable or any account in substitution thereof (including permitted investments in lieu thereof), subject to provisions of Applicable Law; and
  - (vii) Identified Inventory Escrow Account and any monies deposited therein including Identified Inventory Receivables or any account in substitution thereof (including permitted investments in lieu thereof), subject to provisions of Applicable Law.
- (b) An exclusive pledge over 100% (one hundred percent) paid up equity shares of Borrower held by the Promoter and Mr. Pramod Kumar Gupta, in favour of the Security Trustee for the benefit of the Lenders.
  - (c) An exclusive pledge over 100% (one hundred percent) paid up equity shares of DPPL in favour of the Security Trustee for the benefit of the Lenders.
  - (d) Personal guarantee by the Promoter in favour of the Security Trustee for the benefit of the Lenders.
  - (e) Corporate guarantee by STL in favour of the Security Trustee for the benefit of the Lenders.

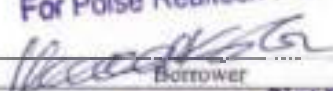


10.2 A demand promissory note executed by the Borrower in favour of the Lenders, prior to the Initial Disbursement Date.

(The Security Interest created pursuant to Clause 10.1 and Clause 10.2 shall be collectively referred to as the "Security")

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- 10.3 The Security created or to be created to secure the Facility shall be a first ranking Security Interest and shall rank *pari passu* inter se the Lenders, without any preference or priority to one over the other or others.
- 10.4 The Borrower shall and shall cause to create the Security Interest as stipulated in Clause 10.1 (b), Clause 10.1(d) and Clause 10.1(e) and Clause 10.2, prior to the Initial Disbursement Date and perfect the same within 30 (thirty) days of creation of such Security Interest.
- 10.5 The Borrower shall and shall cause to create the Security Interest as stipulated in Clause 10.1 (a)(v) and Clause 10.1(a) (vii) within 7 (seven) days from the Initial Disbursement Date, in the form and manner satisfactory to the Lenders and perfect the same within 30 (thirty) days of creation of such Security Interest.
- 10.6 The Borrower shall and shall cause to create the Security Interest as stipulated in Clause 10.1 (c) within 30 (thirty) days of the Initial Disbursement Date, in the form and manner satisfactory to the Lenders and perfect the same within 30 (thirty) days of creation of such Security Interest.
- 10.7 The Borrower shall cause for obtaining of Clearances for creation of Security Interest on the security stipulated in Clause 10.1(a)(i), Clause 10.1(a)(ii), Clause 10.1(a)(iii), Clause 10.1(a)(iv), Clause 10.1 (v) and Clause 10.1 (vi), respectively and shall cause to create such Security Interest within 45 (forty five) days of the Initial Disbursement Date, in the form and manner satisfactory to the Lenders and perfect the same within 30 (thirty) days of creation of such Security Interest.
- 10.8 The Borrower shall ensure that during the entire tenure of the Facility and till the Final Settlement Date, there is a minimum 1.3 (one point three) times the security cover of the Facility.
- 10.9 The Borrower shall make out a good and marketable title to its properties to be secured in favour of the Secured Parties to the satisfaction of Secured Parties and comply with all such formalities as may be necessary or required for the said purpose.
- 10.10 So long as any monies remain due and outstanding to the Secured Parties under the Financing Documents, the Borrower undertakes to notify the Secured Parties in writing of all its acquisitions of immovable properties pertaining to the Projects and as soon as practicable thereafter to make out a marketable title to the satisfaction of Secured Parties, mortgage the same, in such form and manner as may be decided by the Secured Parties, in favour of the Security Trustee for the benefit of the Lenders by way of first mortgage in the form and manner acceptable to the Security Trustee.
- 10.11 The Security shall be created in the form and manner satisfactory to the Secured Parties and within the timelines set out in this Agreement.

## 11. REPRESENTATIONS AND WARRANTIES

<p>For Poise Realtech Pvt. Ltd.</p>  <p>Borrower</p> <p>Authorized Signatory</p>	 
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11.1 The Borrower makes the following representations and warranties as on the date of this Agreement in order to induce each of the Secured Parties to enter into the Financing Documents. These representations and warranties shall survive the execution and delivery of the Financing Documents and the making of the Disbursements under this Agreement and shall be repeated, by reference to the facts and circumstances then existing, on each day until the Final Settlement Date.

(a) *Organization and Authority*

The Borrower is a company duly incorporated and validly existing under the laws of India and has the corporate power and has obtained all required authorizations to own its property and assets, conduct its business as presently conducted and to enter into, and comply with its obligations under, the Transaction Documents to which it is a party or will be a party as per the terms of this Agreement.

(b) *Validity*

This Agreement and each Transaction Documents to which the Borrower is a party has been, or will be, duly authorized and executed by the Borrower and constitutes, or will as and when executed constitute, a valid and legally binding obligation of the Borrower, enforceable in full force and effect in accordance with the terms contained therein.

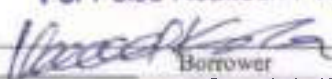


(c) *Status of Authorizations*

(i) All the Borrower's authorizations either statutory or contractual as may be required to execute and comply with Borrower's obligations under this Agreement and each of the other Transaction Documents to which it is a party have been duly and are in full force and effect; and

(ii) All authorizations either statutory or contractual (as the case may be) required to conduct Borrower's business, currently carrying on and is contemplated to be carried on; to carry out the Projects have been duly obtained by the Borrower, each such authorization is in full force and effect and the Borrower is in compliance with all terms and conditions of such authorizations.

(d) *No Conflict*

Neither the making of or any term of the Transaction Documents to which the Borrower is a party nor the compliance with its terms will conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default or require any consent under, any existing indenture, mortgage, agreement or other instrument or arrangement to which the Borrower is a party or by which it is bound, or violate any of the terms or provisions of the Borrower's Charter or any authorization, judgment, decree

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or order or any statute, rule or regulation applicable to the Borrower save and except as may be upfront disclosed to the Lenders in writing.

(c) *No Amendments to Charter*

The Borrower has submitted the certified true copies of its Charter with Lenders and confirms that these are final/ last amended documents and neither entering into the Transaction Documents by the Borrower nor any terms contained therein are in breach or inconsistent to the provisions of the Charter of the Borrower.

(f) *Accuracy*

The Borrower confirms the accuracy, correctness and validity of the information provided by the Borrower in its loan application made to the Lenders, including all other prior or subsequent explanation/s/information given to Lenders in this behalf.

(g) *Filings and Payments*

(i) The Borrower certifies that all registrations, recordings, filings and notarisations of any Financing Documents and all payments of any tax or duty, including without limitation stamp duty, registration charges or similar amounts which are required to be effected or made by the Borrower which is necessary to ensure the legality, validity, enforceability or admissibility in evidence of the Financing Documents have been made or shall be made in accordance with the relevant Financing Documents. The Borrower should have submitted a copy of all registrations, recordings, filings and notarisations of any Financing Documents to the Lenders for their records.

(ii) The Borrower has filed all tax returns and paid all Taxes and fees (other than those Contested In Good Faith), including in relation to stamp duties and registration fees due and payable.



(h) *Financial Condition*

The Borrower has not suffered any change in its financial condition and conditions in the financial market that has a Material Adverse Effect; and

(i) *Financial Statements*

The unconsolidated and consolidated financial statements of the Borrower and its subsidiaries, if any, for the last 3 (three) years:

(a) have been prepared in accordance with the IND AS consistently applied during the period involved, and give a true and fair view of the financial condition of the Borrower as of the date as of which they were prepared and the results of the Borrower's operations

<p>For Poise Realtch Pvt. Ltd.</p>  <p>Borrower</p>	
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during the period then ended; accounting standards and practices in force in India consistently applied during the periods involved and present truly and fairly the financial position and results of the operations of the Borrower and the Borrower has no liabilities; or

- (ii) disclose all material liabilities (including guarantees and other contingent liabilities) of the Borrower, and the reserves, if any, for such material liabilities and material unrealized or anticipated liabilities and material losses arising from commitments entered into by the Borrower.

(j) *Material Agreements*

The Borrower has neither entered into any arrangement and/ or agreement of any nature nor has committed to enter into, any contract which would or might affect the judgment of a prospective investor (if any) and could have resulted or result into a Material Adverse Effect.

(k) *Title to Assets and Permitted Liens*

- (i) With regard to all the Security (created or to be created in favour of the Lenders and/ or all the assets owned or purported to be owned by the Borrower and /or asset(s) it proposes to lease a clear, good, valid, legal and marketable title exist alongwith valid ownership/leasehold interest without any Security Interest (except for Permitted Security Interest) of any nature whatsoever and no contracts or arrangements, conditional or unconditional, exist for the creation of any Security Interest by the Borrower, except for the Permitted Security Interest.

- (ii) All payments including all Taxes in relation to the Properties have been paid in full to all the relevant parties and as on date there are no outstanding payments in relation to the same.

- (iii) No Security Interest (except for Permitted Security Interest) has been created on the whole or any part of the Mortgaged Properties and Project, in any manner whatsoever save and except rights created / proposed to be created in favour of the Lenders herein.

- (iv) Save as the Permitted Security Interest, the Borrower has not created any Security Interest upon any of its present or future revenues or other assets in favour of any Person nor does it have any obligation to create any Security Interest.

- (v) The Borrower represents that there are no document, judgment or legal process or other charges of any latent or patent defect affecting the title of the Mortgaged Properties which has remained undisclosed (in writing) and/or which may prejudicially affect the

<p>For Poise Realtech Pvt. Ltd.</p> <p><i>[Signature]</i></p>	<p><i>[Signature]</i></p>
<p>Authorised Signatory</p>	<p>34</p>

*[Signature]*  
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interest of Lenders under the Transaction Documents in any manner whatsoever.

- (vi) The Projects constructed from the proceeds of the Facility are neither included nor is/ are affected by any of the schemes of the Central/ State Government or of the improvement trust or any other public body or local authority or any alignment, widening or construction of road under any scheme of the Central/ State Government or of any Corporation, Municipal Committee, Gram Panchayat etc.
- (vii) All Clearances used in connection with the Security for creation of Security Interest has been obtained and no term contained in such Clearances restrict it from or imposes any conditions (other than as set out in this Agreement) for: (A) creating Security in favour of the Lender, or (B) the entry into, delivery and performance of its obligations under Financing Documents.

(l) *Taxes*

All tax returns and reports of the Borrower required under Applicable Law have been duly filed within the period legally specified and all Taxes, obligations, fees and other governmental charges upon the Borrower, or its properties, or its income or assets, which are due and payable or to be withheld, have been paid or withheld, other than: (A) those presently payable without penalty or interest; and (B) disputed taxes, obligations, fees and other governmental charges against which sufficient reserves are maintained.

(m) *Litigation*

- (i) The Borrower is neither engaged in nor threatened by any litigation, arbitration or administrative proceedings, the outcome of which could result into a Material Adverse Effect.
- (ii) No judgment or order has been issued against the Borrower which has or may reasonably be expected to have a Material Adverse Effect; and/or
- (iii) No suit is pending in the or any other court of law or forum of judicature in respect of the Mortgaged Properties.

(n) *Compliance with Law*

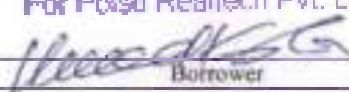

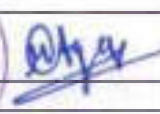
The Borrower is in compliance with all the Applicable Laws.

(o) *Environmental Matters*

- (i) There are no material social or environmental risks or issues in relation to the Project; and

<p>For <b>Poise Realtech Pvt. Ltd.</b></p> <p><i>[Signature]</i> Authorized Signatory</p>	<p><i>[Signature]</i></p> <p><b>ST Infrastructure Finance Ltd.</b> Lender</p>
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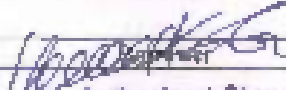

- (i) It has not received nor is aware of either (A) any existing or threatened complaint, order, directive, claim, citation or notice from any authority or (B) any material written communication from any Person concerning the Project's failure which failure has, or could reasonably be expected to have, a Material Adverse Effect or a material adverse impact on the implementation or operation of the Project.
- (p) *Laborer Matters*  
There are no ongoing or threatened, strikes, slowdowns, collective labor disputes, or work stoppages by employees of the Borrower.
- (q) *Group Companies Transactions*
- (i) The description of all the Borrower's group companies' transactions as set out in the Borrower's latest financial statements is accurate; and/or
- (ii) The Borrower and / or its group companies have no overdue/not defaulted in repayment of any amount due and payable to any other bank/ financial institutions.
- (r) *Use of Proceeds*  
The proceeds of the Facility will be applied exclusively for the purpose set under Clause 2.2 of this Agreement.
- (s) *Capitalization*  
The description of the ownership of the Borrower as set out in the Borrower's latest financial statements is accurate.
- (t) *No Material Omissions*  
None of the representations and warranties in this Clause 11.1 omits any matter, the omission of which makes any of such representations and warranties misleading in any material respect.
- (u) *Other Existing Loan*  
There exists are no outstanding default under any other Financial Indebtedness or otherwise, except as disclosed to the Lenders in writing.
- (v) *Defaulter List; ECCO Caution List; Related Party*
- (i) The Borrower, its directors, Promoters, Guarantors or Affiliates do not figure in any list of willful defaulters circulated by RBI/CIBIL or the caution list of the Export Credit Guarantee Corporation or the specific approval list or COFEPOSA defaulter list or the Lender's

For Poiso Realtech Pvt. Ltd.  Borrower	 Lender 
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defaulters list or the defaulter list of any bank or financial institution or any other Government Authority and no director of the Borrower is disqualified under Section 164 of the Companies Act, 2013.

- (ii) The Borrower confirms that none of the directors are directors in any company which has been identified as a willful defaulter by the RBI/CIBIL or any regulatory authority.
- (iii) The Borrower shall not induct a Person in the capacity of director / Promoter who is a director / partner / member / trustee of a company / firm / association of persons / trust as the case may be, identified as willful defaulter. In the event either the Borrower is identified as a willful defaulter or such a Person is found to be a director / partner / member / trustee of a company / firm / association of persons / trust, as the case may be, identified as willful defaulter, the Borrower shall take expeditious and effective steps for either curing/ remediating the same or removal of such Person within 7 (seven) days from such identification to the full satisfaction of the Lenders or otherwise, the Lenders reserves the right to call the same as an Event of Default under the terms of this Agreement.
- (iv) The Borrower confirms that none of its directors or directors of its subsidiaries or holding companies, or any of their relatives or shareholders are director(s)/member(s) of the board/senior officer of the Lenders or member of any other bank's board and no directors of any other bank holds substantial interest or is interested as director or as a guarantor of the Borrower.
- (v) The Borrower confirms that no relative of a chairman/ managing director or director of any of the Lender or a relative of senior officer of any of the Lender, hold substantial interest or is interested as a director or as guarantor of the Borrower.
- (vi) The Borrower confirms that no director of any of any banks or financial institutions, their subsidiaries, trustees of mutual funds, venture capital funds set up by the banks or their relatives is a director, manager, managing agent, employee or guarantor of the Borrower, or of a subsidiary of the Borrower, or of the holding company of the Borrower, or holds substantial interest, in the Borrower or a subsidiary or the holding company of the Borrower and no director of any other bank holds substantial interest or is interested as director or as a guarantor of the Borrower.
- (vii) The Borrower represents that none of its directors or directors of its Affiliates or any of their relatives or shareholders, is a director of any bank or financial institution or a near specified relation of a director of a bank or financial institution or a near specified relation of any senior officer of any bank or financial institution or has any relationship with the directors of any bank or financial institution.

For Poise Realtech Pvt. Ltd.	
	
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(w) *No Misleading Information*

- (i) All information or documents provided by the Borrower to the Secured Parties are true, complete and accurate as at the date they have been provided or as at the date (if any) at which they have been stated and are not false or misleading nor incomplete by omitting to state any fact necessary to make such information not misleading.
- (ii) No event has occurred or no information has been given or withheld by the Borrower that results in the information provided to the Secured Parties being untrue or misleading.

(x) *Ranking of Claims*

- (i) The Borrower shall ensure that its obligations under any Financing Documents do and will rank above and prior to the claims of all its unsecured and subordinated creditors, and at such ranking with all the secured creditors present and future as may be decided by the Lenders in its sole discretion, unless otherwise provided in this Agreement or required under the Applicable Laws.
- (ii) Each Security Document creates (or once entered into will create) in favour of the Lenders/ Security Trustee (if appointed) (for the benefit of the Lenders), the Security which it is expressed to create, and once fully perfected, such Security will have the ranking and priority it is expressed to have.

(y) *Encumbrances*

Save for the Security, no other Security Interest exist over any of the present and future assets of the Borrower which have been charged in favour of the Security Trustee for the benefit of the Lenders in relation to the Facility.

(z) *Undisclosed Liabilities*

As at the date as of which the Borrower's most recent financial statements were prepared, the Borrower had no liabilities (contingent or otherwise) which were not disclosed thereby (or by the notes thereto) or reserved against therein nor any unrealised or anticipated losses arising from commitments entered into by it which were not so disclosed or reserved against.

(aa) *End Use*

With a view to monitor the end-use of funds, if the Lenders desire a specific certification from the Borrower's statutory auditor ("Auditor") regarding diversion/siphoning of funds by the Borrower, the Lenders shall be entitled to directly instruct the Auditor or procure the Borrower to instruct its

For Poise Realtach Pvt. Ltd.

  
Authorized Signatory





Auditor to furnish the said certificate to the Lenders entirely at the cost and expenses of the Borrower.

(bb) *No Default*

Neither that Borrower nor its group companies have defaulted on any loans availed from any banks, financial institutions save and except disclosed to Lenders in writing.

(cc) *Shareholding Documents*

None of the terms and conditions detailed in the Shareholding Documents is prejudicial to the rights and interest of the Lenders in any manner whatsoever and in order to ensure that the rights of the Lenders are duly protected therein, they shall amend such Shareholding Documents if so required by the Lenders.

(dd) *Development Management Agreement*

There are no amendments, modifications or changes carried out to the Development Management Agreement, except to the extent required by the Lenders.

(ee) *Escrow Accounts*

There are no changes to the Escrow Accounts, except to the extent required by the Lenders.

11.2 The representations and warranties contained herein shall be deemed to be repeated by the Borrower on and as of each day from the date of this Agreement until all sums due or owing hereunder by the Borrower to Lenders have been paid in full, as if made with reference to the facts and circumstances existing on such day.



11.3 **Basis of Agreement**

The Borrower acknowledges that the representations and warranties in this Clause 11 (*Representations and Warranties*) is provided to induce each of the Lenders to enter into this Agreement and that Lenders have entered into this Agreement on the basis of, and in full reliance on, each of such representations and warranties.

12. **AFFIRMATIVE COVENANTS**

The Borrower hereby covenants, undertakes and agrees to abide by and ensure continued compliance of the following on or from the date of this Agreement and until the Final Settlement Date.

12.1 **Corporate Existence; Conduct of Business**

For Poise Realtch Pvt. Ltd.	
 <b>Authorised Signatory</b>	

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The Borrower shall maintain its corporate existence, comply with its charter, and implement the Project II and conduct their business with due diligence and efficiency and in accordance with sound financial and business practices.

#### 12.2 Use of Proceeds

The Borrower shall utilize the Facility in accordance with Clause 2.2 (*Purpose*) of this Agreement.

#### 12.3 Compliance with Laws; Taxes

- 12.3.1 The Borrower shall conduct its business in compliance, in all material respects, with the Applicable Laws; and
- 12.3.2 The Borrower shall file by the date due all returns, reports and filings in respect of Taxes required to be filed by them and pay, when due, all Taxes due and payable by it.

#### 12.4 Auditors

The Borrower shall:

- (a) maintain at all times a firm of independent public accountants acceptable to the Lenders as Auditors of the Borrower;
- (b) irrevocably authorize, the Auditors (whose fees and expenses shall be for the account of the Borrower) to communicate directly with the Lenders at any time regarding the Borrower's financial statements (both audited and unaudited), accounts and operations, and provide to Lenders a copy of that authorization; and
- (c) no later than 30 (thirty) days after any change in Auditors, issue a similar authorization to the new Auditors and provide a copy thereof to the Lenders.

#### 12.5 Accounting and Financial Management



The Borrower shall maintain an accounting and control system, management information system and books of account and other records, which together adequately give a fair and true view of the financial condition of the Borrower and the results of its operations in conformity with the accounting standards.

#### 12.6 Credit Rating

The Borrower shall undertake and ensure periodic credit rating of the Facility being done and shall ensure submission of the same to the Lenders as per their discretion and requirement.

#### 12.7 Promoter Shareholding

For Poise Realtch Pvt. Ltd.

 <b>Authorized Signatory</b>	 <b>Lender</b>
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- 12.7.1 The Borrower shall cause the Promoter (including the group companies) to hold at least 100% (one hundred percent) of the economic and voting interests in the Borrower's share capital free and clear of all liens, claims and Security Interest, save and except any Security Interest created in favour of the Lenders.
- 12.7.2 The Borrower shall ensure that the Promoter shall not dispose of or transfer directly or indirectly, any shareholding of the Borrower, without the prior approval of the Lenders.

### 12.8 Insurance

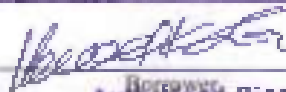

- 12.8.1 The Borrower shall maintain insurance on and in relation to its business, assets and Projects with an insurance company/ or companies (acceptable to the Lenders) against such risks and to such extent as is required by the Lenders and is usual for companies carrying on the business such as that carried on by the Borrower.
- 12.8.2 The said insurance policy/ies shall be endorsed / assigned in favour of the Security Trustee (for the benefit of the Lenders) and Insurance policies should expressly name the Security Trustee as the first loss payee.
- 12.8.3 Insurance policies shall be assigned in favour of the Lenders at the time of next renewal of the policy/ies or within 30 (thirty) days, whichever is earlier and deliver a copy of such insurance policies to the Lenders.
- 12.8.4 The Borrower shall keep the insurance policies alive till the time entire Outstanding Amount is paid to the Lenders to the satisfaction of the Lenders by making timely payment of the premium.

### 12.9 Access

During the continuance of the Facility, upon Lenders request, and with reasonable prior notice to the Borrower, permit representatives of Lenders, during normal office hours, to:

- (a) visit at the Projects or any of the sites and other premises where the business of the Borrower and its associate companies is conducted;
- (b) inspect, monitor or supervise any of the Borrower's and its associate companies sites, facilities, plants and equipment to be used for the Projects and/or provided as Security to Lenders;
- (c) monitoring and/ or supervising and inspecting the progress of construction of the Projects and the Projects Escrow Account and/or the Identified Inventory Escrow Account;
- (d) have access to the Borrower's books of account and all records through their representatives / audit firms and also conduct an audit to ascertain the value of the Mortgaged Properties by the Panel Valuers of Lender; and/or

For Poise Realtach Pvt. Ltd.

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- (e) have access to those employees, agents, contractors and subcontractors of the Borrower who have or may have knowledge of matters with respect to which Lenders seek information.

*Provided*, that no such reasonable prior notice shall be necessary if an Event of Default or Potential Event of Default is continuing or if special circumstances so require.

#### 12.10 Authorizations

- 12.10.1 All requisite authorizations necessary for the implementation of the Projects, the carrying out of the Borrower's business and operations generally and the compliance by the Borrower with all its obligations under the Transaction Documents shall be obtained and maintained in force (and where appropriate, renew in a timely manner); and
- 12.10.2 The Borrower shall comply with all the conditions and restrictions contained in, or imposed on the Borrower by, these authorizations. However, the Borrower shall ensure that such instruction or its effect thereto shall not be prejudicial to the rights and interest of the Lenders under the Financing Documents.

#### 12.11 Financial Ratios

- 12.11.1 The Borrower shall ensure till the Final Settlement Date, a minimum security cover of at least 1.3 times of the Facility is maintained;
- 12.11.2 In the event the Borrower fails to maintain security cover in accordance with the terms of this Clause 12.11, then subject to the provisions of Clause 12.11.1, the Borrower shall create additional Security Interest over such security, as identified by the Lenders and in the form and manner satisfactory to the Lenders.

#### 12.12 Valuation

The Borrower shall provide a copy of the updated valuation report prepared by the Panel Valuer establishing the market value as of the end of each Financial Year with regard to Projects and other Security within 90 (ninety) days after the end of each Financial Year or any date within 90 (ninety) days after the end of each Financial Year.



#### 12.13 Labour Laws

The Borrower shall comply with all labour law requirements including but not limited to pension and employee benefit plans and comply with all the conditions and restrictions contained in, or imposed on the Borrower.

#### 12.14 Insolvency

- 12.14.1 The Borrower hereby irrevocably consents that it shall provide access to the information submitted with the Information Utilities pertaining to its other

For Poize Realtech Pvt. Ltd.

 Borrower <b>Authorized Signatory</b>	 Lender
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borrowings with other lenders to the Lenders and shall do all things as may be necessary to ensure compliance with the obligation contained herein.



- 12.14.2 The Borrower shall promptly inform Lenders, in any case not later than 2 (two) days, of receipt of any notice received from any creditor (financial or operational) seeking default payment or intimidating and/or seeking remedy with respect to a potential payment default.
- 12.14.3 Without Lender's consent the Borrower shall not propose any resolution seeking approval of the board for filing application under IBC, either directly or indirectly.
- 12.14.4 The Borrower shall provide all support and assistance, if so required by the Lenders, including furnishing of all information, execution of documents, passing of resolutions.
- 12.14.5 The Borrower hereby agrees that it shall implement all terms and conditions specified by the Lenders including any requirements pursuant to Applicable Laws.

#### 12.15 RERA

- 12.15.1 The Borrower shall ensure compliance of provisions of Applicable Laws, including RERA and registration of the Projects under RERA, for safeguarding the interest of the Lenders (e.g submissions of details of charge and consequence of default on same) and to give effect to same to enter into such deeds and documents as may be required by the Lenders or any Person acting on their behalf.
- 12.15.2 The Borrower agrees and undertakes that prior to filing for registration of Project's phases with RERA as RERA projects, it shall open new collection account (Account I) and RERA designated Account for each RERA project/s (Account II) and instruct Customers of such additional RERA project to deposit receivables into the relevant Account I and to this effect the terms of Projects Escrow Agreement (to be entered in connection with the Facility) shall be applicable for the relevant Account I and Account II and more specifically that all the monies drawn from Account II shall be mandatorily transferred to Account III, upon which the Lenders shall have the right of securing due repayment of the Facilities together with interest and other charges. It is further clarified that if so required by the Lenders, the Borrower shall enter into such modification or amendment to the said Projects Escrow Agreement without any delay or demur.
- 12.15.3 The Borrower shall submit to the Lenders copies of quarterly report submitted to RERA authority.

#### 12.16 Other Covenants


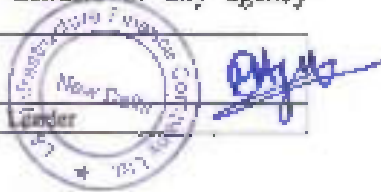
The Borrower covenants, undertake and agrees that so long as the Facility or any part thereof is outstanding, it shall comply and adhere to with the following:

For Polso Realtech Pvt. Ltd.	
	
Borrower Authorized Signatory	Lender

- (a) The Borrower shall adhere to and follow all building norms and technical specifications for real estate exposure as laid down by the National Building Code.
- (b) The Borrower shall adhere to the Ministry of Environment and Forests Notification no. S.O. 2804 (F) dated November 03, 2009 on 'fly ash' and shall continue to be in adherence to the said notification during the tenor of the Facility.
- (c) The Borrower shall ensure that the buildings and structures comprised in the Projects adhere to the National Disaster Management Authority (NDMA) guidelines on 'Ensuring Disaster Resilient Construction of Buildings and Infrastructure and shall continue to be in adherence to the said guidelines at all times.
- (d) The Borrower shall obtain a NoC from the Lenders before entering into any arrangement or agreement for sale of any of the units in the Projects with its Customers.
- (e) The Borrower shall obtain a NoC from the Lenders before availing any Financial Indebtedness in relation to the Projects from any bank, financial institutions and/or other lender.
- (f) The Borrower shall submit to the Lenders debt profile for any other Financial Indebtedness or project, as and when required by the Lenders.
- (g) The Borrower shall ensure to display a signboard at each of the Projects at a prominent place exhibiting the following: "This Project is financed by L&T Housing Finance Limited and L&T Infrastructure Finance Company Limited (as applicable), and has been charged / mortgaged for its benefit."
- (h) All marketing materials of the Borrower/Projects and all sale agreements with its customers should state that the Lenders have financed the Projects and have a Security Interest on the Project assets.
- (i) The Borrower hereby agrees that the Lenders shall have the right to appoint any legal, tax, financial, technical and other consultants, and valuer for the review of the Project/Borrower/valuation of the Projects as may be deemed fit and expenses for which shall be borne by the Borrower.
- (j) *Inspection and Monitoring*




The Lenders shall check progress on sales, collection, cash flow of the Projects and performance of Escrow Accounts through independent firm appointed by the Lenders at the cost of the Borrower and report compliance and variance on periodic basis (quarterly) and in any event not later than 90 (ninety) days of each disbursement of the Facility. The same will continue till the Final Settlement Date. The Borrower shall provide all the information required for this purpose to the Lenders or any agency

For Poise Realtach Pvt. Ltd.

 Borrower Authorised Signatory	
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appointed by the Lenders at any time during the tenor of the Facility. Borrower shall ensure availability of such information within 15 (fifteen) days from the end of each quarter. Any charges thereof shall be borne by the Borrower.

- (k) The Borrower to submit monthly reports (in the form and manner desired by the Lenders) in respect of sale and collection of payment of the units in the Projects.
- (l) The Borrower shall submit to the Lenders yearly audited financial statements within a period of 9 (nine) month from the end of respective reporting period.
- (m) The Borrower hereby agrees that all existing loans and advances in the books of Borrower, obtained from any of the shareholders, directors/family members of the Promoter and other unsecured loans shall be sub-ordinate and sub-servient to the Facility in all respect and will not be paid out of Project Receivables till the Final Settlement Date.
- (n) In the event of inability of the Borrower to complete the Projects as per Schedule V hereof, the Lenders, at its discretion, shall have a right to substitute the Borrower with any other developer and in this regard shall have a right to appoint, *inter alia*, Lender's independent engineer, project management consultant, in order to achieve completion of the Projects.
- (o) The Borrower shall not engage in any corrupt, fraudulent, coercive, collusive or obstructive practice in connection with its business and operations.
- (p) The Borrower shall take permission from the Lenders prior to selling any unsold area under various schemes/ payment plans. In the event of sale of properties of the Borrower in relation to the Projects, without being developed, the Lenders shall have an exclusive right to adjust the proceeds from such sale against the Outstanding Amount.
- (q) In the event of Projects sale dropping below expectations or not happening enough due to which the cash flows of the Borrower are getting impacted adversely and are not in accordance with Schedule VII hereof, the Borrower shall make suitable arrangements (including from cash-flows of any other projects of the Borrower, wherever applicable) to ensure that the servicing of the Loan remains regular.
- (r) The Borrower hereby undertakes that the Security Interest on the Security for the benefit of the Lenders and to secure the Facility shall be registered with RERA.

<p>For Poise Realtech Pvt. Ltd.</p>  <p>Borrower</p> <p><b>Authorized Signatory</b></p>	  <p>Lender</p>
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### 12.17 Escrow Account and Debt Service Reserve

12.17.1 The Borrower shall ensure opening, establishment and maintenance of : (i) Identified Inventory Escrow Account for depositing all Identified Inventory Receivables; and (ii) a REERA complied Projects Escrow Accounts for depositing all the Project Receivables from the Projects with the Escrow Bank to the satisfaction of the Lenders. The utilisation of proceeds of the Escrow Accounts shall be in accordance with the terms and conditions of the respective Escrow Agreements.

12.17.2 The Escrow Accounts and debt service reserve account shall be maintained and operated by the Borrower during the entire tenor of the Facility and shall not be operated or closed without the prior written approval of Lenders.

#### 12.17.3 DSRA

(a) The Borrower hereby agrees that a debt service reserve equivalent to 3 (three) months interest payable by the Borrower (hereinafter referred as "Debt Service Reserve" or "DSR") shall be created by the Borrower from the Project Receivables within 12 (twelve) months from the date of Initial Disbursement. The Borrower shall maintain a debt service reserve (in the form of fixed deposit with a bank or mutual fund units or bank guarantee or such other form of investment as may be acceptable to the Lenders).

(b) If at any time, amount in the DSR is utilized to make payments towards making the debt service payments as a result of shortfall in the cash flows of Borrower, the Borrower shall immediately replenish the DSR within 7 (seven) days, to the extent of the amounts so utilized without any delay or demur, failing which, the Lenders shall reserve the right to call the same as an Event of Default under the terms of this Agreement.

### 12.18 Right of First Refusal

The Borrower shall endeavour to refer on first preferential basis, all Customers to the Lenders for any of their financial needs in respect of the purchase of any of the units in the Project. The Borrower shall endeavour to submit the relevant data to the Lenders in respect of the home loans to be availed by any of the Customers of the Borrower.

### 12.19 Information

The Borrower hereby undertakes and agrees that it shall provide all required information in relation to the Projects to the Lenders or any Person appointed by the Lenders during the tenor of the Facility and the Borrower shall provide access to the Projects and documents including but not limited sales register, collection register and any other document required for validation of the information to the Lenders or any Person appointed by them, as and when desired by the Lenders.

<p>For Poise Realty Pvt. Ltd.</p> <p><i>[Signature]</i></p> <p>Borrower</p> <p><b>Authorized Signatory</b></p>	<p><i>[Signature]</i></p> <p>Lender</p>
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**12.20 Assistance**

- 12.20.1 The Borrower further agrees to give and/ or provide all assistance to the Lenders and its officers and authorized representatives for the purpose of exercising any of the powers set out hereinabove, including endorsing of documents, signing of papers and doing all such things as may be necessary to enable Lenders and its officers to exercise all the powers hereby conferred.
- 12.20.2 The Borrower further agrees that the aforesaid powers have been granted for valuable consideration and as such shall be irrevocable in nature till such time as any amount remains due and payable under or in respect of or in pursuance of the Facility.

**12.21 Remedies**

All remedies either under the Financing Documents or otherwise afforded to the Lenders shall be cumulative and not alternative.

**12.22 Project Cost**

The Borrower hereby undertakes that any additional cost on account of construction of the Project II shall be borne by the Borrower and/or the Promoter through their own sources.

**12.23 Classification of Account**

The Borrower shall hereby declares and undertakes that the Borrower or any of the its' group companies (entire real estate business) are not classified as special mention account by any banks or financial institutions.

**12.24 Minimum Selling Price**

- 12.24.1 The Borrower shall ensure that any unsold units in the Projects are sold at a price not less than the Minimum Selling Price.
- 12.24.2 The Parties hereby agree that the Lenders shall be entitled to review the Minimum Selling Price in every 3 (three) months and accordingly, revise such minimum selling price as per their sole discretion.
- 12.24.3 The Minimum Selling Price shall be exclusive of all taxes and/or other pass through charges.
- 12.24.4 The Minimum Selling Price shall be tested by the Lenders on quarterly basis. In case the average selling price in any quarter is below the Minimum Selling Price, the prepayment pursuant to such an event has to be within 15 (fifteen) days from the end of the quarter and in accordance with Clause 7.4 hereof.

**12.25 Development Management Agreement**

<p>For Poise Realtech Pvt. Ltd.</p> <p><i>[Signature]</i> Borrower</p>	<p><i>[Signature]</i></p>
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Authorized Signatory

**BEFORE THE NATIONAL COMPANY LAW APPELLATE  
TRIBUNAL, NEW DELHI**

**I.A. NO. \_\_\_\_\_ OF 2023**

**IN**

**COMPANY APPEAL (AT) (INSOLVENCY) NO. 406 OF 2022**

**IN THE MATTER OF:**

**RAM KISHOR ARORA  
SUSPENDED DIRECTOR OF  
SUPERTECH LIMITED**

**...APPELLANT**

**VERSUS**

**UNION BANK OF INDIA & ANR.**

**...RESPONDENTS**

**AND IN THE MATTER OF:**

**L&T FINANCE LIMITED**

**...APPLICANT**

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*Ajay* *Maithili*  
**AJAY BHARGAVA/ WAMIKA TREHAN/ MAITHILI MOONDRA**  
**[D/186/1997(R)]/ [D/2176/2014]/ [R/2051/2018]**  
**SIDDHANT KUMAR**  
**[D/1572/2020]**  
**KHAITAN & CO LLP**  
**ADVOCATES FOR THE APPLICANT**  
**MAX TOWERS, 7<sup>TH</sup> FLOOR,**  
**SECTOR 16B, NOIDA**  
**GAUTAM BUDDH NAGAR - 201 301**  
**PH.: 8826307196/ 9953771820**  
**EMAIL: [maithili.moondra@khaitanco.com](mailto:maithili.moondra@khaitanco.com)**

**PLACE: NEW DELHI**  
**DATE: 29 MARCH 2023**

- (i) The Borrower shall comply with all the provisions of the Development Management Agreement and/or any other related agreement entered into for the development of Project II.
- (ii) The Borrower shall provide an undertaking in favour of the Lenders and shall have caused Supertech Limited to provide an undertaking in favour of the Lenders, confirming that the Borrower and Supertech Limited, respectively will adhere to the terms of the Development Management Agreement.

### 13. NEGATIVE COVENANTS

The Borrower hereby covenants, undertakes and agrees to abide by and ensure continued compliance of the following on or from the date of this Agreement and until the Final Settlement Date.

#### 13.1 Dividends

The Borrower hereby further, shall not declare any dividends without the prior consent of the Lenders, and subject to adherence of the following:

- (a) No Event of Default or Potential Event of Default exists or is continuing;
- (b) In case of dividends, the proposed payment or distribution is out of accumulated retained earnings; provided always that the retained earnings out of which any of the payments or distributions referred to in this clause may be made, should in no event include any amount resulting from the revaluation of any of the Borrower's assets;
- (c) in case of dividends, the DSR is maintained as per provisions of Clause 12.17.3; and
- (d) in case security cover is maintained in accordance with the provisions of this Agreement.


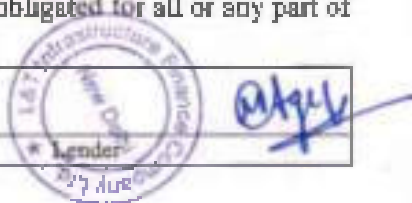
#### 13.2 Equity Contributions

The Borrower undertakes that no principal repayment or payment of interest shall occur till the Final Settlement Date of any monies infused by the Promoter in any form including but not limited to, by way of equity, unsecured loans or capital in relation to the Project II. However, such principal and interest payable thereon, may be accrued.

#### 13.3 Guarantees and Other Obligations

The Borrower shall not enter into any agreement or arrangement to guarantee or, in any way or under any condition, assume or become obligated for all or any part of

For Poise Realtech Pvt. Ltd.

 Borrower <b>Authorized Signatory</b>	 Lender
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any financial or other obligation of another Person (including any associate companies of the Borrower) except for:

- (a) guarantees issued for the benefit of associate companies subject to prior written consent of the Lenders; and
- (b) the existing guarantees or the liabilities which have been already provided and disclosed to the Lenders in writing, if any.

#### 13.4 Arm's Length Transactions

The Borrower shall not enter into any transaction except in the ordinary course of business on the arm's-length basis arrangements, including, without limitation, transactions whereby the Borrower might pay more than the ordinary commercial price for any purchase or might receive less than the full ex-works commercial price (subject to normal trade discounts) for its products.

#### 13.5 Profit Sharing Arrangements

Without prior written consent of the Lenders, the Borrower shall not enter into any partnership, profit-sharing or royalty agreement or other similar arrangement whereby the Borrower's income or profits are, or might be, shared with any other Person.

#### 13.6 Management Contracts

The Borrower shall not enter into any management contract or similar arrangement whereby the Borrower's business or operations are managed by any other Person.

#### 13.7 Permitted Investments


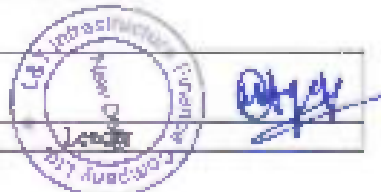
Without prior written consent of the Lenders, the Borrower shall not make or permit to give loans or advances to, or deposits (except commercial bank deposits) with other Persons (including associate companies of the Borrower) not made in the ordinary course of business and in case such loans or advances, etc. are made in ordinary course of business, same shall be duly intimated to the Lenders in writing.

#### 13.8 Fundamental Changes

The Borrower shall not change:

- (a) its Charter in any manner which would be inconsistent with the provisions of any Transaction Document and/ or which would prejudicially affect the rights and interest of the Lenders under the Transaction Documents;
- (b) its Financial Year; and/or
- (c) the nature or scope of the Projects or change the nature of its business or operations without prior written consent of the Lenders.

For Poise Realech Pvt. Ltd.

 Authorized Signatory	
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**13.9 Merger, Consolidation or Reorganisation**

The Borrower shall not:

- (a) undertake or permit any consolidation, reorganization or merger where the Borrower is not the surviving entity and in cases where the Borrower is a surviving entity, prior written consent from the Lenders shall be obtained by the Borrower; and/or
- (b) undertake or permit any consolidation, reorganization, merger or transfer of Borrower's assets which is greater than the 10 (ten) per cent of total consolidated Borrower's asset without Lender's prior written consent.

**13.10 Amendments, Waivers, Etc., of Material Agreements**

The Borrower shall not terminate, amend or grant any waiver with respect to any provision of the Transaction Documents or any agreement or any documents evidencing any loan, borrowing or financial debt without prior written consent of the Lenders.

**13.11 Asset Sales**

The Borrower shall not sell, mortgage, transfer, lease, surrender or otherwise howsoever alienate or deal with the Security or any part thereof or dispose of all or a substantial part of its assets, other than inventory, whether in a single transaction or in a series of transactions, related or otherwise without prior written consent of the Lenders.

**13.12 Borrowings**

The Borrower shall not avail loans or any other borrowing (secured or unsecured) incur any kind of debt from any other source in relation to the Mortgaged Properties.



**13.13 Amalgamation**

The Borrower shall not amalgamate or merge the Security with any other adjacent property nor shall create any right of way or any other easement on the including Mortgaged Properties.

**13.14 Creation of Charge**

The Borrower shall not create or permit to subsist any Security Interest encumbrance, mortgage or charge in any manner whatsoever over all or any part of the Security, assets or receivables of the Borrower, which are offered as Security to Lenders or which creates any interest or liability or any third party interest by related parties or group companies of the Borrower during the tenor of the Facility on the Security.

For Poise Realtech Pvt. Ltd.

 Borrower Authorized Signatory	
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**13.15 Escrow Accounts**

- (i) The Borrower shall not withdraw any funds from the Escrow Accounts to repay any subordinate debt, if any, until the repayment of the Outstanding Amount by the Borrower under this Agreement to the satisfaction of the Lenders. Further, the Borrower shall withdraw any funds from the Escrow Accounts only in manner as provided in the respective Escrow Agreements; and
- (ii) The Borrower shall not cause any disbursements from the Projects Escrow Accounts, without the prior written approval of the Lenders.
- (iii) The Borrower shall not cause any changes to the Projects Escrow Accounts without the prior consent of the Lenders.

**13.16 Change of Control**

The Borrower shall not undertake any action resulting into a change in control of its business, management or operations either directly or indirectly and in case any change in control of the Borrower as mentioned herein occurs, the Lenders reserves the right to call the same as an Event of Default.

**13.17 Share Capital**

The Borrower shall not buy back, cancel or reduce in any manner its share capital, or issue any further share capital, or change its capital structure in any manner whatsoever without prior written consent of the Lenders.

**13.18 Change in Shareholding**

The Borrower shall not permit any disposal /transfer of shares in the Borrower's share capital by the Promoter or any other person as specified by the Lenders except as specifically permitted under the Financing Documents and save and except in pursuance of enforcement of any Security created in favour of the Lenders. The Borrower shall cause such Persons to provide undertakings in this regard as may be required by the Lenders.



**13.19 Liquidation**

The Borrower shall not undertake or permit (either voluntarily or involuntarily) any winding up or dissolving of affairs or liquidation or the appointment of receivers or administrators over all or a substantial party of its assets or undertaking or the initiation of any other insolvency or quasi-insolvency proceeding affecting the Borrower or rights and interest of the Lenders under Transaction Documents.

**13.20 Voluntary Bankruptcy Proceedings**

The Borrower shall not initiate any voluntary bankruptcy proceeding of any nature whatsoever, until the Final Settlement Date. The Borrower shall not propose any

For Poise Realtch Pvt. Ltd.

 Borrower Authorized Signatory	 Lender
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resolution seeking approval of the board for filing application under IBC, either directly or indirectly.

**13.21 Subcontracting**

The Borrower shall not subcontract any of its duties, obligations and/ or responsibilities in relation to the implementation, construction, management or development of the Project II/ Mortgaged Properties to any third party without obtaining prior written consent of the Lenders.

**13.22 Withdrawal of Profits**

The Borrower shall not, without prior written consent of the Lenders withdraw the profits earned in the business/capital invested in the business without meeting the installment under the Loan, to the satisfaction of the Lenders.

**13.23 Change in Constitution**

The Borrower shall without the prior written consent of the Lenders act or omit to do anything which may result into change in their present constitution in any manner whatsoever.

**13.24 Development Management Agreement**

The Borrower shall not cause any amendments to the Development Management Agreement, without the prior written consent of the Lenders.

**14. EVENTS OF DEFAULTS**

**14.1** The occurrence of any one or more of the following events shall constitute an Event of Default unless cured/ remedied within such period, from the date of occurrence of such event ("Cure Period") as provided against it below:

- (a) *Non Payment*
  - (i) Default by the Borrower in the payment of any Repayment Instalment on any Due Date;
  - (ii) Default by the Borrower in payment of any Interest on the Facility on any Interest Payment Date; or
  - (iii) Default by the Borrower in payment of Additional Interest, Further Interest, fees, costs, charges or any other sums payable to the Lenders (other than the Repayment Instalment and Interest) on any Due Date.
- (b) Other than defaults stipulated in this Clause 14 (*Events of Defaults*), if the Borrower fails or neglects to observe or perform or commits or allows to be committed a breach of any of the terms, conditions, provisions, stipulations, or covenants of this Agreement on its part to be observed and performed and

<p>For Poise Realtech Pvt Ltd.</p> <p><i>[Signature]</i> Borrower</p>	
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if such breach does not result into a Material Adverse Effect and is remediable, and fails to remediate within 30 (thirty) days of occurrence of such breach.

(c) *Project Documents and Financing Documents*

- (i) If the Borrower or any other party/Person is in breach of, or does not comply with, or fails to observe or perform, any term or condition or obligation (whether, financial, performance or otherwise) of any Financing Documents, and the Project Documents and same does not result into a Material Adverse Effect and is remediable and if remediable is not remedied within the period for remedy, if any, provided in such Project Documents or Financing Documents, as the case may be.
- (ii) Any Project Document (unless it shall have been replaced as permitted under this Agreement) shall be terminated prior to its stated termination date or shall be repudiated or shall cease to be in full force and effect otherwise than by performance or efflux of time and if the same is not cured/ remediated within 30 (thirty) days of termination of such Project Document to the full satisfaction of the Lenders.
- (iii) Any provision of any Project Document is or becomes invalid, illegal or unenforceable or any party thereto shall have so asserted or any Project Document ceases to be in full force and effect or shall cease to give the Borrower the rights, powers and privileges purported to be created thereby or any party thereto shall have so asserted, unless the provision has been replaced as permitted under this Agreement.



(d) *Supply of Misleading Information*

If any information given by the Borrower in its application for the Facility or in the reports and other documents and information furnished by the Borrower or Sponsors from time to time in accordance with the provisions of the Transaction Document, the reporting system or the representations made or warranties given / deemed to have been given by the Borrower to the Secured Parties is found to be misleading or incorrect in any material respect.

(e) *Failure to Furnish Information*

If the Borrower fails to furnish information/ documents as required by the Lenders in terms of this Agreement.

(f) *Cross Default*

For Poise Realtech Pvt. Ltd.	
	
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- (i) If the Borrower is unable to pay its debts as they fall due, commences negotiations with any one or more of their creditors with a view to general readjustment or rescheduling, in the light of financial difficulties or in contemplation of any default, event of default or potential event of default under any agreement relating to the same (howsoever described), of any indebtedness, or makes a general assignment for the benefit of or composition with its creditors or admits or is ordered to pay any liability and such liability is not paid when due;
- (ii) If any default is made by the Borrower under any other agreement between the Borrower and any other bank or financial institution or any other agreement of indebtedness of the Borrower or the performance of any covenant, term or undertaking thereunder, or any indebtedness of the Borrower are not paid when due or any creditor of the Borrower becomes entitled to declare any such indebtedness due and payable prior to the date on which it would otherwise have become due or any guarantee or indemnity given by the Borrower are not honoured when due and called upon to do so;
- (iii) An event of default howsoever described occurs under any agreement or document relating to any indebtedness of any of the members of the group companies or if any lender of such member of the group companies including financial institutions or banks with whom such member of the Group has entered into agreements for financial assistance have recalled its/their assistance or any part thereof, other than where such event is remedied (where capable of remedy) within a period of 20 (twenty) days of its occurrence; and/or
- (iv) Any proceedings have been initiated or any action taken by any lender to the Borrower (other than the Secured Parties) for the purposes of enforcing any Security Interest created over any of the assets of the Borrower.
- (g) *Insurance*
- (i) If the Mortgaged Properties provided as Security have not been kept insured or depreciates in value to such an extent that in the opinion of Lenders further security to the satisfaction of Lenders should be provided and if such Mortgaged Properties is not insured or such additional security is not furnished within 30 (thirty) days by the Borrower; and/or
- (ii) Any insurance contracted or taken by the Borrower is not, or ceases to be, in full force and effect at any time when it is required to be in effect or any insurance is avoided, or any insurer or re-insurer avoids or suspends or becomes entitled to avoid or suspend, any insurance or any claim under it or otherwise reduce its liability under any insurance or any insurer of any insurance is not bound, or ceases to

<p>For Poise Realtech Pvt. Ltd.</p> <p><i>[Signature]</i></p> <p>Borrower</p>	<p><i>[Signature]</i></p> <p>Lender</p>
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he bound, to meet its obligations in full or in part under any insurances.

(h) *Security*

- (i) If the Security or any part thereof, on which Security Interest is created created for the benefit of the Lenders for securing the Facility, is sold, disposed of, charged, encumbered or otherwise alienated without the written consent of Lenders or is jeopardised in any manner whatsoever.
- (ii) If an attachment or distraint is levied on the Properties, including Mortgaged Properties or any part thereof and such other Security created in favour of the Lenders and/or certificate proceedings are taken or commenced for recovery of any dues from the Borrower.
- (iii) In the event the Borrower fails to perfect the creation of any Security Interest in favour of the Security Trustee for the benefit of the Lenders, be within such timelines as either specifically prescribed under this Agreement or is prescribed by the Lenders in its sole discretion.
- (iv) In the event the Borrower fails to create and perfect the Security Interest on the additional security pursuant to terms hereof.

(i) *Business*

If the Borrower ceases/threatens to cease to carry on the business and the Projects that it carried on at the date hereof, or abandons the Projects not on account of any reason attributable to the Borrower or if there is a breach of any Applicable Laws affecting the Borrower's capacity to operate the Projects and if the same is not cured/ remediated within 30 (thirty) days from such cessation or threat of cessation or such breach of Applicable Laws.

(j) *Insolvency*

- (i) If the Borrower takes any action or omission or any legal proceedings are initiated or other steps taken for: (i) the Borrower to be adjudicated or found insolvent or bankrupt; (ii) the appointment of an administrator, trustee or receiver or similar officer for the Borrower or the whole or any part of their undertaking, assets and properties; and (iii) challenging, repudiating the effectiveness and validity of any of the Financing Documents or causes to do any act or thing evidencing an intention to repudiate.
- (ii) If an insolvency notice or bankruptcy notice and which remains unchallenged is served on the Borrower or a receiver is appointed or an attachment is levied on any of the Borrower's properties or assets.

<p>For Poise Realtech Pvt. Ltd.</p>  <p>Borrower</p>	  <p>Lender</p>
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- (ii) In case of any of the following events occur:
- (A) The Borrower is unable to, is presumed or deemed by Applicable Laws to be unable to or admit the inability to, pay the debts as they fall due, or suspend making payments on any debt;
- (B) An application is filed by the Borrower, financial creditor (as defined under the IBC) or operational creditor (as defined under the IBC) before the relevant authority under the IBC;
- (C) An application is filed by the Borrower, financial creditor (as defined under the IBC) or operational creditor (as defined under the IBC) before the relevant authority under the IBC and the same has been admitted by the relevant authority;
- (D) Other than proceedings detailed in this Agreement, any corporate action, legal proceedings or other procedure or step is taken in relation to:
- (1) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration, provisional supervision or re-organisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Borrower other than any winding up proceeding under Companies Act, 2013;
  - (2) making of a reference in relation to the Borrower for a resolution process under the Companies Act, 2013 or IBC or the regulations issued by RBI;
  - (3) making a reference in relation to the Borrower to the National Company Law Tribunal under Sections 253 and 254 of the Companies Act, 2013;
  - (4) composition, compromise, assignment or arrangement with any creditor of the Borrower that adversely affects the interests of the Lenders;
  - (5) declaration of the Borrower as a "relief undertaking";
  - (6) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager, provisional supervisor or other similar officer in respect of the Borrower or any of its assets; and/or

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- (7) enforcement of any Security Interest over any assets of the Borrower.
- (iv) In the event where the Borrower fails to comply with or pay any sum due from them under any final judgment or any final order made or given by a court of competent jurisdiction;
- (v) In the event where any material attachment, sequestration, distress or execution affects any asset or assets of the Borrower; and/or
- (vi) In the event where the Government of India or any other relevant Governmental Authority declares a general moratorium or "standstill" (or makes or passes any order or regulation having a similar effect) in respect of the payment or repayment of any financial indebtedness (whether in the nature of principal, interest or otherwise), or any indebtedness which includes Financial Indebtedness, owed by the Borrower (and whether or not such declaration, order or regulation is of general application or applies to a class of Persons which includes the Borrower.
- (k) *Litigation*
- (i) Any litigation, arbitration or administrative proceeding or claim before any court, tribunal, arbitrator or other relevant authority is commenced against the Borrower or otherwise in connection with the Security or any part thereof and such other security created in favour of the Lenders and if the same is not cured/ remediated within 7 (seven) days to the full satisfaction of the Lenders; and/or
- (ii) Any judgment or decree, if passed against the Borrower in connection with the Mortgaged Properties is not vacated, discharged or stayed or is pending appeal within a period of 30 (thirty) days from the date of such judgment or decree.
- (l) *Undertaking*
- If all or substantially all of the undertakings, assets or properties of the Borrower or its interests therein are seized, nationalized or compulsorily acquired by the authority of Government.
- (m) *Change in Control*
- If there is any change in the ownership or management of the Borrower, which in the sole opinion of Lenders would prejudicially affect the interest of the Lenders under the Financing Documents.
- (n) *Material Adverse Effect*
- If there occurs any event which in the opinion of Lenders is/ are prejudicial to the interest of Lenders or in the sole opinion of Lenders is/ are likely to

 Borrower <b>Authorised Signatory</b>	 Lender
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materially affect the financial condition of the Borrower or its ability to perform all or any of its obligations under this Agreement and to comply with any of the terms or conditions of the Transaction Documents.

(o) *Utilization*

If the Borrower misuses the Facility or any part thereof for any purpose other than for which the Facility has been sanctioned or utilizes the Facility or any funds thereof for any non-permitted purpose(s).

(p) *Clearances*

(i) If any Clearances, consent, authorization, approval or license of or registration with or declaration to governmental or public bodies or authorities required by the Borrower in connection with the execution, delivery, validity, enforceability or admissibility in evidence of this Agreement or the performance by the Borrower of its obligations hereunder is modified in a manner unacceptable to Lenders or is not granted or revoked or terminated or expires and is not renewed or otherwise ceases to be in full force and effect and if the same is not cured/ remediated within 30 (thirty) days to the full satisfaction of the Lenders.

(ii) In case the Borrower fails to comply with the environmental approvals obtained by it and if the same is not cured/ remediated within 30 (thirty) days from such failure to the full satisfaction of the Lenders.

(q) *Project Receivables*

In the event the entire Project Receivables are not deposited in the Projects Escrow Account established with Escrow Bank at all times.

(r) *Identified Inventory Receivables*

In the event the entire Identified Inventory Receivables are not deposited in the Identified Inventory Escrow Account established with Escrow Bank at all times.

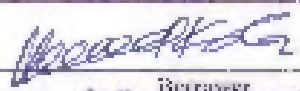
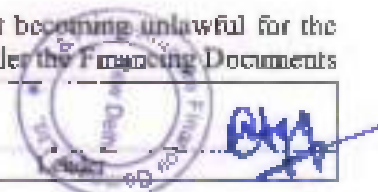
(s) *No Objection Certificate*

In the event the Borrower fails to obtain NoC for sale from the Lenders prior to entering into the agreement to sale with the Customer and if the same is not cured/ remediated to the full satisfaction of the Lenders within 30 (thirty) days from the date of such failure.

(t) *Obligations*

(i) If there occurs an event resulting in it becoming unlawful for the Borrower to perform its obligations under the Financing Documents

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or for any reason, any Financial Documents become ineffective and if the same is not cured/ remediated within 15 (fifteen) days.

- (ii) In case of occurrence of any event affecting the Borrower's liability to repay the Outstanding Amount under the Facility and if the same is not cured/ remediated within 30 (thirty) days from the occurrence of such an event to the full satisfaction of the Lenders.

(u) *Depletion of the Security Cover*

In the event of the Borrower fails to maintain the required security cover as per the terms and condition of this Agreement.

(v) *Change in the Projects Escrow Accounts*

If any change is effected to the Projects Escrow Accounts, without the prior written consent of the Lenders.

(w) *Change in the Development Management Agreement*

If any change/amendment/modification (or any act of similar nature) is effected to the Development Management Agreement, without the prior written consent of the Lenders.

14.2 The Borrower agrees that unless specified otherwise in this Clause 14.1, the Borrower shall not be entitled to any cure periods for any Event of Default and the Lenders shall have the right to enforce their rights immediately as prescribed under the Financing Documents. For Events of Default for which cure periods have been specified, the Lenders shall not take any action under Clause 15 (*Consequences of Event of Default*), except the levying of Additional Interest/ Further Interest, as the case maybe in accordance with the terms of this Agreement, *provided however*, if such Event of Default continues to be un-remedied upon the expiry of the Cure Period, the Lenders may, in their sole discretion, take one or more of the actions specified in Section 15 (*Consequences of Event of Default*).

14.3 The Borrower agrees and undertakes to provide to Lenders an immediate notice on the happening of an Event of Default or a Potential Event of Default.

**15. CONSEQUENCES OF EVENT OF DEFAULT**

15.1 If an Event of Default has occurred and is continuing, the Secured Parties may, without prejudice to any rights that they may have and by notice to the Borrower, take one or more of the following actions including but not limited to the following and each remedy shall be an independent remedy:




- (a) pluse the Facility on demand and declare all amounts payable by the Borrower in respect of the Facility to be due and payable immediately as well as all other charges, costs, expenses and upon such declaration the same shall become due and payable forthwith enforceable, notwithstanding anything to the contrary contained in this Agreement.

For Poise Realtech Pvt. Ltd.  Borrower	 Lender
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- (b) exercise or direct the Security Trustee to exercise any or all of its rights, remedies, powers or discretions under the Financing Documents to accelerate the obligations of the Borrower and to enforce all of the Security Interest created pursuant to the Security Documents and exercise such other rights as may be available to the Secured Parties under the Financing Documents and all Applicable Laws, including the special rights and remedies available to secured lenders under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 (without notice to the Borrower or any other Person);
- (c) sue for creditors' process and/ or exercise rights with respect to the Security in accordance with the Financing Documents
- (d) To enforce the Security either in part or in full, as detailed in Clause 10 and exercise all/any contractual and legal rights / remedies under the Transaction Documents and security documents;
- (e) To accelerate maturity of the Facility;
- (f) suspend further drawings under this Agreement;
- (g) declare the Commitments to be cancelled or suspended;
- (h) exercise any substitution rights available under the Transaction Documents;
- (i) exercise any other legal or equitable rights of the Lenders under Applicable Laws;
- (j) appoint external consultants, at the sole cost of the Borrower, to carry out technical, legal, financial, operation inspections, as may be deemed fit by the Lenders;
- (k) utilise any amounts in the Escrow Accounts to service and repay the Outstanding Amount and issue notice to the Escrow Bank in this regard;
- (l) review, restructure and/ or substitute the management or organisation of the Borrower in a manner acceptable to the Lenders and as may be considered necessary by the Lenders, including the formation of management committees with such powers and functions as may be considered suitable by the Lenders. The Borrower shall comply with all such requirements of the Lenders;
- (m) issue notice regarding payment of proceeds of any Insurance Contract or compensation;
- (n) in the event the Borrower commits a default under this Agreement, then the Lenders shall have the right to convert at its option the whole or part of the outstanding due amount under the Facility (whether due or payable or not) into fully paid up shares of the Borrower at such valuation as may be done by the Lenders from an independent value of repute, and in the manner

For Polsa Realtach Pvt. Ltd.  Borrower	 
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specified in the notice in writing to be given by the Lenders to the Borrower ("Notice of Conversion") and in accordance with the following conditions:

- (i) the conversion right as aforesaid may be exercised by the Lenders on one or more occasions during the currency of the Facility on the happening of the event specified above after providing a notice of 10 (ten) days;
  - (ii) on receipt of the Notice of Conversion, the Borrower shall allot and issue the requisite number of fully paid-up Shares to the Lenders or such other Persons identified by the Lenders as from the date of conversion of the part of the Facility so converted; and
  - (iii) the part of the Facility so converted shall cease to carry interest as from the date of conversion and the Facility shall stand correspondingly reduced. Upon such conversion, the Repayment Instalments payable under the Facility after the date of conversion as per this Agreement shall stand reduced proportionately by the amounts of the Facility so converted. The Shares so allotted and issued to the Lenders or such other Person identified by the Lenders shall carry, from the date of conversion, the right to receive proportionately the dividends and other distributions declared or to be declared in respect of the equity capital of the Borrower. Save as aforesaid, the said shares shall rank *pari passu* with the existing Shares of the Borrower in all respects. The Borrower undertakes to increase its authorised share capital from time to time as may be required by the Lenders in this respect.
- (o) subject to the Security Documents, transfer the secured assets by private treaty or public auction;
  - (p) exercise such other rights as are available to the Lenders under Applicable Law and the Transaction Documents, including initiation of proceedings under the Insolvency and Bankruptcy code;
  - (q) notwithstanding any suspension or termination pursuant to sub-clause (f) or (l) above, all the provisions of the Financing Documents for the benefit or protection of the Lenders and its interests shall continue to be in full force and effect as specifically provided in the Financing Documents;
  - (r) disclose or publish the details of the default/breach of such terms and conditions, name of the Borrower/s, its directors, partners, as the case may be, as defaulters, in such manner and through such medium as the Lenders or RBI, in their absolute discretion may think fit; and/or
  - (s) stipulate additional security and upon such instructions from the Lenders, the Borrower shall within 30 (thirty) days, create, including but not limited to ROC filing and obtaining of necessary approvals, such stipulated additional security to the satisfaction of the Lenders.

For Polso Reatech Pvt. Ltd.

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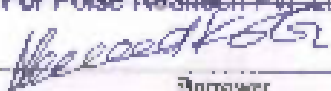
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- 15.2 In the event of default by the Borrower in: (a) payment of the principal and/or interest on the Loan for more than 30 (thirty) days from the respective Due Date for payment; or (b) in complying with Schedule V (*Construction Schedule*) or Schedule VII (*Sales Schedule*) hereto, in addition to other rights and remedies available to the Lenders under Applicable Law or otherwise, the Lenders shall be entitled, but not obliged, to take over and retain and/or dispose of any unsold area of the Projects proportionate to the Outstanding Amount. The price, at which such unsold area of the Projects will be acquired by the Lenders, shall be at a discount of 30% (thirty percent) on an average rate of the previous 3 (three) market transactions. The decision of the Lenders in this regard (including determination of the value of such sale transactions) shall be final and binding on the Borrower.
- 15.3 In the event the Borrower fails to comply with the Schedule V (*Construction Schedule*) or Schedule VII (*Sales Schedule*) hereto, apart from other rights of the Lenders, the Lender(s) shall be entitled to acquire/assign or take possession of unsold area of the Projects. However, before exercising such an option, the Lenders shall provide a notice of 30 (thirty) days to the Borrower. The Borrower shall be permitted to dispose of the unsold units at a price not less than the price at which the Lenders shall have acquired the same. If the Borrower fails to provide the purchaser or dispose of the units within the above stipulated time, then the aforesaid Lenders shall have the right to acquire/assign unsold area of the Projects.

#### 16. PAYMENT OF EXPENSES

- 16.1 The Borrower shall, whether or not the transactions herein contemplated are consummated, pay: (a) all out-of-pocket costs and expenses properly incurred (including all Taxes (including stamp taxes), duties, fees or other charges payable to, the Secured Parties (including, without limitation, the reasonable fees of all consultants of the Secured Parties) on actual basis in connection with (i) the preparation, negotiation, execution, issue and delivery and, where appropriate, registration, or stamping for the legality, validity, enforceability and admissibility in evidence of this Agreement, the other Financing Documents and any other documents and instruments related hereto or thereto (including legal opinions); (ii) any amendment or modification to, or the protection or preservation of Security or any right or claim under the Financing Documents, or consent or waiver in connection with, or any inspection, investigation or consultation undertaken by the Secured Parties (whether or not known to or approved by the Borrower) of the Borrower's performance under or in compliance with, this Agreement, the other Financing Documents or any such other document or instrument related hereto or thereto; (iii) the registration (where appropriate) and the delivery of the evidences of indebtedness relating to the Facility and the Disbursements thereof; and (iv) the enforcement of this Agreement, the other Financing Documents and any other documents and instruments referred to herein and therein (including, without limitation, the legal fees incurred by the Lenders pertaining to the Facility).

- 16.2 The Borrower shall, whether or not the transactions herein contemplated are consummated: (a) pay and hold each of the Lenders and the Security Trustee harmless from and against any and all present and future stamp and other similar

For Poise Realtech Pvt. Ltd.  
  
 Borrower  
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Taxes with respect to the matters described in Section 16.1; and (b) hold each of the Lenders and the Security Trustee harmless from and against any and all liabilities with respect to or resulting from any delay or omission (other than to the extent attributable to such Lenders or the Security Trustee) to pay such taxes.

- 16.3 The Borrower shall pay to Lenders applicable up-front processing fee as mutually agreed with the Lenders.
- 16.4 The Borrower shall bear all costs, expenses incurred by the Lenders upon occurrence of an Event of Default in connection with:
- (a) preservation of the Borrower's assets/ Mortgaged Properties (whether now or hereafter existing);
  - (b) collection of amounts due under this Agreement may be charged to the Borrower and reimbursed by the Borrower, as Lenders shall specify;
  - (c) operation and maintenance of the Escrow Account; and/ or
  - (d) exercise of any of Lender's right or power under Transaction Documents.
- 16.5 All expenses incurred by the Lenders after an Event of Default has occurred in connection with the preservation of the Borrower's assets (whether then or hereafter existing) and collection of amounts due under this Agreement shall be payable by the Borrower.
- 16.6 Notwithstanding anything stated above Escrow Bank shall have right to recover on behalf of Lenders or its agents, all costs, charges and expenses and monies payable to Lenders under this Agreement by debiting the Escrow Accounts.
- 16.7 In the event of failure of the Borrower to pay for the expenses provided under this Clause 16, the Lenders may incur the same (without any obligation to incur) and the Borrower shall in turn reimburse such expenses incurred by the Lenders together with an interest of 21% (twenty one percent) per annum, applicable from the day of such expenses incurred by the Lenders till the date of repayment thereof.

## 17. RIGHT OF SETOFF

- 17.1 In addition to any rights now or hereafter granted under any Applicable Laws or otherwise, and without in any manner limiting such rights the Lenders and/or its Affiliates shall have the paramount right of set-off and lien, irrespective of any other lien or charge, present as well as future on the deposits of any kind and nature (including fixed deposits) held/ balances lying in any account maintained with the Lenders and/or its Affiliates, whether in single name or joint name(s) and on any monies, securities, bonds and all other assets, documents and properties held by/ under the control of the Lenders and/or its Affiliates (whether by way of Security or otherwise pursuant to any contract entered/ to be entered into by the Borrower and/or its Affiliates in any capacity) to the extent of all outstanding dues, whatsoever, arising as a result of any of the outstanding and/or any other liabilities

<p>For Poise Realtch Pvt. Ltd.            Borrower</p>	 
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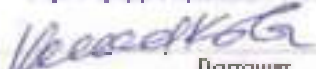

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of the Borrower and/or its Affiliates, to the Lenders and/or its Affiliates on any other account or in any other respect whether such liabilities be actual or contingent primary or collateral and several or joint. The Lenders and/or its Affiliates are entitled without any presentment, demand, protest or other notice of any kind to the Borrower and/or its Affiliates or to any other Person, any such notice being hereby expressly waived, to settle any indebtedness whatsoever owed by the Borrower and/or its Affiliates, to the Lenders and/or its Affiliates (whether actual or contingent, or whether primary or collateral, or whether joint and/ or several) hereunder or under any other document/ agreement, by adjusting, setting-off any deposit(s) and/ or transferring monies lying to the balance of any account(s) notwithstanding that the deposit(s)/ balances lying in such account(s) may not be expressed in the same currency as such indebtedness and to appropriate and apply any and all deposits (general or special) and any investments at any time held or owing by the Lenders and/or its Affiliates (including, without limitation, by any branches and agencies of the Lenders wherever located) to or for the credit of the account of the Borrower and/or its Affiliates against and on account of the obligations and liabilities of the Borrower and/or its Affiliates to the Lenders and/or its Affiliates under this Agreement or under any of the other Finance Documents, and all other claims of any nature or description arising out of or connected with this Agreement or any other Finance Document, irrespective of whether or not the Lenders and/or its Affiliates shall have made any demand with respect thereto.

- 17.2 The Borrower hereby agrees that the aforesaid right of the Lenders and/or its Affiliates is available to the Lenders and/or its Affiliates notwithstanding any agreement to the contrary and notwithstanding the fact that a particular security is given to the Lenders and/or its Affiliates earmarked for a particular loan or account and irrespective of the same having been paid in full by the Borrower and/or its Affiliates.

## 18. INDEMNITY

- 18.1 The Borrower shall, whether or not the transactions herein contemplated are consummated, indemnify each of the Secured Parties and each of their respective officers, directors, employees, representatives, attorneys and agents from and hold each of them harmless against any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses and disbursements incurred by any of them as a result of, or arising out of, or in any way related to, or by reason of, litigation or other proceeding (whether or not the Secured Parties is a Party thereto) related to the entering into and/ or performance of any Financing Document or the Disbursement of, or use of the proceeds of the Facility, the Lenders or the implementation or consummation of any transactions contemplated herein or in any Financing Document, including, without limitation, the fees and disbursements of counsel and any consultants selected by such indemnified party incurred in connection with any such investigation or any Legal Proceeding or in connection with enforcing the provisions of this Clause 18.1 (but excluding any such liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses and disbursements to the extent incurred by reason of the gross

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negligence or willful misconduct of the Person to be indemnified, as determined by a court of competent jurisdiction).

- 18.2 To the extent that the undertakings in this Clause 18 may be unenforceable because they violate any Applicable Law or public policy, the Borrower will contribute the maximum portion that it is permitted to pay under Applicable Law towards the payment and satisfaction of such undertakings. The Borrower hereby undertakes that it shall not raise the defence of or claim unenforceability, for any reason whatsoever, of any of Clauses 18.1 and 18.2. All sums paid and costs incurred in relation to the Financing Documents or the Facility by any of the Secured Parties at the rate of Additional Interest from the date so paid or incurred until reimbursed by the Borrower, and all such sums and costs shall be added to the Outstanding Amount and be secured by the Security Documents and shall be immediately due and payable on demand.
- 18.3 Each indemnified party pursuant to Clauses 18.1 and 18.2 above, on a best efforts basis, endeavours, within 7 (seven) days after the receipt by it of notice of the commencement of any action for which indemnity may be sought by it, or by any Person controlling it, from the Borrower on account of the provisions contained in this Clause 18.3, to notify the Borrower in writing of the commencement thereof, but the failure of such indemnified party to so notify the Borrower of any such action shall not release the Borrower from any liability which it may have to such indemnified party. In case any such action shall be brought against any indemnified party and such indemnified party shall notify the Borrower of the commencement thereof, as above provided, the Borrower shall be entitled to participate in the defence thereof at its own expense, provided that in any event an indemnified party shall have the right to retain its own counsel at the expense of the Borrower and such participation by the Borrower in the defence thereof shall not release the Borrower from any liability which it may have to such indemnified party (including with respect to fees and other charges of its own counsel).
- 18.4 In case of default in making such reimbursement in accordance with Clause 18.4, within 3 (three) Business Days from the date of notice of demand, the Borrower shall also pay on the defaulted amounts, interest at the Additional Interest Rate from the expiry of 3 (three) Business Days from the date of notice of demand till reimbursement.
- 18.5 The Borrower shall, forthwith on demand by the Secured Parties pay any amounts due under this Clause 18.

**19. DISCLOSURE OF INFORMATION**

- 19.1 The Borrower hereby agrees that the Lenders at its discretion may disclose to any actual or potential assignee or transferee or to any Person who may otherwise enter into contractual relations with the Lenders in relation to this Agreement and such credit information about the Borrower as Lenders shall consider appropriate.
- 19.2 The Borrower further agrees that in addition to any other right available to Lenders in the event of the Borrower committing any act of default, Lenders shall be entitled,

For Poise Realtech Pvt. Ltd.  Borrower	 
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without prior notice to the Borrower, to disclose to the Reserve Bank of India (RBI), Credit Information Companies or to any other authority or to any third person, on its being called upon to do so, the name/ identity of the Borrower and the fact of his having committed any act of default as aforesaid.

19.3 The Borrower understands that as a pre-condition, relating to grant of the Facility to the Borrower, the Borrower hereby agrees and give consent for the disclosure by the Lenders of all or any such:

- (a) information and data relating to the Borrower;
- (b) the information or data relating to any loan availed of/to be availed, by the Borrower; or
- (c) default, if any, committed by the Borrower, in discharge of the Borrower's such obligation;
- (d) as Lenders may deem appropriate and necessary, to disclose and furnish to TransUnion Credit Information Bureau (India) Ltd. and any other agency authorized in this behalf by RBI.

19.4 The Borrower undertakes and declares that:

- (a) the TransUnion Credit Information Bureau (India) Ltd. and any other agency so authorized may use, process the said information and data disclosed in the manner as deemed fit by them; and
- (b) the TransUnion Credit Information Bureau (India) Ltd. and any other agency so authorized may furnish for consideration, the processed information and data or products thereof prepared by them, to banks/financial institutions and other credit grantors or registered users, as may be specified by the Reserve Bank of India in this behalf.

19.5 The Borrower hereby consents to the Lenders, its officers and agents disclosing information relating to the Borrower and its account(s) and/or dealing relationship(s) with the Lenders, including but not limited to details of any facilities, any security taken, transactions undertaken and balances and positions with the Lender, to

- (a) the head office of the Lender any of its subsidiaries or subsidiaries of its holding company, Affiliates, representative and branch offices in any jurisdiction (together with the Lender, the "Permitted Parties");
- (b) professional advisers and service providers of the Permitted Parties who are under a duty of confidentiality to the Permitted Parties;
- (c) any actual or potential assignee, novatee, transferee, participant or sub-participant in relation to any of the Lender's rights and/or obligations under any agreement (or any agent or adviser of any of the foregoing).

<p>For Poise Realltech Pvt. Ltd.</p> <p><i>[Signature]</i> Borrower</p> <p>Authorised Signatory</p>	<p><i>[Signature]</i> Lender</p> <p><i>[Circular Stamp]</i> LPT Infrastructure Finance Company Pvt. Ltd.</p>
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- (d) any rating agency, insurer or insurance broker of, or direct or indirect provider of credit protection to any Permitted Party;
- (e) any court or tribunal or regulatory, supervisory, governmental or quasi-governmental authority with jurisdiction over the Permitted Parties or otherwise.

19.6 In case the Borrower commits default in payment or repayment of any amounts in respect of the Facility or there is breach of any of the terms and conditions of the Financing Documents, the Lenders and/or RBI will have an unqualified right to disclose or publish the details of the default/breach of such terms and conditions, the name of the Borrower, its directors, partners, as the case may be, as defaulters, in such manner and through such medium as the Lenders or RBI, in their absolute discretion may think fit.



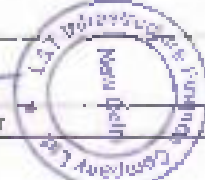
## 20. MISCELLANEOUS

### 20.1 Notice

20.1.1 Except as otherwise expressly provided herein or in any Financing Document, all notices and other communications provided for hereunder or thereunder shall be (i) in writing (including email and telex, except as noted below) and (ii) emailed, telexed, or sent by a Person, courier (if for inland delivery) or international courier (if for overseas delivery) to a Party hereto at its address and contact number as specified below or as specified in Schedule I of this Agreement, as the case maybe, or at such other address and contact number as is designated by such Party in a written notice to the other Parties hereto.

20.1.2 All such notices and communications shall be effective only on actual receipt by the officer of the Secured Party or the Borrower as the case may be for whose attention the notice or communication has been expressly marked, provided however that any notice or communication to the Borrower by the Lenders with respect to an Event of Default, consequences of an Event of Default and enforcement of Security under the Financing Documents shall be effective (i) if sent by email, when sent (with correct email id and so long as an 'undelivered' notice with respect to such email is not received), (ii) is sent by telex, when sent (with the correct answerback), (iii) if sent by Person, when delivered, (iv) if sent by courier, (a) one (1) Business Day after deposit with an overnight courier if for inland delivery and (b) 5 (five) Business Days after deposit with an international courier if for overseas delivery and (v) if sent by registered letter when the registered letter would, in the ordinary course of post, be delivered whether actually delivered or not.

20.1.3 An original of each notice and communication sent by email or telex shall be dispatched by Person, overnight courier (if for inland delivery) or international courier (if for overseas delivery) and, if such Person or courier service is not available, by registered airmail (or, if for inland delivery, registered first class mail) with postage prepaid, provided that the effective date of any such notice shall be

For Pose Reaflech Pvt. Ltd. 	 Lender 
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determined in accordance with this Section 21.3 without regard to the dispatch of such original.

20.1.4 The contact details of the Borrower are as follows:

Address : 201, 3rd Floor Sagur Plaza -II, Plot No.27, Community Centre, Pitampura New Delhi East Delhi – 110034.  
 Attention : Mr. Vinod Gupta  
 Phone : 9810117405  
 Email : vkg@ajnara.com

20.1.5 The contact details of the Lenders are as follows:




Address : L&T Infrastructure Finance Company Limited  
 Attn : Mr. Mohit Richhariya  
 Phone : 9820142297  
 Email : mohitrichhariya@lifs.com

20.1.6 Electronic Communication


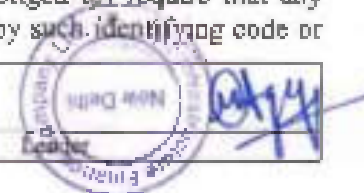
- (a) Any communication to be made between any of the Secured Parties and the Borrower under or in connection with any Financing Document may be made by electronic mail or other electronic means if:
  - (b) the Secured Party agrees, at its sole discretion, in writing that, unless and until it notifies the Borrower to the contrary, electronic mail or other electronic means is to be an accepted form of communication;
  - (c) each of the Secured Party and the Borrower notifies the other in writing of its electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
  - (d) each of the Secured Party and the Borrower notifies the other of any change to its address or any other such information supplied by them.

20.1.7 Fax & Email Indemnity

- (a) The Borrower hereby requests and authorises the Secured Parties to, from time to time (at the Secured Parties' discretion), rely upon and act or omit to act in accordance with any directions, instructions and/or other communication which may from time to time be or purport to be given in connection with or in relation to the Financing Documents by facsimile/email or any other electronic mode of communication by the Borrower or its Authorized Officer.

<p>For Polse Realtech Pvt. Ltd</p>  <p>Borrower Authorized Signatory</p>	 <p>Lender</p> 
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- (b) The Borrower acknowledges that:
- (i) sending information by facsimile/email or any other electronic mode of communication is not a secure means of sending information;
  - (ii) the Borrower is aware of the risks involved in sending facsimile/email or any other electronic mode of instructions, including the risk that facsimile/ email instructions may:
    - (A) be fraudulently or mistakenly written, altered or sent; and
    - (B) not be received in whole or in part by the intended recipient;
 the request to the Secured Parties to accept and act on facsimile/ email instructions is for the Borrower's convenience and benefit only.
- (c) The Borrower hereby agrees and undertakes to send instructions to the Secured Parties (if so agreed upon by the Secured Parties) by email from the email address as specified by the Borrower from time to time to the Secured Parties. The Borrower understands that internet/email is not encrypted and is not a secure means of transmission. The Borrower acknowledges and accepts that such an unsecured transmission method involves the risks of possible unauthorized alteration of data and / or unauthorized usage thereof for whatever purposes. The Borrower exempts the Secured Parties from any and all responsibility of such misuse and receipt of information, and holds the Secured Parties harmless for any costs, liabilities, damages, judgments, expenses, or losses that any of the Secured Parties may suffer or incur due to any errors, delays or problems in transmission or otherwise caused by using the internet/email or any other electronic mode as a means of transmission.
- (d) The Borrower declares and confirms that the Borrower has for its convenience and after being fully aware of, and having duly considered, the risks involved, (which risks shall be borne fully by the Borrower) requested and authorised the Secured Parties to rely upon and act on instructions which may from time to time be given by facsimile/email or any other electronic mode of communication. The Borrower further declares and confirms that the Borrower is aware that the Secured Parties are agreeing to act on the basis of instructions given by facsimile/email or any other electronic mode of communication only by reason of, and relying upon, the Borrower agreeing, confirming, declaring and indemnifying the Secured Parties as done by this Section and the Secured Parties would not have done so in the absence thereof. The provisions of this Section shall apply to any and all matters, communications, directions and instructions whatsoever in connection with the Financing Documents.
- (e) The Secured Parties may (but shall not be obliged to) require that any instruction should contain or be accompanied by such identifying code or

<p>For Poise Realtech Pvt. Ltd.</p>  <p>Borrower</p> <p><b>Authorized Signatory</b></p>	
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test as the Secured Parties may from time to time specify and the Borrower shall be responsible for any improper use of such code or test.

- (f) In consideration of the Secured Parties acting and/or agreeing to act pursuant to the terms of this writing and/or any instructions as provided in this writing, the Borrower hereby agrees to indemnify the Secured Parties and keep the Secured Parties at all times indemnified from and against all actions, suits, proceedings, costs, claims, demands, charges, expenses, losses and liabilities howsoever arising in consequence of or in any way related to the Secured Parties having acted or omitted to act in accordance with or pursuant to any instruction received by fax/email or any other electronic mode of communication.
- (g) Upon receipt by the Secured Parties, each instruction shall constitute and (irrespective of whether or not it is in fact initiated or transmitted by the Borrower and/or by the Authorised Officer), shall be deemed (if the Secured Parties chose to act upon the same) to conclusively constitute the Borrower's mandate to the Secured Parties to act or omit to act in accordance with the directions and instructions contained therein notwithstanding that such instruction may not have been authorised or may have been transmitted in error or fraudulently or may otherwise not have been authorised by or on behalf of the Borrower or the Authorised Officers or may have been altered, misunderstood or distorted in any manner in the course of communication.
- (h) The Secured Parties shall not be under any obligations at any time to maintain any special facility for the receipt of any instructions by way of facsimile/email or any other electronic mode of communication or to ensure the continued operations or availability of any such equipment/ technology.

## 20.2 Benefit of the Agreement

This Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the Parties hereto and shall inure to the benefit of the Borrower, each of the Secured Parties.

## 20.3 No Waiver; Remedies Cumulative

No failure or delay on the part of any Secured Party in exercising any right, power or privilege hereunder or under any other Financing Document and no course of dealing between the Borrower, on the one hand, and the Secured Parties, on the other hand, shall impair any such right, power or privilege or operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Financing Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights, powers and remedies herein or in any other Financing Document or expressly provided are cumulative and not exclusive of any rights, powers or remedies which any of the Secured Parties would otherwise have. No notice to or demand on the Borrower in any case shall entitle the Borrower to any

<p>For <del>Poasa Realtech Pvt. Ltd.</del> Borrower</p>	
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other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of any of the Secured Parties to any other or further action in any circumstances without notice or demand.

#### 20.4 Amendments and Waivers; Procedure

- 20.4.1 Subject to Clause 20.4.2 below and save where otherwise expressly provided in any Financing Document, this Agreement (including the schedules, annexures and appendices hereto) may not be amended, supplemented or modified and no other Financing Document may be amended, supplemented or modified and no term or condition or any part thereof may be waived without the consent of the Parties. The Lenders or any Person authorized on their behalf may effect, on behalf of the Secured Parties, an amendment, supplement, modification or waiver to which the Lenders have agreed in writing, whether generally or specifically.
- 20.4.2 Any amendment, modification or waiver made or given with respect to any Financing Document which is required by this Clause 20.4 to be authorized by the Lenders shall, when made or given on behalf of the Lenders, be binding upon the Lenders. The Borrower shall not be bound to enquire in connection therewith whether the provisions of this Clause 20.4 have been observed.

#### 20.5 Transfer by the Borrower

The Borrower shall not assign, transfer or novate any interest in, or any rights to and/ or obligations under any Financing Document to which it is a Party.

#### 20.6 Novation and Participation

- 20.6.1 The Lenders shall be entitled to transfer, assign, or novate or securitize all or whole or any part of the Facility including their rights and benefits hereunder and in other Transaction Documents to another bank or financial institution or any other Person at any time in accordance with the provisions herein ("New Lender") and in such manner and on such terms as the Lenders may decide without the prior written consent of the Borrower.
- 20.6.2 The Borrower shall take such action as may be necessary (including providing the necessary information and executing the relevant documents) to perfect such risk participation arrangement, assignment, transfer, novation, or securitization.
- 20.6.3 It is hereby clarified that any such risk participation, take out arrangement, transfer, assignment, novation or securitization shall be on same terms and conditions as agreed between the Lenders and the Borrower pursuant to the Transaction Documents. However, any deviation from the terms and conditions agreed between the Lenders and Borrower may be incorporated as mutually agreed between the Borrower and the New Lender.
- 20.6.4 The Borrower agrees that it shall assist and co-operate with the Lenders in completion of any formalities for assignment/novation or transfer of such rights, benefits and obligations and take all actions as may be required for this purpose.

<p>For Poise Realtech Pvt. Ltd.            Borrower</p>	 
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including but not limited to execution of deed of accession/adherence to one or more Financing Documents or amendment of the this Agreement and such other deeds, documents and writings as may be required by the Lenders and/or the New Lender or investors to facilitate or otherwise give effect to such assignment/novation or transfer.

20.6.5 If the Lender(s) wishes to assign or novate whole or part of its rights, benefits and obligations hereunder and under the other Financing Documents, then such novation/assignment shall be made by delivering to the Lenders a duly completed, stamped and executed deed in the form set out in Exhibit 1 ("Novation Deed") or such assignment shall be done by way of the deed of assignment in such form and manner as may be required by the Lenders ("Deed of Assignment"), the other Financing Documents shall also be amended in the manner set out therein in order to reflect the participation of the New Lender. On receipt of such notice (and in the event the assignment or novation is made at the request of the Borrower, payment of applicable fee by the Borrower), the Borrower and the other Parties/Lenders (for and on behalf of itself and such other parties) shall countersign it and subject to the terms of that Novation Deed:

- (a) To the extent the Lenders ("Existing Lenders") seeks to novate its commitment (or any part thereof) and/or Facility (or any part thereof) under the Novation Deed, the Borrower or the Existing Lenders, as the case may be, shall each be released from further obligations to each other and their respective rights against each other shall be cancelled to the extent of novation (such rights and obligations being referred to as "Novation Discharged Rights and Obligations");
- (b) The Borrower and the Lenders shall each assume new obligations towards each other and/or acquire new rights against each other which differ from the Novation Discharged Rights and Obligations only insofar as the Borrower and the New Lender, have assumed and acquired the same in place of the Borrower and the Existing Lenders; and
- (c) The New Lender and the other Parties to this Agreement and the parties to the other Financing Documents (other than the Borrower) shall acquire the same rights and assume the same obligations between themselves as regards the Borrower as they would have acquired and assumed had that New Lender, been an original party to this Agreement and the other Transaction Documents (upon their amendment in the manner set out therein to reflect the participation of the New Lender) as a Lenders with the rights and/or obligations acquired or assumed by it as a result of that novation (and to the extent, of novation, the Existing Lender and those other parties shall each be released from further obligations to each other).

20.6.6 Notwithstanding any such assignment or transfer, the Borrower shall, unless otherwise notified by the Lenders, continue to make all payments under this Agreement and the other Transaction Documents to Lenders and all such payments when made to Lenders shall constitute a full discharge to the Borrower from all its liabilities in respect of such payments. The Lenders shall further have the right to

<p>For Poise Realtech Pvt. Ltd.</p>  <p>Borrower</p>	  <p>New Debt Lender</p>
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assign, transfer, sell, pledge or hypothecate the Facility, Project Receivables, the Security, rights, benefits and any other interest created in its/their favour under the Agreement or any of the Financing Documents or hereunder, without prior concurrence or intimation to the Borrower or any other Person.

- 20.6.7 Any such assignment, transfer, sale, pledge or hypothecation shall bind the Borrower to accept such third party as creditor exclusively or as a joint creditor with Lenders, as the case may be. Any cost in this behalf, whether on account of such sale, assignment or transfer or enforcement of rights and recovery of outstanding amount, shall be to the account of the Borrower.
- 20.6.8 The Borrower hereby expressly agrees that nothing herein contained shall operate to prejudice the rights and remedies of Lenders in respect of any other obligations of the Borrower to Lenders or prejudice or effect any general or particular lien to which Lenders are by law or otherwise entitled to or operate to prejudice Lender's rights or remedies in respect of any present or future security, guarantee or obligation given to Lenders by any other Person for any indebtedness or liability of the Borrower.
- 20.6.9 The Borrower agrees that this Agreement and the security hereby created shall operate as a continuing security for all the obligations of the Borrower in respect of the Facility, notwithstanding the existence of a credit balance in the said account or any partial payments or fluctuation of accounts.

## 20.7 Governing Law

This Agreement shall be governed by and construed in accordance with Indian law.

## 20.8 Jurisdiction

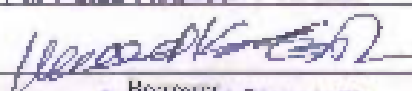
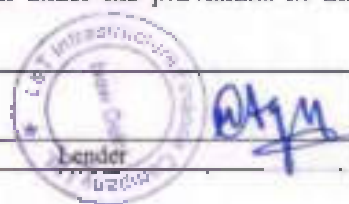
### 20.8.1 Courts and Tribunals

The Borrower agrees that the courts and tribunals (including the Debt Recovery Tribunal) in Delhi shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Financing Documents and that accordingly any suit, action or proceedings (together referred to as "Proceedings") arising out of or in connection with the Financing Documents may be brought in such courts or the tribunals and the Borrower irrevocably submits to and accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of those courts or tribunals.

### 20.8.2 Arbitration

- (a) The Parties agree that all claims, disputes, and differences arising out of or in connection with the Financing Documents between the Borrower and such Lenders shall be referred to arbitration under the provisions of the

For Poise Realtch Pvt. Ltd.



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Arbitration & Conciliation Act, 1996, and any amendments thereto from time to time.

- (b) Pursuant to arbitration referred to in paragraph (i) above, the Lenders shall have the right to appoint a sole arbitrator.
- (c) All proceedings shall be conducted in English and the seat of such arbitration will be at Delhi.
- (d) The decision of the arbitrator shall be final and binding on the parties to such arbitration.
- (e) Notwithstanding anything contained in Section 21.8.2, in the event the legal status of the Lenders changes or in the event of the law being made or amended so as to bring the Lenders under Debts Due to Banks and Financial Institutions Act, 1993 (the "DRT Act") or the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("Securitization Act"), to enable the Lenders to enforce any security under the Securitization Act and proceed to recover dues from the Borrower under the DRT Act, the arbitration provisions hereinbefore contained shall, at the option of the relevant Lenders, cease to have any effect. *Provided that* neither a change in the legal status of the Lenders nor a change in law as referred to in this sub-section, will result in invalidating an existing award passed by an arbitral tribunal constituted pursuant to the provisions of hereof.

#### 20.8.3 General Provisions on Jurisdiction for all Disputes

- (a) The Borrower irrevocably waives any objection now or in future, to the laying of the venue of any Proceedings in the courts and tribunals in Delhi or such other place as maybe decided by the Lenders and any claim that any such Proceedings have been brought in an inconvenient forum and further irrevocably agrees that a judgment in any Proceedings brought in the courts and tribunals of Delhi shall be conclusive and binding upon it and may be enforced in the courts of any other jurisdiction, (subject to the laws of such jurisdiction) by a suit upon such judgment a certified copy of which shall be conclusive evidence of such judgment, or in any other manner provided by law.
- (b) Nothing contained in this Clause 20.8, shall limit any right of the Lenders to take Proceedings in any other court or tribunal of competent jurisdiction, nor shall the taking of Proceedings in one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction whether concurrently or not and the Borrower irrevocably submits to and accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of such court or tribunal, and the Borrower irrevocably waives any objection it may have now or in the future to the laying of the venue of any Proceedings and any claim that any such Proceedings have been brought in an inconvenient forum.

<p>For Poise Realtch Pvt. Ltd.</p>  <p>Borrower</p> <p><b>Authorised Signatory</b></p>	
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- (c) The Borrower hereby consents generally in respect of any Proceedings arising out of or in connection with any Financing Documents to the giving of any relief or the issue of any process in connection with such Proceedings including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such Proceedings.
- (d) To the extent that the Borrower may in any jurisdiction claim for itself or its assets immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that in any such jurisdiction there may be attributed to itself or its assets such immunity (whether or not claimed), the Borrower hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity.

#### 20.9 Severability

Any provision of this Agreement, which is prohibited or unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of prohibition or unenforceability but shall not invalidate the remaining provisions of such Financing Document or affect such provision in any other jurisdiction.

#### 20.10 Documents




All documents to be furnished or communications to be given or made under this Agreement shall be in English or if any other language, shall be accompanied by a translation into English certified by a representative of the Lenders, at the expense of the Borrower, which translation shall be the governing version among the Borrower, the Lenders.

#### 20.11 Calculations and Computations

- 20.11.1 In any legal action or proceedings arising out of or in connection with the Financing Documents, the entries made in the accounts maintained by the Lenders shall be conclusive evidence of the existence and amount of obligations of the Borrower as therein recorded save for manifest error.
- 20.11.2 Any certification or determination by the Lenders of a rate or amount under the Financing Documents is conclusive evidence of the matters to which it relates.
- 20.11.3 All calculations and computations determining compliance with this Agreement shall utilise accounting principles, policies and practices in conformity with the generally accepted accounting principles, policies and practices used to prepare the Financial Statements, delivered to the Lenders pursuant to this Agreement.

#### 20.12 Partial Invalidity

If at any time any provision of this Agreement becomes illegal, invalid or unenforceable in any respect, neither the legality nor the validity or enforceability

<p>For Pors Realtech Pvt. Ltd.            Borrower</p>	 
<p>Authorised Signatory</p>	<p>75</p>

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of the remaining provisions of this Agreement shall in any way be affected or impaired thereby.

#### 20.13 **Overriding Effect**

This Agreement and the other documents attached hereto or referred to herein integrate all the terms and conditions mentioned herein and/ or incidental hereto and supersede all oral negotiations and prior writings in respect of the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Agreement and any agreement or documents attached hereto or referred to herein, then in such event, the terms, conditions and provisions of this Agreement shall prevail.

#### 20.14 **Survival**

20.14.1 All indemnities set forth herein shall survive the Final Settlement Date.

20.14.2 The obligations of the Borrower under this Agreement will not be affected by:

- (a) any unenforceability, illegality or invalidity of any obligation of any Person under a Transaction Document; or
- (b) the breach, frustration or non-fulfilment of any provisions of, or claim arising out of or in connection with a Transaction Document.

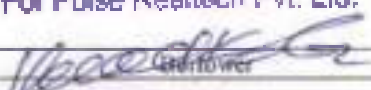
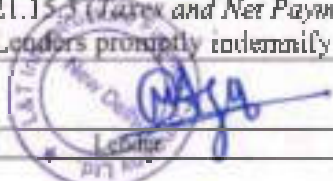
#### 20.14.3 Taxes and Net Payments

- (a) All payments to be made by the Borrower to the Secured Parties under the Financing Documents shall be made free and clear of and without deduction for or on account of Taxes. The Borrower are only allowed to make such a payment subject to the tax deduction at source on the income of the Secured Parties if such deduction is required by law and *provided* that the Borrower deliver to the Secured Parties tax withholding or tax deduction certificates in respect of such withholding or deduction, evidencing that such deducted taxes or withholdings have been duly remitted to the appropriate authority.
- (b) In the event that the Borrower are required to make any other deduction or withholding (other than as mentioned in (a) above with reference to the income of the Secured Parties), the sum payable by the Borrower in respect of which such deduction or withholding is made shall be increased to the extent necessary to ensure that, after the making of the required deduction or withholding, such Secured Party receives and retains (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made.

#### 20.14.4 Tax Indemnity

Without prejudice to the provisions of Section 21.15.3 (Taxes and Net Payments) above, the Borrower shall, upon demand by a Lenders promptly indemnify such

For Poise Realtch Pvt. Ltd.

Authorized Signatory

Lender against any such payment or liability arising or in any relation to Taxes (other than income tax) or otherwise in relation to any sum received or receivable pursuant to the Financing Documents, that are required to be borne by the Borrower, together with any interest, penalties, costs and expenses payable or incurred in connection therewith.

20.14.5 Notification by the Lenders

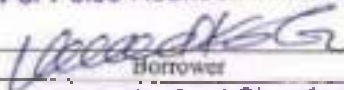

The Lenders intending to make a claim under Section 21.15.4 (*Tax Indemnity*) shall notify the Borrower promptly and in any event within 3 (three) Business Days of becoming aware of the circumstances by which it is entitled to do so and shall deliver to the Borrower, a certificate setting out in reasonable detail the basis of such claim.

20.14.6 Notification by Borrower

If at any time, the Borrower are required by law to make any deduction or withholding from any sum payable hereunder (or if thereafter there is any change in the rates at which or the manner in which such deductions and withholdings are calculated), the Borrower shall forthwith notify the Secured Parties thereof.

20.14.7 Receipt

The Borrower shall deliver to the Secured Parties within 3 (three) Business Days of receipt (or such other period as the Secured Parties may agree) a copy of the receipt, if any, issued by the applicable taxation or other authority evidencing the deduction or withholding of all amounts required to be deducted or withheld from such payment or (if the Borrower fails to provide a copy of such receipt) such other evidence as may be requested by the Secured Party to whom such payment is made.

For Poise Realtch Pvt. Ltd.  Borrower	 Lender
Authorised Signatory	

**SCHEDULE I-A**

**POISE REALTECH PRIVATE LIMITED**, a validly existing company under the Companies Act 2013, having corporate identification number U45400DL2014PTC270549 with its registered office at 201, 3<sup>rd</sup> Floor Sagar Plaza -II, Plot No.27, Community Centre, Pitampura New Delhi East Delhi - 110034.

*[Large handwritten scribble]*

For Poise Realtech Pvt. Ltd.	
<i>[Signature]</i> Borrower	<i>[Signature]</i> Lender
Authorized Signatory	

*As per*  
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SCHEDULE 1-B

DETAILS OF THE LENDERS, FACILITY, INTEREST RATE, SPREAD, INTEREST RESET AND INTEREST PAYMENT DATE

S. No.	Name of the Lender	Commitment (Amount in Rs. Crores)	Interest Rate for the Facility	Interest Reset Date	Spread for the Facility	Interest Payment Due	Sanction Letter
1.	<p>L&amp;T Infrastructure Finance Company Limited</p> <p>Address: Plot no.177, C.S.T. Road, Kalina, Santacruz (E), Mumbai 400 098</p> <p>Email: mohitrichbariya@lifs.com / karveivassan@lifs.com</p> <p>Phone: 22 6212 3406</p> <p>Kind Attn: Mr Mohit Richbariya/ Mr K. Sreechivasan</p>	125	<p>8.75% below L&amp;T Housing Finance Limited's PLR i.e. 9.00% (nine percent) per annum, payable monthly (floating) plus applicable interest tax and other statutory levy (if any) on the principal amount of the</p>	<p><u>Interest Reset/ Spread Reset:</u></p> <p>The Lenders shall have the right to reset the applicable Interest Rate/ Spread at any time during the tenor of the Loan upon the occurrence of any of the following events:</p> <ul style="list-style-type: none"> <li>credit rating for the Facility has been downgraded to below investment grade by an accredited external credit rating agency</li> </ul>	8.75% per annum as may be reset in accordance with this Agreement	<p>Payable monthly, on the expiry of 15 (Fifteen) days from the end of the preceding month. The first instalment of interest shall be for the period from the date of Initial Disbursement till 14th day of next month and thereafter interest shall be payable for the period commencing from 15th day of that month till the 14th day of subsequent month.</p>	<p>Sanction letter dated _____, bearing number _____, including all the amendments/supplements thereto (the "Sanction Letter")</p>

For Polso Realtech Pvt.Ltd

*[Signature]*  
Auth. Signatory



Letter

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S. No.	Name of the Lender	Commitment (Amount in Rs. Crores)	Interest Rate for the Facility	Interest Reset Date	Spread for the Facility	Interest Payment Date	Sanction Letter
			<p>Loan(s) remaining outstanding each day. The Interest Rate shall remain fixed till the expiry of 24 (twenty four) months from the Initial Disbursement Date.</p> <p>The present PLR rate being 17.75% per annum.</p>	<ul style="list-style-type: none"> <li>as approved by the Lenders;</li> <li>adverse change in the money market conditions;</li> <li>RBI revising the standard provision on assets;</li> <li>RBI changing the risk weight for assets; and/or</li> <li>Upon occurrence of any Event of Default.</li> </ul>			

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For Polso Realtech Private  
  
 Auth. Signatory

Lender




**SCHEDULE II**

**REPAYMENT SCHEDULE**

The Facility to be repaid in 12 (twelve) equal quarterly installments as below:

Quarter from Initial Disbursement	Amount to be repaid in each Quarter (Rs. in Crores.)
Q 13 - 24	10.42
Total	125.00



Borrower For Poise Reaitch Pvt. Ltd. 	
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**Authorized Signatory**

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**SCHEDULE III**

**PART A**

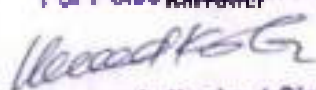


**CONDITION PRECEDENT FOR INITIAL DISBURSEMENT**

The Initial Disbursement under this Agreement shall be subject to the fulfillment or waiver, in a manner satisfactory to the Lenders of the conditions set out herein, such satisfaction to be recorded in writing:

- (i) The Borrower shall have submitted satisfactory legal search, internal & external technical valuation report in respect of Security provided to the Lenders.
- (ii) The Borrower shall have procured relevant Clearances in relation to the transaction contemplated under the Financing Documents.
- (iii) The Borrower shall have submitted satisfactory RoC report in relation to the Security offered to the Lenders.
- (iv) The Borrower shall have submitted to the Lenders 5 (Five) cheques towards repayment of the Loan amount and 12 (Twelve) cheques towards payment of monthly interest amount in favour of the Lenders.
- (v) The Borrower shall have submitted details of sold units, unsold units and collection data of the Projects.
- (vi) The Borrower shall have submitted net worth certificate of the Promoter and Guarantor, duly certified by the chartered accountant, in the form acceptable to the Lender(s). The aforesaid certificate shall not be more than 6 (Six) months old.
- (vii) The Borrower shall have submitted the executed copy of the Development Management Agreement.
- (viii) The Borrower shall have submitted the certified true copies of the Memorandum and Articles of Association, to the Lenders.
- (ix) The Borrower shall have submitted the Project Documents in the form and manner satisfactory to the Lenders.
- (x) The Borrower shall have submitted to the Lenders resolutions listed below, in each case certified by the Authorized Officer of the Borrower:
  - (a) certified true copy of resolutions of the Board:
    - (i) approving the terms and execution of, and the transactions contemplated by the Financing Documents entered into by it;
    - (ii) authorizing the affixation of the common seal on the Financing Documents, and/or a director or directors or other authorized

For Poise <del>Finance</del> Pvt. Ltd.  <b>Authorized Signatory</b>	Lender 
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- executives to execute the Financing Documents to be entered into by it; and
- (iii) authorizing a Person or Persons, on its behalf, to sign and/or dispatch all documents and notices to be signed and/or dispatched by it under or in connection with the Financing Documents entered into by it.
- (b) certified true copy of all other necessary corporate resolutions of the Borrower.
- (xi) The Borrower shall have submitted certified true copy of the resolution of the shareholders of the Borrower under Section 62(3) of the Companies Act authorizing the conversion of the Outstanding Amount into Shares in accordance with the terms and conditions set out in this Agreement; and
- (xii) The Borrower shall have submitted to the Lenders, a certificate from an independent chartered accountant certifying, *inter alia*, that: (i) Section 180(1)(c) of the Companies Act, 2013; and (ii) Section 180(1)(a) of the Companies Act, 2013 do not apply to the Borrower.
- (xiii) The Borrower shall have caused STL to submit to the Lenders resolutions listed below, in each case certified by the Authorized Officer of STL:
- (a) certified true copy of resolutions of the Board:
- (i) approving the terms and execution of, and the transactions contemplated by the Financing Documents and Security Documents to which STL is a party;
- (ii) authorizing the affixation of the common seal on the Financing Documents and Security Documents, and/or a director or directors or other authorized executives to execute the Financing Documents and the Security Documents to be entered into by STL; and
- (iii) authorizing a Person or Persons, on its behalf, to sign and/or dispatch all documents and notices to be signed and/or dispatched by STL under or in connection with the Financing Documents and Security Documents entered into by STL.
- (b) certified true copies of resolution of the shareholders of STL, under Section 186 of the Companies Act, 2013, as applicable; and
- (c) certified true copy of all other necessary corporate resolutions of STL.
- (xiv) The Borrower shall have caused STL to submit to the Lenders prior to the date of any Security Documents proposed to be executed by STL, a certificate by its' company secretary certifying that Section 185 of the Companies Act, 2013 is not applicable in relation to the transaction contemplated under the Security Documents.

<p>For Poise Realtech Pvt. Ltd.    <b>Authorized Signatory</b></p>	<p>Lender    </p>
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- (xv) The Borrower shall have submitted and shall have caused to be submitted, all 'know your customer' requirements of the Borrower and the Promoter, as the case may be, to the satisfaction of the Lenders.
- (xvi) Each of the Financing Documents shall have been duly stamped and executed by the respective parties thereto and registered wherever required with the appropriate authorities and shall have become (or, as the case may be, shall remain) effective and enforceable in accordance with their respective terms and copies thereof shall have been delivered to the Lenders and shall have created and perfection of Security in accordance with the provisions of this Agreement to the satisfaction of the Lender.
- (xvii) The Borrower shall have deposited all fees and charges payable to the Lenders by the Borrower.
- (xviii) The Borrower shall have submitted to the Lenders a valuation report in relation to the Mortgaged Properties forming part of the Projects from the Panel Valuer.
- (xix) The Borrower shall have provided suitable undertaking in favour of the Lenders, in the form and manner satisfactory to the Lenders, including but not limited to ensuring that the Borrower and the Security Providers shall intimate the existing Customers, about the Project II being mortgaged to the Lenders, within a period of 15 (fifteen) days from the date of Initial Disbursement and that the balance payments shall be made by the existing Customers in the Project II Escrow Account.
- (xx) The Borrower shall have caused the Promoter provided, *inter alia*, the following undertakings:
- (a) the Promoter shall at all times until the Final Settlement Date, hold management control in the Borrower and maintain at least 90% (ninety per cent) of the issued and paid up share capital of the Borrower free from any Security Interest (other than created pursuant to the Financing Documents);
  - (b) the Promoter shall not dispose of or transfer, directly or indirectly, any of its shareholding in the Borrower, except with the prior written consent of the Lenders;
  - (c) the Promoter shall infuse additional equity/fund in the Borrower, in event of any shortfall in the resources of the Borrower for successful completion of the Projects (including any shortfall in its working capital requirement or any cost overrun of the Projects), the Promoter shall infuse additional equity/fund in the Borrower;
  - (d) the Promoter shall ensure that none of the clauses of the existing shareholder's agreement, if any, and the constitutional documents of the Borrower ("**Charter Documents**") are prejudicial to the interest of the Lenders and in case of any inconsistencies between the Charter Documents and the terms of the Financing Documents, the Charter Documents shall be

<p>For Polys Research Pvt. Ltd.</p> <p><i>[Signature]</i></p> <p><b>Authorized Signatory</b></p>	<p>Lender</p> <p><i>[Signature]</i></p> <p></p>
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- amended to the effect that the terms of the Financing Documents prevail;  
and
- (e) such undertakings as may be required by the Lenders, from time to time.
- (xxi) The Lenders shall have received confirmation from the Borrower that all conditions for Initial Disbursement in this Agreement have been satisfied.
- (xxii) An exclusive pledge over 100% (one hundred percent) paid up equity shares of Borrower held by the Promoter and Mr. Pramod Kumar Gupta in physical form, in favour of the Security Trustee for the benefit of the Lenders, has been created and perfected within 30 (thirty) days of creation of such Security Interest. Further, the Borrower shall have initiated the conversion of physical shares, if any, in the dematerialized form.
- (xxiii) The Lenders shall have received a certificate from an Authorised Officer of the Borrower certifying, *inter alia*, that: (a) no Event of Default or Potential Event of Default has occurred or is continuing or will occur as a result of the Disbursement; (b) all representations and warranties of the Borrower are true and correct with the same force and effect as though such representations and warranties have been made on and as of the date of Disbursement; (c) the Borrower has the power to borrow the Facility and the memorandum of association and the articles of association of the Borrower and any provision contained in any document by which the Borrower is bound, or any Applicable Law directly or indirectly, does/shall not restrict the power of the Borrower to borrow or the authority or ability of the Borrower to borrow the Facility; (d) each copy document relating to it specified in this Part A of Schedule III Part A is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement; (e) the proceeds of the Drawdown shall be applied only towards the purpose specified in Section 2.2 of this Agreement; and (f) the Borrower certifying that the Borrower is in compliance in all material respects with the Project Documents and with all Applicable Laws in effect as on date of the relevant Disbursement and the Clearances required till the date of Disbursement have been obtained and are in full force and effect and the Borrower are in compliance with all the conditions stipulated therein.
- (xxiv) The Lenders shall have received a certificate from an Authorised Officer of STL certifying, *inter alia*, that: (a) no Event of Default or Potential Event of Default, has occurred and is continuing, or would result from STL entering into the security documents to which it is a party; (b) STL has necessary powers under our memorandum of association and article of association, to execute the guarantee and other security documents, pursuant to the terms and conditions of this Agreement; (c) no applicable law and/or any other document binding on STL, directly or indirectly, does not restrict the power of STL to provide security and to guarantee the obligations of the Borrower; (d) all representations and warranties made by us under the Security Documents to which, the Guarantor is a party are true and correct in all material on and as of the relevant such Security Document; (e) each copy document relating to it specified in this Part A of Schedule III Part A is correct, complete and in full force and effect as at a date no earlier than the date of the Agreement; (f) there are no ongoing proceedings/litigations or disputes which restrict STL from entering into the Security Documents, to which it is a party; (g) STL is in compliance in all material respects with all Applicable Laws in effect as on date of the relevant Security Documents, to which it is a party and all the Clearances

<p>Not Paise Realtech Private Ltd. <i>[Signature]</i> Authorised Signatory</p>	<p>Lender <i>[Signature]</i> </p>
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required) have been obtained and are in full force and effect and we are in compliance with all the conditions stipulated therein; and (b) no material adverse effect has occurred or will occur as a result of providing guarantee or entering into Security Documents to which it is a party.

- (xxv) The Borrower shall have submitted a NoC from the Existing Lenders for availing the Facility, if applicable.
- (xxvi) The Borrower shall have caused STL to submit to the Lenders a certificate from the company secretary of the Guarantor, certifying that Section 185 of the Companies Act, 2013 does not apply to the Security Documents proposed to be entered into by the Guarantor.
- (xxvii) The Promoter, STL and the Borrower shall and shall have caused to submit a declaration (on Rs. 100 (Rupees One Hundred) stamp paper duly notarized) that their property upon which Security is to be created / created for the benefit of the Lender is treated as stock in trade in financial books of the aforesaid parties. In the event, the assets on which the Security Interest is proposed to be secured are not classified as stock in trade, the Borrower, STL, Promoter and Mr. Pramod Kumar Gupta shall provide a certificate of an independent chartered accountant certifying the same along with the confirmation that there are no income tax dues under Section 281(1) (ii) of the Income Tax Act, 1961 are outstanding on the Borrower, STL, Promoter and Mr. Pramod Kumar Gupta respectively; or In the event the property upon which Security is to be created/created for the benefit of the Lenders is not treated as stock in trade in financial books of the such aforesaid parties, a self-declaration as well as a certificate from of statutory auditor's/ chartered accountants stating non- applicability/ no dues under section 281(1) (ii) of the Income Tax Act, 1961 along with duly acknowledged copy of the application for permission made to Income Tax authority under Section 281(1)(ii) of the Income Tax Act, 1961.

## PART B

### CONDITION SUBSEQUENT TO INITIAL DISBURSEMENT

- (i) The Borrower shall have caused DPPL to submit to the Lenders, resolutions listed below, in each case certified by the Authorized Officer of DPPL, prior to the execution of the Security Documents to which DPPL is a party:
- (a) certified true copy of resolutions of the Board:
- (i) approving the terms and execution of, and the transactions contemplated by the Financing Documents and Security Documents to which DPPL is a party;

<p>For Polso Realtech Pvt. Ltd. Borrower</p> <p><i>[Signature]</i> Authorized Signatory</p>	<p>Lender</p> <p><i>[Signature]</i></p> <p><i>[Stamp: THE MANUFACTURE FINANCE AND INVESTMENT CORPORATION LTD.]</i></p>
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- (i) authorizing the affixation of the common seal on the Financing Documents and Security Documents, and/or a director or directors or other authorized executives to execute the Financing Documents and the Security Documents to be entered into by DPPL; and
- (ii) authorizing a Person or Persons, on its behalf, to sign and/or dispatch all documents and notices to be signed and/or dispatched by DPPL under or in connection with the Financing Documents and Security Documents entered into by DPPL.
- (b) certified true copies of resolution of the shareholders of DPPL, under Section 186 of the Companies Act, 2013, as applicable; and
- (c) certified true copy of all other necessary corporate resolutions of DPPL.
- (ii) The Borrower shall have caused DPPL to submit to the Lenders prior to the date of any Security Documents proposed to be executed by DPPL, a certificate by its' company secretary certifying that Section 185 of the Companies Act, 2013 is not applicable in relation to the transaction contemplated under the Security Documents.
- (iii) The Lenders shall have received a certificate from an Authorized Officer of the DPPL certifying, *inter alia*, that: (a) no Event of Default or Potential Event of Default, has occurred and is continuing, or would result from DPPL entering into the security documents to which it is a party; (b) DPPL has necessary powers under our memorandum of association and article of association, to execute the guarantee and other security documents, pursuant to the terms and conditions of this Agreement; (c) no applicable law and/or any other document binding on DPPL, directly or indirectly, does not restrict the power of the DPPL to provide security to secure the obligations of the Borrower; (d) all representations and warranties made by us under the Security Documents to which, DPPL, is a party are true and correct in all material on and as of the relevant such security document; (e) each copy document relating to it specified in this Part B of Schedule III Part A is correct, complete and in full force and effect as at a date no earlier than the date of the Agreement; (f) there are no ongoing proceedings/litigations or disputes which restrict DPPL from entering into the Security Documents, to which it is a party; (g) DPPL is in compliance in all material respects with all Applicable Laws in effect as on date of the relevant Security Documents, to which it is a party and all the Clearances required have been obtained and are in full force and effect and we are in compliance with all the conditions stipulated therein; and (h) no material adverse effect has occurred or will occur as a result of providing guarantee or entering into Security Documents to which it is a party.
- (iv) The Borrower shall have provided evidence of creation of Security Interest, created in the favour of the Security Trustee for the benefit of the Lenders, as stipulated in Clause 10.1(a)(v) and Clause 10.1(a)(vii) within 7 (seven) days from the Initial Disbursement Date, in the form and manner satisfactory to the Lenders.

<p>For Polisar Global Pvt. Ltd.</p>  <p>Authorized Signatory</p>	
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- (v) The Borrower undertakes to provide/procure the following, within a period of 15 (Fifteen) days from the date of Initial Disbursement, submit to the Lenders:
- (a) evidence of sale deeds containing clauses that the Security Interest has been created on Projects in favour of the Lenders;
  - (b) copies of necessary Insurance Contracts to secure the Projects assets, in the form and manner satisfactory to the Lenders; and
- (vi) The Borrower shall have submitted evidence of insertion of a clause in all the sale agreement(s) with its Customers of the Project II stating that L&T Infrastructure Finance Company Limited is the Lender(s) of the Project II and the properties of the Project have been charged / mortgaged in favour of the Lender(s) and any sale consideration in respect of the units in Project II shall be deposited by such Customers directly in the Projects Escrow Account.
- (vii) The Borrower shall have provided evidence of creation of Security Interest, created in the favour of the Security Trustee for the benefit of the Lenders, as stipulated in Clause 10.1(c) of this Agreement, within 30 (thirty) days from the Initial Disbursement Date, in the form and manner satisfactory to the Lenders.
- (viii) The Borrower shall have caused the creation of Security Interest on the security stipulated in Clause 10.1(a)(i), Clause 10.1(a)(ii), Clause 10.1(a)(iii), Clause 10.1(a)(iv), Clause 10.1 (v) and Clause 10.1 (vi), respectively of this Agreement, within 45 (forty five) days of the Initial Disbursement Date, in the form and manner satisfactory to the Lenders.
- (ix) The Borrower shall have provided evidence to the Lenders of perfection (which shall include registration of mortgage with the relevant Sub-Registrar of Assurance, filing of Lenders/Security Trustee's charge with ROC, etc.) of the Security Interest to be created in the favour of the Security Trustee for the benefit of the Lenders, within 15 (fifteen) days from the date of the creation of Security Interest on the Security, in accordance with the terms of this Agreement.
- (x) The Borrower shall have completed the process of dematerialization of its shares and have done to all necessary filings with the depositories, evidencing the continuation of pledge over 100% (one hundred percent) paid up equity shares of Borrower in favour of the Security Trustee for the benefit of the Lenders, within 30 (thirty) days of the creation of the Security Interest or such other date as agreed by the Lenders.

For Poise Realtech Pvt. Ltd.

Borrower	Lender
	

**PART C**

**CONDITION PRECEDENT FOR ALL DISBURSEMENTS AFTER THE INITIAL DISBURSEMENT**

Any Disbursement after the Initial Disbursement of the Facility shall, *inter alia*, be subject to the Borrower complying with the following conditions to the satisfaction of the Lenders:

- (i) The Borrower shall have created and perfected the additional security stipulated by the Lenders, in the form and manner satisfactory to the Lenders and shall have completed the relevant RoC filings.
- (ii) The Borrower shall have completed the work as stipulated in Schedule VI (*Disbursement Schedule*) hereof.
- (iii) The Borrower shall have submitted to the Lenders the booking details with the number of units in the Projects being sold and the amount of money received against the same on quarterly basis.
- (iv) The Borrower shall have submitted to the Lenders end use certificate within 60 (sixty) days from the date of Disbursement, issued by an independent chartered accountant, duly certifying that the Facility has been utilised by the Borrower, in accordance with the purpose set out in Clause 2.2 hereof.
- (v) The Borrower shall submit to the Lenders independent chartered accountant certificate for details of any cost incurred on the Projects on a quarterly basis.



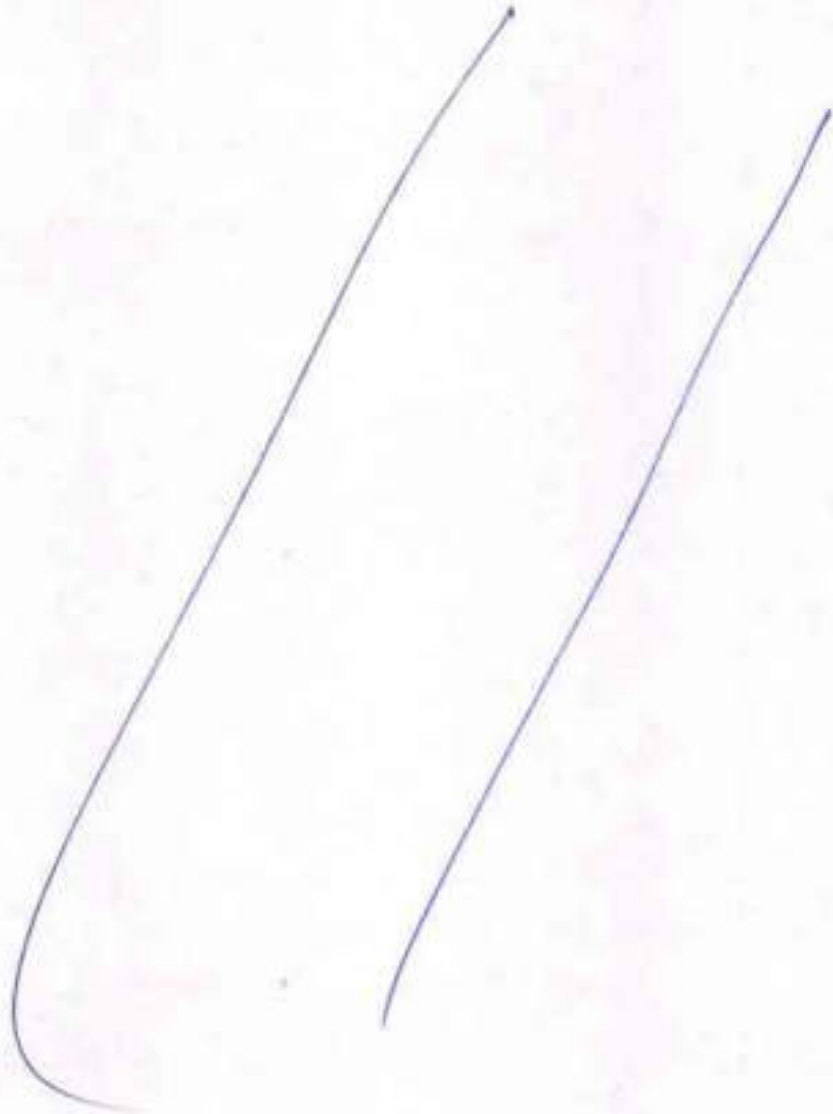
<p style="text-align: center;"><b>For Poise Realtex Pvt. Ltd.</b> Borrower</p> <p style="text-align: center;"><i>[Signature]</i> <b>Authorised Signatory</b></p>	<p style="text-align: center;"><b>Lender</b></p> <p style="text-align: center;">New Delhi</p> <p style="text-align: center;"><i>[Signature]</i></p>
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SCHEDULE IV

EXISTING LOAN & EXISTING GUARANTEES

(Details attached separately)



<p>For Pison Realtech Pvt. Ltd. <i>[Signature]</i> Authorized Signatory</p>	<p></p>
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## SCHEDULE V

## CONSTRUCTION SCHEDULE

Remaining Project I cost: Rs. 217.95 Crore

No of Quarters from Initial Disbursement	% Completion of "Remaining Project I cost"
1	0.00%
2	2.87%
3	8.09%
4	15.71%
5	25.33%
6	33.50%
7	44.00%
8	51.52%
9	61.09%
10	71.37%
11	79.08%
12	85.15%
13	89.06%
14	92.97%
15	96.87%
16	100.00%

Remaining Project II cost: Rs. 56.19 Crore

No of Quarter from Initial Disbursement	% Completion of "Remaining Project Cost - II"
1	0.00%
2	10.02%
3	21.19%
4	33.31%
5	45.44%
6	51.91%
7	59.04%
8	66.17%
9	73.30%
10	80.43%
11	87.56%
12	91.28%
13	94.83%
14	98.38%
15	100.00%
16	100.00%

For Pwss, Bangalore www.pwss.com	Lender
 Authorised Signatory	 

**SCHEDULE VI**

**DETAILS OF THE DISBURSEMENT SCHEDULE**

1. Tranche I of Rs. 75 Crore

- Tranche I of Rs. 75,00,00,000 (Rupees Seventy Five Crore) shall be disbursed upfront subject to compliance of conditions mentioned under this Agreement.

2. Tranche II of Rs. 50 Crore

- Tranche II of Rs. 50,00,00,000 (Rupees Fifty Crore) to be disbursed subject to compliance of terms of this Agreement and basis the construction progress of Project I as detailed below:

Present Stage of Construction is 35.8 %

- First Disbursement up to Rs. 20.0 Crore
  - For payment of project refundable security deposit of up to Rs. 75,00,00,000 (Rupees Seventy Five Crore), land related cost, loan related expenses and completion of cumulative 42.2 % of project construction work.
- Second Disbursement up to Rs. 8.5 Crore
  - For loan related expenses and completion of cumulative 49.4 % of project construction work.
- Third Disbursement up to Rs. 15.0 Crore
  - For land related cost, loan related expenses and completion of cumulative 57.2 % of project construction work.
- Fourth Disbursement up to Rs. 6.5 Crore
  - For loan related expenses and completion of cumulative 65.0 % of project construction work.

For Patsa Healthtech Pvt. Ltd.  Authorised Signatory	
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**SCHEDULE VII**  
**SALES SCHEDULE**  
**For Project I**

No of Qtr from 1 <sup>st</sup> disbursement	Trigger for Right to levy Further Interest		Trigger for right to Recall	
	Cumulative Area to be sold from currently Unsold Area (square feet)	Cumulative Sales Inflow (Rs in Crs)	Cumulative Area to be sold from currently Unsold Area (square feet)	Cumulative Sales Inflow (Rs in Crs)
1	-	-	-	-
2	29,427	11.73	-	-
3	69,043	29.59	29,427	11.73
4	124,601	51.22	69,043	29.59
5	186,454	76.48	124,601	51.22
6	255,120	94.96	186,454	76.48
7	324,714	131.39	255,120	94.96
8	404,825	164.71	324,714	131.39
9	488,500	224.68	404,825	164.71
10	569,807	285.27	488,500	224.68
11	672,551	345.34	569,807	285.27
12	763,210	398.08	672,551	345.34
13	847,144	437.65	763,210	398.08
14	928,768	476.27	847,144	437.65
15	1,005,401	512.56	928,768	476.27
16	1,090,291	540.67	1,005,401	512.56
17	1,175,182	575.57	1,090,291	540.67
18	1,237,322	602.68	1,175,182	575.57
19	1,299,463	623.01	1,237,322	602.68
20	1,364,546	644.31	1,299,463	623.01
21	1,409,030	658.81	1,364,546	644.31
22	1,427,030	664.57	1,409,030	658.81
23	1,445,030	670.33	1,427,030	664.57
24	1,452,230	672.63	1,445,030	670.33

**For Project II**


For Poise Realtech Pvt. Ltd. Borrower  Authorized Signatory	
---	--

No. of Quarter from 1 <sup>st</sup> disbursement	Trigger for Right to levy further interest		Trigger for Right to recall	
	Cumulative Area to be sold from currently Unsold Area (square feet)	Cumulative Sales Inflow (Rs. in Crore)	Cumulative Area to be sold from currently Unsold Area (square feet)	Cumulative Sales Inflow (Rs. in Crore)
1	-	-	-	-
2	-	-	-	-
3	-	-	-	-
4	12,164	3.85	-	-
5	24,328	10.57	12,164	3.85
6	42,574	22.57	24,328	10.57
7	64,942	39.08	42,574	22.57
8	93,392	63.18	64,942	39.08
9	121,842	90.58	93,392	63.18
10	150,292	120.05	121,842	90.58
11	178,742	151.59	150,292	120.05
12	195,028	169.42	178,742	151.59
13	217,396	193.62	195,028	169.42
14	239,764	219.63	217,396	193.62
15	249,968	237.14	239,764	219.63
16	249,968	246.91	249,968	237.14
17	249,968	249.97	249,968	246.91
18	249,968	249.97	249,968	249.97
19	249,968	249.97	249,968	249.97
20	249,968	249.97	249,968	249.97
21	249,968	249.97	249,968	249.97
22	249,968	249.97	249,968	249.97
23	249,968	249.97	249,968	249.97
24	249,968	249.97	249,968	249.97

For Pose ~~Barista~~ Pvt. Ltd.

*Uleedhga*

Authorised Signatory



*Aty*



## SCHEDULE VIII

## PART A

## DETAILS OF PROJECT I

Type	Towers/Blocks	Total Area (square feet)	Unsold Area (square feet)
Group Housing	B, E1, E2, A1, A2, E3, H1, H2, C3, C4, C5, D, F, G1	3,771,534	623,194
Villas	S1, S3, S4 & S6	1,054,930	35,542
Plots	Plots	752,360	23,795
Shops	Shops	4,725	630

## PART B

## DETAILS OF IDENTIFIED INVENTORY

Type	Towers/Blocks	Total Area (square feet)	Unsold Area (square feet)
Group Housing	B, E1, E2, A1, A2, E3, H1, H2, C3, C4, C5, D, F, G1	1,099,465	531,610
Villas	S1, S3, S4 & S6	214,879	205,059
Plots	Plots	39,600	32,400

For Pooja Tech Pvt. Ltd. <i>[Handwritten Signature]</i>	Lentha <i>[Handwritten Signature]</i> New Delhi
--	---

Authorized Signatory

## EXHIBIT I

## NOVATION DEED

To Lender/ Lender's Agent

1. This Novation Deed dated [●] (hereinafter referred to as "**Deed**") relates to the facility agreement dated [●] ("**Agreement**") entered into between the Lenders and the Borrower, as may be amended from time to time. Except as defined in this Deed, the capitalized terms defined in the Deed shall have the same meaning in this Facility Agreement and:

(a) "**Existing Lender**" shall mean [●] (which expression shall, unless it be repugnant to the subject or context thereof, include its successors and assigns);

(b) "**New Lender**" shall mean [●] (which expression shall, unless it be repugnant to the subject or context thereof, include its successors and assigns).

2. The Existing Lender hereby:

(a) confirms that, to the extent details appear below under the heading "**Rights and/ or Obligations to be Novated**", those details accurately summarize the rights and/ or obligations which are to be novated and which are, upon execution and delivery of this Novation Deed to Lender (but subject to paragraph 3 below), cancelled and discharged in accordance with the Clause 20.6 of the Facility Agreement;

(b) confirms that consent, if any, required in accordance with the Clause 20.6 of the Facility Agreement has been duly obtained for this novation, and




(c) gives notice to the undersigned New Lender that the Existing Lender is/ are under no obligation to repurchase all or any part of those Rights and/ or obligations to be Novated at any time nor to support any losses suffered by the New Lender.

3. The undersigned New Lender agrees that it assumes and acquires new rights and/ or obligations stated under the heading "**Rights and/ or Obligations to be Novated**" in accordance with the Clause 20.6 of the Facility Agreement on and with effect from [●].

4. The New Lender:

(a) confirms that, until further notice, its office and details for communication are set out below and the contents of **Schedule I, Part B** of the Loan Agreement shall be amended to make the following addition:

For : [●]

<p>For Poise Research Pvt. Ltd.            Authorized Signatory</p>	<p>Lender            New Delhi  </p>
--	--

**Address** : [●]

**Attention** : [●]

**Tel. No.** : [●]

**Email** : [●]

(b) agrees to perform and comply with the obligations expressed to be imposed on it by the Clause 20.6 of the Facility Agreement as a result of this Deed taking effect;

(c) acknowledges and accepts paragraph 2(c) above;

(d) agrees to be bound by the Facility Agreement, and other Financing Documents (upon their amendment in the manner set out therein to reflect the participation of the New Lender) in relation to the matters stated under the heading "**Rights and/ or Obligations to be Novated**" as if the New Lender was a Party thereto in place and stead of the Existing Lender except in relation to the rights of the Existing Lender in respect of the said matters which shall accrue to the New Lender with effect from the date hereof; and

(e) confirms, on the basis of the facts then known to it that the novation will not give rights to any requirement for any withholding or increased Cost or other cost or expenses to the Borrower which would not be incurred by the Borrower if the novation did not take place.

5. The above confirmations and documents are given to and for the benefit of and made with each of the other parties to the Loan Agreement.

6. "**Rights and/ or Obligations to be Novated**" shall mean and include:




The Existing Lender's Commitment to the extent of Rs. [●] and/or loans to the extent of [●] to be novated in accordance with this Deed and the Loan Agreement.

7. This Deed shall be governed by and construed in accordance with the laws of India.

8. Schedule I B - **LENDER AND DETAILS OF LOAN** of the Facility Agreement shall stand amended in the following manner: [●]

9. This Deed shall be a Financing Document and shall be read in unison with the terms and conditions as more fully set out in the Facility Agreement as may be amended from time to time.

*For the Existing Lender*



<p>For Polaris Research Pvt. Ltd.            Authorised Signatory</p>	<p>Lender    </p>
--	---

*For New Lender*

*For Borrower*

*Agreed for and on behalf of the other parties to the Facility Agreement and Financing Agreements*

*Lenders*

<p>For Polson Finance Pvt. Ltd.</p>  <p>Authorized Signatory</p>	
---	---

## EXHIBIT 2

## DISBURSEMENT NOTICE

To: [●], as the Lenders


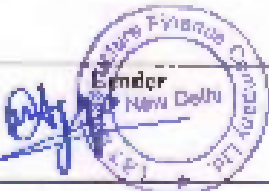

Disbursement Notice

Ladies and Gentlemen:

I, the undersigned Authorised Officer of Poise Realtech Private Limited (the "Borrower"), **DO HEREBY CERTIFY** that:

1. This certificate is furnished pursuant to Clause 3.2.1 (*Mechanics for Requesting Disbursement*) of the Facility Agreement, dated as of [●] (the "Facility Agreement"), among the Borrower and the Lenders. Unless otherwise defined herein, all capitalized terms used herein have the meanings assigned to those terms in the Facility Agreement.
2. The Borrower has irrevocably requested a Disbursement from Lenders on [insert Business Day] for the amount of [insert amount] in accordance with Clause 3.2 (*Mechanics for Requesting Disbursement*) of Facility Agreement (the "Proposed Disbursement"). After giving effect to the Proposed Disbursement, the aggregate principal outstanding under the Facility Agreement is [●].
3. For the purposes of Clause 3.2 (*Mechanics for Requesting Disbursement*) and Clause [9.1 (*Conditions Precedent to Initial Disbursement*) and] Clause 9.3 (*Conditions Precedent to all Disbursements after the Initial Disbursements*) of the Facility Agreement, the Borrower hereby certifies that the following statements are true on the date hereof and that the acceptance by the Borrower of the benefits of the Proposed Disbursement shall constitute a representation and warranty by the Borrower to each of the Lenders that as of the date of such Proposed Disbursement:
  - (a) All representations and warranties of the Borrower under the Financing Documents are true and correct in all respects with the same force and effect as though such representations and warranties have been made on and as of the date of Disbursement.
  - (b) The proposed [Initial Disbursement Date/disbursement date]<sup>2</sup> is a Business Day.
  - (c) No Event of Default or Potential Event of Default has occurred and is continuing or shall result from this Disbursement.

*Insert only for Initial Disbursement*  
*Insert as applicable*

<p>For Poise Realtech Pvt. Ltd.  </p>	<p>  </p>
--	---

Authorised Signatory

- (d) All of the conditions in Section 9.1 (*Conditions Precedent to Initial Disbursements*) and] <sup>3</sup> 9.1 (*Conditions Precedent for all Disbursements after the Initial Drawdown*) of the Facility Agreement have been satisfied or waived by the Lenders and all the necessary certificates and documentation required thereunder is attached herewith or has already been made available to the Lenders.
  - (e) The outstanding Commitment and the Loan including the amount of each Disbursement requested today is as follows: \_\_\_\_\_
  - (f) The Outstanding Amounts including the amount of each Disbursement requested today is as follows: \_\_\_\_\_
4. The proceeds of the Proposed Disbursement shall be used only for the purpose for which the Facility has been sanctioned.
  5. If any of the certifications set forth in paragraph 3 above shall cease to be valid on, as of or prior to the date of the Proposed Disbursement, the Borrower shall immediately notify each of the Lenders in writing.


IN WITNESS WHEREOF, I have hereunto set my hand this day of \_\_\_\_\_.

By: \_\_\_\_\_

Name:

Designation:

*Insert only for Initial Disbursement:*

<p><b>Borrower</b> For Poise Realtech Pvt. Ltd.</p> <p><i>[Signature]</i></p> <p>Authorised Signatory</p>	<p><b>Lender</b> New Delhi</p> <p><i>[Signature]</i></p> 
---	--

*TRUE COPY*

IN WITNESS WHEREOF the signature of the Borrower and the Lenders have caused these presents to be executed by its authorized signatory or themselves the day and year first hereinabove written.

THE COMMON SEAL of the within named )  
POISE REALTECH PRIVATE LIMITED, as )  
the Borrower, has been hereunto affixed pursuant to )  
a Resolution of its Board passed on )  
06/12/2019 in the presence of )  
\_\_\_\_\_)  
U.S.A. Kumar Gupta, Director, who has )  
signed these presents in token thereof. )



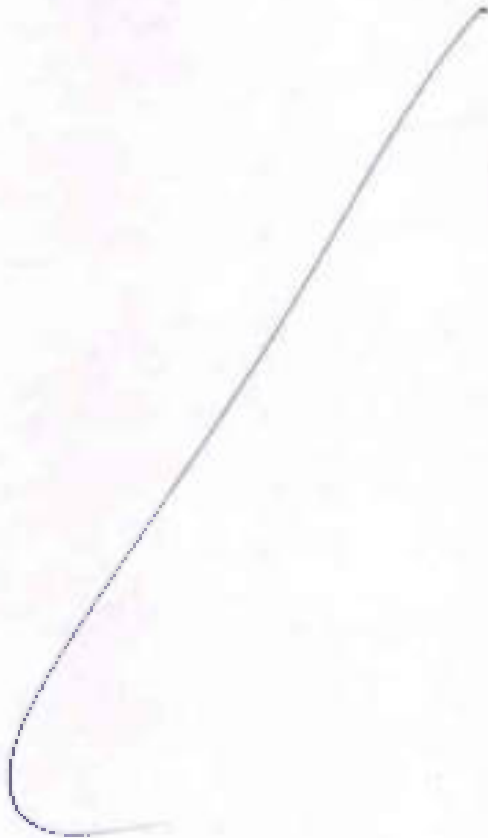
For Poise Realtech Pvt. Ltd.

*[Handwritten Signature]*  
Authorized Signatory

*[Handwritten Signature]*  *[Handwritten Signature]*

*[Handwritten Signature]*  
TRUE COPY

SIGNED AND DELIVERED by the within named Lender M/S. L&T INFRASTRUCTURE FINANCE COMPANY LIMITED through its authorised officer Mayank  
AGGARWAL



For Pooja Realtach Pvt. Ltd.

  
Authorized Signatory





सत्यमेव जयते

# INDIA NON JUDICIAL

## Government of National Capital Territory of Delhi

### e-Stamp

Certificate No.	: IN-DLBB488105117844R
Certificate Issued Date	: 29-Nov-2019 11:52 AM
Account Reference	: IMPAGG (IV) dIB04303V DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDB04303BB401333505831R
Purchased by	: POISE REALTECH PRIVATE LIMITED
Description of Document	: Article 5 General Agreement
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: POISE REALTECH PRIVATE LIMITED
Second Party	: OTHERS
Stamp Duty Paid By	: POISE REALTECH PRIVATE LIMITED
Stamp Duty Amount(Rs.)	: 500 (Five Hundred only)



Please write or type below this line

This stamp paper forms an Integral part of Facility Agreement dated 10/12/2019

For Poise Realtech Pvt. Ltd

*[Signature]*

Authorised Signatory

*[Signature]*

Statutory Alert

1. The emblem of the State of Delhi is on the reverse side of this stamp paper.  
2. The emblem showing the flag of India is on the reverse side of this stamp paper.

TRUE COPY

Visit [www.indianstamp.com](http://www.indianstamp.com) for details on the details of the Stamp paper and its use.

For Poise Realtech Pvt. Ltd.  
*[Signature]*  
Authorised Signatory



DATED 12 / 12 /, 2019

# FACILITY AGREEMENT

BY AND BETWEEN

**POISE REALTECH PRIVATE LIMITED**  
as the Borrower

AND

**THE PERSONS SET FORTH IN SCHEDULE I B**  
as the Lenders



CYRIL AMARCHAND MANGALDAS  
ADVOCATES & SOLICITORS

For Poise Realtech Pvt. Ltd.

*[Signature]*  
Authorised Sign



*[Signature]*  
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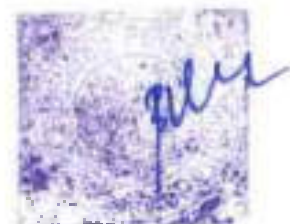
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For Poise Realtech Pvt. Ltd.

*Authorise*

*TRUE COPY*



For Poise Realtech Pvt. Ltd.

**FACILITY AGREEMENT**

*[Signature]*  
Auth. Signatory

This **FACILITY AGREEMENT** (the "Agreement") is made on the 10<sup>th</sup> day of December 2019 at Delhi by and among:

1. **THE PERSONS SET OUT IN SCHEDULE I A**, (hereinafter referred as the "Borrower", which expression shall, unless it be repugnant to the subject or context thereof, be deemed to include its successors and permitted assigns) of the **FIRST PART**;

**AND**

2. **THE PERSONS SET OUT IN SCHEDULE I B**, in their capacity as the leader (hereinafter collectively and individually referred to as the "Lenders", which expression shall, unless repugnant to the subject or context thereof, be deemed to mean and include their respective successors, transferees, nominees and assigns) of the **SECOND PART**.

The Borrower and the Lenders shall hereinafter, where the context so permits, be referred individually as a "Party" and collectively as the "Parties".

**WHEREAS:**

- (A) The Borrower is in the business of developing, constructing, implementing and setting up real estate projects.
- (B) The Borrower has requested the Lenders to make available to the Borrower a financial assistance aggregating to a sum of Facility (more particularly detailed in *Schedule I B* hereto) for the Purpose (*hereinafter defined*).
- (C) The Lenders based on the request and representation made by the Borrower under this Agreement and under other Financing Documents have agreed to make available the Facility to the Borrower (to the extent of their respective Commitment as specified in *Schedule I B*) on terms of the Sanction Letter (*as defined in Schedule I B*) on the terms and subject to the conditions of this Agreement and in the other Financing Documents.

**NOW, THEREFORE**, in consideration of the foregoing, the Borrower and the Lenders entering into this Agreement and other good and valid consideration, the receipt and adequacy of which are hereby expressly acknowledged, the Parties hereby agree as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement (including the recitals), unless there is anything repugnant to the subject, meaning or context thereof, the following terms, when capitalised, shall have the following meanings assigned to them:

"Additional Interest Rate" with respect to each Lender shall mean the applicable Interest Rate for such Lender plus 2% (two percent) per annum, with monthly rests except any tax deducted as per Applicable Law, payable by the Borrower.

"Affiliate" in relation to a Person means,

<p>For Poise Realtech Pvt. Ltd. Borrower</p> <p><i>[Signature]</i> Auth. Signatory</p>	<p>Leader</p> <p><i>[Signature]</i></p>
--	---



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- (a) being a corporate entity, shall mean any entity or Person, which controls, is controlled by, or is under the common control of such Person, whether directly or indirectly; or
- (b) being an individual, shall mean any relative or any other entity or Person, which is controlled by such Person or a relative of such individual (as defined under the Companies Act, 2013).

"Ajnara India Limited" or "AIL" shall mean a company having corporate identification number U01111DL1991PLC046358 and registered office at 502, 5th Floor, Sachdeva corporate Tower 17, Karkardoula community centre Delhi East Delhi-110092.

"Applicable Laws" means and include any statute, law, treaties, rule, regulation, ordinance, guideline, notification or any requirement, restriction, authorisation, order, directive, permit, judgment, decree, injunctions, writs or orders of any court of record having the force of law, or any interpretation of any of the foregoing by any Government Authority, whether in effect as on the date hereof or thereafter, and shall include any re-contract, substitution or amendment thereof as may be in force and effect during the subsistence of this Agreement.

"Availability Period" in relation to:

- (a) Initial Disbursement shall mean a period of 90 (thirty) days from the date of this Agreement;
- (b) any other Disbursement pursuant to the provisions of this Agreement.


"Benchmark Rate" shall:

- (a) in relation to L&T Housing Finance Limited, be the PLR as specified by L&T Housing Finance Limited from time to time; and
- (b) in relation to the other Lenders (other than L&T Housing Finance Limited), be their respective MCLR, benchmark rate or PLR, as the case may be, as specified by such Lenders from time to time.

"Business Day" in relation to the making of any Disbursement, by a Lender, any day on which such Lender is required or authorized by law to be open for business in the place of its Lending Office; or in relation to all other matters, a day (other than a Saturday or Sunday on which banks are normally open for business in Mumbai/Delhi)

"Clearances" shall mean any consent, license, approval, registration, permit or other authorisation of any nature which is required under Applicable Law to be granted by any statutory or regulatory authority or any Governmental Authority for the Projects, including:

- (a) for the incorporation of the Borrower and the Security Providers and fulfilling of its obligations under the Transaction Documents;
- (b) for the enforceability of any Transaction Documents and the making of any payments contemplated thereunder by the Borrower and the Security Provider; and

2	
Borrower	Lender
For Poise Realtech Pvt. Ltd.	

Authorised Signatory

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(c) for all such other matters as may be necessary in connection with the Projects or the performance of the Borrower's or any Security Provider's obligations under any Transaction Document.

"Commitment(s)" shall:

- (a) with respect to a Lender, means the amount set forth against its name in Schedule I B of this Agreement; and
- (b) with respect to a New Lender, means the amount received or transferred to such New Lender in accordance with Section 20.6 (Novation and Participation) of this Agreement.

"Corporate Guarantor" shall mean STL.

"Customer(s)" means any Person purchasing the flats/units in the Projects and/ or Mortgaged Properties or entering into any other arrangement requiring such Person to make payments for purchasing the relevant flat/unit in the Projects and/ or Mortgaged Properties.

"Disbursement" means the act of Lenders of making available to the Borrower amounts of the Loan, subject to terms and conditions of this Agreement.

"Debt Service Reserve/ DSR" shall mean the monies, which are required to be created and maintained by the Borrower as per the terms detailed in Clause 12.17.3 herein;

"Disbursement Notice" shall mean the notice to be provided by the Borrower to the Lenders in the form set out in Exhibit I duly completed and in substance satisfactory to the Lender, together such other documents required by the Lender, in accordance with the terms and conditions of this Agreement.

"Due Date" means in respect of:

- (a) any Repayment Installment, the Repayment Dates;
- (b) any Interest, the Interest Payment Dates; and
- (c) any other amount payable under the Financing Documents, including in relation to an event of acceleration under Clause 15 (Consequences of Event of Default), the date on which such amount falls due in terms of the Financing Documents.

*Handwritten signature*

"Devya Propcon Private Limited or DPPL" shall mean a company having corporate identification number U70109UP2016PTC087122 and registered office at C-45, Sector 62 NOIDA Gauram Buddha Nagar UP 201307, India.

"Development Management Agreement" shall mean the development management agreement dated 06/12/2017 entered into, *inter alia*, the Borrower, Sapertech Limited and Ajham India Limited, for inter alia, appointing the Borrower as the development manager in relation to the Projects, and as may be amended from time to time.

"Escrow Accounts" shall mean and include the Identified Inventory Escrow Account and Project I Escrow Account and Project II Escrow Account.

For Paise Realtech Pvt. Ltd.  
*Handwritten signature*

Authorized Signatory

Borrower For Paise Realtech Pvt. Ltd. <i>Handwritten signature</i>	3	Lender  <i>Handwritten signature</i>
--	---	---

Authorized Signatory

*Handwritten*  
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"Escrow Agreements" shall collectively mean and include the Identified Inventory Escrow Agreement and the Project Escrow Agreements.

"Escrow Banks" shall collectively mean and include Identified Inventory Escrow Bank, Project I Escrow Bank and Project II Escrow Bank.

"Event of Default" shall mean occurrence of any one or more of the events of default as set out in Clause 14 (*Events of Default*) of this Agreement.


"Existing Loan" shall mean existing liabilities of the Borrower, if any, as detailed in Schedule IV hereof.

"Existing Lenders" shall mean the Persons identified in Schedule IV, who have advanced Existing Loan to the Borrower.

"Final Settlement Date" shall mean the date on which all the Outstanding Amount shall have been irrevocably and unconditionally paid and discharged in full to the Lenders to the satisfaction of the Secured Parties.

"Financial Indebtedness" means any indebtedness whatsoever at any time for or in respect of monies borrowed, contracted or raised (whether or not for cash consideration) or liabilities contracted by whatever means (including under guarantees, indemnities, acceptances, credits, deposits, hire-purchase and leasing), *inter alia*, in respect of:

- (a) monies borrowed including any principal, interest, premium or other amount payable in relation thereto;
- (b) any amount raised under any acceptance credit, bill acceptance or bill endorsement facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with IND AS, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);
- (h) shares which are expressed to be redeemable;
- (i) any guarantee, indemnity or counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;

Borrower  For Poise Realtech Pvt. Ltd.	4	Lender  
--	---	--

*[Signature]*  
**Authorized Signatory**

*[Signature]*  
**TRUE COPY**

- (j) any liabilities contracted by whatever means;
- (k) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (j) above;
- (l) any liabilities in pursuance to put options, shortfall undertakings and letters of comfort that may have been issued; and/ or
- (m) any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent.

"Financial Quarter" shall mean each calendar quarter commencing from April 1 to June 30, July 1 to September 30, October 1 to December 31 and January 1 to March 31 of each Financial Year.

"Financial Year" means the accounting year of the Borrower commencing each year on April 1 and ending on the following March 31.

"Financing Documents" means:

- (a) this Agreement;
- (b) Escrow Agreements;
- (c) Security Documents;
- (d) Security Trustee Agreement; and
- (e) Such other agreements, instruments, undertakings, deeds, writings and other documents executed or entered into, or to be executed or entered into by the Borrower and/or any other Person in relation to or pertaining to the transactions contemplated by, or under this Agreement as amended from time to time and such other documents as may be assigned by the Lenders from time to time;



"Further Interest" have the meaning ascribed to the term in Clause 5.6.1 hereof

"Further Interest Rate" with respect to each Lender shall mean the applicable Interest Rate for such Lender plus 2% (two percent) per annum.

"GOI" shall mean Government of India.

"Governmental Authority" means the GOI, or the government of any other state of India or any ministry, department, board, authority, instrumentality, agency, corporation (to the extent acting in a legislative, judicial or administrative capacity and not as a contracting party with the Borrower) or regulatory body exercising statutory powers under any Applicable Law under the direct or indirect control of the GOI or the Government or any subdivision of any of them or owned or controlled by the GOI, the Government or any of their subdivisions, or any court, tribunal or judicial body within India.

"IBC" shall mean Insolvency and Bankruptcy Code, 2016 along with applicable rules, regulation(s), notification(s) and circular(s) as amended from time to time.

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"Identified Inventory" shall mean such identified units in Project I held by DPPL, as more particularly described in Schedule VIII Part B herein.

"Identified Inventory Escrow Account" shall mean account opened with the Escrow Bank, in accordance with the terms and conditions of the Identified Inventory Escrow Agreement.

"Identified Inventory Escrow Agreement" shall mean the agreement entered into by and between the DPPL, the Lender, Security Trustee (if any) and the Escrow Bank, in relation to *inter alia* the deposit of Identified Inventory Receivables and all the monies emanating from the Identified Inventory and its application as per the terms thereof.

"Identified Inventory Escrow Bank" shall mean HDFC Bank having a branch office at Indrapuram

"Identified Inventory Receivables" shall mean any and all present and future returns (on permitted investments, revenues and proceeds on account of sale, lease, lease receivable discounting, license, transfer, disposal or any other arrangement pertaining to the interest in the saleable area/ leaseable area/ built up area/ land of the Identified Inventory including but not limited to any lease receivables, rental payments, lease rental discounting amounts, security deposits from tenants, development charges, infrastructure premium, advance bookings, earnest money, preferential location charges, parking charges, membership charges, external development charges, internal development charges, legal charges, floor rise and terrace charges, interest, transfer fees, charges, or any other applicable fee/ charge receivable from the sale/ lease, pre-sale, pre-launch of all or any part of the Identified Inventory, proceeds of insurance, book debts, present or future, any other cash inflows of the Borrower from the sale/ lease of any part of the Identified Inventory and all rights, title, interest, benefits, claims and demands of Identified Inventory.

"Information Utilities" shall mean an information collection body to be constituted under the provisions of IBC and as may be identified by the Lender

"Initial Disbursement Date" shall mean date of the Initial Disbursement.

"Interest" has the meaning set out in Clause 5.1.1 (*Interest and Fees*) hereof.



"Interest Payment Date" shall mean, with respect to each Lender, the date that is specified against its name in Schedule I B of this Agreement.

"Interest Period" shall mean, in respect of a Loan shall mean;

- (a) in the first instance, the period commencing from the date of Disbursement and ending on (and excluding) the immediately following Interest Payment Date; and
- (b) subsequently, the period commencing on one Interest Payment Date and ending on (and excluding) the immediately following Interest Payment Date.

"Interest Rate" means the rate of interest to be paid by the Borrower to the Lender under particular described in Schedule I B hereof.

For Poise Realtech Pvt. Ltd.  
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"Interest Reset Date" shall mean the first day of the subsequent month at the end of 24 (twenty four) months from the Initial Disbursement Date and every year thereafter or such other date on which the Spread is reset in accordance with Schedule I B.

"Interest Tax" shall mean any tax, fees or other statutory levy payable by the Lenders on any payments on interest payment but shall not include any tax on income of the Lenders.

"Internal Rate of Return or IRR" shall mean, the notual compounded rate of return on the Facility as cash in, after adjusting Interest and all such other amounts paid by the Borrower to the Lenders in accordance with this Agreement (including any amounts paid as Indemnification payments) as a cash out, in each case taking in account the dates on which monies are either cash in or cash out.

"Insurance Contract" shall mean the insurance contracts and policies, in relation to the Projects, any substitutes therefor and any additional insurance contracts or policies required under any of the Transaction Documents.

"Lender's Group Companies" means any group company of the Lender.

"Lending Confirmation Notice" shall have its meaning specified in Clause 3.3.1(i) (Procedure for Drawdowns) of this Agreement.

"Loan" means, as the context requires, any loans made or to be made under the Facility or the principal amount outstanding for the time being of the loans made under the Facility.

"Material Adverse Effect" shall mean the change or consequence of an event, circumstance, occurrence or condition which has caused, as of any date of determination, or could be expected to cause an adverse effect, as on any date of determination, in the sole opinion of the Lenders, on the following of the Borrower or Affiliates of the Borrower or group entity of the Borrower or the Obligor(s):

- (a) ability to make payments as and when due under the Transaction Documents or comply with its obligations under this Agreement or any Transaction Documents to which it is a Party;
- (b) the legality, validity, priority, enforceability or effectiveness of this Agreement or any other Transaction Documents or any Security thereunder;
- (c) the financial condition, operations, assets and property, liabilities or business prospects of the Borrower or Borrower's group companies including Promoter and the Guarantor;
- (d) the ability of the Borrower or the Security Providers to exercise or enforce any right, benefit, privilege or remedy under any Project Document or Clearances for the Projects;
- (e) the ability of the Borrower or the Security Provider to comply in all respects with the terms or conditions of any Clearances for the Projects; and/or
- (f) the legal character, ownership or control of the Borrower and/or the Affiliates of the Borrower and/or group entity of the Borrower and/or the Guarantor.

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"**Marginal Cost of Fund based Lending Rate or MCLR**" shall mean the percentage rate per annum determined by the Lender(s) from time to time and announced or notified (including modification over its website) by the Lender(s) as its marginal cost of fund lending rate in accordance with the Master Direction - Interest Rates on Advances bearing RBI/DBR/2015-16/20 dated March 3, 2016, as may be amended, replaced or modified, from time to time.

"**Memorandum and Articles of Association**" shall mean the memorandum and articles of association of the Borrower, as may be amended or supplemented from time to time.

"**Minimum Selling Price**" shall mean:

- (i) In relation to Project I:
- (a) Rs. 3,200 per square feet for group housing units (except towers C1, C6, E4 and G2);
  - (b) Rs. 4,000 per square feet for villas;
  - (c) Rs. 3,500 per square feet for plots; and
  - (d) Rs. 7,500 per square feet for commercial units.

For C1, C6, E4 and G2 towers in Project I

- (a) Rs. 3,150 per square feet for 3,38,410 square feet saleable area; and
- (b) Rs. 3,300 per square feet for remaining saleable area.

- (ii) In relation to Project II, Rs. 10,000 (Rupees Ten Thousand) per square feet for the entire area.



"**Moratorium Period**" shall mean 36 (thirty six) months from the Initial Disbursement Date.

"**Mortgaged Properties**" shall have the meaning ascribed to the term in the memorandum of entry, and shall include such other additional properties agreed to be mortgaged for the benefit of the Lenders, in favour of the Security Trustee, from time to time.

"**NOC**" shall mean no objection certificate.

"**Outstanding Amount**" shall mean all amounts payable by the Borrower to the Lenders in relation to the Facility pursuant to the terms of this Agreement or any other Financing Document or Security Document, including, without limitation:

- (a) the principal amount of the Facility and the Interest payable in relation thereto, and all other obligations and liabilities of the Borrower, including Commitment fees, indemnities, expenses, fees, interest, Additional Interest, Further Interest, further interest and any charges that may be imposed or incurred under, arising out of or in connection with the Facility;
- (b) any and all sums advanced by the Lenders in order to preserve the Security Interest created/used to be created by the Borrower in relation to the Facility; and

Borrower	Lender
For Poise Realtech Pvt. Ltd. 	

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(e) in the event of any proceeding for the collection or enforcement of the Outstanding Amount, after an Event of Default shall have occurred and be continuing, the expenses of retaking, holding, preparing for sale or lease, selling or otherwise disposing of or realizing the Security Interest created / caused to be created by the Borrower, or of any exercise by the Lenders of their right under the relevant Transaction Documents, together with legal fees and court costs.

"Panel Valuer" means a recognized and reputable valuer duly licensed to practice in India acceptable to Lenders and appointed as valuer by the Borrower.

"Person" means any individual, corporation, partnership, (including, without limitation, association), joint stock company, trust, unincorporated organization or Governmental Authority or political subdivision thereof, international organization, agency or authority (in each case, whether or not having separate legal personality) and shall include their respective successors and assigns and in case of an individual shall include his legal representatives, administrators, executors and heirs and in case of a trust shall include the trustee or the trustees for the time being.

"Permitted Security Interest" shall mean the following:

- (a) the Security Interest, charges and other liens or encumbrances created on the Security, in favour of or for the benefit of the Secured Parties, to secure the Facility;
- (b) the Security Interest, charges and other liens or encumbrances created on the Security, in favour of or for the benefit of the L&T Infrastructure Finance Company Limited, to secure the Financial Indebtedness availed by the Borrower in relation to Projects;
- (c) any Security Interest created by the Borrower on the Security and offered to the Existing Lenders in relation to the Financial Indebtedness detailed in Schedule IV hereof; and/or
- (d) any other Security Interest approved by the Lenders.

"Prime Lending Rate"/ "PLR" means the percentage rate per annum decided by the Lenders from time to time and notified by the Lenders as its PLR and more particularly detailed in Schedule I B, hereinafter (for clarity, the PLR may fluctuate from time to time, as may be determined by the Lenders their absolute discretion).

"Prepayment Premium" shall mean 2% (two percent) of the amount of Loan being prepaid.

"Potential Event of Default" means any event or circumstance which would, with notice, lapse of time, the making of a determination or any continuation thereof, become an Event of Default.

"Pranod Kumar Gupta" shall mean Mr. Pranod Kumar Gupta age \_\_\_\_\_, son of Gyan Prakash Gupta having passport number \_\_\_\_\_, residing at - 201, Sagar Plaza, Pitampura, Delhi

"Project I" means the residential group housing project 'Upcountry' located in sector 17A, Yamuna Expressway, U.P. consisting of total saleable area of 55,83,549 square feet, as



For Poise Realtech Pvt. Ltd.  
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Borrower For Poise Realtech Pvt. Ltd. <i>[Signature]</i> Authorized Signatory	9	Lender <i>[Signature]</i>
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more particularly described in Schedule VIII Part A herein and shall include all phases as applicable,

"Project II" means Capetown Villas project located in Sector 74, Noeda, Uttar Pradesh consisting of 35 villas and saleable area of 2,49,963 square feet and shall include all phases as applicable,

"Projects" shall collectively mean and include Project I and Project II.

"Projects Escrow Account" shall collectively mean and include Project I Escrow Account and Project II Escrow Account.

"Project I Escrow Account" shall mean and include the escrow accounts opened with the Project I Escrow Bank, in accordance with the terms and conditions of the Project I Escrow Agreement.

"Project I Escrow Agreement" shall mean the Project I escrow agreement dated November 3, 2017, as amended from time to time, entered into by and between, *inter alia*, STL and Project I Escrow Bank.

"Project I Escrow Bank" shall mean HDFC Bank.

"Project II Escrow Account" shall mean and include the escrow account opened with the Project II Escrow Bank, in accordance with the terms and conditions of the Project II Escrow Agreement.

"Project II Escrow Agreement" shall mean the Project II escrow agreement entered into by and between, *inter alia*, STL and Project II Escrow Bank.

"Project II Escrow Bank" shall mean HDFC Bank

"Project I Documents" shall mean (a) the joint venture agreement (if any), (b) all deeds/development agreements/ conveyance deeds/ lease deeds/agreements in relation to the immovable properties pertaining to the Project I; (c) all contracts, writings entered into with any Governmental Authority in connection with the Project I; (d) the Insurance Contracts providing for insurance required by the Financing Documents; (e) documents reflecting Borrower's title to the fixed assets, easements, water rights and other documents analogous to the above; (f) all Clearances, contracts, agreements, and writings entered into or obtained by the Borrower in any manner connected with (i) the designing, construction, development, operation, management and/or maintenance in relation to the Project I; (ii) supply of material, spares, equipment, operation and maintenance services and other technical and specialized services for the operations and maintenance in relation to the Project I; and any other document(s) that may be designated as such by the Lender.

"Project II Documents" shall mean (a) the joint venture agreement (if any), (b) all deeds/development agreements/ conveyance deeds/ lease deeds/agreements in relation to the immovable properties pertaining to the Project II, (c) all contracts, writings entered into with any Governmental Authority in connection with the Project II; (d) the Insurance Contracts providing for insurance required by the Financing Documents; (e) documents reflecting Borrower's title to the fixed assets, easements, water rights and other documents analogous to the above; (f) all Clearances, contracts, agreements, and writings entered into or obtained by the Borrower in any manner connected with (i) the designing, construction,

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For Poise Realtech Pvt. Ltd.  
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Authorized Signatory

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For Poise Realtech Pvt-Ltd. <i>Handwritten signature</i>	<i>Handwritten signature</i>
Authorized Signatory	

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development, operation, management and/or maintenance in relation to the Project II; (ii) supply of material, spares, equipment, operation and maintenance services and other technical and specialized services for the operations and maintenance in relation to the Project II; and any other document(s) that may be designated as such by the Lenders.

**"Project Documents"** means collectively, the Project I Documents and Project II Documents.

**"Project I Receivables"** means any and all present and future returns on permitted investments, revenues and proceeds on account of sale, lease, lease receivable discounting, license, transfer, disposal or any other arrangement pertaining to the interest in the saleable area/ leaseable area/ built up area/ land of the Project I including but not limited to any lease receivables, rental payments, lease rental discounting amounts, security deposits from tenants, development charges, infrastructure premium, advance bookings, earnest money, preferential location charges, parking charges, membership charges, external development charges, internal development charges, legal charges, floor rise and terrace charges, interest, transfer fees, charges, or any other applicable fee/ charge receivable from the sale/ lease, pre-sale, pre-launch of all or any part of the Project I, proceeds of insurance, book debts, present or future, any other cash inflows of the Borrower from the sale/ lease of any part of the Project I and all rights, title, interest, benefits, claims and demands of Project I.

**"Project II Receivables"** shall mean any and all present and future returns on permitted investments, revenues and proceeds on account of sale, lease, lease receivable discounting, license, transfer, disposal or any other arrangement pertaining to the interest in the saleable area/ leaseable area/ built up area/ land of the Project II including but not limited to any lease receivables, rental payments, lease rental discounting amounts, security deposits from tenants, development charges, infrastructure premium, advance bookings, earnest money, preferential location charges, parking charges, membership charges, external development charges, internal development charges, legal charges, floor rise and terrace charges, interest, transfer fees, charges, or any other applicable fee/ charge receivable from the sale/ lease, pre-sale, pre-launch of all or any part of the Project II, proceeds of insurance, book debts, present or future, any other cash inflows of the Borrower from the sale/ lease of any part of the Project II and all rights, title, interest, benefits, claims and demands of Project II.

**"Project Receivables"** means collectively Project I Receivables and Project II Receivables.

**"Promoter"** means Mr. Vinod Kumar Gupta age 48, son of Gyan Prakash Gupta, having passport number Z2774264, residing at B-189, Vojna Vihar, Delhi-110092.

**"Repayment Cheques"** means the cheques issued by the Borrower or such other Person as may be accepted by the Lenders as per the terms detailed in Schedule III A hereof.

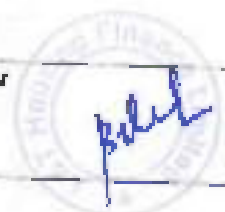
**"Repayment Schedule"** shall mean the schedule for Repayment of the Facility as set out in Schedule II of this Agreement.

**"RERA"** shall mean the Real Estate (Regulation and Development) Act, 2016 which came into force from May 1, 2017 and shall include all applicable rules, regulations and state amendments thereunder.

**"Secured Parties"** shall mean the Lenders, the Security Trustee and such other Persons as may be identified by the Lenders, from time to time.

Borrower	L1
For Poise Realtech Pvt. Ltd.	Lender

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**Authorised Signatory**



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"Security" shall have the meaning ascribed to the term in Clause 10 hereof.

"Security Providers" shall collectively mean Supertech Limited, DPPL and any other Person, required to create Security Interest to secure the Outstanding Amount, as per the terms and conditions of this Agreement.

"Security Documents" shall, as required by the context, mean the Security Trustee Agreement, memorandum of entry, director's declaration, indenture of mortgage/mortgage deed, the deed of personal guarantee, deed of corporate guarantee and all such other documents in the opinion of Lenders which may be required for creating and perfecting the Security Interest over the Security in favour of the Security Trustee for the benefit of the Lender, in such form and manner satisfactory to the Lender.

"Security Interest" shall mean any mortgage, pledge, lien, equitable interest, assignment, conditional sales contract, hypothecation, right of other Persons, claim, encumbrance, title defect, title retention agreement, trust agreement, interest, option, commitment, restriction or limitation of any nature whatsoever, including restriction on use, voting rights, transfer, receipt of income or exercise of any other attribute of ownership, right of set-off, any arrangement (for the purpose of, or which has the effect of, granting security), any designation of loss payees or beneficiaries or any similar arrangement under or with respect to any insurance policy or any preference of one creditor over another arising by operation of law or any other Security Interest of any kind whatsoever, or any agreement, whether conditional or otherwise, to create any of the same.

"Security Trustee" shall mean SBICAP Trustee Company Limited or such Person, acting as security trustee, as may be identified by the Lenders and appointed as per the terms of the Security Trustee Agreement.

"Security Trustee Agreement" shall mean an agreement dated on or about the date of this Agreement, entered to be entered into between the Borrower, Lenders and Security Trustee, as may be extended, amended and restated or otherwise modified and in effect from time to time.

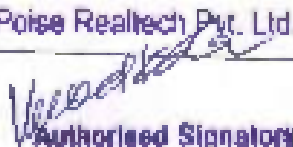

"Shareholding Documents" shall mean share purchase agreement (if any), shareholders agreement (if any) and such other documents evidencing and recording the ownership and rights of the shareholders of the Borrower.

"Supertech Limited" or "STL" shall mean an Indian company having corporate identification number U74899DL1995PTC074432 and registered office at 1114 RAMKUND CHAMBERS, 11 FLOOR 89, NEHRU PLACE NEW DELHI DL 110019.

"Taxes" means any taxes including income tax, sales tax, stamp duty, customs and import duties, levy, impost, octroi, duty imposed and/or levied of any nature whatsoever, whether by the Government of India or any Governmental Authority and wherever and whenever charged, levied or imposed together with any interest and penalties in relation thereto within the Republic of India.


"Transaction Documents" means and includes the Project Documents, Security Documents and Financing Documents.

1.2 For the purpose of this Agreement, unless the context or meaning thereof otherwise requires, the principles of interpretation as set forth hereunder shall apply:

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For Poise Realtech Pvt. Ltd.  Authorized Signatory		

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- (a) words importing a particular gender includes all genders.
- (b) 'Singular' includes plural, and vice versa.
- (c) A reference to:
- (i) any Article, Clause or Schedule means an article, clause or a Schedule to this Agreement;
  - (ii) an Account includes a reference to any sub-account of that Account;
  - (iii) an 'amendment' includes a supplement, modification, amendment, variation, accession, replacement or re-enactment and 'amended' is to be construed accordingly;
  - (iv) 'assets' include all properties whatsoever both present and future, (whether tangible, intangible or otherwise) (including intellectual property and intellectual property rights), investments, cash-flows, revenues, rights, benefits, interests and title of every description of the Borrower.
  - (v) 'authorization' or 'consent' or 'approval' or 'permission' includes a Clearance, resolution, license, exemption, filing, registration, authorization, consent, approval, permission;
  - (vi) 'encumbrance' includes a mortgage, charge, lien, pledge, hypothecation, Security Interest or any lien or transfer/disposal of any nature or description whatsoever;
  - (vii) an Article or Schedule or Annexure is, unless indicated to the contrary, a reference to an Article or Schedule or Annexure to this Agreement;
  - (viii) the word 'includes' or 'including' are to be construed without limitation;
  - (ix) no agreement shall include all schedules, annexures and exhibits of such agreement and all of such schedules, annexures and exhibits shall be deemed to be an integral part of such agreement;
  - (x) any statute shall be construed as including all statutory provisions consolidating, amending or replacing such statute, now existing or in force hereafter;
  - (xi) "Party" means a party to this Agreement and references to "Parties" shall be construed accordingly;
  - (xii) a person shall include such person's successors and permitted assignees or transferees, unless otherwise indicated in this Agreement;
  - (xiii) to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned from time to time;

Borrower	13	Lender
For Poise Realtech Pvt. Ltd.		

  
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- (xiv) a public organisation shall be regarded as including a reference to any successor to such public organisation or any organisation or entity which has taken over the functions or responsibilities of such public organisation;
- (xv) to a Government Authority shall be deemed to include a reference to any successor to such Government Authority or any organisation or entity which has taken over the functions or responsibilities of such Government Authority; and
- (xvi) reference to a 'month' or 'Month' shall mean a period beginning at 00:00 hours of the first day of the calendar month of a Gregorian Year and ending at 24:00 hours on the last day of such calendar month.
- (d) headings and the use of bold typeface shall be ignored in its construction;
- (e) any consent, approval, determination, waiver or finding to be given or made by any of the Secured Parties shall be made or given by such Secured Party in its sole discretion;
- (f) the words 'other', 'or otherwise' and 'whichever' shall not be construed *ejusdem generis* or be construed as any limitation upon the generality of any preceding words or matters specifically referred to;
- (g) all references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned from time to time;
- (h) words and abbreviations, which have, well known technical or trade/commercial meanings are used in this Agreement in accordance with such meanings;
- (i) any consent or waiver required to be provided by the Secured Parties or any of them shall mean the prior written consent or waiver of each of the Secured Parties or such of those who have given such consent or waiver;
- (j) where any action of the Secured Parties is subject to 'reasonability' under this Agreement or the other Financing Documents, such 'reasonability' shall be determined solely by such Secured Party(ies);
- (k) any determination with respect to the materiality or reasonableness of any matter including of any event, occurrence, circumstance, change, fact, information, document, authorization, proceeding, act, omission, claims, breach, default or otherwise shall be made by the Secured Parties, or any of them, at their sole discretion, which determination shall, in the absence of manifest error, be final and binding on all Parties;
- (l) 'repayment' includes 'redemption' and vice-versa and repaid, repayable, repay, redeemed, redeemable and redemption shall be construed accordingly;
- (m) a Potential Event of Default is 'continuing' if it has not been remedied or waived and an Event of Default is 'continuing' if it has not been waived;

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For Poise Realty Pvt. Ltd.	

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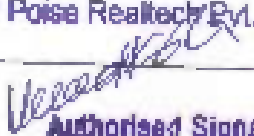

- (n) all duties, obligations and covenants shall be performed by the Borrower jointly and severally and all undertakings, declarations, confirmations and indemnities given hereunder shall be deemed to be given by the Borrower, jointly and severally. The Lenders shall have the right to proceed against one or both of the Borrower in case of a default by one or both of the Borrower;
- (o) the words 'hereof', 'herein', and 'hereto' and words of similar import when used with reference to a specific Article in, or Schedule to, or Annexure to this Agreement shall refer to such Article in, or Schedule to, or Annexure to this Agreement, and when used otherwise than in connection with specific Articles or Schedules, or Annexures shall refer to this Agreement as a whole;
- (p) when any number of days is prescribed in any document, the same shall be reckoned exclusive of the first and inclusive of the last day unless the last day does not fall on a Business Day, in which case the last day shall be the next succeeding day which is a Business Day;
- (q) the rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof (rule of *contra proferentem*), shall not apply;
- (r) the Lenders shall have the undisputable sole and exclusive right to ascertain, assess, analyze and conclude on the existence of a Material Adverse Effect and such decision/conclusion by the Lenders shall be conclusive and binding;
- (s) any consent, approval, determination, waiver or finding to be given or made by any of the Secured Parties shall be made or given by such Secured Party in its sole discretion;
- (t) any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the relevant other component and rounding the result up or down to the nearest number (with a rounding-up if there is no neutral number);
- (u) this Agreement shall come into effect and be binding on the Agreement date as mentioned aforesaid. This Agreement shall remain in force until termination in accordance with this Agreement or until all the amounts due and payable to the Lenders under the Transaction Documents are fully paid by the Borrower.

## 2. THE FACILITY

### 2.1 Facility

The Borrower agrees to borrow, from the Lenders and the Lenders agree to lend and advance to the Borrower during the Availability Period, a rupee term loan assistance not exceeding Rs. 200,00,00,000 (Rupees Two Hundred Crores only) (the "Facility") on the terms and conditions contained in this Agreement.

### 2.2 Purpose

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For Poisa Realech Pvt. Ltd. 	

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2.2.1 The Borrower agrees that they shall apply the proceeds of each Disbursement only for the purpose as specified below:

- (a) an amount aggregating to Rs. 110,00,00,000 (Rupees One Hundred and Ten Crores) forming part of the Facility, towards acquisition of rights in Identified Inventory through repayment of existing liabilities against the Identified Inventory and payment towards adjustable security deposit for Development Management Agreement; and
- (b) an amount aggregating to Rs. 90,00,00,000 (Rupees Ninety Crores) forming part of the Facility, towards construction cost of Project I and other costs incidental to the Facility.

2.2.2 The Borrower hereby agrees that any other use of the Facility shall require prior written consent of the Lenders.

### 2.3 Rights Several

The rights of each of the Secured Parties under the Financing Documents are separate and independent.

## 3. DISBURSEMENT MECHANISM

### 3.1 Availability



3.1.1 The Lenders may disburse the Facility during the Availability Period in one or multiple tranches or may be mutually agreed upon between the Parties and shall be subject to the satisfaction (or waiver) of each condition precedent set forth in Schedule III Part A (Conditions Precedent to Initial Disbursement), Schedule III Part B (Conditions Subsequent to Initial Disbursement) and III Part C (Conditions Precedent to all Disbursements after the Initial Drawdown) *hereof*, provided however, that, unless otherwise stated in Schedule III Part A (Conditions Precedent to Initial Disbursement), the conditions set forth in Schedule III Part B (Conditions Subsequent to Initial Drawdown), and III Part C (Conditions Precedent to all Disbursements after the Initial Drawdown) of this Agreement shall be required to be satisfied (or waived) only in connection with the Initial Drawdown.

3.1.2 Notwithstanding anything contained in this Agreement, the Borrower shall provide to the Lenders, in respect of all proposed Disbursements under this Agreement, a valid Disbursement Notice.

### 3.2 Mechanics for Requesting Disbursement

Subject to Clause 3.1 hereof, the Borrower may request a Disbursement under this Agreement by delivering to the Lenders, a Disbursement Notice with respect to each such Disbursement substantially in the form attached in Exhibit 2 hereto, no later than 1 (one) Business Days prior to the Initial Disbursement Date or the disbursement date, or such shorter period as may be acceptable to the Lenders, as the case may be.

### 3.3 Mechanics for Funding Disbursements

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Borrower For Poise Realtech Pvt. Ltd.  Authorized Signatory	Lender 

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3.3.1 Procedure for Disbursement

- (a) Upon receipt of the Disbursement Notice from the Borrower, the Lenders shall review such Disbursement Notice and attachments thereto to determine whether all required documentation has been provided and whether all applicable conditions precedent pursuant to this Agreement under which such Disbursement is requested have been satisfied; and
- (b) Subject to Clause 3.2 (*Mechanics for Requesting Drawdowns*) and the other sub-sections of this Clause 3.3 (*Mechanics for Funding Drawdowns*) and satisfaction or waiver of all applicable conditions precedent and any other applicable provisions under this Agreement under which such Disbursement is requested, at such time all applicable conditions precedent set forth in Schedule III have been satisfied or waived by the Lenders the Disbursement under the Facility shall occur.
- (c) If in connection with any Disbursement, any Lender determines that any applicable condition precedent under Schedule III A (*Conditions Precedent to Initial Drawdown*) or Schedule III C (*Conditions Precedent to all Drawdowns after the Initial Drawdown*) (as applicable) has not been satisfied, such Lender shall notify the Borrower prior to the disbursement date that the Disbursement may not be made and shall give the reasons therefor (any such notice, is hereinafter referred to as an "Unsatisfied CP Notice"). The Unsatisfied CP Notice shall specify the conditions precedent which have not been satisfied. Upon issuing such Unsatisfied CP Notice, the Lenders shall not have any obligation to make the Disbursement requested under the related Disbursement Notice unless such Unsatisfied CP Notice is revoked under sub-clause (d) below.
- (d) At such time, if ever, the Lenders determines that the condition precedent to the Disbursement which had not been satisfied or has been satisfied or waived in accordance with the Financing Documents, the Lenders shall notify the Borrower in writing that the event giving rise to such Unsatisfied CP Notice no longer exists or has been waived. Further, where the Borrower provides the Lenders information as to the satisfaction of the condition precedent, which is the subject of such Unsatisfied CP Notice, the Unsatisfied CP Notice shall be treated as being revoked as and when communicated by the Lenders to the Borrower, unless some of the Lenders issues a fresh Unsatisfied CP Notice.
- Upon the occurrence of any of the foregoing, such Unsatisfied CP Notice shall be treated as being revoked and the Lenders shall promptly notify the Borrower, whereupon the Lenders shall make the requested Disbursements under the Facility as may be applicable, as soon as practicable after receipt of the Lending Confirmation Notice in accordance with sub-clause (f) below.
- (e) No Lender shall have any liability to the Borrower or any Affiliate thereof or any other Lender arising from the issuance of an Unsatisfied CP Notice, if such Person issued the Unsatisfied CP Notice in good faith.
- (f) If the Lenders have not issued an Unsatisfied CP Notice pursuant to Clause 3.3.1(c) (*Procedure for Drawdowns*) and is satisfied that the conditions precedent to a Disbursement have been satisfied, or at such time as the Lender has issued a notice to the Borrower under Clause 3.3.1(d) (*Procedure for Disbursement*) and is otherwise satisfied that the conditions precedent to a Drawdown are satisfied or an

Borrower For Poise Realty Pvt. Ltd.	17 Lender
<i>[Signature]</i> Authorized Signatory	<i>[Signature]</i>

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Unsatisfied CP Notice is treated as being revoked pursuant to Clause 3.3.1(f) (*Procedure for Disbursement*) and the Lender is satisfied that the conditions precedent have been fulfilled, the Lender shall issue a notice confirming the Disbursement, (hereinafter the "Lending Confirmation Notice") and manner as may be satisfactory to the Lenders and in their sole discretion.

- (g) On the proposed disbursement date following the issue of a Lending Confirmation Notice, the Lenders shall make available to the Borrower at the relevant Lender's "Lending Office" the relevant amount at par. The mode of disbursement specified above shall be at the option of the respective Lenders.

3.3.2 Drawstop Notices

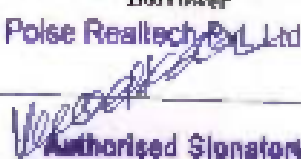
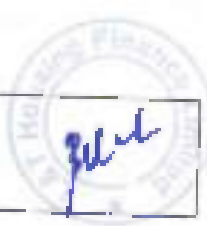
- (n) In addition to the ability to issue an Unsatisfied CP Notice pursuant to Clause 3.3.1 (*Procedure for Disbursement*) and notwithstanding the issuance of any Lending Confirmation Notice by the Lender pursuant to Clause 3.3.1(g) (*Procedure for Disbursement*) in connection with any Disbursement, any Lender may, on the occurrence of an Event of Default or a Potential Event of Default issue a notice (a "Drawstop Notice") to the Borrower and the other Lenders that no Disbursement shall be made under any Disbursement Notice.
- (b) A Drawstop Notice issued pursuant to this Clause 3.3.2 shall remain in full force and effect until:
  - (i) the Potential Event of Default or Event of Default which led to the issuance of such Drawstop Notice has been remedied by the Borrower or waived by the Lenders; or
  - (ii) the Lenders which issued such Drawstop Notice authorizes the Lenders to revoke such Drawstop Notice by sending notice of such revocation to the Borrower (which notice shall specify in reasonable detail the basis for such revocation and shall have attached thereto copies of relevant documentation supporting such revocation).
- (c) Upon the occurrence of any of the foregoing, such Drawstop Notice shall be treated as being revoked, whereupon the applicable Lenders shall make the requested Drawdowns as soon as practicable thereafter.

3.3.3 Reliance on Notices relating to Borrowing

The Secured Parties shall be entitled (but not obliged) to rely and act upon any Disbursement Notice and any documentation or information provided in connection with a Disbursement Notice, which appears on its face to have been duly completed, genuine and properly signed by the Authorized Officer notwithstanding that such Disbursement Notice, documentation or information later on proves to be not genuine, not properly signed or otherwise incorrect in any respect.

3.3.4 Drawdown Notice Irrevocable

Each Disbursement Notice is irrevocable and shall commit the Borrower to borrow in accordance with such notice.

Borrower <b>For Polse Realtech Pvt. Ltd.</b>  <b>Authorized Signatory</b>	OR	Lender 
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### 3.3.5 Made of Disbursements

- (a) All Disbursements by the Lenders to the Borrower under this Agreement shall be made through credit to the account designated by the Borrower in the Disbursement Notice and maintained with the bank acceptable to the Lenders (hereinafter referred to as "Designated Account").
- (b) The Designated Account shall be used for all the Disbursement of the Facility made by the Lenders to the Borrower under this Agreement.

3.3.6 The Facility shall have a door to door tenor of 72 (seventy two) months.

3.3.7 The Borrower hereby agrees that unless the Lenders otherwise agrees, the Borrower's right to make Initial Disbursement from the Facility shall cease at the end of 90 (ninety) days from the date of execution of this Agreement.

3.3.8 The Facility shall be available to be withdrawn by the Borrower during the Availability Period subject to fulfilment of terms and conditions detailed in this Agreement.

## 4. CANCELLATION OF THE FACILITY

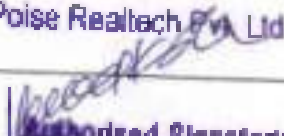

### 4.1 Automatic Cancellation

The undrawn Commitments under this Agreement shall be cancelled at the close of normal working hours on the last Business Day of the Availability Period unless otherwise agreed to by the Lenders in writing. The Borrower shall not cancel the Facility or any part thereof without the prior written approval of the Lenders.

### 4.2 Cancellation by the Lenders

4.2.1 The Borrower hereby agrees that the Lenders reserves the right, without assuming any liability, without providing any reasons and without any prior notice, to unconditionally revoke, cancel, alter, modify or change, at any time, the Facility at its sole discretion for any reason whatsoever, including but not limited to the following events:

- (a) In case any part of the Facility is not utilized by the Borrower.
- (b) Upon occurrence of an Event of Default (including Potential Event of Default).
- (c) Upon occurrence of a Material Adverse Effect.
- (d) In case of deterioration in the loan account in any manner whatsoever.
- (e) In case of any misrepresentation by the Borrower or any document or information furnished to the Lenders is found to be incorrect or untrue.
- (f) In case of any other development or situation which in the opinion of Lenders will be prejudicial or detrimental to the interest of the Lender.
- (g) In case of any misrepresentation by the Borrower or any document or any information is furnished to the Lenders is found to be not true or incorrect.

Borrower	Lender
For Poise Realtach Pvt. Ltd.  Authorized Signatory	

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- 4.2.2 The Borrower hereby agrees that exercise by the Lenders of their right of suspension shall not preclude Lenders from exercising its/their right of cancellation, either for the same or any other reason specified in this Clause 4.2 and shall not limit any other provision of this Agreement. Upon any cancellation the Borrower shall pay to the Lenders all fees and other amounts accrued (whether or not then due and payable) under this Agreement up to the date of that cancellation.

#### 4.3 General Provisions for Cancellation

No amount of the Facility cancelled under this Agreement may subsequently be reinstated. No cancellation of the Facility is permitted except in accordance with the express terms of this Agreement.

### 5. INTEREST AND FEES

#### 5.1 Interest

- 5.1.1 The Borrower shall pay to the Lenders, interest ("Interest") on their respective Loans at the Interest Rate as specified in Schedule I B of this Agreement for the Interest Period on each Interest Payment Date.
- 5.1.2 In case of a New Lender pursuant to any accession or novation and/or assignment in accordance with Clause 20.6 (*Novation and Participation*) who becomes a party to this Agreement, the Interest Rate of such New Lender shall be linked to the Benchmark Rate of the Lenders, however, the New Lender shall have an option to link to its respective Benchmark Rate on the expiry of 6 (six) months from the Initial Disbursement of the New Lender and their Spread shall be the difference between the Interest Rate and the Benchmark Rate as applicable, on the date of novation/assignment. Thereafter the Spread shall be reset in accordance with the provisions of this Agreement. The New Lender shall have the option to specify interest rate reset period in order to give effect to any change in the underlying Benchmark Rates, in line with the Applicable Laws. The Interest Rate of the New Lender shall not be lower than the Benchmark Rate and shall be in line with Applicable Laws.
- 5.1.3 On the reset of Spread pursuant to the provisions specified in Schedule I B, the Lenders shall notify the Borrower of such reset Interest Rate (the "Reset Lending Rate") within 15 (fifteen) days from the Interest Reset Date, and the Borrower shall, from the Interest Payment Date immediately following the Interest Reset Date, pay interest on all the existing Loans at the Reset Lending Rate.
- 5.1.4 The Parties agree and acknowledge that Lender at its sole discretion shall have option to increase IRR for the Facility up to 12% per annum, subject to covenants stipulated in this Agreement, and demand payments from the Borrower during the term of the Facility at its discretion to achieve the aforementioned IRR.
- 5.1.5 In the event of breach of the terms of the Financing Documents or during subsistence of an Event of Default, no benefit of reduction in Interest, as provided herein shall be passed by the Lenders to the Borrower, until the breach is cured by the Borrower. *Provided*, such breach shall not affect the Interest being paid by the Borrower, on the date of occurrence of such default.

#### 5.2 Interest Tax

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Borrower For Polse Realtch Pvt. Ltd.	Lender
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*[Signature]*  
Authorized Signatory

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The Borrower shall pay to the Lenders, in addition to the interest on the Loans payable as per this Clause 5, Interest Tax, service tax and all other imposts, duties, levies and taxes of whatever descriptions levied pursuant to any law or otherwise by statutory authority including the GOI or other authorities in connection with the Facility (as required under Applicable Law) including but not limited to stamp duties, professional fees, cost and charges for advocates, counsel fees for opinions, advice, creation of Security, investigation of title, protection of the Lenders' interests and other charges or surcharges levied by GOI or any other statutory authority in connection with the Facility, as applicable from time to time.

### 5.3 Additional Interest

Without prejudice to the obligations of the Borrower under this Agreement and the other Financing Documents, the Borrower shall pay additional interest (the "Additional Interest") at the Additional Interest Rate on the defaulted amount, for each day of delay beyond the Due Date, upon the occurrence of a default by the Borrower in payment of interest, installment of principal, or any other monies accruing due to such Lenders including all costs, charges, expenses due under this Agreement or any other Financing Document on the Due Date (whether at stated maturity, by acceleration, by mandatory prepayment in accordance with this Agreement or otherwise), such Additional Interest will be computed from the respective Due Date until the date on which the Borrower have repaid such amounts, to the satisfaction of the Lenders, and shall be payable on demand and if no demand is made then on the Interest Payment Date, immediately following the date of default.

*Provided however*, that the levy of Additional Interest under this Clause 5.3 of this Agreement shall not prevent the Lenders from declaring an Event of Default or exercise of any rights and remedies available to Lenders upon the occurrence of an Event of Default.

### 5.4 Accrual

All interest accruing on amounts outstanding under the Facility shall be paid in arrears at the end of each Interest Period and shall accrue from day to day and be calculated on the basis of the actual number of days elapsed in a year of 365 (three hundred and sixty-five) days.

### 5.5 General

- 5.5.1 The determination of the applicable Interest Rate by the Lender, from time to time, shall be final, conclusive and binding upon the Borrower without any demur or protest.
- 5.5.2 The Borrower acknowledges that any sum, interest, default amount including but not limited to the Additional Interest under Sections 5.4 (Additional Interest) and 5.6 (Further Interest) of this Agreement respectively are reasonable and represent a genuine pre-estimate of the loss incurred by the Lenders in the event of non-payment/non performance by the Borrower.
- 5.5.3 The Borrower acknowledges that the Facility provided under this Agreement is for a commercial transaction and waives any defense available under usury or other laws relating to the charging of interest.


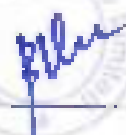
### 5.6 Further Interest

Borrower	21	Lender
For Poise Respects Pvt. Ltd.		
<i>[Signature]</i>		<i>[Signature]</i>
Authorized Signatory		

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- 5.6.1 Without prejudice to the obligations of the Borrower under this Agreement and the other Financing Documents, the Borrower shall pay Further Interest (the "Further Interest") at Further Interest Rate, during the currency of the Facility, for the relevant period and for each default specified below:
- Non adherence to the construction schedule as provided in Schedule V (Construction Schedule) hereof;
  - Non achievement of sale of units and sales collections in the Projects as per Schedule VII (Sales Schedule) hereof;
  - Non creation and perfection of Security Interest on the Security, pursuant to the provisions of this Agreement;
  - Non closure of any existing escrow mechanisms or any retention account mechanism with the any of the existing lenders of the Borrower, if any, within the agreed timelines with the Lenders;
  - Non-maintenance of DSR and not adhering to other covenants as per agreed provisions and/or breach or non-adherence of any term(s) contained in other Transaction Documents in relation to DSR, the Borrower shall (if the same may be levied by the Lenders as per their own discretion); and/or
  - Breach of any terms and conditions of the Transaction Documents.
- 5.6.2 The Further Interest payable at Further Interest Rate under as per this Clause 5.6.1 (Further Interest) shall be due and payable from the date of the occurrence of breach till such breach is cured to the satisfaction of the Lenders.
- 5.6.3 The applicable Further Interest over and above the Further Interest Rate, shall be payable on demand or, if not demanded, on cash Interest Payment Date, falling after any such amount(s), in relation to which payment has not been made, has become due.
- 5.6.4 The Borrower hereby agrees that the obligation to pay the applicable Further Interest or Additional Interest shall neither be considered as a waiver of Event of Default nor shall absolve Borrower of its other obligations in respect of such default and/ or breach or non-adherence of the terms of Transaction Documents and the payment of said Further Interest, Additional Interest or Additional Fee shall be without prejudice to Lender's right to exercise all rights and remedies available to it under this Agreement and/ or any other Transaction Documents.
- 5.6.5 Notwithstanding anything contained in any of the Financing Documents, the Additional Interest, the Further Interest and Additional Fee when payable by the Borrower to the Lender, shall be independent of each other, unless so communicated at the sole and absolute discretion of the Lenders.
- 5.6.6 The Lenders shall have the right to exercise any or all rights available to it under the Transaction Documents including but not limited to Levy Additional Interest or Further Interest or upon occurrence of an Event of Default and upon expiry of the cure period, if any, to recall all or part of the Facility and cancel undischursed Facility.

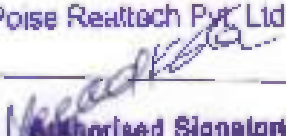


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Borrower For Poise Reatech Pvt. Ltd.	Lender
 Authorised Signatory	

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5.6.7 Notwithstanding anything contained herein, the Lenders shall in their sole discretion shall be entitled to exercise any rights available them under the Transaction Documents including but not limited to levy of Additional Interest, Further Interest or Additional Fee mentioned herein, cancelling or calling back of the Facility (in part or full), after expiry of cure period, if applicable, upon occurrence of an Event of Default, the Lenders shall have the sole discretion in determining upon an Event of Default.

## 6. REPAYMENT

- 6.1 Upon expiry of the Moratorium Period, the Borrower agrees and undertakes to repay the Facility in 12 (twelve) structured quarterly instalments on the last day of each Financial Quarter, as provided under Schedule II hereof.
- 6.2 The first Repayment Installment for the Lenders shall be due on the First Repayment Date. All subsequent Repayment Installments shall be due on the successive Repayment Dates.
- 6.3 No amounts repaid under the Facility may be re-borrowed under the Financing Documents.
- 6.4 The Borrower hereby agrees that the Interest Rate and other interest and charges (including, Further Interest and any Additional Interest) shall be payable as per the terms of this Agreement during the term of the Facility, including during the Moratorium Period.
- 6.5 The Lenders may, wherever warranted, revise, vary or postpone the repayment of the principal amounts of the Facility or the balance outstanding for the time being or any Repayment Installment(s) of the said principal amounts of the Facility or any part thereof by giving prior notice to the Borrower on such terms and conditions as may be decided by it and the Borrower shall be deemed to have consented to the same.
- 6.6 If the Repayment Installment or an Interest Payment Date falls on public holiday, then such Repayment Installment shall be made on the first Business Day after that Repayment Date and the interest shall be paid on the date falling prior to the actual Interest Payment Date (and Interest Rate will be calculated up to the actual repayment date).
- 6.7 Repayment of the Facility would include all amounts actually received by the Lenders by any or all of the following modes:
- Repayment by the Borrower of the Facility and interest thereon in accordance with the Repayment Schedule;
  - Amounts received by the Lenders through electronic clearing service or on encashment of the post-dated cheques.
- 6.8 Notwithstanding anything contained herein, in the event of occurrence of Event of Default or Potential Event of Default or non-achievement of projected cash flows or deterioration or non-realisation of Project Receivables within reasonable time, the Lenders without prejudice to their other rights under the Transaction Documents shall have the right at any time and from time to time to review, accelerate and/or reschedule the Repayment terms of the Facility or of the Outstanding Amount thereof in such manner as Lenders may at their sole discretion deem fit. In such an event, without any demur or protest, the Borrower shall remit payment as per such revised Repayment Schedule as revised by the Lenders for the amount outstanding at such time.

Borrower	23	Lender
For Poise Realtach Pvt Ltd. 		 
<b>Authorized Signatory</b>		

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6.9 The Repayment shall be made through the Escrow Accounts to be opened and established by the Borrower with the Escrow Banks in the name of the Borrower as per the terms and conditions contained in the Escrow Agreements. At any point of time if the proceeds lying to the credit of the Escrow Accounts are not sufficient to repay outstanding amount of the Loan on the Repayment Date, the Borrower undertakes to deposit, sufficient funds to meet the shortfall amount into the Escrow Accounts from their income other than the Project Receivables and Identified Inventory Receivables. In the event the Borrower fails to deposit sufficient funds in the Escrow Accounts to make good the shortfall, Lenders shall have a right to present the Repayment Cheques, of that month on the Due Date. The Parties agree that the Borrower shall make Repayment through such other sources and in such manner, which shall be with the prior written approval of the Lenders.

7. **PREPAYMENT**

7.1 **Prepayment from Project cash flow**

The Borrower hereby agrees and shall ensure that, any cash flow generated from the Projects and/or Identified Inventory, by way of any sale, allotment, booking or any other kind of alienation of interest in any units of the Projects or Identified Inventory, as the case may be, either directly or indirectly or any other mode of obtaining advance against transfer of rights in the land or construction thereon, be mandatorily credited into the respective Escrow Accounts and shall be available for the sole utilization by the Lenders towards prepayment of the Outstanding Amount (without payment of any prepayment charges) or such other revised rates as may be stipulated by the Lenders, from time to time. The amount prepaid as above will be adjusted towards the principal amount of the Loan in forward order of maturity or in the manner as determined by the Lenders.


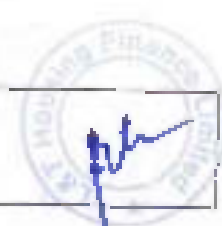
7.2 **Prepayment through Re-Financing and Other Sources**

Subject to prior written consent of the Lenders, in the event Borrower prepays the Outstanding Amount (or any part thereof) by availing any re-financing Facility from any other bank, non-banking financial institution or financial institutions, from any cash flow received from inventory funding, bulk sale in the nature of loan (more than 10% of useful stock of the Projects) and/or from any other sources, with a payment of Prepayment Premium. The Borrower shall provide a prior written notice of at least 15 (fifteen) Business Days to the Lenders, requesting the written consent for such prepayment provided in this Clause 7.2.

7.3 **Prepayment Upon Interest Rate Reset**

In the event upon reset of Interest Rate in accordance with this Agreement, is not acceptable to the Borrower, the Borrower may prepay the Outstanding Amount, either in full or in part thereof within 90 (ninety) days of such reset of Interest Rate, subject to the Borrower providing an irrevocable notice of prepayment to the Lenders within 30 (thirty) days from the date of communication of such reset of Interest Rate. Such notice shall, *inter alia*, specify the amount to be prepaid and the date of prepayment. No prepayment charges will be charged by the Lenders for such payments. However, till the time entire Outstanding Amount is paid to the Lenders to the satisfaction of the Lenders, the revised Interest Rate shall be payable by the Borrower.

7.4 **Prepayment in absence of Minimum Selling Price**

Borrower	24	Lender
For Poise Realtech Pvt. Ltd. 		

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The Parties hereby agree that in the event the sale of the unsold units is below the Minimum Selling Price after obtaining the prior written consent of the Lenders, the Borrower shall prepay the Loan to the extent of differential amount, without payment of any Prepayment Premium.

## 8. PAYMENT MECHANISM

### 8.1 Place

Except to the extent otherwise provided herein, all payments to be made by the Borrower or any other Person (as applicable) having obligations under the Transaction Documents, to the Lenders in terms of this Agreement or other Transaction Documents, shall be made directly to the Lenders at their respective Leading Offices or at such other place as may be specified by the Lenders by real time gross settlement/other mechanism for payment specified by the Lenders, in each case, through the Accounts in accordance with the Escrow Agreements.

### 8.2 Currency

Amounts payable to the Lenders under the Financing Documents shall be payable in Rupees.

### 8.3 Set-off and Counterclaim

All payments made by the Borrower shall be made without deduction (other than any tax deduction in accordance with Clause 20.14.) (Taxes and Net Payments), set-off or counterclaim.

### 8.4 Non-Business Days

If a payment under this Clause 8.4 is due on a day, which is not a Business Day, the Due Date for that payment shall instead be the immediately preceding Business Day.

### 8.5 Appropriation of Payments

The Borrower's further agrees and confirms that anything contained herein or in any other documents or instructions in writing by the Borrower or unless otherwise agreed to by the Lenders, any payments due and payable under this Agreement and made by the Borrower or amount realized/received/recovered by the Lenders shall be appropriated towards such dues in the order they appear herein below:

- (a) Costs, charges, expenses and other monies;
- (b) Interest on costs, charges, expenses and other monies;
- (c) Additional Interest;
- (d) Further Interest;
- (e) Interest;
- (f) Prepayment Premium; and

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Borrower For Price Realised Pvt. Ltd. <i>[Signature]</i>	Lender <i>[Signature]</i>

Authorized Signatory

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## (g) Repayment Instalments.

Notwithstanding anything contained in Clause 8.5 hereinabove, Lenders may, at their discretion, appropriate such payments towards the dues, if any, payable by the Borrower and/ or any of its group entities in respect of Financial Indebtedness availed/ to be availed by the Borrower and/ or any of its group entities from Lenders and/ or Lender's Group Companies in the order specified in the relevant loan agreement(s).

**8.6 Realisation at Par**

All sums payable under this Agreement shall be so paid by the Borrower as to enable the Lenders to realise the monies at par on the Due Date.

**9. CONDITIONS PRECEDENT & SUBSEQUENT****9.1 Pre-disbursement Conditions**

The Initial Disbursement under the Facility shall be made at the discretion of the Lenders subject to the Borrower Promoter, Corporate Guarantor, as the case may be, complying with all the conditions to the satisfaction of the Lenders, as detailed in Part A of Schedule III, (*Conditions Precedent to Initial Disbursement*) or such other conditions as may be prescribed by the Lender.

**9.2 Post disbursement conditions**

The obligations of Lenders to make further disbursement out of the Facility shall, *inter alia*, be subject to the Borrower and the Security Providers, as the case may be complying with the conditions to the satisfaction of the Lender, as detailed in Schedule III Part B (*Conditions Precedent for Subsequent Disbursement*) or such other conditions as may be prescribed by the Lenders.



**9.3 Condition Precedent to all Disbursement after the Initial Disbursement**

Any disbursement under the Facility shall be made at the discretion of the Lenders subject to the Borrower and the Security Providers, as the case may be, complying with all the conditions to the satisfaction of the Lenders, as detailed in Part C of Schedule III, (*Conditions Precedent for all Disbursement after the Initial Disbursement*).

**10. SECURITY****10.1 The Outstanding Amount shall be secured by the following:**

- (a) a *first pari passu* charge on:
- (i) the land, development rights, title and interest of Supertech Limited on land admeasuring 100 Acres forming part of Project I, owned by Supertech Limited;
  - (ii) the land, development rights, title and interest of Supertech Limited on land admeasuring 49 Acres forming part of Project II, owned by Supertech Limited;
  - (iii) entire movable assets, including but not limited to, plant and machinery,

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Borrower	Lender
For Poise Realtech Pvt. Ltd. 	

Authorized Signatory

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machinery spares, tools and accessories, both present and future, pertaining to the Projects, by Supertech Limited;

- (iv) all the rights, title, interest, benefits, claims and demands whatsoever of Supertech Limited and the Borrower in, to and under the Project Documents (including but not limited to Insurance Contracts, insurance proceeds and the Clearances), duly acknowledged and consented to by the counterparties to the Project Documents (if such Project Document requires prior consent of such counterparties) before the creation of security as within-mentioned, all as amended, varied or supplemented from time to time.
- (v) all the rights, title, interest, benefits, claims and demands whatsoever in the Identified Inventory by DPPL and Supertech Limited;
- (vi) Projects Escrow Accounts, Debt Service Reserve and any monies deposited therein including Projects Receivable or any account in substitution thereof (including permitted investments in lieu thereof), subject to provisions of Applicable Law; and
- (vii) Identified Inventory Escrow Account and any monies deposited therein including Identified Inventory Receivables or any account in substitution thereof (including permitted investments in lieu thereof), subject to provisions of Applicable Law.

- (b) An exclusive pledge over 100% (one hundred percent) paid up equity shares of Borrower held by the Promoter and Mr. Prasad Kumar Gupta, in favour of the Security Trustee for the benefit of the Lenders.
- (c) An exclusive pledge over 100% (one hundred percent) paid up equity shares of DPPL, in favour of the Security Trustee for the benefit of the Lenders.
- (d) Personal guarantee by the Promoter in favour of the Security Trustee for the benefit of the Lenders.
- (e) Corporate guarantee by STL in favour of the Security Trustee for the benefit of the Lenders.

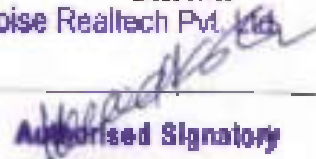

10.2 A demand promissory note executed by the Borrower in favour of the Lenders, prior to the Initial Disbursement Date.

(The Security Interest created pursuant to Clause 10.1 and Clause 10.2 shall be collectively referred to as the "Security")

10.3 The Security created or to be created to secure the Facility shall be a first ranking Security Interest and shall rank *pari passu* inter se the Lenders, without any preference or priority to one over the other or others.

10.4 The Borrower shall and shall cause to create the Security Interest as stipulated in Clause 10.1 (b), Clause 10.1(d) and Clause 10.1(c) and Clause 10.2, prior to the Initial Disbursement Date and perfect the same within 30 (thirty) days of creation of such Security Interest.

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- 10.5 The Borrower shall and shall cause to create the Security Interest as stipulated in Clause 10.1 (a)(v) and Clause 10.1(a)(vi) within 7 (seven) days from the Initial Disbursement Date, in the form and manner satisfactory to the Lenders and perfect the same within 30 (thirty) days of creation of such Security Interest.
- 10.6 The Borrower shall and shall cause to create the Security Interest as stipulated in Clause 10.1 (c) within 30 (thirty) days of the Initial Disbursement Date, in the form and manner satisfactory to the Lenders and perfect the same within 30 (thirty) days of creation of such Security Interest.
- 10.7 The Borrower shall cause for obtaining of Clearances for creation of Security Interest on the security stipulated in Clause 10.1(a)(i), Clause 10.1(a)(ii), Clause 10.1(a)(iii), Clause 10.1(a)(iv), Clause 10.1 (v) and Clause 10.1 (vi), respectively and shall cause to create such Security Interest within 45 (forty five) days of the Initial Disbursement Date, in the form and manner satisfactory to the Lenders and perfect the same within 30 (thirty) days of creation of such Security Interest.
- 10.8 The Borrower shall ensure that during the entire tenure of the Facility and till the Final Settlement Date, there is a minimum 1.3 (one point three) times the security cover of the Facility.
- 10.9 The Borrower shall make out a good and marketable title to its properties to be secured in favour of the Secured Parties to the satisfaction of Secured Parties and comply with all such formalities as may be necessary or required for the said purpose.
- 10.10 So long as any monies remain due and outstanding to the Secured Parties under the Financing Documents, the Borrower undertakes to notify the Secured Parties in writing of all its acquisitions of immovable properties pertaining to the Projects and as soon as practicable thereafter to make out a marketable title to the satisfaction of Secured Parties, mortgage the same, in such form and manner as may be decided by the Secured Parties, in favour of the Security Trustee for the benefit of the Lenders by way of first mortgage in the form and manner acceptable to the Security Trustee.
- 10.11 The Security shall be created in the form and manner satisfactory to the Secured Parties and within the timelines set out in this Agreement.

## 11. REPRESENTATIONS AND WARRANTIES

- 11.1 The Borrower makes the following representations and warranties as on the date of this Agreement in order to induce each of the Secured Parties to enter into the Financing Documents. These representations and warranties shall survive the execution and delivery of the Financing Documents and the making of the Disbursements under this Agreement and shall be repeated, by reference to the facts and circumstances then existing, on each day until the Final Settlement Date.

(a) *Organization and Authority:*

The Borrower is a company duly incorporated and validly existing under the laws of India and has the corporate power and has obtained all required authorizations to own its property and assets, conduct its business as presently conducted and to enter into, and comply with its obligations under, the Transaction Documents to which it is a party or will be a party as per the terms of this Agreement.

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<p>For Poise Realtech Pvt. Ltd.</p> <p><i>[Signature]</i></p> <p>Authorized Signatory</p>	<p>Lender</p> <p><i>[Signature]</i></p>

*[Signature]*  
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(b) *Validity*

This Agreement and each Transaction Document to which the Borrower is a party has been, or will be, duly authorized and executed by the Borrower and constitutes, or will be and when executed constitute, a valid and legally binding obligation of the Borrower, enforceable in full force and effect in accordance with the terms contained therein.

(c) *Status of Authorizations*

- (i) All the Borrower's authorizations either statutory or contractual as may be required to execute and comply with Borrower's obligations under this Agreement and each of the other Transaction Documents to which it is a party have been duly and are in full force and effect; and
- (ii) All authorizations either statutory or contractual (as the case may be) required to conduct Borrower's business, currently carrying on and is contemplated to be carried on; to carry out the Projects have been duly obtained by the Borrower, each such authorization is in full force and effect and the Borrower is in compliance with all terms and conditions of such authorizations

(d) *No Conflict*

Neither the making of or any terms of the Transaction Documents to which the Borrower is a party nor the compliance with its terms will conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default or require any consent under, any existing indenture, mortgage, agreement or other instrument or arrangement to which the Borrower is a party or by which it is bound, or violate any of the terms or provisions of the Borrower's Charter or any authorization, judgment, decree or order or any statute, rule or regulation applicable to the Borrower save and except as may be upfront disclosed to the Lenders in writing.

(e) *No Amendments to Charter*

The Borrower has submitted the certified true copies of its Charter with Lenders and confirms that these are final/ last amended documents and neither entering into the Transaction Documents by the Borrower nor any terms contained therein are in breach or inconsistent to the provisions of the Charter of the Borrower.

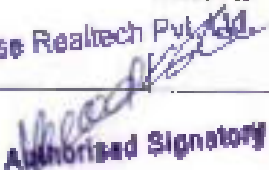


(f) *Accuracy*

The Borrower confirms the accuracy, correctness and validity of the information provided by the Borrower in its loan application made to the Lenders, including all other prior or subsequent explanation/s/information given to Lenders in this behalf.

(g) *Filings and Payments*

- (i) The Borrower certifies that all registrations, recordings, filings and notarizations of any Financing Documents and all payments of any tax or duty, including without limitation stamp duty, registration charges or

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similar amounts which are required to be effected or made by the Borrower which is necessary to ensure the legality, validity, enforceability or admissibility in evidence of the Financing Documents have been made or shall be made in accordance with the relevant Financing Documents. The Borrower should have submitted a copy of all registrations, recordings, filings and notarisations of any Financing Documents to the Lenders for their records.

- (ii) The Borrower has filed all tax returns and paid all Taxes and fees (other than those Contested In Good Faith), including in relation to stamp duties and registration fees due and payable.

(h) *Financial Condition*

The Borrower has not suffered any change in its financial condition and conditions in the financial market that has a Material Adverse Effect; and

(i) *Financial Statements*

The unconsolidated and consolidated financial statements of the Borrower and its subsidiaries, if any, for the last 3 (three) years:

- (i) have been prepared in accordance with the IND AS consistently applied during the period involved, and give a true and fair view of the financial condition of the Borrower as of the date as of which they were prepared and the results of the Borrower's operations during the period then ended; accounting standards and practices in force in India consistently applied during the periods involved and present truly and fairly the financial position and results of the operations of the Borrower and the Borrower has no liabilities; or
- (ii) disclose all material liabilities (including guarantees and other contingent liabilities) of the Borrower, and the reserves, if any, for such material liabilities and material unrealized or anticipated liabilities and material losses arising from commitments entered into by the Borrower.


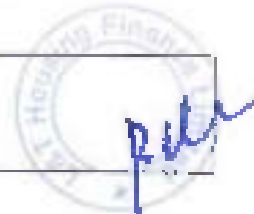
(j) *Material Agreements*

The Borrower has neither entered into any arrangement and/ or agreement of any nature nor has committed to enter into, any contract which would or might affect the judgment of a prospective investor (if any) and could have resulted or result into a Material Adverse Effect.

(k) *Title to Assets and Permitted Liens*

- (i) With regard to all the Security (created or to be created in favour of the Lenders and/ or all the assets owned or purported to be owned by the Borrower and for asset(s) it proposes to lease a clear, good, valid, legal and marketable title exist alongwith valid ownership/leasehold interest without any Security Interest (except for Permitted Security Interest) of any nature whatsoever and no contracts or arrangements, conditional or

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unconditional, exist for the creation of any Security Interest by the Borrower, except for the Permitted Security Interest.


- (ii) All payments including all Taxes in relation to the Properties have been paid in full to all the relevant parties and as on date there are no outstanding payments in relation to the same.
- (iii) No Security Interest (except for Permitted Security Interest) has been created on the whole or any part of the Mortgaged Properties and Project, in any manner whatsoever save and except rights created / proposed to be created in favour of the Lenders herein.
- (iv) Save as the Permitted Security Interest, the Borrower has not created any Security Interest upon any of its present or future revenues or other assets in favour of any Person nor does it have any obligation to create any Security Interest.
- (v) The Borrower represents that there are no document, judgment or legal process or other charges of any latent or patent defect affecting the title of the Mortgaged Properties which has remained undisclosed (in writing) and/or which may prejudicially affect the interest of Lenders under the Transaction Documents in any manner whatsoever.
- (vi) The Projects constructed from the proceeds of the Facility are neither included nor is/ are affected by any of the schemes of the Central/ State Government or of the improvement trust or any other public body or local authority or any alignment, widening or construction of road under any scheme of the Central/ State Government or of any Corporation, Municipal Committee, Gram Panchayat etc.
- (vii) All Clearances used in connection with the Security for creation of Security Interest has been obtained and no term contained in such Clearances restrict it from or imposes any conditions (other than as set out in this Agreement) for: (A) creating Security in favour of the Lender, or (B) the entry into, delivery and performance of its obligations under Financing Documents.

(j) **Taxes**

All tax returns and reports of the Borrower required under Applicable Law have been duly filed within the period legally specified and all Taxes, obligations, fees and other governmental charges upon the Borrower, or its properties, or its income or assets, which are due and payable or to be withheld, have been paid or withheld, other than: (A) those presently payable without penalty or interest; and (B) disputed taxes, obligations, fees and other governmental charges against which sufficient reserves are maintained.

(k) **Litigation**

- (i) The Borrower is neither engaged in nor threatened by any litigation, arbitration or administrative proceedings, the outcome of which could result into a Material Adverse Effect;

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- (ii) No judgment or order has been issued against the Borrower which has or may reasonably be expected to have a Material Adverse Effect; and/or
- (iii) No suit is pending in the or any other court of law or forum of jurisdiction in respect of the Mortgaged Properties.

(u) *Compliance with Law*

The Borrower is in compliance with all the Applicable Laws.

(v) *Environmental Matters*

- (i) There are no material social or environmental risks or issues in relation to the Project; and
- (ii) It has not received nor is aware of either (A) any existing or threatened complaint, order, directive, claim, citation or notice from any authority or (B) any material written communication from any Person concerning the Project's failure which failure has, or could reasonably be expected to have, a Material Adverse Effect or a material adverse impact on the implementation or operation of the Project.

(w) *Labour Matters*

There are no ongoing or threatened, strikes, slowdowns, collective labor disputes, or work stoppages by employees of the Borrower.

(x) *Group Companies Transactions*

- (i) The description of all the Borrower's group companies' transactions as set out in the Borrower's latest financial statements is accurate; and/or
- (ii) The Borrower and/or its group companies have no overdues/nor defaulted in repayment of any amount due and payable to any other bank/ financial institutions.

(y) *Use of Proceeds*

The proceeds of the Facility will be applied exclusively for the purpose set out under Clause 2.2 of this Facility Agreement.

(z) *Capitalization*

The description of the ownership of the Borrower as set out in the Borrower's latest financial statements is accurate.

(aa) *No Material Omissions*

None of the representations and warranties in this Clause 11.1 omits any matter, the omission of which makes any of such representations and warranties misleading in any material respect.

(ab) *Other Existing Loans*

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<p>For Poise Realtech Pvt. Ltd.</p> <p><i>[Handwritten Signature]</i></p>	<p><i>[Handwritten Signature]</i></p> <p><i>[Circular Stamp]</i></p>

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There exists are no outstanding default under any other Financial Indebtedness or otherwise, except as disclosed to the Lenders in writing.

(v) *Defaulter List; ECGC Caution List; Related Party*

- (i) The Borrower, its directors, Promoters, Guarantors or Affiliates do not figure in any list of willful defaulters circulated by RBI/CIBIL or the caution list of the Export Credit Guarantee Corporation or the specific approval list or COFF/PCOA defaulters list or the Lender's defaulters list or the defaulter list of any bank or financial institution or any other Government Authority and no director of the Borrower is disqualified under Section 164 of the Companies Act, 2013.
- (ii) The Borrower confirms that none of the directors are directors in any company which has been identified as a willful defaulter by the RBI/CIBIL, or any regulatory authority.
- (iii) The Borrower shall not induct a Person in the capacity of director / Promoter who is a director / partner / member / trustee of a company / firm / association of persons / trust as the case may be, identified as willful defaulter. In the event either the Borrower is identified as a willful defaulter or such a Person is found to be a director / partner / member / trustee of a company / firm / association of persons / trust, as the case may be, identified as willful defaulter, the Borrower shall take expeditious and effective steps for either curing/ remediating the same or removal of such Person within 7 (seven) days from such identification to the full satisfaction of the Lenders or otherwise, the Lenders reserves the right to call the same as an Event of Default under the terms of this Agreement.
- (iv) The Borrower confirms that none of its directors or directors of its subsidiaries or holding companies, or any of their relatives or shareholders are director(s)/member(s) of the board/senior officer of the Lenders or member of any other bank's board and no directors of any other bank holds substantial interest or is interested as director or as a guarantor of the Borrower.
- (v) The Borrower confirms that no relative of a chairman/ managing director or director of any of the Lender or a relative of senior officer of any of the Lender, hold substantial interest or is interested as a director or as guarantor of the Borrower.
- (vi) The Borrower confirms that no director of any of any banks or financial institutions, their subsidiaries, trustees of mutual funds, venture capital funds set up by the banks or their relatives is a director, manager, managing agent, employee or guarantor of the Borrower, or of a subsidiary of the Borrower, or of the holding company of the Borrower, or holds substantial interest, in the Borrower or a subsidiary or the holding company of the Borrower and no director of any other bank holds substantial interest or is interested as director or as a guarantor of the Borrower.
- (vii) The Borrower represents that none of its directors or directors of its Affiliates or any of their relatives or shareholders, is a director of any bank

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or financial institution or a near specified relation of a director of a bank or financial institution or a near specified relation of any senior officer of any bank or financial institution or has any relationship with the directors of any bank or financial institution.

(w) *No Misleading Information*

- (i) All information or documents provided by the Borrower to the Secured Parties are true, complete and accurate as at the date they have been provided or as at the date (if any) at which they have been stated and are not false or misleading nor incomplete by omitting to state any fact necessary to make such information not misleading.
- (ii) No event has occurred or no information has been given or withheld by the Borrower that results in the information provided to the Secured Parties being untrue or misleading.

(x) *Ranking of Claims*

- (i) The Borrower shall ensure that its obligations under any Financing Documents do and will rank above and prior to the claims of all its unsecured and subordinated creditors, and at such ranking with all the secured creditors present and future as may be decided by the Lenders in its sole discretion, unless otherwise provided in this Agreement or required under the Applicable Law.
- (ii) Each Security Document creates (or once entered into will create) in favour of the Lenders/ Security Trustee (if appointed) (for the benefit of the Lenders), the Security which it is expressed to create, and once fully perfected, such Security will have the ranking and priority it is expressed to have.

(y) *Encumbrances*

Save for the Security, no other Security interest exist over any of the present and future assets of the Borrower which have been charged in favour of the Security Trustee for the benefit of the Lenders in relation to the Facility.

(z) *Undisclosed Liabilities*

As at the date as of which the Borrower's most recent financial statements were prepared, the Borrower had no liabilities (contingent or otherwise) which were not disclosed thereby (or by the notes thereto) or reserved against therein nor any unrealised or anticipated losses arising from commitments entered into by it which were not so disclosed or reserved against.

(aa) *End Use*

With a view to monitor the end-use of funds, if the Lenders desire a specific certification from the Borrower's statutory auditor ("Auditor") regarding diversion/siphoning of funds by the Borrower, the Lenders shall be entitled to directly instruct the Auditor or procure the Borrower to instruct its Auditor to

Borrower	Lender
<p>For Poise Realtech Pvt Ltd.</p> <p><i>[Signature]</i></p>	<p><i>[Signature]</i></p>

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furnish the said certificate to the Lenders entirely at the cost and expenses of the Borrower.

(bb) *No Default*

Neither that Borrower nor its group companies have defaulted on any loans availed from any banks, financial institutions save and except disclosed to Lenders in writing.

(cc) *Shareholding Documents*

None of the terms and conditions detailed in the Shareholding Documents is prejudicial to the rights and interest of the Lenders in any manner whatsoever and in order to ensure that the rights of the Lenders are duly protected therein, they shall amend such Shareholding Documents if so required by the Lenders.

(dd) *Development Management Agreement*

There are no amendments, modifications or changes carried out to the Development Management Agreement, except to the extent required by the Lenders.

(ee) *Escrow Accounts*

There are no changes to the Escrow Accounts, except to the extent required by the Lenders.

11.2 The representations and warranties contained herein shall be deemed to be repeated by the Borrower on and as of each day from the date of this Agreement until all sums due or owing hereunder by the Borrower to Lenders have been paid in full, as if made with reference to the facts and circumstances existing on such day.

11.3 **Basis of Agreement**

The Borrower acknowledges that the representations and warranties in this Clause 11 (*Representations and Warranties*) is provided to induce each of the Lenders to enter into this Agreement and that Lenders have entered into this Agreement on the basis of, and in full reliance on, each of such representations and warranties.

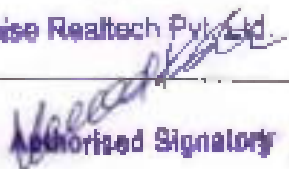
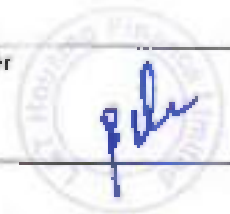
12. **AFFIRMATIVE COVENANTS**

The Borrower hereby covenants, undertakes and agrees to abide by and ensure continued compliance of the following on or from the date of this Agreement and until the Final Settlement Date:

12.1 **Corporate Existence; Conduct of Business**

The Borrower shall maintain its corporate existence, comply with its charter, and implement the Project 1 and conduct their business with due diligence and efficiency and in accordance with sound financial and business practices.

12.2 **Use of Proceeds**

<p>Borrower</p> <p><b>For Poise Realtech Pvt. Ltd.</b></p> 	<p>Lender</p> 
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The Borrower shall utilize the Facility in accordance with Clause 2.2 (*Purpose*) of this Agreement.

**12.3 Compliance with Laws; Taxes**

- 12.3.1 The Borrower shall conduct its business in compliance, in all material respects, with the Applicable Laws; and
- 12.3.2 The Borrower shall file by the date due all returns, reports and filings in respect of Taxes required to be filed by them and pay, when due, all Taxes due and payable by it.

**12.4 Auditors**

The Borrower shall:

- (a) maintain at all times a firm of independent public accountants acceptable to the Lenders as Auditors of the Borrower;
- (b) irrevocably authorize, the Auditors (whose fees and expenses shall be for the account of the Borrower) to communicate directly with the Lenders at any time regarding the Borrower's financial statements (both audited and unaudited), accounts and operations, and provide to Lenders a copy of that authorization; and
- (c) no later than 30 (thirty) days after any change in Auditors, issue a similar authorization to the new Auditors and provide a copy thereof to the Lenders.

**12.5 Accounting and Financial Management**

The Borrower shall maintain an accounting and control system, management information system and books of account and other records, which together adequately give a fair and true view of the financial condition of the Borrower and the results of its operations in conformity with the accounting standards.

**12.6 Credit Rating**

The Borrower shall undertake and ensure periodic credit rating of the Facility being done and shall ensure submission of the same to the Lenders as per their discretion and requirement.

**12.7 Promoter Shareholding**

- 12.7.1 The Borrower shall cause the Promoter (including the group companies) to hold at least 100% (one hundred percent) of the economic and voting interests in the Borrower's share capital free and clear of all liens, claims and Security Interest, save and except any Security Interest created in favour of the Lenders.
- 12.7.2 The Borrower shall ensure that the Promoter shall not dispose of or transfer directly or indirectly, any shareholding of the Borrower, without the prior approval of the Lenders.

**12.8 Insurance**

- 12.8.1 The Borrower shall maintain insurance on and in relation to its business, assets and Projects with an insurance company/ or companies (acceptable to the Lenders) against such risks

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and to such extent as is required by the Lenders and is usual for companies carrying on the business such as that carried on by the Borrower.

- 12.8.2 The said insurance policy/ies shall be endorsed / assigned in favour of the Security Trustee (for the benefit of the Lenders) and insurance policies should expressly name the Security Trustee as the first loss payee.
- 12.8.3 Insurance policies shall be assigned in favour of the Lenders at the time of next renewal of the policy/ies or within 30 (thirty) days, whichever is earlier and deliver a copy of such insurance policies to the Lenders.
- 12.8.4 The Borrower shall keep the insurance policies alive till the time entire Outstanding Amount is paid to the Lenders to the satisfaction of the Lenders by making timely payment of the premium.

**12.9 Access**

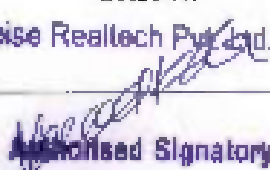
During the continuance of the Facility, upon Lenders request, and with reasonable prior notice to the Borrower, permit representatives of Lenders, during normal office hours, to:

- (a) visit at the Projects or any of the sites and other premises where the business of the Borrower and its associate companies is conducted;
- (b) inspect, monitor or supervise any of the Borrower's and its associate companies sites, facilities, plants and equipment to be used for the Projects and/or provided as Security to Lenders;
- (c) monitoring and/ or supervising and inspecting the progress of construction of the Projects and the Projects Escrow Account and/or the Identified Inventory Escrow Account;
- (d) have access to the Borrower's books of account and all records through their representatives / audit firms and also conduct an audit to ascertain the value of the Mortgaged Properties by the Panel Valuers of Lender, and/or
- (e) have access to those employees, agents, contractors and subcontractors of the Borrower who have or may have knowledge of matters with respect to which Lenders seek information.

*Provided, that no such reasonable prior notice shall be necessary if an Event of Default or Potential Event of Default is continuing or if special circumstances so require.*

**12.10 Authorizations**

- 12.10.1 All requisite authorizations necessary for the implementation of the Projects, the carrying out of the Borrower's business and operations generally and the compliance by the Borrower with all its obligations under the Transaction Documents shall be obtained and maintained in force (and where appropriate, renew in a timely manner); and
- 12.10.2 The Borrower shall comply with all the conditions and restrictions contained in, or imposed on the Borrower by, these authorizations. However, the Borrower shall ensure that such instruction or its effect thereon shall not be prejudicial to the rights and interest of the Lenders under the Financing Documents.

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**12.11 Financial Ratios**

- 12.11.1 The Borrower shall ensure till the Final Settlement Date, a minimum security cover of at least 1.3 times of the Facility is maintained; and
- 12.11.2 In the event the Borrower fails to maintain security cover in accordance with the terms of this Clause 12.11, then subject to the provisions of Clause 12.11.1, the Borrower shall create additional Security Interest over such security, as identified by the Lenders and in the form and manner satisfactory to the Lenders.

**12.12 Valuation**

The Borrower shall provide a copy of the updated valuation report prepared by the Panel Valuer establishing the market value as of the end of each Financial Year with regard to Projects and other Security within 90 (ninety) days after the end of each Financial Year or any date within 90 (ninety) days after the end of each Financial Year.

**12.13 Labour Laws**

The Borrower shall comply with all labour law requirements including but not limited to pension and employee benefit plans and comply with all the conditions and restrictions contained in, or imposed on the Borrower.

**12.14 Insolvency**

- 12.14.1 The Borrower hereby irrevocably consents that it shall provide access to the information submitted with the Information Utilities pertaining to its other borrowings with other lenders to the Lenders and shall do all things as may be necessary to ensure compliance with the obligation contained herein.
- 12.14.2 The Borrower shall promptly inform Lenders, in any case not later than 2 (two) days, of receipt of any notice received from any creditor (financial or operational) seeking default payment or intimating and/ or seeking remedy with respect to a potential payment default.
- 12.14.3 Without Lender's consent the Borrower shall not propose any resolution seeking approval of the board for filing application under IBC, either directly or indirectly.
- 12.14.4 The Borrower shall provide all support and assistance, if so required by the Lenders, including furnishing of all information, execution of documents, passing of resolutions.
- 12.14.5 The Borrower hereby agrees that it shall implement all terms and conditions specified by the Lenders including any requirements pursuant to Applicable Laws.

**12.15 RERA**

- 12.15.1 The Borrower shall ensure compliance of provisions of Applicable Laws, including RERA and registration of the Projects under RERA, for safeguarding the interest of the Lenders (e.g submissions of details of charge and consequence of default on same) and to give effect to same to enter into such deeds and documents as may be required by the Lenders or any Person acting on their behalf.
- 12.15.2 The Borrower agrees and undertakes that prior to filing for registration of Project's phases with RERA as RERA projects, it shall open new collection account (Account 1)

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and RERA designated Account for each RERA project's (Account II) and instruct Customers of such additional RERA project to deposit receivables into the relevant Account I and to this effect the terms of Projects Escrow Agreement (to be entered in connection with the Facility) shall be applicable for the relevant Account I and Account II and more specifically that all the monies drawn from Account II shall be mandatorily transferred to Account III, upon which the Lenders shall have the right of securing due repayment of the Facilities together with interest and other charges. It is further clarified that if so required by the Lenders, the Borrower shall enter into such modification or amendment to the said Projects Escrow Agreement without any delay or demur.

12.15.3 The Borrower shall submit to the Lenders copies of quarterly report submitted to RERA authority.

#### 12.16 Other Covenants

The Borrower covenants, undertake and agrees that so long as the Facility or any part thereof is outstanding, it shall comply and adhere to with the following:

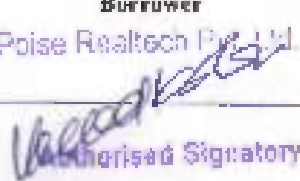

- (a) The Borrower shall adhere to and follow all building norms and technical specifications for real estate exposure as laid down by the National Building Code.
- (b) The Borrower shall adhere to the Ministry of Environment and Forests Notification no. S.O. 2604 (E) dated November 03, 2009 on 'Dy ash' and shall continue to be in adherence to the said notification during the tenor of the Facility.
- (c) The Borrower shall ensure that the buildings and structures comprised in the Projects adhere to the National Disaster Management Authority (NDMA) guidelines on 'Ensuring Disaster Resilient Construction of Buildings and Infrastructure and shall continue to be in adherence to the said guidelines at all times.
- (d) The Borrower shall obtain a NoC from the Lenders before entering into any arrangement or agreement for sale of any of the units in the Projects with its Customers.
- (e) The Borrower shall obtain a NoC from the Lenders before availing any Financial indebtedness in relation to the Projects from any bank, financial institutions and/or other lender.
- (f) The Borrower shall submit to the Lenders debt profile for any other Financial indebtedness or project, as and when required by the Lenders.
- (g) The Borrower shall ensure to display a signboard at each of the Projects at a prominent place exhibiting the following: "This Project is financed by L&T Housing Finance Limited and L&T Infrastructure Finance Company Limited (as applicable), and has been charged / mortgaged for its benefit."
- (h) All marketing materials of the Borrower/Projects and all sale agreements with its customers should state that the Lenders have financed the Projects and have a Security Interest on the Project assets.

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- (i) The Borrower hereby agrees that the Lenders shall have the right to appoint any legal, tax, financial, technical and other consultants, and valuer for the review of the Project/Borrower/valuation of the Projects as may be deemed fit and expenses for which shall be borne by the Borrower.
- (j) *Inspection and Monitoring*  
The Lenders shall check progress on sales, collection, cash flow of the Projects and performance of Escrow Accounts through independent firm appointed by the Lenders at the cost of the Borrower and report compliance and variance on periodic basis (quarterly) and in any event not later than 90 (ninety) days of each disbursement of the Facility. The same will continue till the Final Settlement Date. The Borrower shall provide all the information required for this purpose to the Lenders or any agency appointed by the Lenders at any time during the term of the Facility. Borrower shall ensure availability of such information within 15 (fifteen) days from the end of each quarter. Any charges thereof shall be borne by the Borrower.
- (k) The Borrower to submit monthly reports (in the form and manner desired by the Lenders) in respect of sale and collection of payment of the units in the Projects.
- (l) The Borrower shall submit to the Lenders yearly audited financial statements within a period of 9 (nine) months from the end of respective reporting period.
- (m) The Borrower hereby agrees that all existing loans and advances in the books of Borrower, obtained from any of the shareholders, directors/family members of the Promoter and other unsecured loans shall be sub-ordinate and sub-servient to the Facility in all respect and will not be paid out of Project Receivables till the Final Settlement Date.
- (n) In the event of inability of the Borrower to complete the Projects as per Schedule V hereof, the Lenders, at its discretion, shall have a right to substitute the Borrower with any other developer and in this regard shall have a right to appoint, *inter alia*, Lender's independent engineer, project management consultant, in order to achieve completion of the Projects.
- (o) The Borrower shall not engage in any corrupt, fraudulent, coercive, collusive or obstructive practice in connection with its business and operations.
- (p) The Borrower shall take permission from the Lenders prior to selling any unaid area under various schemes/ payment plans. In the event of sale of properties of the Borrower in relation to the Projects, without being developed, the Lenders shall have an exclusive right to adjust the proceeds from such sale against the Outstanding Amount.
- (q) In the event of Projects sale dropping below expectations or not happening enough due to which the cash flows of the Borrower are getting impacted adversely and are not in accordance with Schedule VII hereof, the Borrower shall make suitable arrangements (including from cash-flows of any other projects of the Borrower, wherever applicable) to ensure that the servicing of the Loan remains regular.

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(c) The Borrower hereby undertakes that the Security Interest on the Security for the benefit of the Lenders and to secure the Facility shall be registered with RERA.

**12.17 Escrow Account and Debt Service Reserve**

12.17.1 The Borrower shall ensure opening, establishment and maintenance of : (i) Identified Inventory Escrow Account for depositing all Identified Inventory Receivables; and (ii) a RERA complied Projects Escrow Accounts for depositing all the Project Receivables from the Projects with the Escrow Bank to the satisfaction of the Lenders. The utilisation of proceeds of the Escrow Accounts shall be in accordance with the terms and conditions of the respective Escrow Agreements.

12.17.2 The Escrow Accounts and debt service reserve account shall be maintained and operated by the Borrower during the entire tenor of the Facility and shall not be operated or closed without the prior written approval of Lenders.

**12.17.3 DSR**

(a) The Borrower hereby agrees that a debt service reserve equivalent to 3 (three) months interest payable by the Borrower (hereinafter referred as "Debt Service Reserve" or "DSR") shall be created by the Borrower from the Project Receivables within 12 (twelve) months from the date of Initial Disbursement. The Borrower shall maintain a debt service reserve (in the form of fixed deposit with a bank or mutual fund units or bank guarantee or such other form of investment as may be acceptable to the Lenders).


(b) If at any time, amount in the DSR is utilized to make payments towards making the debt service payments as a result of shortfall in the cash flows of Borrower, the Borrower shall immediately replenish the DSR within 7 (seven) days, to the extent of the amounts so utilized without any delay or demur, failing which, the Lenders shall reserve the right to call the same as an Event of Default under the terms of this Agreement.

**12.18 Right of First Refusal**

12.18.1 The Borrower shall endeavour to refer on first preferential basis, all Customers to the Lenders for any of their financial needs in respect of the purchase of any of the units in the Project. The Borrower shall endeavour to submit the relevant data to the Lenders in respect of the home loans to be availed by any of the Customers of the Borrower.

**12.19 Information**

The Borrower hereby undertakes and agrees that it shall provide all required information in relation to the Projects to the Lenders or any Person appointed by the Lenders during the tenor of the Facility and the Borrower shall provide access to the Projects and documents including but not limited sales register, collection register and any other document required for validation of the information to the Lenders or any Person appointed by them, as and when desired by the Lenders.

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**12.20 Assistance**

- 12.20.1 The Borrower further agrees to give and/ or provide all assistance to the Lenders and its officers and authorized representatives for the purpose of exercising any of the powers set out hereinabove, including endorsing of documents, signing of papers and doing all such things as may be necessary to enable Lenders and its officers to exercise all the powers hereby conferred.
- 12.20.2 The Borrower further agrees that the aforesaid powers have been granted for valuable consideration and as such shall be irrevocable in nature till such time as any amount remains due and payable under or in respect of or in pursuance of the Facility.

**12.21 Remedies**

All remedies either under the Financing Documents or otherwise afforded to the Lenders shall be cumulative and not alternative.

**12.22 Project Cost**

The Borrower hereby undertakes that any additional cost on account of construction of the Project J shall be borne by the Borrower and/or the Promoter through their own sources.

**12.23 Classification of Account**

The Borrower shall hereby declares and undertakes that the Borrower or any of the its' group companies (entire real estate business) are not classified as special mention account by any banks or financial institutions.

**12.24 Minimum Selling Price**

- 12.24.1 The Borrower shall ensure that any unsold units in the Projects are sold at a price not less than the Minimum Selling Price.
- 12.24.2 The Parties hereby agree that the Lenders shall be entitled to review the Minimum Selling Price in every 3 (three) months and accordingly, revise such minimum selling price as per their sole discretion.
- 12.24.3 The Minimum Selling Price shall be exclusive of all taxes and/or other pass through charges.
- 12.24.4 The Minimum Selling Price shall be tested by the Lenders on quarterly basis. In case the average selling price in any quarter is below the Minimum Selling Price, the prepayment pursuant to such an event has to be within 15 (fifteen) days from the end of the quarter and in accordance with Clause 7.4 hereof.

**12.25 Development Management Agreement**

- (i) The Borrower shall comply with all the provisions of the Development Management Agreement and/or any other related agreement entered into for the development of Project I.
- (ii) The Borrower shall provide an undertaking in favour of the Lenders and shall have caused Supertech Limited to provide an undertaking in favour of the Lenders,

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confirming that the Borrower and Supertech Limited, respectively will adhere to the terms of the Development Management Agreement.

### 13. NEGATIVE COVENANTS

The Borrower hereby covenants, undertakes and agrees to abide by and ensure continued compliance of the following on or from the date of this Agreement and until the Final Settlement Date.

#### 13.1 Dividends

The Borrower hereby further shall not declare dividends without the prior written consent of the Lenders and subject to adherence to the following:

- (a) No Event of Default or Potential Event of Default exists or is continuing;
- (b) In case of dividends, the proposed payment or distribution is out of accumulated retained earnings; provided always that the retained earnings out of which any of the payments or distributions referred to in this clause may be made, should in no event include any amount resulting from the revaluation of any of the Borrower's assets;
- (c) in case of dividends, the DSR is maintained as per provisions of Clause 13.17.3; and
- (d) in case security cover is maintained in accordance with the provisions of this Agreement.

#### 13.2 Equity Contributions

The Borrower undertakes that no principal repayment or payment of interest shall occur till the Final Settlement Date of any monies infused by the Promoter in any form including but not limited to, by way of equity, unsecured loans or capital in relation to the Project I. However, such principal and interest payable thereon, may be accrued.

#### 13.3 Guarantees and Other Obligations

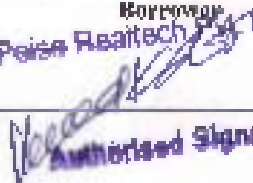

The Borrower shall not enter into any agreement or arrangement to guarantee or, in any way or under any condition, assume or become obligated for all or any part of any financial or other obligation of another Person (including any associate companies of the Borrower) except for:

- (a) guarantees issued for the benefit of associate companies subject to prior written consent of the Lenders; and
- (b) the existing guarantees or the liabilities which have been already provided and disclosed to the Lenders in writing, if any.

#### 13.4 Arm's Length Transactions

The Borrower shall not enter into any transaction except in the ordinary course of business on the arm's-length basis arrangements, including, without limitation, transactions whereby the Borrower might pay more than the ordinary commercial price for any purchase or might

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receive less than the full ex-works commercial price (subject to normal trade discounts) for its products.

### 13.5 Profit Sharing Arrangements

Without prior written consent of the Lenders, the Borrower shall not enter into any partnership, profit-sharing or royalty agreement or other similar arrangement whereby the Borrower's income or profits are, or might be, shared with any other Person.

### 13.6 Management Contracts

The Borrower shall not enter into any management contract or similar arrangement whereby the Borrower's business or operations are managed by any other Person.

### 13.7 Permitted Investments

Without prior written consent of the Lenders, the Borrower shall not make or permit to give loans or advances to, or deposits (except commercial bank deposits) with other Persons (including associate companies of the Borrower) not made in the ordinary course of business and in case such loans or advances, etc. are made in ordinary course of business, same shall be duly intimated to the Lenders in writing.

### 13.8 Fundamental Changes

The Borrower shall not change:

- (a) its Charter in any manner which would be inconsistent with the provisions of any Transaction Document and/ or which would prejudicially affect the rights and interest of the Lenders under the Transaction Documents;
- (b) its Financial Year, and/or
- (c) the nature or scope of the Projects or change the nature of its business or operations without prior written consent of the Lenders.

### 13.9 Merger, Consolidation or Reorganization

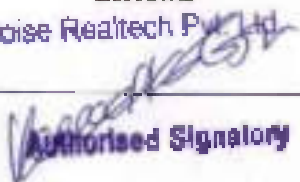

The Borrower shall not:

- (a) undertake or permit any consolidation, reorganization or merger where the Borrower is not the surviving entity and in cases where the Borrower is a surviving entity, prior written consent from the Lenders shall be obtained by the Borrower; and/or
- (b) undertake or permit any consolidation, reorganization, merger or transfer of Borrower's assets which is greater than the 10 (ten) per cent of total consolidated Borrower's asset without Lender's prior written consent.

### 13.10 Amendments, Waivers, Etc., of Material Agreements

The Borrower shall not terminate, amend or grant any waiver with respect to any provision of the Transaction Documents or any agreement or any documents evidencing any loan, borrowing or financial debt without prior written consent of the Lenders.

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**13.11 Asset Sales**

The Borrower shall not sell, mortgage, transfer, lease, surrender or otherwise howsoever alienate or deal with the Security or any part thereof or dispose of all or a substantial part of its assets, other than inventory, whether in a single transaction or in a series of transactions, related or otherwise without prior written consent of the Lenders.

**13.12 Borrowings**

The Borrower shall not avail loans or any other borrowing (secured or unsecured) incur any kind of debt from any other source in relation to the Mortgaged Properties.

**13.13 Amalgamation**

The Borrower shall not amalgamate or merge the Security with any other adjacent property nor shall create any right of way or any other easement on the including Mortgaged Properties.

**13.14 Creation of Charge**

The Borrower shall not create or permit to subsist any Security Interest encumbrance, mortgage or charge in any manner whatsoever over all or any part of the Security, assets or receivables of the Borrower, which are offered as Security to Lenders or which creates any interest or liability or any third party interest by related parties or group companies of the Borrower during the term of the Facility on the Security.

**13.15 Escrow Accounts**

- (i) The Borrower shall not withdraw any funds from the Escrow Accounts to repay any subordinate debt, if any, until the repayment of the Outstanding Amount by the Borrower under this Agreement to the satisfaction of the Lenders. Further, the Borrower shall withdraw any funds from the Escrow Accounts only in manner as provided in the respective Escrow Agreements; and
- (ii) The Borrower shall not cause any disbursements from the Projects Escrow Accounts, without the prior written approval of the Lenders.
- (iii) The Borrower shall not cause any changes to the Projects Escrow Accounts without the prior consent of the Lenders.

**13.16 Change of Control**

The Borrower shall not undertake any action resulting into a change in control of its business, management or operations either directly or indirectly and in case any change in control of the Borrower as mentioned herein occurs, the Lenders reserves the right to call the same as an Event of Default.

**13.17 Share Capital**

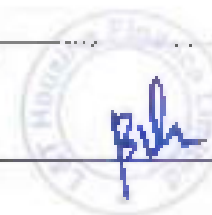
The Borrower shall not buy back, cancel or reduce in any manner its share capital, or issue any further share capital, or change its capital structure in any manner whatsoever without prior written consent of the Lenders.

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**13.18 Change in Shareholding**

The Borrower shall not permit any disposal /transfer of shares in the Borrower's share capital by the Promoter or any other person as specified by the Lenders except as specifically permitted under the Financing Documents and save and except in pursuance of enforcement of any Security created in favour of the Lenders. The Borrower shall cause such Persons to provide undertakings in this regard as may be required by the Lenders.

**13.19 Liquidation**

The Borrower shall not undertake or permit (either voluntarily or involuntarily) any winding up or dissolving of affairs or liquidation or the appointment of receivers or administrators over all or a substantial part of its assets or undertaking or the initiation of any other insolvency or quasi-insolvency proceeding affecting the Borrower or rights and interest of the Lenders under Transaction Documents.

**13.20 Voluntary Bankruptcy Proceedings**

The Borrower shall not initiate any voluntary bankruptcy proceeding of any nature whatsoever, until the Final Settlement Date. The Borrower shall not propose any resolution seeking approval of the board for filing application under IBC, either directly or indirectly.

**13.21 Subcontracting**

The Borrower shall not subcontract any of its duties, obligations and/ or responsibilities in relation to the implementation, construction, management or development of the Project / Mortgaged Properties to any third party without obtaining prior written consent of the Lenders.

**13.22 Withdrawal of Profits**

The Borrower shall not, without prior written consent of the Lenders withdraw the profits earned in the business/capital invested in the business without meeting the installment under the Loan, to the satisfaction of the Lenders.

**13.23 Change in Constitution**

The Borrower shall without the prior written consent of the Lenders act or omit to do anything which may result into change in their present constitution in any manner whatsoever.

**13.24 Development Management Agreement**

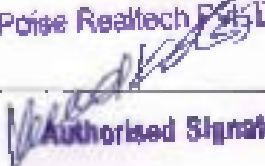
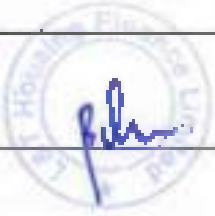
The Borrower shall not cause any amendments to the Development Management Agreement, without the prior written consent of the Lenders.

**14. EVENTS OF DEFAULTS**

14.1 The occurrence of any one or more of the following events shall constitute an Event of Default unless cured/ remedied within such period, from the date of occurrence of such event ("Cure Period") as provided against it below:

(a) *Non Payment*

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- (i) Default by the Borrower in the payment of any Repayment Instalment on any Due Date;
- (ii) Default by the Borrower in payment of any Interest on the Facility on any Interest Payment Date; or
- (iii) Default by the Borrower in payment of Additional Interest, Further Interest, fees, costs, charges or any other sums payable to the Lenders (other than the Repayment Instalment and Interest) on any Due Date.
- (b) Other than defaults stipulated in this Clause 14 (*Events of Default*), if the Borrower fails or neglects to observe or perform or commits or allows to be committed a breach of any of the terms, conditions, provisions, stipulations, or covenants of this Agreement on its part to be observed and performed and if such breach does not result into a Material Adverse Effect and is remediable, and fails to remediate within 30 (thirty) days of occurrence of such breach.
- (c) *Project Documents and Financing Documents*
- (i) If the Borrower or any other party/Person is in breach of, or does not comply with, or fails to observe or perform, any term or condition or obligation (whether financial, performance or otherwise) of any Financing Documents, and the Project Documents and same does not result into a Material Adverse Effect and is remediable and if remediable is not remedied within the period for remedy, if any, provided in such Project Documents or Financing Documents, as the case may be.
- (ii) Any Project Document (unless it shall have been replaced as permitted under this Agreement) shall be terminated prior to its stated termination date or shall be repudiated or shall cease to be in full force and effect otherwise than by performance or efflux of time and if the same is not cured/ remediated within 30 (thirty) days of termination of such Project Document to the full satisfaction of the Lenders.
- (iii) Any provision of any Project Document is or becomes invalid, illegal or unenforceable or any party thereto shall have so asserted or any Project Document ceases to be in full force and effect or shall cease to give the Borrower the rights, powers and privileges purported to be created thereby or any party thereto shall have so asserted, unless the provision has been replaced as permitted under this Agreement.
- (d) *Supply of Misleading Information*
- If any information given by the Borrower in its application for the Facility or in the reports and other documents and information furnished by the Borrower or Sponsors from time to time in accordance with the provisions of the Transaction Document, the reporting system or the representations made or warranties given / deemed to have been given by the Borrower to the Secured Parties is found to be misleading or incorrect in any material respect.
- (e) *Failure to Furnish Information*

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If the Borrower fails to furnish information/ documents as required by the Lenders in terms of this Agreement.

(f) *Cross Default*

- (i) If the Borrower is unable to pay its debts as they fall due, commences negotiations with any one or more of their creditors with a view to general readjustment or rescheduling, in the light of financial difficulties or in contemplation of any default, event of default or potential event of default under any agreement relating to the same (howsoever described), of any indebtedness, or makes a general assignment for the benefit of or composition with its creditors or admits or is ordered to pay any liability and such liability is not paid when due;
- (ii) If any default is made by the Borrower under any other agreement between the Borrower and any other bank or financial institution or any other agreement of indebtedness of the Borrower or the performance of any covenant, term or undertaking thereunder, or any indebtedness of the Borrower are not paid when due or any creditor of the Borrower becomes entitled to declare any such indebtedness due and payable prior to the date on which it would otherwise have become due or any guarantee or indemnity given by the Borrower are not honoured when due and called upon to do so;
- (iii) An event of default howsoever described occurs under any agreement or document relating to any indebtedness of any of the members of the group companies or if any lender of such member of the group companies including financial institutions or banks with whom such member of the group has entered into agreements for financial assistance have recalled its/their assistance or any part thereof, other than where such event is remedied (where capable of remedy) within a period of 20 (twenty) days of its occurrence; and/or
- (iv) Any proceedings have been initiated or any action taken by any lender to the Borrower (other than the Secured Parties) for the purposes of enforcing any Security Interest created over any of the assets of the Borrower

(g) *Insurance*

- (i) If the Mortgaged Properties provided as Security have not been kept insured or depreciates in value to such an extent that in the opinion of Lenders further security to the satisfaction of Lenders should be provided and if such Mortgaged Properties is not insured or such additional security is not furnished within 30 (thirty) days by the Borrower, and/or
- (ii) Any insurance contracted or taken by the Borrower is not, or ceases to be, in full force and effect at any time when it is required to be in effect or any insurance is avoided, or any insurer or re-insurer avoids or suspends or becomes entitled to avoid or suspend, any insurance or any claim under it or otherwise reduce its liability under any insurance or any insurer of any insurance is not bound, or ceases to be bound, to meet its obligations in full or in part under any insurance.

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(h) *Security*

- (i) If the Security or any part thereof, on which Security Interest is created created for the benefit of the Lenders for securing the Facility, is sold, disposed of, charged, encumbered or otherwise alienated without the written consent of Lenders or is jeopardised in any manner whatsoever.
- (ii) If an attachment or distress is levied on the Properties, including Mortgaged Properties or any part thereof and such other Security created in favour of the Lenders and/or certificate proceedings are taken or commenced for recovery of any dues from the Borrower.
- (iii) In the event the Borrower fails to perfect the creation of any Security Interest in favour of the Security Trustee for the benefit of the Lenders, be within such timelines as either specifically prescribed under this Agreement or is prescribed by the Lenders in its sole discretion.
- (iv) In the event the Borrower fails to create and perfect the Security Interest on the additional security pursuant to terms hereof.

(i) *Business*

If the Borrower ceases/threatens to cease to carry on the business and the Projects that it carried on at the date hereof, or abandons the Projects not on account of any reason attributable to the Borrower or if there is a breach of any Applicable Laws affecting the Borrower's capacity to operate the Projects and if the same is not cured/ remediated within 30 (thirty) days from such cessation or threat of cessation or such breach of Applicable Laws.

(j) *Insolvency*

- (i) If the Borrower takes any action or omission or any legal proceedings are initiated or other steps taken for: (i) the Borrower to be adjudicated or found insolvent or bankrupt; (ii) the appointment of an administrator, trustee or receiver or similar officer for the Borrower or the whole or any part of their undertaking, assets and properties; and (iii) challenging, repudiating the effectiveness and validity of any of the Financing Documents or causes to do any act or thing evidencing an intention to repudiate.
- (ii) If an insolvency notice or bankruptcy notice and which remains unchallenged is served on the Borrower or a receiver is appointed or an attachment is levied on any of the Borrower's properties or assets.
- (iii) In case of any of the following events occur:
- (A) The Borrower is unable to, is presumed or deemed by Applicable Laws to be unable to or admit the inability to, pay the debts as they fall due, or suspend making payments on any debt;

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- (B) An application is filed by the Borrower, financial creditor (as defined under the IBC) or operational creditor (as defined under the IBC) before the relevant authority under the IBC;
- (C) An application is filed by the Borrower, financial creditor (as defined under the IBC) or operational creditor (as defined under the IBC) before the relevant authority under the IBC and the same has been admitted by the relevant authority;
- (D) Other than proceedings detailed in this Agreement, any corporate action, legal proceedings or other procedure or step is taken in relation to:
- (1) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration, provisional supervision or re-organisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Borrower other than any winding up proceeding under Companies Act, 2013;
  - (2) making of a reference in relation to the Borrower for a resolution process under the Companies Act, 2013 or IBC or the regulations issued by RBI;
  - (3) making a reference in relation to the Borrower to the National Company Law Tribunal under Sections 253 and 254 of the Companies Act, 2013;
  - (4) composition, compromise, assignment or arrangement with any creditor of the Borrower that adversely affects the interests of the Lenders;
  - (5) declaration of the Borrower as a "relief undertaking";
  - (6) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager, provisional supervisor or other similar officer in respect of the Borrower or any of its assets; and/or
  - (7) enforcement of any Security Interest over any assets of the Borrower.
- (iv) In the event where the Borrower fails to comply with or pay any sum due from them under any final judgment or any final order made or given by a court of competent jurisdiction;
- (v) In the event where any material attachment, sequestration, distress or execution affects any asset or assets of the Borrower, and/or
- (vi) In the event where the Government of India or any other relevant Governmental Authority declares a general moratorium or "standstill" (or makes or passes any order or regulation having a similar effect) in respect

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of the payment or repayment of any Financial Indebtedness (whether in the nature of principal, interest or otherwise), or any indebtedness which includes Financial Indebtedness, owed by the Borrower (and whether or not such declaration, order or regulation is of general application or applies to a class of Persons which includes the Borrower.

(k) *Litigation*

- (i) Any litigation, arbitration or administrative proceeding or claim before any court, tribunal, arbitrator or other relevant authority is commenced against the Borrower or otherwise in connection with the Security or any part thereof and such other security created in favour of the Lenders and if the same is not cured/ remediated within 7 (seven) days to the full satisfaction of the Lenders; and/or
- (ii) Any judgment or decree, if passed against the Borrower in connection with the Mortgaged Properties is not vacated, discharged or stayed or is pending appeal within a period of 30 (thirty) days from the date of such judgment or decree.

(l) *Undertaking*

If all or substantially all of the undertakings, assets or properties of the Borrower or its interests therein are seized, nationalized or compulsorily acquired by the authority of Government.

(m) *Change in Control*

If there is any change in the ownership or management of the Borrower, which in the sole opinion of Lenders would prejudicially affect the interest of the Lenders under the Financing Documents.

(n) *Material Adverse Effect*

If there occurs any event which in the opinion of Lenders is/ are prejudicial to the interest of Lenders or in the sole opinion of Lenders is/ are likely to materially affect the financial condition of the Borrower or its ability to perform all or any of its obligations under this Agreement and to comply with any of the terms or conditions of the Transaction Documents.

(o) *Utilization*

If the Borrower misuses the Facility or any part thereof for any purpose other than for which the Facility has been sanctioned or utilizes the Facility or any funds thereof for any non-permitted purpose(s)

(p) *Clearances*

- (i) If any Clearances, consent, authorization, approval or license of or registration with or declaration to governmental or public bodies or authorities required by the Borrower in connection with the execution, delivery, validity, enforceability or admissibility in evidence of this

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Agreement or the performance by the Borrower of its obligations hereunder is modified in a manner unacceptable to Lenders or is not granted or revoked or terminated or expires and is not renewed or otherwise ceases to be in full force and effect and if the same is not cured/ remediated within 30 (thirty) days to the full satisfaction of the Lenders.

- (s) In case the Borrower fails to comply with the environmental approvals obtained by it and if the same is not cured/ remediated within 30 (thirty) days from such failure to the full satisfaction of the Lenders
- (q) *Project Receivables*  
In the event the entire Project Receivables are not deposited in the Projects Escrow Account established with Escrow Bank at all times.
- (r) *Identified Inventory Receivables*  
In the event the entire Identified Inventory Receivables are not deposited in the Identified Inventory Escrow Account established with Escrow Bank at all times.
- (B) *No Objection Certificate*  
In the event the Borrower fails to obtain NoC for sale from the Lenders prior to entering into the agreement to sale with the Customer and if the same is not cured/ remediated to the full satisfaction of the Lenders within 30 (thirty) days from the date of such failure.
- (I) *Obligations*
  - (i) If there occurs an event resulting in it becoming unlawful for the Borrower to perform its obligations under the Financing Documents or for any reason, any Financial Documents become ineffective and if the same is not cured/ remediated within 15 (fifteen) days.
  - (ii) In case of occurrence of any event affecting the Borrower's liability to repay the Outstanding Amount under the Facility and if the same is not cured/ remediated within 30 (thirty) days from the occurrence of such an event to the full satisfaction of the Lenders.
- (u) *Depletion of the Security Cover*  
In the event of the Borrower fails to maintain the required security cover as per the terms and condition of this Agreement.
- (v) *Change in the Projects Escrow Accounts*  
If any change is effected to the Projects Escrow Accounts, without the prior written consent of the Lenders.
- (w) *Change in the Development Management Agreement*  
If any change/amendment/modification (or any act of similar nature) is effected to the Development Management Agreement, without the prior written consent of the

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14.2 The Borrower agrees that unless specified otherwise in this Clause 14.1, the Borrower shall not be entitled to any cure periods for any Event of Default and the Lenders shall have the right to enforce their rights immediately as prescribed under the Financing Documents. For Events of Default for which cure periods have been specified, the Lenders shall not take any action under Clause 15 (*Consequences of Event of Default*), except the levying of Additional Interest/ Further Interest, as the case maybe in accordance with the terms of this Agreement, *provided however*, if such Event of Default continues to be un-remedied upon the expiry of the Cure Period, the Lenders may, in their sole discretion, take one or more of the actions specified in Section 15 (*Consequences of Event of Default*).

14.3 The Borrower agrees and undertakes to provide to Lenders an immediate notice on the happening of an Event of Default or a Potential Event of Default.

## 15. CONSEQUENCES OF EVENT OF DEFAULT

15.1 If an Event of Default has occurred and is continuing, the Secured Parties may, without prejudice to any rights that they may have and by notice to the Borrower, take one or more of the following actions including but not limited to the following and each remedy shall be an independent remedy:

- (a) place the Facility on demand and declare all amounts payable by the Borrower in respect of the Facility to be due and payable immediately as well as all other charges, costs, expenses and upon such declaration the same shall become due and payable forthwith enforceable, notwithstanding anything to the contrary contained in this Agreement;
- (b) exercise or direct the Security Trustee to exercise any or all of its rights, remedies, powers or discretions under the Financing Documents to accelerate the obligations of the Borrower and to enforce all of the Security Interest created pursuant to the Security Documents and exercise such other rights as may be available to the Secured Parties under the Financing Documents and all Applicable Laws, including the special rights and remedies available to secured lenders under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 (without notice to the Borrower or any other Person);
- (c) sue for creditors' process and/ or exercise rights with respect to the Security in accordance with the Financing Documents;
- (d) To enforce the Security either in part or in full, as detailed in Clause 10 and exercise all/any contractual and legal rights / remedies under the Transaction Documents and security documents;
- (e) To accelerate maturity of the Facility;
- (f) suspend further drawings under this Agreement;
- (g) declare the Commitments to be cancelled or suspended;
- (h) exercise any substitution rights available under the Transaction Documents;

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- (i) exercise any other legal or equitable rights of the Lenders under Applicable Laws;
- (j) appoint external consultants, at the sole cost of the Borrower, to carry out technical, legal, financial, operation inspections, as may be deemed fit by the Lenders;
- (k) utilise any amounts in the Escrow Accounts to service and repay the Outstanding Amount and issue notice to the Escrow Bank in this regard;
- (l) review, restructure and/ or substitute the management or organisation of the Borrower in a manner acceptable to the Lenders and as may be considered necessary by the Lenders, including the formation of management committees with such powers and functions as may be considered suitable by the Lenders. The Borrower shall comply with all such requirements of the Lenders;
- (m) issue notice regarding payment of proceeds of any Insurance Contract or compensation;
- (n) in the event the Borrower commits a default under this Agreement, then the Lenders shall have the right to convert at its option the whole or part of the outstanding due amount under the Facility (whether due or payable or not) into fully paid up Shares of the Borrower at such valuation as may be done by the Lenders from an independent valour of repute and in the manner specified in the notice in writing to be given by the Lenders to the Borrower ("Notice of Conversion") and in accordance with the following conditions:
- (i) the conversion right as aforesaid may be exercised by the Lenders on one or more occasions during the currency of the Facility on the happening of the event specified above after providing a notice of 10 (ten) days;
  - (ii) on receipt of the Notice of Conversion, the Borrower shall allot and issue the requisite number of fully paid-up Shares to the Lenders or such other Persons identified by the Lenders as from the date of conversion of the part of the Facility so converted; and
  - (iii) the part of the Facility so converted shall cease to carry interest as from the date of conversion and the Facility shall stand correspondingly reduced. Upon such conversion, the Repayment Instruments payable under the Facility after the date of conversion as per this Agreement shall stand reduced proportionately by the amounts of the Facility so converted. The Shares so allotted and issued to the Lenders or such other Person identified by the Lenders shall carry, from the date of conversion, the right to receive proportionately the dividends and other distributions declared or to be declared in respect of the equity capital of the Borrower. Save as aforesaid, the said shares shall rank *pari passu* with the existing Shares of the Borrower in all respects. The Borrower undertakes to increase its authorised share capital from time to time as may be required by the Lenders in this respect.
- (o) subject to the Security Documents, transfer the secured assets by private treaty or public auction;

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- (p) exercise such other rights as are available to the Lenders under Applicable Law and the Transaction Documents, including initiation of proceedings under the Insolvency and Bankruptcy code;
- (q) notwithstanding any suspension or termination pursuant to sub-clause (f) or (f) above, all the provisions of the Financing Documents for the benefit or protection of the Lenders and its interests shall continue to be in full force and effect as specifically provided in the Financing Documents;
- (r) disclose or publish the details of the default/breach of such terms and conditions, name of the Borrower/s, its directors, partners, as the case may be, as defaulters, in such manner and through such medium as the Lenders or RBI, in their absolute discretion may think fit; and/or
- (s) stipulate additional security and upon such instructions from the Lenders, the Borrower shall within 30 (thirty) days, create, including but not limited to ROC filing and obtaining of necessary approval, such stipulated additional security to the satisfaction of the Lenders

15.2 In the event of default by the Borrower in: (a) payment of the principal and/or interest on the Loan for more than 30 (thirty) days from the respective Due Date for payment; or (b) in complying with Schedule V (Construction Schedule) or Schedule VII (Sales Schedule) hereto, in addition to other rights and remedies available to the Lenders under Applicable Law or otherwise, the Lenders shall be entitled, but not obliged, to take over and retain and/or dispose of any unsold area of the Projects proportionate to the Outstanding Amount. The price, at which such unsold area of the Projects will be acquired by the Lenders, shall be at a discount of 30% (thirty percent) on an average rate of the previous 3 (three) market transactions. The decision of the Lenders in this regard (including determination of the value of such sale transactions) shall be final and binding on the Borrower.

15.3 In the event the Borrower fails to comply with the Schedule V (Construction Schedule) or Schedule VII (Sales Schedule) hereto, apart from other rights of the Lenders, the Lender(s) shall be entitled to acquire/assign or take possession of unsold area of the Projects. However, before exercising such an option, the Lenders shall provide a notice of 30 (thirty) days to the Borrower. The Borrower shall be permitted to dispose of the unsold units at a price not less than the price at which the Lenders shall have acquired the same. If the Borrower fails to provide the purchaser or dispose of the units within the above stipulated time, then the aforesaid Lenders shall have the right to acquire/assign unsold area of the Projects.

16. PAYMENT OF EXPENSES

16.1 The Borrower shall, whether or not the transactions herein contemplated are consummated, pay: (a) all out-of-pocket costs and expenses properly incurred (including all Taxes (including stamp taxes), duties, fees or other charges payable to, the Secured Parties (including, without limitation, the reasonable fees of all consultants of the Secured Parties) on actual basis in connection with (i) the preparation, negotiation, execution, issue and delivery and, where appropriate, registration, or stamping for the legality, validity, enforceability and admissibility in evidence of this Agreement, the other Financing Documents and any other documents and instruments related hereto or thereto (including legal opinions); (ii) any amendment or modification to, or the protection or preservation of Security or any right or claim under the Financing Documents, or consent or waiver in

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connection with, or any inspection, investigation or consultation undertaken by the Secured Parties (whether or not known to or approved by the Borrower) of the Borrower's performance under or in compliance with, this Agreement, the other Financing Documents or any such other document or instrument related hereto or thereto; (iii) the registration (where appropriate) and the delivery of the evidences of indebtedness relating to the Facility and the Disbursements thereof; and (iv) the enforcement of this Agreement, the other Financing Documents and any other documents and instruments referred to herein and therein (including, without limitation, the legal fees incurred by the Lenders pertaining to the Facility).

- 16.2 The Borrower shall, whether or not the transactions herein contemplated are consummated: (a) pay and hold each of the Lenders and the Security Trustee harmless from and against any and all present and future stamp and other similar Taxes with respect to the matters described in Section 16.1; and (b) hold each of the Lenders and the Security Trustee harmless from and against any and all liabilities with respect to or resulting from any delay or omission (other than to the extent attributable to such Lenders or the Security Trustee) to pay such taxes.
- 16.3 The Borrower shall pay to Lenders applicable up-front processing fee as mutually agreed with the Lenders.
- 16.4 The Borrower shall bear all costs, expenses incurred by the Lenders upon occurrence of an Event of Default in connection with:
  - (a) preservation of the Borrower's assets/ Mortgaged Properties (whether now or hereafter existing);
  - (b) collection of amounts due under this Agreement may be charged to the Borrower and reimbursed by the Borrower, as Lenders shall specify;
  - (c) operation and maintenance of the Escrow Account; and/ or
  - (d) exercise of any of Lender's right or power under Transaction Documents.
- 16.5 All expenses incurred by the Lenders after an Event of Default has occurred in connection with the preservation of the Borrower's assets (whether then or thereafter existing) and collection of amounts due under this Agreement shall be payable by the Borrower.
- 16.6 Notwithstanding anything stated above Escrow Bank shall have right to recover on behalf of Lenders or its agents, all costs, charges and expenses and fees payable to Lenders under this Agreement by debiting the Escrow Accounts.
- 16.7 In the event of failure of the Borrower to pay for the expenses provided under this Clause 16, the Lenders may incur the same (without any obligation to incur) and the Borrower shall in turn reimburse such expenses incurred by the Lenders together with an interest of 21% (twenty one percent) per annum, applicable from the day of such expenses incurred by the Lenders till the date of repayment thereof.

**17. RIGHT OF SETOFF**

17.1 In addition to any rights now or hereafter granted under any Applicable Laws or otherwise, and without in any manner limiting such rights the Lenders and/or its Affiliates shall have

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the paramount right of set-off and lien, irrespective of any other lien or charge, present as well as future on the deposits of any kind and nature (including fixed deposits) held/ balances lying in any account maintained with the Lenders and/or its Affiliates, whether in single name or joint name(s) and on any monies, securities, bonds and all other assets, documents and properties held by/ under the control of the Lenders and/or its Affiliates (whether by way of Security or otherwise pursuant to any contract entered/ to be entered into by the Borrower and/or its Affiliates in any capacity) to the extent of all outstanding dues, whatsoever, arising as a result of any of the outstanding and/or any other liabilities of the Borrower and/or its Affiliates, to the Lenders and/or its Affiliates on any other account or in any other respect whether such liabilities be actual or contingent primary or collateral and several or joint. The Lenders and/or its Affiliates are entitled without any presentment, demand, protest or other notice of any kind to the Borrower and/or its Affiliates or to any other Person, any such notice being hereby expressly waived, to settle any indebtedness whatsoever owed by the Borrower and/or its Affiliates, to the Lenders and/or its Affiliates (whether actual or contingent, or whether primary or collateral, or whether joint and/ or several) hereunder or under any other document/ agreement, by adjusting, setting-off any deposit(s) and/ or transferring monies lying to the balance of any account(s) notwithstanding that the deposit(s)/ balances lying in such account(s) may not be expressed in the same currency as such indebtedness and to appropriate and apply any and all deposits (general or special) and any investments at any time held or owing by the Lenders and/or its Affiliates (including, without limitation, by any branches and agencies of the Lenders wherever located) to or for the credit of the account of the Borrower and/or its Affiliates against and on account of the obligations and liabilities of the Borrower and/or its Affiliates to the Lenders and/or its Affiliates under this Agreement or under any of the other Finance Documents, and all other claims of any nature or description arising out of or connected with this Agreement or any other Finance Document, irrespective of whether or not the Lenders and/or its Affiliates shall have made any demand with respect thereto.

- 17.2 The Borrower hereby agrees that the aforesaid right of the Lenders and/or its Affiliates is available to the Lenders and/or its Affiliates notwithstanding any agreement to the contrary and notwithstanding the fact that a particular security is given to the Lenders and/or its Affiliates earmarked for a particular loan or account and irrespective of the same having been paid in full by the Borrower and/or its Affiliates.

## 18. INDEMNITY

- 18.1 The Borrower shall, whether or not the transactions herein contemplated are consummated, indemnify each of the Secured Parties and each of their respective officers, directors, employees, representatives, attorneys and agents from and hold each of them harmless against any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses and disbursements incurred by any of them as a result of, or arising out of, or in any way related to, or by reason of, litigation or other proceeding (whether or not the Secured Parties is a Party thereto) related to the entering into and/ or performance of any Financing Document or the Disbursement of, or use of the proceeds of the Facility, the Lenders or the implementation or consummation of any transactions contemplated herein or in any Financing Document, including, without limitation, the fees and disbursements of counsel and any consultants selected by such indemnified party incurred in connection with any such investigation or any Legal Proceeding or in connection with enforcing the provisions of this Clause 18.1 (but excluding any such liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses and disbursements to the extent incurred by reason of the gross negligence or

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wilful misconduct of the Person to be indemnified, as determined by a court of competent jurisdiction).

- 18.2 To the extent that the undertakings in this Clause 18 may be unenforceable because they violate any Applicable Law or public policy, the Borrower will contribute the maximum portion that it is permitted to pay under Applicable Law towards the payment and satisfaction of such undertakings. The Borrower hereby undertakes that it shall not raise the defence of or claim unenforceability, for any reason whatsoever, of any of Clauses 18.1 and 18.2. All sums paid and costs incurred in relation to the Financing Documents or the Facility by any of the Secured Parties at the rate of Additional Interest from the date so paid or incurred until reimbursed by the Borrower, and all such sums and costs shall be added to the Outstanding Amount and be secured by the Security Documents and shall be immediately due and payable on demand.
- 18.3 Each indemnified party pursuant to Clauses 18.1 and 18.2 above, on a best efforts basis, endeavours, within 7 (seven) days after the receipt by it of notice of the commencement of any action for which indemnity may be sought by it, or by any Person controlling it, from the Borrower on account of the provisions contained in this Clause 18.3, to notify the Borrower in writing of the commencement thereof, but the failure of such indemnified party to so notify the Borrower of any such action shall not release the Borrower from any liability which it may have to such indemnified party. In case any such action shall be brought against any indemnified party and such indemnified party shall notify the Borrower of the commencement thereof, as above provided, the Borrower shall be entitled to participate in the defence thereof at its own expense, provided that in any event an indemnified party shall have the right to retain its own counsel at the expense of the Borrower and such participation by the Borrower in the defence thereof shall not release the Borrower from any liability which it may have to such indemnified party (including with respect to fees and other charges of its own counsel).
- 18.4 In case of default in making such reimbursement in accordance with Clause 18.4, within 3 (three) Business Days from the date of notice of demand, the Borrower shall also pay on the defaulted amounts, interest at the Additional Interest Rate from the expiry of 3 (three) Business Days from the date of notice of demand till reimbursement.
- 18.5 The Borrower shall, forthwith on demand by the Secured Parties pay any amounts due under this Clause 18.

## 19. DISCLOSURE OF INFORMATION

- 19.1 The Borrower hereby agrees that the Lenders at its discretion may disclose to any actual or potential assignee or transferee or to any Person who may otherwise enter into contractual relations with the Lenders in relation to this Agreement and such credit information about the Borrower as Lenders shall consider appropriate.
- 19.2 The Borrower further agrees that in addition to any other right available to Lenders in the event of the Borrower committing any act of default, Lenders shall be entitled, without prior notice to the Borrower, to disclose to the Reserve Bank of India (RBI), Credit Information Companies or to any other authority or to any third person, on its being called upon to do so, the name/ identity of the Borrower and the fact of his having committed any act of default as aforesaid.

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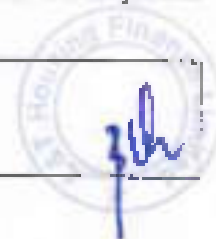
- 19.3** The Borrower understands that as a pre-condition, relating to grant of the Facility to the Borrower, the Borrower hereby agrees and give consent for the disclosure by the Lenders of all or any such:
- information and data relating to the Borrower;
  - the information or data relating to any loan availed of/to be availed, by the Borrower; or
  - default, if any, committed by the Borrower, in discharge of the Borrower's such obligation;
  - as Lenders may deem appropriate and necessary, to disclose and furnish to TransUnion Credit Information Bureau (India) Ltd. and any other agency authorized in this behalf by RBI.
- 19.4** The Borrower undertakes and declares that:
- the TransUnion Credit Information Bureau (India) Ltd. and any other agency so authorized may use, process the said information and data disclosed in the manner as deemed fit by them; and
  - the TransUnion Credit Information Bureau (India) Ltd. and any other agency so authorized may furnish for consideration, the processed information and data or products thereof prepared by them, to banks/financial institutions and other credit grantors or registered users, as may be specified by the Reserve Bank of India in this behalf.
- 19.5** The Borrower hereby consents to the Lenders, its officers and agents disclosing information relating to the Borrower and its account(s) and/or dealing relationship(s) with the Lenders, including but not limited to details of any facilities, any security taken, transactions undertaken and balances and positions with the Lender, to
- the head office of the Lender, any of its subsidiaries or subsidiaries of its holding company, Affiliates, representative and branch offices in any jurisdiction (together with the Lender, the "Permitted Parties");
  - professional advisers and service providers of the Permitted Parties who are under a duty of confidentiality to the Permitted Parties;
  - any actual or potential assignee, novatee, transferee, participant or sub-participant in relation to any of the Lender's rights and/or obligations under any agreement (or any agent or advisor of any of the foregoing);
  - any rating agency, insurer or insurance broker of, or direct or indirect provider of credit protection to any Permitted Party;
  - any court or tribunal or regulatory, supervisory, governmental or quasi-governmental authority with jurisdiction over the Permitted Parties or otherwise.
- 19.6** In case the Borrower commits default in payment or repayment of any amounts in respect of the Facility or there is breach of any of the terms and conditions of the Financing Documents, the Lenders and/or RBI will have an unqualified right to disclose or publish

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the details of the default/breach of such terms and conditions, the name of the Borrower, its directors, partners, as the case may be, as defaulters, in such manner and through such medium as the Lenders or RBI, in their absolute discretion may think fit.

## 20. MISCELLANEOUS

### 20.1 Notice

20.1.1 Except as otherwise expressly provided herein or in any Financing Document, all notices and other communications provided for hereunder or thereunder shall be (i) in writing (including email and telex, except as noted below) and (ii) emailed, teleaxed, or sent by a Person, courier (if for inland delivery) or international courier (if for overseas delivery) to a Party hereto at its address and contact number as specified below or as specified in Schedule I of this Agreement, as the case maybe, or at such other address and contact number as is designated by such Party in a written notice to the other Parties hereto.

20.1.2 All such notices and communications shall be effective only on actual receipt by the officer of the Secured Party or the Borrower as the case may be for whose attention the notice or communication has been expressly marked, provided however that any notice or communication to the Borrower by the Lenders with respect to an Event of Default, consequences of an Event of Default and enforcement of Security under the Financing Documents shall be effective (i) if sent by email, when sent (with correct email id and so long as an "undelivered" notice with respect to such email is not received), (ii) is sent by telex, when sent (with the correct answerback), (iii) if sent by Person, when delivered, (iv) if sent by courier, (a) one (1) Business Day after deposit with an overnight courier if for inland delivery and (b) 5 (five) Business Days after deposit with an international courier if for overseas delivery and (v) if sent by registered letter when the registered letter would, in the ordinary course of post, be delivered whether actually delivered or not.

20.1.3 An original of each notice and communication sent by email or telex shall be dispatched by Person, overnight courier (if for inland delivery) or international courier (if for overseas delivery) and, if such Person or courier service is not available, by registered airmail (or, if for inland delivery, registered first class mail) with postage prepaid, provided that the effective date of any such notice shall be determined in accordance with this Section 20.1.3 without regard to the dispatch of such original.

20.1.4 The contact details of the Borrower are as follows:

Address : 201, 3rd Floor Sagar Plaza -II, Plot No.27, Community Centre,  
Pitampura New Delhi East Delhi - 110034

Attention : Mr. Vinod Gupta

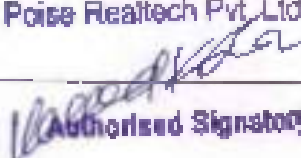

Phone : 9810117405

Email : vkg@ejnra.com

20.1.5 The contact details of the Lenders are as follows:

Address : L&T Infrastructure Finance Company Limited

Attn : Mr. Mohit Richariya

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Phone : 9820142297  
 Email : mohitrichharyu@lts.com

20.1.6 Electronic Communication

- (a) Any communication to be made between any of the Secured Parties and the Borrower under or in connection with any Financing Document may be made by electronic mail or other electronic means if:
  - (b) the Secured Party agrees, at its sole discretion, in writing that, unless and until it notifies the Borrower to the contrary, electronic mail or other electronic means is to be an accepted form of communication;
  - (c) each of the Secured Party and the Borrower notifies the other in writing of its electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
  - (d) each of the Secured Party and the Borrower notifies the other of any change to its address or any other such information supplied by them.

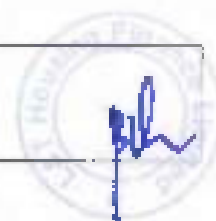
20.1.7 Fax & Email Indemnity

- (a) The Borrower hereby requests and authorises the Secured Parties to, from time to time (at the Secured Parties' discretion), rely upon and act or omit to act in accordance with any directions, instructions and/or other communication which may from time to time be or purport to be given in connection with or in relation to the Financing Documents by facsimile/email or any other electronic mode of communication by the Borrower or its Authorised Officer.
- (b) The Borrower acknowledges that:
  - (i) sending information by facsimile/email or any other electronic mode of communication is not a secure means of sending information;
  - (ii) the Borrower is aware of the risks involved in sending facsimile/email or any other electronic mode of instructions, including the risk that facsimile/email instructions may:
    - (A) be fraudulently or mistakenly written, altered or sent; and
    - (B) not be received in whole or in part by the intended recipient;
 the request to the Secured Parties to accept and act on facsimile/ email instructions is for the Borrower's convenience and benefit only.
- (c) The Borrower hereby agrees and undertakes to send instructions to the Secured Parties (if so agreed upon by the Secured Parties) by email from the email address as specified by the Borrower from time to time to the Secured Parties. The Borrower understands that internet/email is not encrypted and is not a secure means of transmission. The Borrower acknowledges and accepts that such an unsecured transmission method involves the risks of possible unauthorized alteration of data and / or unauthorized usage thereof for whatever purposes. The Borrower exempts

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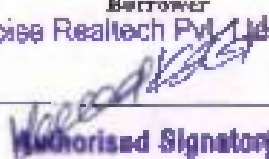



the Secured Parties from any and all responsibility of such misuse and receipt of information, and holds the Secured Parties harmless for any costs, liabilities, damages, judgments, expenses, or losses that any of the Secured Parties may suffer or incur due to any errors, delays or problems in transmission or otherwise caused by using the internet/email or any other electronic mode as a means of transmission.

- (d) The Borrower declares and confirms that the Borrower has for its convenience and after being fully aware of, and having duly considered, the risks involved, (which risks shall be borne fully by the Borrower) requested and authorised the Secured Parties to rely upon and act on instructions which may from time to time be given by facsimile/email or any other electronic mode of communication. The Borrower further declares and confirms that the Borrower is aware that the Secured Parties are agreeing to act on the basis of instructions given by facsimile/email or any other electronic mode of communication only by reason of, and relying upon, the Borrower agreeing, confirming, declaring and indemnifying the Secured Parties as done by this Section and the Secured Parties would not have done so in the absence thereof. The provisions of this Section shall apply to any and all matters, communications, directions and instructions whatsoever in connection with the Financing Documents.
- (e) The Secured Parties may (but shall not be obliged to) require that any instruction should contain or be accompanied by such identifying code or text as the Secured Parties may from time to time specify and the Borrower shall be responsible for any improper use of such code or text.
- (f) In consideration of the Secured Parties acting and/or agreeing to act pursuant to the terms of this writing and/or any instructions as provided in this writing, the Borrower hereby agrees to indemnify the Secured Parties and keep the Secured Parties at all times indemnified from and against all actions, suits, proceedings, costs, claims, demands, charges, expenses, losses and liabilities howsoever arising in consequence of or in any way related to the Secured Parties having acted or omitted to act in accordance with or pursuant to any instruction received by fax/email or any other electronic mode of communication.
- (g) Upon receipt by the Secured Parties, each instruction shall constitute and (irrespective of whether or not it is in fact initiated or transmitted by the Borrower and/or by the Authorised Officer), shall be deemed (if the Secured Parties chose to act upon the same) to conclusively constitute the Borrower's mandate to the Secured Parties to act or omit to act in accordance with the directions and instructions contained therein notwithstanding that such instruction may not have been authorised or may have been transmitted in error or fraudulently or may otherwise not have been authorised by or on behalf of the Borrower or the Authorised Officers or may have been altered, misunderstood or distorted in any manner in the course of communication.
- (h) The Secured Parties shall not be under any obligations at any time to maintain any special facility for the receipt of any instructions by way of facsimile/email or any other electronic mode of communication or to ensure the continued operations or availability of any such equipment/ technology.

## 20.2 Benefit of the Agreement

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Borrower	Lender
For Poies Realtech Pvt. Ltd. 	

Authorised Signatory

As per  
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This Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the Parties hereto and shall inure to the benefit of the Borrower, each of the Secured Parties.

**20.3 No Waiver; Remedies Cumulative**

No failure or delay on the part of any Secured Party in exercising any right, power or privilege hereunder or under any other Financing Document and no course of dealing between the Borrower, on the one hand, and the Secured Parties, on the other hand, shall impair any such right, power or privilege or operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Financing Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights, powers and remedies herein or in any other Financing Document or expressly provided are cumulative and not exclusive of any rights, powers or remedies which any of the Secured Parties would otherwise have. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of any of the Secured Parties to any other or further action in any circumstances without notice or demand.

**20.4 Amendments and Waivers; Procedure**

20.4.1 Subject to Clause 20.4.2 below and save where otherwise expressly provided in any Financing Document, this Agreement (including the schedules, annexures and appendices hereto) may not be amended, supplemented or modified and no other Financing Document may be amended, supplemented or modified and no term or condition or any part thereof may be waived without the consent of the Parties. The Lenders or any Person authorized on their behalf may effect, on behalf of the Secured Parties, an amendment, supplement, modification or waiver to which the Lenders have agreed in writing, whether generally or specifically.

20.4.2 Any amendment, modification or waiver made or given with respect to any Financing Document which is required by this Clause 20.4 to be authorized by the Lenders shall, when made or given on behalf of the Lenders, be binding upon the Lenders. The Borrower shall not be bound to enquire in connection therewith whether the provisions of this Clause 20.4 have been observed.

**20.5 Transfer by the Borrower**

The Borrower shall not assign, transfer or novate any interest in, or any rights to and/or obligations under any Financing Document to which it is a Party.

**20.6 Novation and Participation**

20.6.1 The Lenders shall be entitled to transfer, assign, or novate or securitize all or whole or any part of the Facility including their rights and benefits hereunder and in other Transaction Documents to another bank or financial institution or any other Person at any time in accordance with the provisions herein ("New Lender") and in such manner and on such terms as the Lenders may decide without the prior written consent of the Borrower.

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Borrower	Lender
For Poise Realtech Pvt. Ltd 	

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- 20.6.2 The Borrower shall take such action as may be necessary (including providing the necessary information and executing the relevant documents) to perfect such risk participation arrangement, assignment, transfer, novation, or securitization.
- 20.6.3 It is hereby clarified that any such risk participation, take out arrangement, transfer, assignment, novation or securitization shall be on some terms and conditions as agreed between the Lenders and the Borrower pursuant to the Transaction Documents. However, any deviation from the terms and conditions agreed between the Lenders and Borrower may be incorporated as mutually agreed between the Borrower and the New Lender.
- 20.6.4 The Borrower agrees that it shall assist and co-operate with the Lenders in completion of any formalities for assignment/novation or transfer of such rights, benefits and obligations and take all actions as may be required for this purpose, including but not limited to execution of deed of accession/adherence to one or more Financing Documents or amendment of the this Agreement and such other deeds, documents and writings as may be required by the Lenders and/or the New Lender or investors to facilitate or otherwise give effect to such assignment/novation or transfer.
- 20.6.5 If the Lender(s) wishes to assign or novate whole or part of its rights, benefits and obligations hereunder and under the other Financing Documents, then such novation/assignment shall be made by delivering to the Lenders a duly completed, stamped and executed deed in the form set out in Exhibit 1 ("Novation Deed") or such assignment shall be done by way of the deed of assignment in such form and manner as may be required by the Lenders ("Deed of Assignment"), the other Financing Documents shall also be amended in the manner set out therein in order to reflect the participation of the New Lender. On receipt of such notice (and in the event the assignment or novation is made at the request of the Borrower, payment of applicable fee by the Borrower), the Borrower and the other Parties/Lenders (for and on behalf of itself and such other parties) shall countersign it and subject to the terms of that Novation Deed.
- (a) To the extent the Lenders ("Existing Lenders") seeks to novate its commitment (or any part thereof) and/or Facility (or any part thereof) under the Novation Deed, the Borrower or the Existing Lenders, as the case may be, shall each be released from further obligations to each other and their respective rights against each other shall be cancelled to the extent of novation (such rights and obligations being referred to as "Novation Discharged Rights and Obligations");
- (b) The Borrower and the Lenders shall each assume new obligations towards each other and/or acquire new rights against each other which differ from the Novation Discharged Rights and Obligations only insofar as the Borrower and the New Lender, have assumed and required the same in place of the Borrower and the Existing Lenders; and
- (c) The New Lender and the other Parties to this Agreement and the parties to the other Financing Documents (other than the Borrower) shall acquire the same rights and assume the same obligations between themselves as regards the Borrower as they would have acquired and assumed had that New Lender, been an original party to this Agreement and the other Transaction Documents (upon their amendment in the manner set out therein to reflect the participation of the New Lender) as a Lenders with the rights and/or obligations acquired or assumed by it as a result of that novation (and to the extent, of novation, the Existing Lender and those other parties shall each be released from further obligations to each other).

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Borrower	Lender
For Poise Real Estate PVT. Ltd. 	

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- 20.6.6 Notwithstanding any such assignment or transfer, the Borrower shall, unless otherwise notified by the Lenders, continue to make all payments under this Agreement and the other Transaction Documents to Lenders and all such payments when made to Lenders shall constitute a full discharge to the Borrower from all its liabilities in respect of such payments. The Lenders shall further have the right to assign, transfer, sell, pledge or hypothecate the Facility, Project Receivables, the Security, rights, benefits and any other interest created in its/their favour under the Agreement or any of the Financing Documents or hereunder, without prior concurrence or intimation to the Borrower or any other Person.
- 20.6.7 Any such assignment, transfer, sale, pledge or hypothecation shall bind the Borrower to accept such third party as creditor exclusively or as a joint creditor with Lenders, as the case may be. Any cost in this behalf, whether on account of such sale, assignment or transfer or enforcement of rights and recovery of outstanding amount, shall be to the account of the Borrower.
- 20.6.8 The Borrower hereby expressly agrees that nothing herein contained shall operate to prejudice the rights and remedies of Lenders in respect of any other obligations of the Borrower to Lenders or prejudice or effect any general or particular lien to which Lenders are by law or otherwise entitled to or operate to prejudice Lender's rights or remedies in respect of any present or future security, guarantee or obligation given to Lenders by any other Person for any indebtedness or liability of the Borrower.
- 20.6.9 The Borrower agrees that this Agreement and the security hereby created shall operate as a continuing security for all the obligations of the Borrower in respect of the Facility, notwithstanding the existence of a credit balance in the said account or any partial payments or fluctuation of accounts.

## 20.7 Governing Law

This Agreement shall be governed by and construed in accordance with Indian law.

## 20.8 Jurisdiction

### 20.8.1 Courts and Tribunals

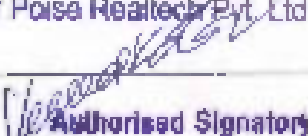
The Borrower agrees that the courts and tribunals (including the Debt Recovery Tribunal) in Delhi shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Financing Documents and that accordingly any suit, action or proceedings (together referred to as "Proceedings") arising out of or in connection with the Financing Documents may be brought in such courts or the tribunals and the Borrower irrevocably submits to and accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of those courts or tribunals.

### 20.8.2 Arbitration

- (a) The Parties agree that all claims, disputes, and differences arising out of or in connection with the Financing Documents between the Borrower and such Lenders shall be referred to arbitration under the provisions of the Arbitration & Conciliation Act, 1996, and any amendments thereto from time to time.
- (b) Pursuant to arbitration referred to in paragraph (i) above, the Lenders shall have the right to appoint a sole arbitrator.

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Borrower	Lender
For Poise Realtech Pvt. Ltd.	

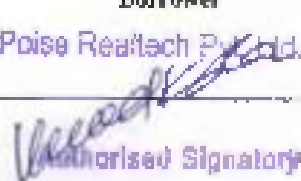

  
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- (c) All proceedings shall be conducted in English and the seat of such arbitration will be at Delhi.
- (d) The decision of the arbitrator shall be final and binding on the parties to such arbitration.
- (e) Notwithstanding anything contained in Section 21.8.2, in the event the legal status of the Lenders changes or in the event of the law being made or amended so as to bring the Lenders under the Debts Due to Banks and Financial Institutions Act, 1993 (the "DRT Act") or the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("Securitization Act"), to enable the Lenders to enforce any security under the Securitization Act and proceed to recover dues from the Borrower under the DRT Act, the arbitration provisions hereinbefore contained shall, at the option of the relevant Lenders, cease to have any effect. *Provided that* neither a change in the legal status of the Lenders nor a change in law as referred to in this sub-section, will result in invalidating an existing award passed by an arbitral tribunal constituted pursuant to the provisions of hereof.

#### 20.8.3 General Provisions on Jurisdiction for all Disputes

- (a) The Borrower irrevocably waives any objection now or in future, to the laying of the venue of any Proceedings in the courts and tribunals in Delhi or such other place as maybe decided by the Lenders and any claim that any such Proceedings have been brought in an inconvenient forum and further irrevocably agrees that a judgment in any Proceedings brought in the courts and tribunals of Delhi shall be conclusive and binding upon it and may be enforced in the courts of any other jurisdiction, (subject to the laws of such jurisdiction) by a suit upon such judgment a certified copy of which shall be conclusive evidence of such judgment, or in any other manner provided by law.
- (b) Nothing contained in this Clause 20.8, shall limit any right of the Lenders to take Proceedings in any other court or tribunal of competent jurisdiction, nor shall the taking of Proceedings in one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction whether concurrently or not and the Borrower irrevocably submits to and accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of such court or tribunal, and the Borrower irrevocably waives any objection it may have now or in the future to the laying of the venue of any Proceedings and any claim that any such Proceedings have been brought in an inconvenient forum.
- (c) The Borrower hereby consents generally in respect of any Proceedings arising out of or in connection with any Financing Documents to the giving of any relief or the issue of any process in connection with such Proceedings including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such Proceedings.
- (d) To the extent that the Borrower may in any jurisdiction claim for itself or its assets immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that in any such jurisdiction there may be attributed to itself or its assets such immunity (whether

Borrower	Lender
For Poise Reattach Pvt. Ltd. 	

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or not claimed), the Borrower hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity.

#### 20.9 Severability

Any provision of this Agreement, which is prohibited or unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of prohibition or unenforceability but shall not invalidate the remaining provisions of such Financing Document or affect such provision in any other jurisdiction.

#### 20.10 Documents

All documents to be furnished or communications to be given or made under this Agreement shall be in English or if any other language, shall be accompanied by a translation into English certified by a representative of the Lenders, at the expense of the Borrower, which translation shall be the governing version among the Borrower, the Lenders.

#### 20.11 Calculations and Computations

20.11.1 In any legal action or proceedings arising out of or in connection with the Financing Documents, the entries made in the accounts maintained by the Lenders shall be conclusive evidence of the existence and amount of obligations of the Borrower as therein recorded save for manifest error.

20.11.2 Any certification or determination by the Lenders of a rate or amount under the Financing Documents is conclusive evidence of the matters to which it relates.

20.11.3 All calculations and computations determining compliance with this Agreement shall utilize accounting principles, policies and practices in conformity with the generally accepted accounting principles, policies and practices used to prepare the Financial Statements, delivered to the Lenders pursuant to this Agreement.

#### 20.12 Partial Invalidation



If at any time any provision of this Agreement becomes illegal, invalid or unenforceable in any respect, neither the legality nor the validity or enforceability of the remaining provisions of this Agreement shall in any way be affected or impaired thereby.

#### 20.13 Overriding Effect

This Agreement and the other documents attached hereto or referred to herein integrate all the terms and conditions mentioned herein and/or incidental hereto and supersede all oral negotiations and prior writings in respect of the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Agreement and any agreement or documents attached hereto or referred to herein, then in such event, the terms, conditions and provisions of this Agreement shall prevail.

#### 20.14 Survival

20.14.1 All indemnities set forth herein shall survive the Final Settlement Date.

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Borrower	Lender
<b>For Poise Realtech Pvt. Ltd.</b> 	

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20.14.2 The obligations of the Borrower under this Agreement will not be affected by:

- (a) any unenforceability, illegality or invalidity of any obligation of any Person under a Transaction Document; or
- (b) the breach, frustration or non-fulfilment of any provisions of, or claim arising out of or in connection with a Transaction Document.

20.14.3 Taxes and Net Payments

- (a) All payments to be made by the Borrower to the Secured Parties under the Financing Documents shall be made free and clear of and without deduction for or on account of Taxes. The Borrower are only allowed to make such a payment subject to the tax deduction at source on the income of the Secured Parties if such deduction is required by law and provided that the Borrower deliver to the Secured Parties tax withholding or tax deduction certificates in respect of such withholding or deduction, evidencing that such deducted taxes or withholdings have been duly remitted to the appropriate authority.
- (b) In the event that the Borrower are required to make any other deduction or withholding (other than as mentioned in (a) above with reference to the income of the Secured Parties), the sum payable by the Borrower in respect of which such deduction or withholding is made shall be increased to the extent necessary to ensure that, after the making of the required deduction or withholding, such Secured Party receives and retains (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made.

20.14.4 Tax Indemnity


Without prejudice to the provisions of Section 21.15.3 (Taxes and Net Payments) above, the Borrower shall, upon demand by a Lenders promptly indemnify such Lender against any such payment or liability arising or in any relation to Taxes (other than income tax) or otherwise in relation to any sum received or receivable pursuant to the Financing Documents, that are required to be borne by the Borrower, together with any interest, penalties, costs and expenses payable or incurred in connection therewith.

20.14.5 Notification by the Lenders

The Lenders intending to make a claim under Section 21.15.4 (Tax Indemnity) shall notify the Borrower promptly and in any event within 3 (three) Business Days of becoming aware of the circumstances by which it is entitled to do so and shall deliver to the Borrower, a certificate setting out in reasonable detail the basis of such claim.

20.14.6 Notification by Borrower

If at any time, the Borrower are required by law to make any deduction or withholding from any sum payable hereunder (or if thereafter there is any change in the rates at which or the manner in which such deductions and withholdings are calculated), the Borrower shall forthwith notify the Secured Parties thereof.

08 Borrower For Poise Reactech Pvt. Ltd.	Lender 
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*[Signature]*  
 Authorized Signatory

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20.14.7 Receipt

The Borrower shall deliver to the Secured Parties within 3 (three) Business Days of receipt (or such other period as the Secured Parties may agree) a copy of the receipt, if any, issued by the applicable taxation or other authority evidencing the deduction or withholding of all amounts required to be deducted or withheld from such payment or (if the Borrower fails to provide a copy of such receipt) such other evidence as may be requested by the Secured Party to whom such payment is made.

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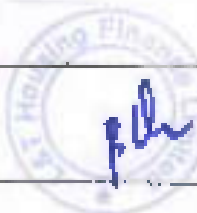
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Borrower For Poise Realltech Pvt. Ltd.	Lender
<i>[Handwritten Signature]</i> Authorized Signatory	

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## SCHEDULE I-A

**POISE REALTECH PRIVATE LIMITED**, a validly existing company under the Companies Act 2013, having corporate identification number U45400DL2014PTC270349 with its registered office at 201, 3<sup>rd</sup> Floor Sagar Plaza -II, Plot No.27, Community Centre, Pitampura New Delhi East Delhi - 110034

Borrower	Lender
For Poise Realtech Pvt. Ltd. <i>Uweeeka</i>	

Authorised Signatory

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SCHEDULE I-B

DETAILS OF THE LENDERS, FACILITY, INTEREST RATE, SPREAD, INTEREST RESET AND INTEREST PAYMENT DATE

S. No.	Name of the Lender	Commitment (Amount in Rs. Crores)	Interest Rate for the Facility	Interest Reset Date	Spread for the Facility	Interest Payment Date	Sanction Letter
1.	<p>L&amp;T Housing Finance Limited</p> <p>Address: Plot no.177, C.S.T. Road, Kaitna, Santacruz (E), Mumbai 400 098</p> <p>Email: <a href="mailto:ekalinihbharyaa@lts.com">ekalinihbharyaa@lts.com</a>  <a href="mailto:ksateenivasan@lts.com">ksateenivasan@lts.com</a></p> <p>Phone: 22 6212 5406</p> <p>Kind Attn: Mr Mohit Rajbharyar Mr K Sateenivasan</p>	250	<p>8.75% below L&amp;T Housing Finance Limited's PLR i.e. 9.00% (nine percent) per annum, payable monthly (floating) plus applicable interest tax and other statutory levy (if any) on the principal amount of the Loan(s) remaining outstanding each day. The Interest Rate shall remain fixed till the expiry of 24 (twenty four)</p>	<p><u>Interest Reset</u> <u>Event</u></p> <p>The Lenders shall have the right to reset the applicable Interest Rate/ Spread at any time during the term of the Loan upon occurrence of any of the following events:</p> <ul style="list-style-type: none"> <li>credit rating for the Facility has been downgraded to below investment grade by an accredited external credit rating agency as</li> </ul>	<p>8.75% per annum as per agreed in this Agreement</p>	<p>Payable monthly, on the expiry of 15 (Fifteen) days from the end of the preceding month. The first instalment of interest shall be for the period from the date of Initial Disbursement till 14th day of next month and thereafter interest shall be payable for the period commencing from 15th day of that month till the 14th day of subsequent month.</p>	<p>Sanction Letter dated _____, bearing reference number _____ including all the amendments/side letters/supplement thereto (the "Sanction Letter").</p>

For Polys Reatech Pvt. Ltd.

Borrower

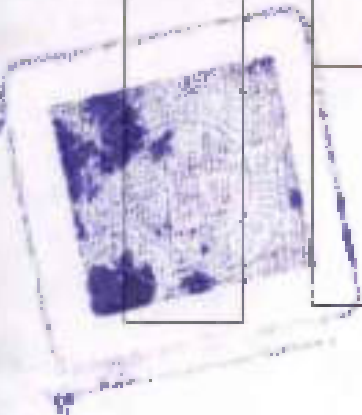
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Lender

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S. No.	Name of the Lender	Commitment (Amount in Rs. Crores)	Interest Rate for the Facility	Interest Reset Date	Spread for the Facility	Interest Payment Date	Sanction Letter
			avoids from the Initial Disbursement Date. The present PLR rate being 17.75% per annum.	approved by the Lenders; • adverse change in the money market conditions; • RBI revising the standard provision on assets; • RBI changing the risk weight for assets; and/or • Upon occurrence of any Event of Default.			

**For Poiss Research Pvt Ltd**

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**SCHEDULE II**  
**REPAYMENT SCHEDULE**

The Facility to be repaid in 12 (twelve) equal quarterly installments as below:

Quarter from Initial Disbursement	Amount to be repaid in each Quarter (Rs. in Crores.)
Q 13 - 24	16.67
Total	200.00

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Borrower	Lender
<b>For Poise Realtech Pvt. Ltd.</b> 	

**Authorized Signatory**

*Asst*  
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## SCHEDULE III

## PART A

## CONDITION PRECEDENT FOR INITIAL DISBURSEMENT

The Initial Disbursement under this Agreement shall be subject to the fulfillment or waiver, in a manner satisfactory to the Lenders of the conditions set out herein, such satisfaction to be recorded in writing:

- (i) The Borrower shall have submitted satisfactory legal search, internal & external technical valuation report in respect of Security provided to the Lenders.
- (ii) The Borrower shall have procured relevant Clearances in relation to the transaction contemplated under the Financing Documents.
- (iii) The Borrower shall have submitted satisfactory RoC report in relation to the Security offered to the Lenders.
- (iv) The Borrower shall have submitted to the Lenders 5 (Five) cheques towards repayment of the Loan amount and 12 (Twelve) cheques towards payment of monthly interest amount in favour of the Lenders.
- (v) The Borrower shall have submitted details of sold units, unsold units and collection data of the Projects.
- (vi) The Borrower shall have submitted net worth certificate of the Promoter and Guarantor, duly certified by the chartered accountant, in the form acceptable to the Lender(s). The aforesaid certificate shall not be more than 6 (Six) months old.
- (vii) The Borrower shall have submitted the executed copy of the Development Management Agreement.
- (viii) The Borrower shall have submitted the certified true copies of the Memorandum and Articles of Association, to the Lenders.
- (ix) The Borrower shall have submitted the Project Documents in the form and manner satisfactory to the Lenders.
- (x) The Borrower shall have submitted to the Lenders resolutions listed below, in each case certified by the Authorised Officer of the Borrower:
  - (a) certified true copy of resolutions of the Board:
    - (i) approving the terms and execution of, and the transactions contemplated by the Financing Documents entered into by it;
    - (ii) authorizing the affixation of the common seal on the Financing Documents, and/or a director or directors or other authorized executives to execute the Financing Documents to be entered into by it; and


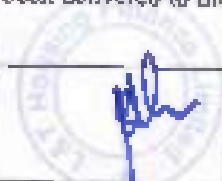
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Borrower	Lender
For Poise Realtech Pvt. Ltd. 	

Authorized Signatory

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- (iii) authorizing a Person or Persons, on its behalf, to sign and/or dispatch all documents and notices to be signed and/or dispatched by it under or in connection with the Financing Documents entered into by it.
- (b) certified true copy of all other necessary corporate resolutions of the Borrower.
- (xi) The Borrower shall have submitted certified true copy of the resolution of the shareholders of the Borrower under Section 62(3) of the Companies Act authorizing the conversion of the Outstanding Amount into Shares in accordance with the terms and conditions set out in this Agreement; and
- (xii) The Borrower shall have submitted to the Lenders, a certificate from an independent chartered accountant certifying, *inter alia*, that: (i) Section 180(1)(c) of the Companies Act, 2013; and (ii) Section 180(1)(a) of the Companies Act, 2013 do not apply in the Borrower.
- (xiii) The Borrower shall have caused STL to submit to the Lenders resolutions listed below, in each case certified by the Authorized Officer of STL:
  - (a) certified true copy of resolutions of the Board:
    - (i) approving the terms and execution of, and the transactions contemplated by the Financing Documents and Security Documents to which STL is a party;
    - (ii) authorizing the affixation of the common seal on the Financing Documents and Security Documents, and/or a director or directors or other authorized executives to execute the Financing Documents and the Security Documents to be entered into by STL; and
    - (iii) authorizing a Person or Persons, on its behalf, to sign and/or dispatch all documents and notices to be signed and/or dispatched by STL under or in connection with the Financing Documents and Security Documents entered into by STL.
  - (b) certified true copies of resolution of the shareholders of STL, under Section 186 of the Companies Act, 2013, as applicable; and
  - (c) certified true copy of all other necessary corporate resolutions of STL.
- (xiv) The Borrower shall have caused STL to submit to the Lenders prior to the date of any Security Documents proposed to be executed by STL, a certificate by its' company secretary certifying that Section 185 of the Companies Act, 2013 is not applicable in relation to the transaction contemplated under the Security Documents.
- (xv) The Borrower shall have submitted and shall have caused to be submitted, all "know your customer" requirements of the Borrower and the Promoter, as the case may be, to the satisfaction of the Lenders.
- (xvi) Each of the Financing Documents shall have been duly stamped and executed by the respective parties thereto and registered wherever required with the appropriate authorities and shall have become (or, as the case may be, shall remain) effective and enforceable in accordance with their respective terms and copies thereof shall have been delivered to the

Borrower <b>For Poise Realtech Pvt. Ltd.</b> 	75 Lender 
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Lenders and shall have created and perfection of Security in accordance with the provisions of this Agreement to the satisfaction of the Lender.

- (xvii) The Borrower shall have deposited all fees and charges payable to the Lenders by the Borrower.
- (xviii) The Borrower shall have submitted to the Lenders a valuation report in relation to the Mortgaged Properties forming part of the Projects from the Panel Valuer.
- (xix) The Borrower shall have provided suitable undertaking in favour of the Lenders, in the form and manner satisfactory to the Lenders, including but not limited to ensuring that the Borrower and the Security Providers shall intimate the existing Customers, about the Project I being mortgaged to the Lenders, within a period of 15 (fifteen) days from the date of Initial Disbursement and that the balance payments shall be made by the existing Customers in the Project I Escrow Account.
- (xx) The Borrower shall have caused the Promoter provided, *inter alia*, the following undertakings:
- the Promoter shall at all times until the Final Settlement Date, hold management control in the Borrower and maintain at least 90% (ninety per cent) of the issued and paid up share capital of the Borrower free from any Security Interest (other than created pursuant to the Financing Documents);
  - the Promoter shall not dispose of or transfer, directly or indirectly, any of its shareholding in the Borrower, except with the prior written consent of the Lenders;
  - the Promoter shall infuse additional equity/fund in the Borrower, in event of any shortfall in the resources of the Borrower for successful completion of the Projects (including any shortfall in its working capital requirement or any cost overrun of the Projects), the Promoter shall infuse additional equity/fund in the Borrower;
  - the Promoter shall ensure that none of the clauses of the existing shareholder's agreement, if any, and the constitutional documents of the Borrower ("Charter Documents") are prejudicial to the interest of the Lenders and in case of any inconsistencies between the Charter Documents and the terms of the Financing Documents, the Charter Documents shall be amended to the effect that the terms of the Financing Documents prevails; and
  - such undertakings as may be required by the Lenders, from time to time.
- (xxi) The Lenders shall have received confirmation from the Borrower that all conditions for Initial Disbursement in this Agreement have been satisfied.
- (xxii) An exclusive pledge over 100% (one hundred percent) paid up equity shares of Borrower held by the Promoter and Mr. Pramod Kumar Gupta in physical form, in favour of the Security Trustee for the benefit of the Lenders, has been created and perfected within 30 (thirty) days of creation of such Security Interest. Further, the Borrower shall have initiated the conversion of physical shares in the dematerialized form.
- (xxiii) The Lenders shall have received a certificate from an Authorized Officer of the Borrower certifying, *inter alia*, that: (a) no Event of Default or Potential Event of Default has occurred or is continuing or will occur as a result of the Disbursement; (b) all representations and warranties of the Borrower are true and correct with the same force and effect as though such representations and warranties have been made on and as of the date of Disbursement;

<p>For Police Research Pvt. Ltd. Borrower</p> <p><i>[Signature]</i> Auth. Signatory</p>	<p>76</p> <p>Lender</p> <p><i>[Signature]</i></p>
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(c) the Borrower has the power to borrow the Facility and the memorandum of association and the articles of association of the Borrower and any provision contained in any document by which the Borrower is bound, or any Applicable Law directly or indirectly, does/shall not restrict the power of the Borrower to borrow or the authority or ability of the Borrower to borrow the Facility; (d) each copy document relating to it specified in this Part A of Schedule III Part A is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement; (e) the proceeds of the Drawdown shall be applied only towards the purpose specified in Section 2.2 of this Agreement; and (f) the Borrower certifying that the Borrower is in compliance in all material respects with the Project Documents and with all Applicable Laws in effect as on date of the relevant Disbursement and the Clearances required till the date of Disbursement have been obtained and are in full force and effect and the Borrower are in compliance with all the conditions stipulated therein.

- (xxiv) The Lenders shall have received a certificate from an Authorized Officer of STL certifying, *inter alia*, that: (a) no Event of Default or Potential Event of Default, has occurred and is continuing, or would result from STL entering into the security documents to which it is a party; (b) STL has necessary powers under our memorandum of association and article of association, to execute the guarantee and other security documents, pursuant to the terms and conditions of this Agreement; (c) no applicable law and/or any other document binding on STL, directly or indirectly, does not restrict the power of STL to provide security and to guarantee the obligations of the Borrower; (d) all representations and warranties made by us under the Security Documents to which, the Guarantor is a party are true and correct in all material on and as of the relevant such Security Document; (e) each copy document relating to it specified in this Part A of Schedule III Part A is correct, complete and in full force and effect as at a date no earlier than the date of the Agreement; (f) there are no ongoing proceedings/litigations or disputes which restrict STL from entering into the Security Documents, to which it is a party; (g) STL is in compliance in all material respects with all Applicable Laws in effect as on date of the relevant Security Documents, to which it is a party and all the Clearances required have been obtained and are in full force and effect and we are in compliance with all the conditions stipulated therein; and (h) no material adverse effect has occurred or will occur as a result of providing guarantee or entering into Security Documents to which it is a party.
- (xxv) The Borrower shall have submitted a NoC from the Existing Lenders for availing the Facility, if applicable.
- (xxvi) The Borrower shall have caused STL to submit to the Lenders a certificate from the company secretary of the Guarantor, certifying that Section 185 of the Companies Act, 2013 does not apply to the Security Documents proposed to be entered into by the Guarantor.
- (xxvii) The Promoter, STL and the Borrower shall and shall have caused to submit a declaration (on Rs. 100 (Rupees One Hundred) stamp paper duly notarized) that their property upon which Security is to be created / created for the benefit of the Lender is treated as stock in trade in financial books of the aforesaid parties. In the event, the assets on which the Security Interest is proposed to be secured are not classified as stock in trade, the Borrower, STL, Promoter and Mr. Pramod Kumar Gupta shall provide a certificate of an independent chartered accountant certifying the same along with the confirmation that there are no income tax dues under Section 281(1) (ii) of the Income Tax Act, 1961 are outstanding on the Borrower, STL, the Promoter and Mr. Pramod Kumar Gupta respectively; or in the event the property upon which Security is to be created/created for the benefit of the

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Borrower	Lender
<p>For Poise Realtach Pvt. Ltd.</p>	


*Vijay Kumar*  
Authorized Signatory

*Asst*  
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Lender is not treated as stock in trade in financial books of the such addressed parties, a self-declaration as well as a certificate from of statutory auditor's/ chartered accountants stating non- applicability/ no dues under section 281(1) (ii) of the Income Tax Act, 1961 along with duly acknowledged copy of the application for permission made to Income Tax authority under Section 281(1)(ii) of the Income Tax Act, 1961.

*[Large handwritten mark]*

<p style="text-align: center;">78</p> <p style="text-align: center;"><b>Borrower</b> For Poise Realtech Pvt. Ltd.</p> <p><i>[Handwritten Signature]</i></p> <p><b>Authorized Signatory</b></p>	<p style="text-align: center;"><b>Lender</b></p> <p style="text-align: center;"><i>[Handwritten Signature]</i></p> 
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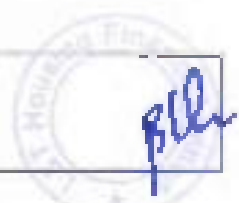
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## PART B

## CONDITION SUBSEQUENT TO INITIAL DISBURSEMENT

- (i) The Borrower shall have caused DPPL to submit to the Lenders, resolutions listed below, in each case certified by the Authorised Officer of DPPL, prior to the execution of the Security Documents to which DPPL is a party:
- (a) certified true copy of resolutions of the Board:
    - (i) approving the terms and execution of, and the transactions contemplated by the Financing Documents and Security Documents to which DPPL is a party;
    - (ii) authorizing the affixation of the common seal on the Financing Documents and Security Documents, and/or a director or directors or other authorised executives to execute the Financing Documents and the Security Documents to be entered into by DPPL; and
    - (iii) authorizing a Person or Persons, on its behalf, to sign and/or dispatch all documents and notices to be signed and/or dispatched by DPPL, under or in connection with the Financing Documents and Security Documents entered into by DPPL.
  - (b) certified true copies of resolution of the shareholders of DPPL, under Section 186 of the Companies Act, 2013, as applicable; and
  - (c) certified true copy of all other necessary corporate resolutions of DPPL.
- (ii) The Borrower shall have caused DPPL to submit to the Lenders prior to the date of any Security Documents proposed to be executed by DPPL, a certificate by its' company secretary certifying that Section 185 of the Companies Act, 2013 is not applicable in relation to the transaction contemplated under the Security Documents.
- (iii) The Lenders shall have received a certificate from an Authorised Officer of the DPPL certifying, *inter alia*, that: (a) no Event of Default or Potential Event of Default, has occurred and is continuing, or would result from DPPL entering into the security documents to which it is a party; (b) DPPL has necessary powers under our memorandum of association and article of association, to execute the guarantee and other security documents, pursuant to the terms and conditions of this Agreement; (c) no applicable law and/or any other document binding on DPPL, directly or indirectly, does not restrict the power of the DPPL to provide security to secure the obligations of the Borrower; (d) all representations and warranties made by us under the Security Documents to which, DPPL is a party are true and correct in all material on and as of the relevant such security document; (e) each copy document relating to it specified in this Part B of Schedule III Part A is correct, complete and in full force and effect as at a date no earlier than the date of the Agreement; (f) there are no ongoing proceedings/litigations or disputes which restrict DPPL from entering into the Security Documents, to which it is a party; (g) DPPL is in compliance in all material respects with all Applicable Laws in effect as on date of the relevant Security Documents, to which it is a party and all the Clearances required have been obtained and are in full force and effect and we are in compliance with all the


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Borrower	Lender
For Pulse Realestate Pvt. Ltd. 	

Authorized Signatory

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- conditions stipulated therein; and (2) no material adverse effect has occurred or will occur as a result of providing guarantee or entering into Security Documents to which it is a party.
- (iv) The Borrower shall have provided evidence of creation of Security Interest, created in the favour of the Security Trustee for the benefit of the Lenders, as stipulated in Clause 10.1(a)(v) and Clause 10.1(a)(vii) within 7 (seven) days from the Initial Disbursement Date, in the form and manner satisfactory to the Lenders.
- (v) The Borrower undertakes to provide/procure the following, within a period of 15 (Fifteen) days from the date of Initial Disbursement, submit to the Lenders:
- evidence of sale deeds containing clauses that the Security Interest has been created on Projects in favour of the Lenders;
  - copies of necessary Insurance Contracts to secure the Projects assets, in the form and manner satisfactory to the Lenders; and
- (vi) The Borrower shall have submitted evidence of insertion of a clause in all the sale agreement(s) with its Customers of the Project I stating that L&T Housing Finance Limited is the Lender(s) of the Project I and the properties of the Project have been charged / mortgaged in favour of the Lender(s) and any sale consideration in respect of the units in Project I shall be deposited by such Customers directly in the Projects Escrow Account.
- (vii) The Borrower shall have provided evidence of creation of Security Interest, created in the favour of the Security Trustee for the benefit of the Lenders, as stipulated in Clause 10.1(e) of this Agreement, within 30 (thirty) days from the Initial Disbursement Date, in the form and manner satisfactory to the Lenders.
- (viii) The Borrower shall have caused the creation of Security Interest on the security stipulated in Clause 10.1(a)(i), Clause 10.1(a)(ii), Clause 10.1(a)(iii), Clause 10.1(a)(iv), Clause 10.1 (v) and Clause 10.1 (vi), respectively of this Agreement, within 45 (forty five) days of the Initial Disbursement Date, in the form and manner satisfactory to the Lenders.
- (ix) The Borrower shall have provided evidence to the Lenders of perfection (which shall include registration of mortgage with the relevant Sub-Registrar of Assurance, filing of Lenders/Security Trustee's charge with ROC, etc.) of the Security Interest to be created in the favour of the Security Trustee for the benefit of the Lenders, within 15 (fifteen) days from the date of the creation of Security Interest on the Security, in accordance with the terms of this Agreement.
- (x) The Borrower shall have completed the process of dematerialization of its shares and have done to all necessary filings with the depositories, evidencing the continuation of pledge over 100% (one hundred percent) paid up equity shares of Borrower in favour of the Security Trustee for the benefit of the Lenders, within 30 (thirty) days of the creation of the Security Interest or such other date as agreed by the Lenders.

<p>For <del>Pulse Realty</del> <b>Pulse Realty Pvt. Ltd.</b> Borrower</p> <p><i>[Signature]</i> Auth. Signatory</p>	<p>39</p> <p>Lender</p> <p><i>[Signature]</i></p> 
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*[Signature]*  
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## PART C

## CONDITION PRECEDENT FOR ALL DISBURSEMENTS AFTER THE INITIAL DISBURSEMENT

Any Disbursement after the Initial Disbursement of the Facility shall, *inter alia*, be subject to the Borrower complying with the following conditions to the satisfaction of the Lenders:

- (i) The Borrower shall have created and perfected the additional security stipulated by the Lenders, in the form and manner satisfactory to the Lenders and shall have completed the relevant RoC filings.
- (ii) The Borrower shall have completed the work as stipulated in Schedule VI (*Disbursement Schedule*) hereof.
- (iii) The Borrower shall have submitted to the Lenders the booking details with the number of units in the Projects being sold and the amount of money received against the same on quarterly basis.
- (iv) The Borrower shall have submitted to the Lenders end use certificate within 60 (sixty) days from the date of Disbursement, issued by an independent chartered accountant, duly certifying that the Facility has been utilised by the Borrower, in accordance with the purpose set out in Clause 2.2 hereof.
- (v) The Borrower shall submit to the Lenders independent chartered accountant certificate for details of any cost incurred on the Projects on a quarterly basis.

Borrower	Lender
For Poise Realtech Pvt. Ltd.	

*[Signature]*  
Authorised Signatory



*[Signature]*  
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SCHEDULE IV

EXISTING LOAN & EXISTING GUARANTEES

(Details attached separately)



<p>Borrower</p> <p>For Poise Realty Pvt. Ltd.</p> <p><i>[Handwritten Signature]</i></p>	<p>Lender</p> <p><i>[Handwritten Signature]</i></p>
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Authorized Signatory

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## SCHEDULE V

## CONSTRUCTION SCHEDULE

Remaining Project I cost: Rs. 217.95 Crore

No of Quarters from Initial Disbursement	% Completion of "Remaining Project I cost"
1	0.00%
2	2.87%
3	8.09%
4	15.71%
5	25.33%
6	33.50%
7	44.00%
8	53.52%
9	61.09%
10	71.37%
11	79.08%
12	85.12%
13	89.06%
14	92.97%
15	96.87%
16	100.00%

Remaining Project II Cost: Rs. 56.19 Crore

No of Quarter from Initial Disbursement	% Completion of "Remaining Project Cost - II"
1	0.00%
2	10.02%
3	21.19%
4	33.31%
5	45.44%
6	51.91%
7	59.04%
8	66.17%
9	73.30%
10	80.43%
11	87.56%
12	91.28%
13	94.83%
14	98.38%
15	100.00%
16	100.00%

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Borrower	Lender
For Poise Realtach Pvt. Ltd.	

*[Signature]*  
 Authorised Signatory



*[Signature]*  
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## SCHEDULE VI

## DETAILS OF THE DISBURSEMENT SCHEDULE

Disbursement	Rs. (In Crore)	Towards
I	132.00	Acquisition of Identified Inventory in Project I, up to Rs. 110.00 Crores, land related cost, Facility related expenses and completion of cumulative 68.10 % of Project I construction work.
II	04.00	Facility related expenses and completion of cumulative 69.9 % of Project I construction work
III	15.00	Facility related expenses and completion of cumulative 72.4 % of Project I construction work
IV	10.00	Facility related expenses and completion of cumulative 75.50 % of Project I construction work
V	26.00	Facility related expenses and completion of cumulative 78.20 % of Project I construction work
VI	13.00	Facility related expenses and completion of cumulative 81.60 % of Project I construction work

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Borrower For Poise Realtech Pvt. Ltd.	Lender
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*Ujjwal*  
Authorized Signatory

*Asst*  
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**SCHEDULE VII**  
**SALES SCHEDULE**  
**For Project I**

No of Qtr from 1 <sup>st</sup> disbursement	Trigger for Right to levy Further Interest		Trigger for right to Recall	
	Cumulative Area to be sold from currently Unsold Area (square feet)	Cumulative Sales Inflow (Rs in Crs)	Cumulative Area to be sold from currently Unsold Area (square feet)	Cumulative Sales Inflow (Rs in Crs)
1	-	-	-	-
2	29,427	11.73	-	-
3	69,043	29.59	29,427	11.73
4	124,601	51.22	69,043	29.59
5	186,454	76.48	124,601	51.22
6	255,120	94.96	186,454	76.48
7	324,714	131.39	255,120	94.96
8	404,825	164.71	324,714	131.39
9	488,500	224.68	404,825	164.71
10	569,807	285.27	488,500	224.68
11	672,551	345.34	569,807	285.27
12	763,210	398.08	672,551	345.34
13	847,144	437.65	763,210	398.08
14	928,768	476.27	847,144	437.65
15	1,005,401	512.56	928,768	476.27
16	1,090,291	540.67	1,005,401	512.56
17	1,175,182	575.57	1,090,291	540.67
18	1,237,322	602.68	1,175,182	575.57
19	1,299,463	623.01	1,237,322	602.68
20	1,364,546	644.31	1,299,463	623.01
21	1,409,030	658.81	1,364,546	644.31
22	1,427,030	664.57	1,409,030	658.81
23	1,445,030	670.33	1,427,030	664.57
24	1,452,210	672.63	1,445,030	670.33

**For Project II**

No. of Quarter from 1 <sup>st</sup> disbursement	Trigger for Right to levy further interest		Trigger for Right to recall	
	Cumulative Area to be sold from currently Unsold Area (square feet)	Cumulative Sales Inflow (Rs. in Crore)	Cumulative Area to be sold from currently Unsold Area (square feet)	Cumulative Sales Inflow (Rs. in Crore)
1	-	-	-	-
2	-	-	-	-
3	-	-	-	-
4	12,164	3.85	-	-
5	24,328	10.57	12,164	3.85
6	42,574	22.57	24,328	10.57

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Borrower	Lender
For Poise Realtech Pvt. Ltd.	


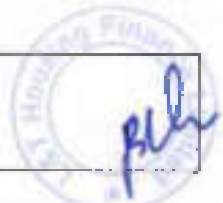
*Venugopala*  
Authorized Signatory

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No. of Quarter from 1 <sup>st</sup> disbursement	Trigger for Right to levy further Interest		Trigger for Right to recall	
	Cumulative Area to be sold from currently Unsold Area (square feet)	Cumulative Sales Inflow (Rs. in Crore)	Cumulative Area to be sold from currently Unsold Area (square feet)	Cumulative Sales Inflow (Rs. in Crore)
7	64,942	39.08	42,574	22.57
8	93,392	63.18	64,942	39.08
9	121,842	90.58	93,392	63.18
10	150,292	120.05	121,842	90.58
11	178,742	151.59	150,292	120.05
12	195,028	169.42	178,742	151.59
13	217,396	193.62	195,028	169.42
14	239,764	219.63	217,396	193.62
15	249,968	237.14	239,764	219.63
16	249,968	246.91	249,968	237.14
17	249,968	249.97	249,968	246.91
18	249,968	249.97	249,968	249.97
19	249,968	249.97	249,968	249.97
20	249,968	249.97	249,968	249.97
21	249,968	249.97	249,968	249.97
22	249,968	249.97	249,968	249.97
23	249,968	249.97	249,968	249.97
24	249,968	249.97	249,968	249.97

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Authorized Signatory  For Paise Realtech Pvt Ltd	Lender 
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## SCHEDULE VIII

## PART A

## DETAILS OF PROJECT I

Type	Towers/Blocks	Total Area (square feet)	Unsold Area (square feet)
Group Housing	B, E1, E2, A1, A2, B3, H1, H2, C3, C4, C5, D, F, G1	3,771,534	623,194
Villas	S1, S3, S4 & S6	1,054,930	35,542
Plots	Plots	752,360	23,795
Shops	Shops	4,725	630

## PART B

## DETAILS OF IDENTIFIED INVENTORY

Type	Towers/Blocks	Total Area (square feet)	Unsold Area (square feet)
Group Housing	B, B1, E2, A1, A2, E3, H1, H2, C3, C4, C5, D, F, G1	1,099,465	531,610
Villas	S1, S3, S4 & S6	234,879	205,059
Plots	Plots	39,600	32,400

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Borrower For Poise Realech Pvt. Ltd.	Lender
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*[Handwritten Signature]*  
Authorized Signatory



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EXHIBIT 1

NOVATION DEED

To Lender/ Lender's Agent

1. This Novation Deed dated [●] (hereinafter referred to as "Deed") relates to the facility agreement dated [●] ("Agreement") entered into between the Lenders and the Borrower, as may be amended from time to time. Except as defined in this Deed, the capitalized terms defined in the Deed shall have the same meaning in this Facility Agreement and:

(a) "Existing Lender" shall mean [●] (which expression shall, unless it be repugnant to the subject or context thereof, include its successors and assigns);

(b) "New Lender" shall mean [●] (which expression shall, unless it be repugnant to the subject or context thereof, include its successors and assigns).

2. The Existing Lender hereby:

(a) confirms that, to the extent details appear below under the heading "Rights and/or Obligations to be Novated", those details accurately summarize the rights and/or obligations which are to be novated and which are, upon execution and delivery of this Novation Deed to Lender (but subject to paragraph 3 below), cancelled and discharged in accordance with the Clause 20.6 of the Facility Agreement;

(b) confirms that consent, if any, required in accordance with the Clause 20.6 of the Facility Agreement has been duly obtained for this novation, and

(c) gives notice to the undersigned New Lender that the Existing Lender is/ are under no obligation to repurchase all or any part of those Rights and/or obligations to be Novated at any time nor to support any losses suffered by the New Lender.

3. The undersigned New Lender agrees that it assumes and acquires new rights and/or obligations stated under the heading "Rights and/or Obligations to be Novated" in accordance with the Clause 20.6 of the Facility Agreement on and with effect from [●].

4. The New Lender:

(a) confirms that, until further notice, its office and details for communication are set out below and the contents of Schedule 1, Part B of the Loan Agreement shall be amended to make the following addition:

For : [●]  
 Address : [●]  
 Attention : [●]  
 Tel. No. : [●]  
 Email : [●]

Borrower For Poise Realtech Pvt. Ltd.	Lender
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*[Handwritten Signature]*  
 Authorised Signatory



*[Handwritten Signature]*  
 TRUE COPY

- (b) agrees to perform and comply with the obligations expressed to be imposed on it by the Clause 20.6 of the Facility Agreement as a result of this Deed taking effect;
  - (c) acknowledges and accepts paragraph 2(c) above;
  - (d) agrees to be bound by the Facility Agreement, and other Financing Documents (upon their amendment in the manner set out therein to reflect the participation of the New Lender) in relation to the matters stated under the heading "Rights and/or Obligations to be Novated" as if the New Lender was a Party thereto in place and stead of the Existing Lender except in relation to the rights of the Existing Lender in respect of the said matters which shall accrue to the New Lender with effect from the date hereof; and
  - (e) confirms, on the basis of the facts then known to it that the novation will not give rights to any requirement for any withholding or Increased Cost or other cost or expenses to the Borrower which would not be incurred by the Borrower if the novation did not take place.
3. The above confirmations and documents are given to and for the benefit of and made with each of the other parties to the Loan Agreement.
  6. "Rights and/or Obligations to be Novated" shall mean and include:  
The Existing Lender's Commitment to the extent of its {■} and/or loans to the extent of {■} to be novated in accordance with this Deed and the Loan Agreement.
  7. This Deed shall be governed by and construed in accordance with the laws of India.
  8. Schedule I B - LENDER AND DETAILS OF LOAN of the Facility Agreement shall stand amended in the following manner: {■}
  9. This Deed shall be a Financing Document and shall be read in unison with the terms and conditions as more fully set out in the Facility Agreement as may be amended from time to time.


\_\_\_\_\_  
For the Existing Lender

\_\_\_\_\_  
For New Lender

\_\_\_\_\_  
For Borrower

Agreed for and on behalf of the other parties to the Facility Agreement and Financing Agreements

\_\_\_\_\_  
Lenders

Borrower  For Poise Reatech Pvt. Ltd.  Authorized Signatory	39 Lender  
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EXHIBIT 2

DISBURSEMENT NOTICE

To: [●], as the Lenders



Disbursement Notice

Ladies and Gentlemen,

I, the undersigned Authorised Officer of Poise Realtech Private Limited (the "Borrower"), DO HEREBY CERTIFY that:

1. This certificate is furnished pursuant to Clause 3.2.1 (*Mechanics for Requesting Disbursement*) of the Facility Agreement, dated as of [●] (the "Facility Agreement"), among the Borrower and the Lenders. Unless otherwise defined herein, all capitalized terms used herein have the meanings assigned to those terms in the Facility Agreement.
2. The Borrower has irrevocably requested a Disbursement from Lenders on [insert Business Day] for the amount of [insert amount] in accordance with Clause 3.2 (*Mechanics for Requesting Disbursement*) of Facility Agreement (the "Proposed Disbursement"). After giving effect to the Proposed Disbursement, the aggregate principal outstanding under the Facility Agreement is [●].
3. For the purposes of Clause 3.2 (*Mechanics for Requesting Disbursement*) and Clause 9.1 (*Conditions Precedent to Initial Disbursement*) and<sup>1</sup> Clause 9.3 (*Conditions Precedent to all Disbursements after the Initial Disbursements*) of the Facility Agreement, the Borrower hereby certifies that the following statements are true on the date hereof and that the acceptance by the Borrower of the benefits of the Proposed Disbursement shall constitute a representation and warranty by the Borrower to each of the Lenders that as of the date of such Proposed Disbursement:
  - (a) All representations and warranties of the Borrower under the Financing Documents are true and correct in all respects with the same force and effect as though such representations and warranties have been made on and as of the date of Disbursement.
  - (b) The proposed (Initial Disbursement Date/disbursement date)<sup>2</sup> is a Business Day.
  - (c) No Event of Default or Potential Event of Default has occurred and is continuing or shall result from this Disbursement.
  - (d) All of the conditions in Section 9.1 (*Conditions Precedent to Initial Disbursements*) and<sup>3</sup> 9.3 (*Conditions Precedent to all Disbursements after the Initial Drawdown*) of the Facility Agreement have been satisfied or waived by the Lenders and all the necessary certificates and documentation required thereunder is attached herewith or has already been made available to the Lenders.

<sup>1</sup> Insert only for Initial Disbursement  
<sup>2</sup> Insert as applicable  
<sup>3</sup> Insert only for Initial Disbursement

Borrower	Lender
For Poise Realtech Pvt. Ltd.  Authorised Signatory	

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(g) The outstanding Commitment and the Loan including the amount of each Disbursement requested today is as follows: \_\_\_\_\_.

(h) The Outstanding Amounts including the amount of each Disbursement requested today is as follows: \_\_\_\_\_.

- 4. The proceeds of the Proposed Disbursement shall be used only for the purpose for which the Facility has been sanctioned.
- 5. If any of the certifications set forth in paragraph 3 above shall cease to be valid on, as of or prior to the date of the Proposed Disbursement, the Borrower shall immediately notify each of the Lenders in writing.

IN WITNESS WHEREOF, I have hereunto set my hand this day of \_\_\_\_\_.

By: \_\_\_\_\_

Name:

Designation:

Borrower	91	Lender
For Poiso Realtech Pvt. Ltd.		

*[Handwritten Signature]*  
Authorized Signatory

*[Handwritten Signature]*  
TRUE COPY

IN WITNESS WHEREOF the signature of the Borrower and the Lenders have caused these presents to be executed by its authorized signatory or themselves the day and year first hereinabove written.

THE COMMON SEAL of the within named **POISE REALTECH PRIVATE LIMITED**, as the Borrower, has been hereunto affixed pursuant to a Resolution of its Board passed on 06/12/2018 in the presence of Vinod Kumar Gupta Director, who has signed these presents in token thereof.



For Poise Realtech Pvt. Ltd.

*Vinod Kumar Gupta*  
Authorized Signatory

*[Large handwritten signature]*

For Poise Realtech Pvt. Ltd.

*Vinod Kumar Gupta*  
Authorized Signatory



*32*  
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SIGNED AND DELIVERED by the within named )  
Lender L&T HOUSING FINANCE LIMITED through )  
its authorised officer Vinodh B )

*Vinodh B*



For Poise Realtech Pvt. Ltd.

*Vinodh B*  
Authorised Signatory



*Vinodh B*  
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सत्यमेव जयते

## INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

## e-Stamp

Certificate No.	: IN-DL89438477761725R
Certificate Issued Date	: 29-Nov-2019 11:21 AM
Account Reference	: IMPACC (IV)/ dl804303/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL80430388328579970896R
Purchased by	: SUPERTECH LIMITED
Description of Document	: Article 5 General Agreement
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: SUPERTECH LIMITED
Second Party	: SBICAP TRUSTEE COMPANY LIMITED
Stamp Duty Paid By	: SUPERTECH LIMITED
Stamp Duty Amount(Rs.)	: 500 (Five Hundred only)



.....Please write or type below this line.....

For SUPERTECH LTD.

Authorized Signatory

For SUPERTECH LTD.

DATED 10<sup>th</sup> December 2019

  
Authorized Signatory

**DEED OF GUARANTEE**

**BY**

**SUPERTECH LIMITED**  
as the Guarantor

**IN FAVOUR OF**

**SBICAP TRUSTEE COMPANY LIMITED**  
as the Security Trustee



Cyril Amarchand Mangaldas  
advisors & solicitors

For SUPERTECH LTD.

  
Authorized Signatory

  
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For SUPRTECH LTD.  
  
 Authorized Signatory

(i)

  
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## DEED OF GUARANTEE

This DEED OF GUARANTEE (this "Guarantee") executed on this 10<sup>th</sup> day of December, 2019 at New Delhi

For SUPERTECH LTD.  
Authorized Signatory

1. SUPERTECH LIMITED, a company incorporated under the Companies Act, 2013 with the corporate identification number identification number U74899DL1995PLC074422 and registered office at 1114, Hamkund Chambers, 11<sup>th</sup> Floor 89, Nehru Place New Delhi 110019, India (hereinafter referred to as the "Guarantor", which expression shall, unless repugnant to the context, be deemed to include its successors and permitted assigns);

## IN FAVOUR OF

2. SBICAP TRUSTEE COMPANY LIMITED, a company incorporated in India under the Companies Act, 1956, with company identification number U65991MH2005PLC158386 and an existing company under the Companies Act, 2013 and having its registered office at 202, Maker Tower "E", Cuffe Parade, Mumbai 400 005 and branch offices *inter alia* at Apeejay House, 6<sup>th</sup> Floor, 3, Dinshaw Wachha Road, Churchgate, Mumbai - 400 020, in its capacity as security trustee for the Lender (hereinafter referred to as the "Security Trustee", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors, transferees and permitted assigns) of the SECOND PART.

## WHEREAS:

- (A) POISE REALTECH PRIVATE LIMITED, a validly existing company under the Companies Act 2013, having corporate identification number U45400DL2014PTC270549 with its registered office at 201, 3<sup>rd</sup> Floor Sagar Plaza -II, Plot No.27, Community Centre, Pitampura New Delhi East Delhi - 110034 ("Borrower") has availed financial assistance, from:
- (i) L&T Housing Finance Limited ("Lender 1" which expression shall, unless repugnant to the subject or context hereof, be deemed to mean and include its respective successors, transferees, novatees and assigns) for and aggregate amount of Rs.200,00,00,000 (Rupees Two Hundred Crores) ("Facility 1") on the terms and conditions of the facility agreement dated on or about the date hereof, as entered into by the Borrower and Lender 1 ("Facility Agreement 1"); and
- (ii) L&T Infrastructure Finance Company Limited ("Lender 2" which expression shall, unless repugnant to the subject or context hereof, be deemed to mean and include its respective successors, transferees, novatees and assigns) for and aggregate amount of Rs.125,00,00,000 (Rupees One Hundred and Twenty Five Crores) ("Facility 2") on the terms and conditions of the facility agreement dated on or about the date hereof, as entered into by the Borrower and the Lender 2 ("Facility Agreement 2").

For SUPERTECH LTD.  
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(The Lender 1 and Lender 2 shall hereinafter collectively be referred to as "Lenders"; The Facility 1 and Facility 2 shall hereinafter collectively be referred to as "Facilities"; and the Facility Agreement 1 and the Facility Agreement 2, shall hereinafter collectively be referred to as "Facility Agreements")

- (B) One of the condition of the Facility Agreements, is that the Borrower is required to procure and furnish an irrevocable and unconditional corporate guarantee from the Guarantor in favour of the Security Trustee in respect of the Guaranteed Obligations (*as hereinafter defined*).
- (C) Pursuant to the security trustee agreement dated \_\_\_\_\_ For SUPERTECH LTD. SBICAP Trustee Company Limited has been appointed as the security trustee for, the benefit of the Lenders, on the terms and conditions as set out in the Security Trustee Agreement. *Authorized Signatory*
- (D) At the request of the Borrower, the Guarantor has agreed to execute this Guarantee in favour of the Security Trustee for the benefit of the Lenders on the terms and in the manner hereinafter appearing.

**NOW IT IS AGREED AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

The capitalised terms used herein but not defined otherwise shall:

- (i) in relation to the Facility 1, have the meaning ascribed to the term in the Facility Agreement 1; and
- (ii) in relation to the Facility 2, have the meaning ascribed to the term in the Facility Agreement 2.

In this Guarantee, unless repugnant to the subject, context or meaning thereof, the following capitalized terms wherever used, shall have the meanings given hereunder:

"**Default Interest**" shall mean default interest calculated at the rate of 2% (two percent) on the Guaranteed Obligations, from and including the date of the Demand Notice until the date of actual payment of the Guaranteed Obligations.

"**Demand Notice**" shall mean any demand notice given under this Guarantee substantially in the form and manner set out in Schedule I (*Form of Demand Notice*).

"**Event of Default**" shall mean any event of default (howsoever described) under the Financing Documents.

"**Facility 1**" shall have the meaning ascribed to such term in Recital A.

For SUPERTECH LTD.  
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*Authorized Signatory*

*As per*  
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"Facility 2" shall have the meaning ascribed to such term in Recital A.

"Facilities" shall mean and include Facility 1 and Facility 2.

"Facility Agreement 1" shall have the meaning ascribed to such term in Recital A.

"Facility Agreement 2" shall have the meaning ascribed to such term in Recital A.

"Facility Agreements" shall mean and include Facility Agreement 1 and Facility Agreement 2.

"Financing Documents" shall have the meaning ascribed to such term in the respective Facility Agreements.

"Final Settlement Date" shall mean the date on which all the Outstanding Amount shall have been irrevocably and unconditionally paid and discharged in full to the Lenders to the satisfaction of the Secured Parties.

"Guaranteed Obligations" shall mean principal amount of the Facilities together with all Obligations payable by the Borrower under the Financing Documents.

"Lender 1" shall mean L&T Housing Finance Limited and shall include its respective successors, transferees, novatees and assigns.

"Lender 2" shall mean L&T Infrastructure Finance Company Limited and shall include its respective successors, transferees, novatees and assigns.

"Lenders" shall mean and include Lender 1 and Lender 2.

"Outstanding Amount" shall have the meaning ascribed to such term in the respective Facility Agreements.

"Proceedings" shall have the meaning ascribed to it in Clause 20.1 (*Jurisdiction*) of this Guarantee.

"RBI" shall mean the Reserve Bank of India.

"Security Interest" shall have the meaning given to such term in the respective Facility Agreements.

"Security Trustee Agreement" shall mean the security trustee agreement dated on or about the date hereof, as entered amongst the Borrower, the Lenders and the Security Trustee.

"Tax" shall mean any and all present and future taxes, including without limitation, gross receipts, sales, turn-over, value added, use consumption, property, income, franchise, capital, occupational, license, excise, interest and

For SUPERTECH LTD.  
31/1/2018  
Its Guarantor  
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documentary stamps taxes, and customs and other duties, assessments, or fees, however imposed, withheld, levied, or assessed by any country or government subdivision thereof or any other taxing authority.

"Tax Deduction" shall mean a deduction for or on account of Tax from a payment under a Financing Document.

## 1.2 Interpretation

In this Guarantee:

- (i) reference to an account includes a reference to any sub-account of that account;
- (ii) unless the context otherwise requires, the singular includes the plural and *vice versa*;
- (iii) headings and the use of bold typeface shall be ignored in its construction;
- (iv) a reference to a Clause or Schedule is, unless indicated to the contrary, a reference to a section of or schedule to this Guarantee;
- (v) references to this Guarantee shall be construed as references also to any separate or independent stipulation or agreement contained in it;
- (vi) the words "other", "or otherwise" and "whatsoever" shall not be construed *ejusdem generis* or be construed as any limitation upon the generality of any preceding words or matters specifically referred to;
- (vii) references to the word "includes" or "including" are to be construed without limitation;
- (viii) a "person" includes any:
  - (a) individual,
  - (b) firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality),
 or two or more of any of the foregoing;
- (ix) references to a person shall include such person's successors in title and permitted assignees or transferees;
- (x) all references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned from time to time;

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- (xi) words importing a particular gender include all genders;
- (xii) any reference to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over the functions or responsibilities of such public organisation;
- (xiii) references to "Party" means a party to this Guarantee and references to "Parties" shall be construed accordingly;
- (xiv) references to any law shall include references to such law as it may, after the date of this Guarantee, from time to time be amended, supplemented or re-enacted;
- (xv) capitalised terms and expressions not defined in this Guarantee shall have the meanings specified in the Financing Documents;
- (xvi) words and abbreviations, which have, well known technical or trade/commercial meanings are used in this Guarantee in accordance with such meanings;
- (xvii) any consent, approval, determination, waiver or finding to be given or made by any of the Secured Parties shall be made or given by such Secured Parties in their sole discretion;
- (xviii) any consent required to be provided by the Secured Parties shall mean the prior written consent of each of the Secured Parties; and
- (xix) in the event of any disagreement or dispute between the Secured Parties and the Guarantor or the Borrower regarding the determination of whether any matter, event, occurrence, circumstance, change, fact, information, document, authorization, proceeding, act, omission, claims, breach, default or otherwise, is material, as provided in the Financing Documents or this Guarantee, the opinion of the Lenders in respect thereof shall be final and binding on the Guarantor and the Borrower.

## 2. GUARANTEE

- 2.1 In consideration of the Lenders agreeing to make the Facilities available to the Borrower, the Guarantor guarantees the due and punctual payment and discharge of the Guaranteed Obligations by the Borrower in accordance with the Financing Documents.
- 2.2 On the failure of the Borrower to pay and discharge any of the Guaranteed Obligations, the Guarantor undertakes that it shall, unconditionally and irrevocably pay on demand to the Security Trustee without demur or protest and without any set-off or lien, within 3 (three) Business Days of receipt of the Demand Notice, the amount stated in the Demand Notice. The Security Trustee

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FOR SUSTAIN GUARANTOR.



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shall be entitled to make one or more demands on the Guarantor under this Guarantee.

- 2.3 Without prejudice to any demand given or made by the Security Trustee to the Guarantor by way of a Demand Notice being final, conclusive and binding on the Guarantors, a certificate in writing signed by a duly authorised official of the Lenders shall be conclusive evidence against the Guarantor of the amount for the time being due to the Lenders from the Borrower in any action or proceeding brought under this Guarantee against the Guarantor.
- 2.4 The Guarantor shall, as a separate and independent stipulation and without prejudice to the other provisions contained herein, as primary obligors and not merely as sureties, indemnify the Secured Parties against any liability, loss, damages, claims or cost suffered by the Secured Parties as a result of any or all of the Guaranteed Obligations being or becoming void, voidable, unenforceable, illegal, invalid, ineffective or not being recoverable for any reason whatsoever irrespective of whether such reason or any related fact or circumstance was known or ought to have been known to the Security Trustee or any of its officers, employees, agents or advisers.
- 2.5 The liability the Guarantor under Sections 2.2 (*Guarantee*) and 2.4 (*Guarantee*) above is as primary obligors and not merely as sureties and the Lenders may act as though the Guarantor was the principal debtor to the Lenders.
- 2.6 The Guarantor hereby agrees that it is acting as principal debtors and hereby specifically waive all of their rights under sections 133, 134, 135, 139 and 141 of the Indian Contract Act, 1872.

### 3. INTEREST

If, on the invocation of this Guarantee, the Guarantor does not pay all amounts due and payable by it under Section 2 above within the time stipulated therein, then without prejudice to any other rights of the Lenders under the Financing Documents, the Guarantor shall be liable to pay Default Interest till the date of payment by the Guarantor of such amounts to the satisfaction of the Security Trustee. The Guarantor agrees that the rate of Default Interest agreed is a genuine pre-estimate of the loss likely to be suffered by any of the Secured Parties on account of default by the Guarantor in discharging its obligations under this Guarantee.

### 4. POWER TO VARY

The Guarantor hereby agrees that, without the concurrence of the Guarantor and without impairing or discharging in any way the Guarantor's obligations hereunder or incurring liability to the Guarantor, the Security Trustee shall be at liberty to, at any time without the consent of or notice to the Guarantor:

- (a) exercise or refrain from exercising any rights against the Borrower or other persons (including the Guarantor);

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- (b) settle, release or compromise any of the Guaranteed Obligations, any security therefor or any liability (including hereunder) incurred directly or indirectly in respect thereof or hereof;
- (c) vary, alter, waive, release or modify any and all the provisions of the Financing Documents including, without limitation, any modification, variation, waiver, release or amendment of the Financing Documents which increases the aggregate amounts to be paid in accordance with the Facility Agreements, as the case may be;
- (d) defer, postpone or revise the Facilities amount and other monies payable by the Borrower on such terms and conditions as may be considered necessary by the Security Trustee;
- (e) extend the time of payment by the Borrower of any of the Guaranteed Obligations;
- (f) extend the availability period for the Facilities;
- (g) enter into any composition or compound with or to grant any other indulgence or facility to the Borrower and/or the Guarantor gives or grants, temporary or extra overdrafts or other advances or credit facilities to the Borrower and appropriate payments made to it by the Borrower towards repayment or payment of such overdrafts, advances or credit facilities from time to time and the Guarantor shall not be entitled to question such appropriation or require the Security Trustee to appropriate such payments towards the repayment of the Facilities; and
- (h) exercise at any time and in any manner any power or powers reserved to the Security Trustee under the Financing Documents, to enforce or forbear to enforce payment of any amounts under the Facility Agreements or any part thereof or interest or other moneys due to the Lenders from the Borrower or any of the remedies or securities available to the Lenders.

#### 5. NO RELEASE

Subject to Clause 7 (*Irrevocable and Continuing Guarantee*), the rights of the Security Trustee against the Guarantor shall remain in full force and effect notwithstanding any arrangement which may be reached between the Security Trustee and any other guarantor(s), and notwithstanding the release of any other guarantor(s) from liability and notwithstanding that at any time hereafter the other guarantor(s) may cease for any reason whatsoever to be liable to the Security Trustee and the Security Trustee shall be at liberty to require the performance by the Guarantor of its obligations hereunder to the same extent in all respects as if the Guarantor had at all times been solely liable to perform the said obligations until repayment in full of the Guaranteed Obligations under the Facility Agreements.

#### 6. NO PROOF IN LIQUIDATION; NO EXERCISE OF RIGHTS

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 as Guarantor  
  
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- 6.1 The Guarantor shall not:
- (a) in the event of the liquidation or insolvency of the Borrower, prove any claims in liquidation or insolvency proceedings; and
  - (b) have the right of subrogation or indemnity against the Borrower, nor shall any of them exercise any such rights available under Applicable Law, to claim any sum relating to the Guaranteed Obligations from the Borrower, including those of subrogation and of proof in the Borrower's insolvency, and shall hold the benefit of any such rights on trust for the Security Trustee, till such time the Guaranteed Obligations have been discharged.

7. **IRREVOCABLE AND CONTINUING GUARANTEE**

This Guarantee is an irrevocable continuing guarantee which will extend to the ultimate balance of all sums payable under the Financing Documents, regardless of any partial or intermediate payment or discharge and shall not be wholly or partially satisfied or exhausted by any payments made to or settled with the Secured Parties by the Borrower and shall be valid and binding on the Guarantor and operative until the Final Settlement Date.

8. **LIABILITY NOT AFFECTED**

- 8.1 The liability of the Guarantor under this Guarantee shall not be released, discharged, terminated or affected by the following:
- (a) any change in the constitution, management, ownership or corporate existence of the Borrower and the Secured Parties;
  - (b) acquisition or nationalization of the Borrower and/or of any of its undertakings pursuant to Applicable Law;
  - (c) any insolvency, liquidation, bankruptcy, winding-up or similar situation or proceeding in respect of the Borrower or any absorption, merger, amalgamation of the Borrower with any company or concern;
  - (d) any absence or deficiency (including irregularity in the exercise of such powers) or power on the part of the Guarantor to give guarantees or indemnities or any irregularity in the exercise of such powers;
  - (e) winding up (voluntary or otherwise), absorption, merger or amalgamation or bankruptcy or insolvency of the Guarantor;
  - (f) any intermediate payments or satisfaction of any part of the Guaranteed Obligations;
  - (g) the granting of any time or extension of time for payment of any amounts due to the Secured Parties pursuant to the Facility Agreements or any other Financing Documents;

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- (h) any dispute or disagreement between the Secured Parties and the Borrower or other indulgence to the Borrower or any other person with respect to the Guaranteed Obligations;
- (i) any illegality, invalidity, irregularity or unenforceability of all or any part of the Guaranteed Obligations or the terms of any Financing Document;
- (j) any variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any person;
- (k) any variation in the terms, conditions or manner of disbursement of monies by the Secured Parties under the Facility Agreements or any other Financing Documents and that no further consent of the Guarantor shall be required for giving effect to any such renewal, extension, variation, alteration, modification, waiver, dispensation with, or release of security;
- (l) any non-presentation or non-observance of any formality or forbearance or delay or waiver or concession whatsoever, whether as to time, performance or otherwise, on the part of a Secured Party under the Facility Agreements or any other Financing Documents or other requirement in respect of any instrument or any failure to realize the full value of any security;
- (m) any incapacity or lack of power, authority or legal personality of any person;
- (n) any amendment or assignment or novation or charge or succession or variation (however fundamental) to the terms of any Financing Document; or
- (o) any other act, thing or omission on the part of the Security Trustee or by any other matter or thing whatsoever which under the law relating to sureties would have the effect of so releasing, impairing, discharging the Guarantor of its liability under this Guarantee. The Guarantor hereby waives in favour of the Security Trustee so far as may be necessary to give effect to any of the provisions of this Guarantee, all the suretyship and other rights which the Guarantor might otherwise be entitled to enforce.

8.2 The Security Trustee shall be at liberty to take in addition to the subsisting securities any other securities for the Guaranteed Obligations or any part thereof and to release or forbear to enforce all or any of the remedies upon or under such securities and any collateral security or securities now held by the Security Trustee and that no such release or forbearance as aforesaid shall have the effect of releasing or discharging or in any manner affecting the liability of the Guarantor under this Guarantee and that the Guarantor shall have no right to the benefit of the said security and/or any other security that may be held by the Security Trustee until all the claims of the Secured Parties against the Borrower

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For <sup>Signature</sup> GUERTECH LTD.

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arising under or in pursuance of the Facility Agreements shall have been fully satisfied and then in so far only as such security shall not have been exhausted for the purpose of realising the amount of the claims of the Secured Parties and rateably only with other Guarantor or other persons (if any) entitled to the benefit of such securities respectively.

- 8.3 The Guarantor hereby agrees and declares that the Borrower will be free to avail of further loans or other facilities in addition to the Facilities and/or renew/ insure the same during the subsistence of this Guarantee and in that event the guarantee herein contained will not be affected or vitiated in any way whatsoever but will remain in full force and effect and binding on the Guarantor.

## 9. NO REQUIREMENT TO EXHAUST REMEDIES

- 9.1 Prior to making any demand hereunder, the Security Trustee shall not be required to take any step, make any demand upon, exercise any remedies or obtain any judgment against the Borrower, give notice to the Borrower or any other person under the Financing Documents or otherwise and howsoever arising, or make or file any claim or proof in the dissolution or winding-up of the Borrower or enforce or seek to enforce any Security Interest or security now or hereafter held by the Security Trustee in respect of the Guaranteed Obligations.
- 9.2 This Guarantee shall be enforceable against the Guarantor notwithstanding that any security or securities comprised in any instrument(s) executed or to be executed by the Borrower in favour of the Secured Parties shall at the time when the proceedings are taken against the Guarantor on this Guarantee, be outstanding or unrealised or lost.

## 10. NOTICE OF DEMAND

- 10.1 Any Demand Notice, other notice or any other communication under this Guarantee to the Guarantor shall be in writing and shall be sent at the following addresses of the Guarantor:

Guarantor: SUPERTECH LIMITED

Address : Supertech Limited ,E Square, Plot no C2 ,sector 96, Noida  
 Phone : 0120-4252600  
 Attention : Mr. R K Arora  
 Email : rka@supertechlimited.com

- 10.2 All such Demand Notices, under this Guarantee shall be sufficiently given if sent by post to or left at the last known address of the Guarantor or its successors or assigns as the case may be. Such Demand Notice is to be made or given, and shall be assumed to have reached the addressee in the course of post, if given by post, and no period of limitation shall commence to run in favour of the Guarantor until

For SUPERTECH LTD.  
 STL as Guarantor  
  
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after demand for payment in writing shall have been made or given as aforesaid and in proving such notice when sent by post it shall be sufficiently proved that the envelope containing the notice was posted and a certificate by any of the responsible officers of the Secured Parties that to the best of his knowledge and belief, the envelope containing the said notice was so posted shall be conclusive as against the Guarantor even though it was returned unserved on account of refusal of the Guarantor or otherwise.

- 10.3 An original of each notice and communication sent by fax shall be dispatched by person or overnight courier and, if such person or courier service is not available, by registered mail with postage prepaid, provided that the effective date of any such notice shall be determined in accordance with Section 10.2, as the case may be, without regard to the dispatch of such original.

#### 11. RIGHT OF SET-OFF AND LIEN

The Guarantor agrees that in addition to any rights, now or hereafter granted under Applicable Law or otherwise, upon the occurrence and continuation of an Event of Default, the Lenders are hereby authorized at any time or from time to time, to set off and to appropriate and apply any and all deposits (general or special) at any time held or owing by such Lender (including, without limitation, by any branches and agencies of such Lender wherever located) to or for the credit or the account of the Guarantor against and on account of the obligations and liabilities of the Guarantor due and payable to any such Lender under this Guarantee or under any of the other Financing Documents.

#### 12. PAYMENTS; GROSS UP

- 12.1 All payments under this Guarantee will be made without any deduction for or on account of any Tax unless such deduction is required by any Applicable Law then in effect. If the Guarantor is required to make any Tax Deductions from any payments to a Secured Party, it shall make that Tax Deduction, make payment of the Tax so deducted to the relevant Tax authority within the time period prescribed under Applicable Law and deliver to the concerned Secured Party entitled to the payment, a tax deduction certificate in the format prescribed under Applicable Law (the "TDS Certificate") or such other form of confirmation as per Applicable Law which allows the concerned Secured Party to take full credit for such Tax Deduction, within the timelines prescribed under Applicable Law.
- 12.2 The Guarantor shall, promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction), notify the Security Trustee accordingly.

#### 13. TAXES AND EXPENSES

The Guarantor agrees to indemnify the Security Trustee against all Taxes or any other levies (including stamp or documentary taxes) incurred in connection with this Guarantee and all costs, expenses or charges relating to or arising out of this

For SUPERTECH LTD.  
STL as Guarantor  
  
Authorized Signatory

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Guarantee including all or any other Taxes and costs, expenses or charges incurred in connection with the preservation or enforcement of the rights of the Security Trustee.

#### 14. REPRESENTATIONS AND WARRANTIES

14.1 The Guarantor represents and warrants to the Security Trustee as of the date of this Guarantee that:

(a) Status of the Guarantor

The Guarantor is a body corporate duly incorporated and validly existing under the laws of India and has the capacity to carry on its businesses as now being conducted, to own its property and other assets, to execute and give effect to this Guarantee.

(b) No Contravention

The execution, delivery and performance of this Guarantee and all instruments and agreements required hereunder do not and would not contravene, violate or constitute a default under (i) any provision of any agreement or other instrument to which the Guarantor is a party or by which the Guarantor or its assets are or may be bound, (ii) the memorandum and articles of association of the Guarantor, (iii) any treaty or, Applicable Law applicable to the Guarantor or (iv) any judgment, injunction, order or decree binding upon the Guarantor or its assets.

(c) No Default

No event has occurred and is continuing which constitutes or which, upon the lapse of time or the giving of notice or both, would become an Event of Default relating to the Guarantor under the Financing Documents or a default under any agreement, mortgage, indenture, note or other instrument to which the Guarantor is a party or by which the Guarantor or its assets are or may be bound.

(d) Third Party Approvals

No approvals or consents from any third parties are required to be obtained by the Guarantor for execution and performance of this Guarantee.

(e) Regulatory Requirements

It is not necessary to obtain any regulatory approval for this Guarantee or file, register or otherwise record this Guarantee in any court, public office or elsewhere in India or to pay any stamp, registration or similar tax on or in relation to the execution, delivery or performance of this Guarantee and to ensure the validity, legality, effectiveness, enforceability or

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admissibility in evidence hereof, other than the payment of stamp duty on this Guarantee in accordance with Applicable Law.

(f) Financial Statements

- (i) The most recent audited financial statements of the Guarantor for the time being were prepared in accordance with applicable laws and regulations of, and generally accepted accounting principles and policies consistently applied in, the jurisdiction of incorporation of the Guarantor and show a true and fair view of the financial position of the Guarantor and the results of its operations for, as at the end of the financial period to which they relate;
- (ii) As at the end of such period the Guarantor had no liabilities (contingent or otherwise) or any unrealised or anticipated losses which are not disclosed by or reserved against in such financial statements; and
- (iii) There has been no material adverse effect on the Guarantor since the date of such financial statements.

(g) Compliance with Laws

The Guarantor is in compliance in all respects with Applicable Law.


(h) Pari Passu Obligations

The obligations and liabilities of the Guarantor under this Guarantee are unconditional and general obligations of the Guarantor and shall rank at least *pari passu* with all other present or future unsecured and unsubordinated indebtedness (both actual and contingent) of the Guarantor except those which in a winding-up of the Guarantor would be preferred solely by operation of law and the Guarantor's liabilities and obligations to its secured creditors will rank ahead of its liabilities and obligations hereunder towards the Security Trustee.

(i) Solvency

The Guarantor hereby represents that:

- (i) it is able to, and has not admitted its inability to, pay its debts (as disclosed in the financial statements of the Guarantor) as they mature and has not suspended making payment on any of its debts;
- (ii) it, by reason of actual or anticipated financial difficulties, has not commenced, and does not intend to commence, negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;

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- (iii) the value of its assets (including capitalised assets) is more than its respective liabilities (taking into account contingent and prospective liabilities) and it has sufficient capital to carry on its business;
- (iv) no moratorium has been declared or threatened in respect of any of its indebtedness; and
- (v) no steps have been taken for its liquidation, winding-up or dissolution or restructuring or reorganization.

(j) Binding Effect

This Guarantee and all related documents are or when executed, will constitute valid and binding obligations of the Guarantor and be enforceable in accordance with their respective terms.

(k) Litigation:

There are no legal, administrative or other actions, claims or other proceedings current, pending or, threatened against the Guarantor which if decided adversely would affect the Guarantor or would adversely affect the Guarantor's ability to perform its obligations under this Guarantee or which question the legality, validity or binding effect of any provision of this Guarantee.

(l) Taxes

There is no tax imposed (whether by withholding or otherwise) on or by virtue of the execution and delivery of the Guarantee, the performance or enforcement hereof, any payment required to be made hereunder or in order to render the Guarantee admissible in evidence.

(m) Immunity

The Guarantor has no immunity and the waiver of immunity by the Guarantor herein is legal, valid, binding and enforceable and the Guarantor is not entitled to claim for itself or any of its assets any right of immunity from suit, execution, attachment prior to judgment, attachment in aid of execution or any other legal process with respect to its obligations under the Guarantee in any jurisdiction.

(n) Genuineness of Documents

All documents provided by the Guarantor in connection with this Guarantee are genuine.

(o) No Misrepresentation:

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- (i) All information communicated to or supplied by or on behalf of the Guarantor to the Security Trustee from time to time in a form and manner acceptable to the Security Trustee, is true, correct and complete in all respects as on the date on which it was communicated or supplied;
- (ii) No event has occurred since the date of communication or supply of any information to the Security Trustee which renders such information untrue or misleading in any respect.

(p) Opinion of the Security Trustee to be binding in case of a dispute:

In the event of any disagreement or dispute between the Secured Parties and the Guarantor regarding the materiality or reasonableness of any matter including of any event, occurrence, circumstance, change, fact, information, document, authorisation, proceeding, act, omission, claims, breach, default or otherwise, the opinion of the Lenders as to the materiality or reasonableness of any of the foregoing shall be final and binding on the Guarantor.

(q) Governing Law:

The Guarantor confirms that the choice of law as specified in Section 19 (*Governing Law*) of this Guarantee will be recognized and enforced in India and is valid and binding on the Guarantor.

14.2 The representations are deemed to be made by the Guarantor on each day until the Final Settlement Date by reference to the facts and circumstances then existing.

15. **COVENANTS**

The Guarantor covenants and agrees that from the date of this Guarantee and until the Final Settlement Date:

(a) Compliance

The Guarantor shall obtain and comply with the terms of and do all that is necessary to maintain in full force and effect all approvals, authorizations, consents and licenses required by Applicable Law to enable it to lawfully enter into and perform its obligations under this Guarantee or to ensure the legality, validity, priority, enforceability or admissibility in evidence of this Guarantee in India.

(b) Corporate Existence

The Guarantor shall maintain its corporate existence and has a right to carry on the business as now being conducted.

(c) Information

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The Guarantor shall furnish or cause to be furnished to the Security Trustee the following reports and information:

- (i) within 7 (seven) days of receipt of a request, such reports and information as the Security Trustee may request from time to time, with respect to the implementation and administration of this Guarantee;
- (ii) sufficient copies of the duly audited stand alone and consolidated financial statements of the Guarantor in respect of a financial year, as soon as they are available, but in any event within 150 days after the end of each financial year of the Guarantor.

(d) Declaration of Assets

The Guarantor shall, on the date of execution of this Guarantee and within 30 (thirty) days of March 31 of every Fiscal Year, provide to the Secured Parties a statement that the assets of the Guarantor are sufficient to discharge any and all claims which may accrue of the Guarantor due to any debts of or other guarantees given by the Guarantor. At all times during the term of this Guarantee, the Guarantor shall ensure and maintain sufficient net worth to enable them to perform their obligations under this Guarantee.

(e) Notifications

Without prejudice to the other provisions of this Guarantee, the Guarantor shall:

- (i) immediately inform the Security Trustee of (a) the imposition of, or change in, any Applicable Law materially affecting the Guarantor and (b) any substantial change in the business activities of the Guarantor ;
- (ii) promptly inform the Security Trustee of the occurrence of any other matter which materially affects the business activities or the existence of the Guarantor;
- (iii) notify the Security Trustee as soon as it becomes aware of the occurrence of any event which, upon the lapse of time or the giving of notice or both, would become (I) an Event of Default relating to the Guarantor under the Financing Documents, (II) any other Event of Default under the Financing Documents, or (III) a breach or default under this Guarantee, or any event which interferes, or threatens to interfere, with the performance by the Guarantor or its obligations under this Guarantee;

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- (iv) promptly inform the Security Trustee of any litigation, arbitration or administrative proceeding or other dispute; and
- (v) promptly inform the Security Trustee of any other event or circumstance which could have a Material Adverse Effect.

(f) No Commission

The Guarantor hereby declares and agrees that it has not received and shall not, receive any commission from the Borrower for giving this Guarantee so long as the Guaranteed Obligations remain due and payable by the Borrower to the Security Trustee under the Financing Documents.

(g) Disposals

The Guarantor shall not without prior written approval of the Security Trustee, enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, transfer, otherwise dispose or deal with (or agree to do any of the foregoing at any future time) any of its assets or investments.

(h) Disclosure

The Guarantor hereby agrees and consent and as a precondition for the Security Trustee or the other Secured Parties relying upon this Guarantee in case of default by the Guarantor in discharging its obligations under this Guarantee, and otherwise of all or any such for the disclosure by the Secured Parties:

- (i) information and data relating to the Borrower, the Guarantor and /or its directors;
- (ii) information or data furnished by the Borrower and/or the Guarantor to the Security Trustee or the other Secured Parties;
- (iii) obligations, information and data in any credit facility, Facilities granted/to be granted, by the Lenders and including the facilities guaranteed by the Guarantor;
- (iv) default, if any, committed by the Borrower, Guarantor, in discharge of the Guarantor's obligation;
- (v) obligations assumed / to be assumed by the Borrower and/or the Guarantor hereunder and under the Financing Documents;

as the Secured Parties may deem appropriate and necessary, to disclose and furnish to TransUnion CIBIL Limited (formerly known as Credit Information Bureau (India) Limited) ("CIBIL") and any other agency authorised in this behalf by the Reserve Bank of India.

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The Guarantor agrees and undertakes that (a) the CIBIL and any other agency so authorised may use, process the said information and data disclosed by the Secured Parties in the manner as deemed fit by them; and (b) the CIBIL and any other agency so authorised may furnish for consideration, the processed information and data or products thereof prepared by them, to banks/financial institutions and other credit grantors or registered users, as may be specified by the RBI in this behalf.

The Guarantor understands and consents, that in the event the Guarantor commits any default in payment, repayment or reimbursement, as the case may be, of the Guaranteed Obligations or in the event it commits any default in complying with the terms of the Financing Documents, the Secured Parties and/or RBI/CIBIL shall have an unqualified right to classify the Guarantor together with its directors as a 'Willful Defaulter' in accordance with the terms of the extant RBI guidelines and Applicable Law and shall have the right to publish their names, photographs and details pertaining to the default in the print and/or electronic mode and/or any other media. The Guarantor agrees and confirms that the Security Trustee and the other Secured Parties shall have the right to share credit information of the Borrower and the Guarantor as deemed appropriate by CIBIL or any other institution/agency/credit bureau as approved by RBI, from time to time.

(i) Merger, Consolidations, etc.

The Guarantor shall not undertake or permit any merger, consolidation, re-organisation, scheme of arrangement or effect any scheme of amalgamation or reconstruction.

(j) Waiver of Guarantor's rights

Until the Final Settlement Date, the Guarantor agrees that, without the prior written consent of the Security Trustee, it shall not:

- (i) demand or accept repayment in whole or in part of any indebtedness now or hereafter due to the Guarantor from the Borrower or demand or accept any security in respect of such indebtedness provided that if the Security Trustee so requires, the Guarantor shall receive and/ or enforce such indebtedness and all monies received thereto shall be held separately from the other assets of the Guarantor and in trust for the Secured Parties and be applied towards discharge of the Guaranteed Obligations in such manner as the Security Trustee may deem fit;
- (ii) exercise its rights of subrogation, reimbursement, indemnity, exoneration and contribution against the Borrower;

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- (iii) exercise its suretyship and other rights, which the Guarantor might otherwise be entitled to enforce;
- (iv) take any step to enforce any right against the Borrower in respect of any security; or
- (v) claim any set-off or counterclaim against the Borrower or claim or prove in competition with the Secured Parties in the winding up or liquidation proceedings of the Borrower or have the benefit of, or share in, any payment from or composition with, the Borrower or any other security now or hereafter held by the Secured Parties for any Guaranteed Obligations but so that, if so directed by the Security Trustee, they will prove for the whole or any part of their claim in the winding up or liquidation proceedings of the Borrower on terms that the benefit of such proof and of all money received by them in respect thereof shall be held separately from the other assets of the Guarantor and in trust for the Secured Parties and be applied towards discharge of the Guaranteed Obligations in such manner as the Security Trustee shall deem appropriate.

The Guarantor hereby assents to all of the terms of this Guarantee and waive: (i) acceptance and notice of acceptance of this Guarantee from the Secured Parties; (ii) demand upon the Borrower for the performance or observance of all or any of the obligations under the Financing Documents; (iii) presentment, protest or notice of dishonour upon the Borrower of any obligation under the Financing Documents; and (iv) notice of the occurrence of any Default and any other notice of any kind whatsoever.

#### 16. REINSTATEMENT

Where any discharge, release or arrangement (whether in respect of the obligations of the Borrower, the Guarantor or any security for those obligations or otherwise) is made by a Secured Party in whole or in part or any arrangement is made on the basis of any payment, security or other disposition which is subsequently avoided or must be restored as a result of any applicable insolvency, liquidation, bankruptcy or equivalent proceedings or otherwise, then the liability of the Guarantor under this Guarantee shall continue or shall be reinstated (as the case may be) as if such discharge or arrangement had not occurred.

#### 17. ASSIGNMENT AND TRANSFER

The Security Trustee may, with the consent of the Lenders, at any time, assign or transfer or encumber in any manner, all or any of its rights, title and benefits under this Guarantee.

#### 18. AMENDMENTS AND WAIVER

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Any term of the Guarantee may be amended or waived with the written agreement of the Guarantor and the Security Trustee.

## 19. GOVERNING LAW

This Guarantee is governed by and shall be construed in accordance with the laws of India.

## 20. JURISDICTION

### 20.1 Jurisdiction

The Guarantor agrees that the courts and tribunals in New Delhi shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Guarantee and that accordingly any suit, action or proceedings (together referred to as "**Proceedings**") arising out of or in connection with this Guarantee may be brought in such courts or the tribunals and the Guarantor irrevocably submits to and accept for itself and in respect of its property, generally and unconditionally, the jurisdiction of those courts or tribunals.

### 20.2 Arbitration

- (i) The Guarantor agree that all claims, disputes, and differences arising out of or in connection with the Financing Documents between the Guarantor and Secured Parties shall be referred to arbitration under the provisions of the Arbitration & Conciliation Act, 1996, and any amendments thereto from time to time.
- (ii) Pursuant to arbitration referred to in paragraph (i) above, the Lenders shall have the right to appoint a sole arbitrator.
- (iii) All proceedings shall be conducted in English and the seat of such arbitration will be at Delhi.
- (iv) The decision of the arbitrator shall be final and binding on the parties to such arbitration.

Notwithstanding anything contained in Section 20.2, in the event the legal status of the Secured Parties changes or in the event of the law being made or amended so as to bring the Secured Parties under Debts Due to Banks and Financial Institutions Act, 1993 (the "**DRT Act**") or the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("**Securitization Act**"), to enable the Secured Parties to enforce any security under the Securitization Act and proceed to recover dues from the Guarantor under the DRT Act, the arbitration provisions hereinbefore contained shall, at the option of the relevant Secured Party, cease to have any effect. *Provided that* neither a change in the legal status of the Secured Parties nor a change in law as

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referred to in this sub-section, will result in invalidating an existing award passed by an arbitral tribunal constituted pursuant to the provisions of hercof.

### 20.3 Waiver of Objection

The Guarantor irrevocably waive any objection now or in future, to decide of the venue of any Proceedings in the courts and tribunals at New Delhi and any claim that any such Proceedings have been brought in an inconvenient forum and further irrevocably agree that a judgment in any Proceedings brought in the courts and tribunals at New Delhi shall be conclusive and binding.

### 20.4 Right to take Proceedings in other Jurisdictions

Nothing contained in this Section 20 (*Jurisdiction*), shall limit any right of the Security Trustee to take Proceedings in any other court or tribunal of competent jurisdiction, nor shall the taking of Proceedings in one or more jurisdictions preclude the taking of Proceedings in any other competent jurisdiction whether concurrently or not and the Guarantor irrevocably submits to and accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of such court or tribunal, and the Guarantor irrevocably waives any objection it may have now or in the future to the laying of the venue of any Proceedings and any claim that any such Proceedings have been brought in an inconvenient forum.

### 20.5 General Consent

The Guarantor hereby consents generally in respect of any Proceedings arising out of or in connection with this Guarantee to the giving of any relief or the issue of any process in connection with such Proceedings including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such Proceedings.

### 20.6 Waiver of Immunity

To the extent that the Guarantor may in any jurisdiction claim for itself or its assets immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that in any such jurisdiction there may be attributed to itself or its assets such immunity (whether or not claimed), the Guarantor hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity.

For SUPERTECH LTD.  
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## SCHEDULE I

## FORM OF DEMAND NOTICE

To: [Guarantor Name]

From: [●], acting as the Security Trustee

Dated: [●]

Dear Sirs,

**Deed of guarantee dated [●] (the "Guarantee") executed by the Guarantor in favour of the Security Trustee.**

An amount of Rs. [ ] (Rupees [ ] only) is due and payable by the Borrower. Accordingly, we hereby give you notice pursuant to Section 2.2 of the Guarantee that we require you to pay such amount of Rs. [ ] (Rupees [ ] only).

In addition to the above, Default Interest amounting to [.....] at the rate of [.....] from [.....] until the date of payment, is due and payable by you.

Capitalised terms used herein shall have the meaning given to them in the Guarantee.

Yours faithfully,

\_\_\_\_\_  
Security Trustee

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IN WITNESS WHEREOF THIS GUARANTEE HAS BEEN DULY EXECUTED BY THE UNDERSIGNED GUARANTOR AS OF THE DATE FIRST ABOVE WRITTEN.

THE COMMON SEAL of SUPERTECH )  
LIMITED has pursuant to the resolution of its )  
board of directors passed in that behalf on the )  
\_\_\_\_ day of \_\_\_\_\_, 2019 )  
hereunto been affixed in the presence of )  
\_\_\_\_\_)  
,Director and \_\_\_\_\_, its )  
Director/Company Secretary, who has signed these )  
presents in token thereof. )

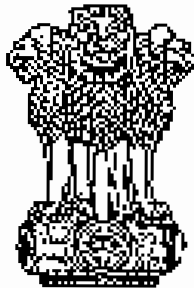
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Authorized Signatory

For SUPERTECH LTD.  
  
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INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL90825825762743P
Certificate Issued Date	: 07-Jun-2017 03:26 PM
Account Reference	: IMPACC (IVV) 804303/ DFLHV DL-DLH
Unique Doc. Reference	: SUBIN-DL90430382324165117167P
Purchased By	: AJNARA INDIA LIMITED
Description of Document	: Article Others
Property Description	: AS ANNEXED
Consideration Price (Rs.)	: 0 (Zero)
First Party	: AJNARA INDIA LIMITED
Second Party	: LAND T FINANCE LIMITED
Stamp Duty Paid By	: AJNARA INDIA LIMITED
Stamp Duty Amount(Rs.)	: 500 (Five Hundred only)



Please write or type below this line.

This stamp paper forms an integral part of "loan Agreement"

For EYE Prime Developers (Asset) Pvt. Ltd

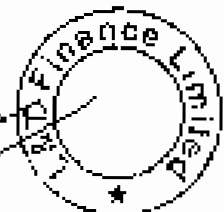
Authorised Signatory

*[Signature]*

FOR AJNARA INDIA LTD.

*[Signature]*

Authorised Signatory



Disclaimer

- 1. The signatory of this Stamp Certificate is not responsible for the
- 2. The act of checking the rights
- 3. In case of any discrepancy

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Stamp of Government of National Capital Territory of Delhi on the Certificate and on the contract

In this Agreement (including the recitals), unless there is anything repugnant to the subject, meaning or context thereof, the following terms, when capitalised, shall have the following meanings assigned to them:

- (i) "Additional Interest" shall have the meaning assigned to such term under Schedule II (Key Terms) of this Agreement;
- (ii) "Affiliate" in relation to a Person,
- (a) being a corporate entity, shall mean any entity or Person, which controls, is controlled by, or is under the common control of such Person, whether directly or indirectly; or
- (b) being an individual, shall mean any relative or any other entity or Person, which is controlled by such Person or a relative of such individual (as defined under the Companies Act, 2013);
- (iii) "Agreement" means this Loan Agreement including the recitals, schedules and annexures hereto, and any amendment or supplement made in accordance with the provisions hereof;
- (iv) "Applicable Laws" means and include any statute, law, treaties, rule, regulation, ordinance, guideline, notification or any requirement, restriction, authorisation, order, directive, permit, judgment, decree, injunctions, writs or orders of any court of record having the force of law, or any interpretation of any of the foregoing by any Government Authority, whether in effect as on the date hereof or thereafter, and shall include any re-enactment, substitution or amendment thereof as may be in force and effect during the subsistence of this Agreement which the Borrower are required to comply with for the proper conduct of its business and maintenance of assets or properties, including implementation, and operation and maintenance of the said Property(ies) and the Project constructed pursuant to the Loan, and includes the Real Estate (Regulation and Development) Act, 2016 and all rules and regulations made thereunder;
- (v) "Associate Company" shall have the meaning ascribed to the term in the Companies Act, 2013;
- (vi) "Availability Period" shall have the meaning assigned to such terms under the Schedule II (Key Terms) of this Agreement;
- (vii) "Borrower" shall be the person named in the Schedule IA, as may be amended from time to time;
- (viii) "Business Day" means a day on which branch/office of Lenders at the place of execution of this Agreement are open for business;
- (ix) "Charter" means in case of a company, the memorandum and articles of association or such other documents mandated under its respective laws;
- (x) "Co-Borrower" shall be the person named in the Schedule IA, as may be



Anura India Limited  
As Borrower



PVR Finance Developers (PVRFD) Pvt. Ltd.  
As the Co-Borrower



L&I Finance Limited  
As Lender 1







L&I Housing Finance Limited  
As Lender 2

As  
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amended from time to time;

- (xi) "Construction Schedule" shall mean the schedule as detailed in Schedule IX of this Agreement;
- (x) "Customer(s)" means the prospective individual, company, partnership firm, limited liability partnership or any other person purchasing the flat/Units in the Project and/ or properties or entering into any other arrangement requiring such person to make payments for purchasing the relevant flat/Unit in the Project and/ or Properties;
- (xii) "Default Interest" shall have the meaning assigned to the term in Article 2.2 of this Agreement;
- (xiv) "Disbursement" means the act of Lenders of making available to the Borrower amounts of the Loan in accordance with the Disbursement Schedule subject to terms of this Agreement.
- (xv) "Disbursement Schedule" shall mean the disbursement schedule as detailed in the Schedule VIII of this Agreement;
- (xvi) "Drawdown Notice" shall mean the notice to be provided by the Borrower to the Lenders for the purposes of drawing down and/or for obtaining Disbursement of the Loan (or the relevant part thereof), which form shall be submitted along with the confirmation and undertakings required to be made by the Borrower under this Agreement and as per the terms contained herein;
- (xvii) "DSRA/Debt Service Reserve Amount" shall mean the monies, which are required to be created and maintained by the Borrower as per the terms detailed in Article 10.4 of this Agreement;
- (xviii) "Encumbrance" shall mean any lien, equitable interest, assignment by way of security, conditional sales contract, hypothecation, right of other Persons, claim, encumbrance, title defect, title retention agreement, voting trust agreement, interest, option, commitment, restriction or limitation of any nature whatsoever, including restriction on use, voting rights, transfer, receipt of income or exercise of any other attribute of ownership, right of set-off, any arrangement (for the purpose of, or which has the effect of, granting security) any designation of loss payees or beneficiaries or any similar arrangement under or with respect to any insurance policy or any preference of one creditor over another arising by operation of law or any other security interest of any kind whatsoever, or any agreement, whether conditional or otherwise, to create any of the same. The term "Encumber" or "Encumbered" shall be construed accordingly;
- (xix) "Escrow Account" shall mean and include the Escrow Account opened with the Escrow Agent, in accordance with the Escrow Agreement;
- (xx) "Escrow Agreement" shall mean the agreement entered into by and between the Borrower, Security Trustee, the Lenders and the Escrow Agent for capturing the Escrow Mechanism;

 Ajanta India Limited as Borrower	 PVR Parks Developers (PVRD) Pvt. Ltd. As the Co-Borrower	 T & T Finance Limited As Lender 1	 L&T Housing Finance Limited As Lender 2
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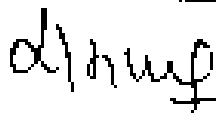


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- (xxi) "Escrow Agent" shall mean such entity as may be identified and acceptable to the Lenders to act as Escrow Agent under the Escrow Agreement;
- (xxii) "Escrow Mechanism" shall mean the broad framework set out in Article 10.2 herein, which will be more particularly detailed in the Escrow Agreement;
- (xxiii) "Event of Default" shall mean occurrence of any one or more of the events of default as set out in Article 13 of this Agreement;
- (xxiv) "Existing Lenders" shall mean the lenders providing the Existing Loan, as defined in Schedule VI of this Agreement;
- (xxv) "Existing Loan" shall mean existing loan liabilities of the Borrower as detailed in Schedule VI of this Agreement;
- (xxvi) "Final Settlement Date" shall mean the date on which all the Outstanding Amount shall have been irrevocably and unconditionally paid and discharged in full to the Lenders to the satisfaction of the Secured Parties;
- (xxvii) "Financial Year" means the accounting year of the Borrower commencing each year on April 1<sup>st</sup> and ending on the following March 31<sup>st</sup>;
- (xxviii) "Financing Documents" means this Agreement, Escrow/ DSR Agreement, if any, Security Documents, Security Trustee Agreement, Lender's agent agreement, if any, all agreements, instruments, undertakings, deeds, writings and other documents executed or entered into, or to be executed or entered into by the Borrower and/ or other Obligor and / or any other person in relation to or pertaining to the transactions contemplated by, or under this Agreement as amended from time to time and such other documents as may be designated as the "Financing Document" by the Lenders from time to time;
- (xxix) "Guarantor(s)" means the Guarantor whose names are mentioned in Schedule II hereto, in his /its/their capacity as the Guarantor/s guaranteeing the Borrower's obligations, under his /its/ Guarantees;
- (xxx) "Governmental Authority" means any government, any state or other political subdivision thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government or any other government authority, agency, department, board, commission or instrumentality of any political subdivision thereof, and any court, tribunal or arbitrator(s) of competent jurisdiction, and, any governmental or non-governmental self-regulatory organization, agency or authority, having jurisdiction over the Borrower, any of the Parties, any assets or operations of any of the foregoing, or any of the transactions contemplated hereby and includes without limitation New Okla Industrial Development Authority ("NOIDA Authority") and the Real Estate Regulatory Authority, adjudicating officer and appellate tribunal established under Real Estate (Regulation and Development) Act, 2015;
- (xxxi) "IBC" shall mean Insolvency and Bankruptcy Code, 2016 alongwith applicable rules and regulation(s), as amended from time to time;

 [Borrower's Name] Ltd & Limited as Borrower	 TVR Prime Developers (AVAD) Pvt Ltd. As the Co. Borrower	 L&T Finance Limited as Lender 1	 L & T Housing Finance Limited As Lender 2
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- (xxx) "Information Utilities" shall mean an information collection body to be constituted under the provisions of IBC;
- (xxxi) "Interest Rate" means the rate of interest to be paid by the Borrower to the Lenders as referred to in Article 2.5 and Schedule II (Key Terms) of this Agreement;
- (xxxii) "L&T Group Companies" means any group company of the Lenders;
- (xxxiii) "Material Adverse Effect" shall mean the change or consequence of an event, circumstance, occurrence or condition which has caused, as of any date of determination, or could be expected to cause an adverse effect in the sole opinion of Lenders, or the following of the Borrower or Affiliate of the Borrower or group entity of the Borrower or the Obligors:
- ability to make payments as and when due under the Transaction Documents or comply with its obligations under this Agreement or any Transaction Documents to which it is a Party;
  - the legality, validity, priority, enforceability or effectiveness of this Agreement or any other Transaction Documents or any Security thereunder; or
  - the financial condition, operations, assets and property, liabilities or business prospects of the Borrower or its group companies/ Affiliates including Obligors/ Promoters/ Sponsors/ Guarantors;
  - the implementation of the Project, the related financial plan or the carrying on of such business or operations;
  - the legal character, ownership or control of the Borrower and/ or the Affiliate of the Borrower and/ or group entity of the Borrower and/ or Guarantors and/ or other Obligors.
- (xxxiv) "Moratorium Period" shall mean the period as detailed in Schedule IV of this Agreement;
- (xxxv) "Mortgage" shall mean the mortgage over the Mortgaged Properties or other Properties;
- (xxxvi) "Mortgaged Properties" means one or more or all of the properties identified in Schedule III of this Agreement over which the mortgage shall be created for securing the Outstanding Amounts;
- (xxxvii) "Obligor(s)" hereby collectively means the Borrower (including Co-Borrower), Promoters, Security Provider(s), Guarantors and such other persons who have obligation to act or omit to do certain deeds or otherwise as per the terms of the Financing Documents and as the context so requires, collectively referred to as "Obligors" and individually as the "Obligor". "Original Lenders" means L&T Group Companies as detailed in Schedule I B of this Agreement of the date hereof;
- (xl) "Outstanding Amount" shall mean all amounts payable by the Borrower and/ or other Obligors to the Lenders in relation to the Loan pursuant to the terms of this Agreement, including without limitation:

 L&T Finance Limited as Borrower	 P&H Prime Developers (A&AD) Pvt. Ltd. As the Co-Borrower	 L&T Finance Limited as Lender 1	 L&T Housing Finance Limited As Lender 2
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- (a) the principal amount of the Loan and the Interest payable in relation thereto, and all other obligations and liabilities of the Borrower, including commitment fees, indemnities, expenses, fees, Interest, Default Interest, Additional Interest and penalties, incurred under, arising out of or in connection with the Loan;
- (b) any and all sums advanced by the Lenders in order to preserve the security interest created / caused to be created by the Borrower in relation to the Loan, and
- (c) in the event of any proceeding for the collection or enforcement of the Outstanding Amount, after an Event of Default shall have occurred and be continuing, the expenses of retaking, holding, preparing for sale or lease, selling or otherwise disposing of or realizing the security interest created / caused to be created by the Borrower and/ or any other Obligor or of any exercise by the Lenders of its right under the relevant Transaction Documents together with legal fees and court costs.
- (xii) "Panel Valuer" means a recognized and reputable valuer duly licensed to practice in India acceptable to Lenders and appointed as valuer by the Borrower;
- (xiii) "Permitted Indebtedness" means:
- (a) the Loan; and
- (b) Existing Loan, till the time the same has been repaid pursuant to the Loan granted herein;
- (xiv) "Permitted Security Interest" means:
- (a) the Security created pursuant to the terms hereof; and
- (b) the security created over any of the Properties for securing the Existing Loan, till the time the same has been repaid pursuant to the Loan granted herein;
- (xv) "Potential Event of Default" any event or circumstance which would, with notice, lapse of time, the making of a determination or any combination thereof, become an Event of Default;
- (xvi) "Project" shall mean the building/ construction / development/ redevelopment of a residential / commercial project in the name and style of 'Ajnara Ambrosia', as detailed in Schedule I of this Agreement;
- (xvii) "Project Properties" means all immovable properties on which the Project is being constructed and developed, which are more fully detailed in Schedule II of this Agreement;
- (xviii) "Project Receivables" means all receivables/ deposits/ sales proceeds/ cash flows/ revenues (including booking amounts from the Customers) arising out of or in connection with or relating to the Project;
- (xix) "Project Documents" shall mean (a) all deeds/ development agreements/ conveyance deeds/ agreements in relation to the immovable properties pertaining to the Project, including the lease deed(s) executed with the NOIDA Authority collaboration agreement/ joint development agreement executed between the Borrower and the Co-Borrower and Tripartite agreement between the Borrower, Co-





 L&T Finance Limited As Borrower	 IVR Prime Developers (AVAD) Pvt. Ltd. As the Co-Borrower	 L&T Finance Limited as Lender 1	 L&T Housing Finance Limited As Lender 2
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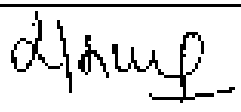


Borrower and Corporate Guarantor; (b) all contracts, writings entered into with any Authority in connection with the Project; (c) all Clearances, contracts, agreements and writings entered into or obtained by the Borrower in any manner connected with (i) the designing, construction, development, operation, management and/or maintenance in relation to the Project; (ii) supply of material, spares, equipment, operation and maintenance services and other technical and specialized services for the operations and maintenance in relation to the Project; and any other documents(s) that may be designated as such by the Lenders;

- (xix) "Promoter/s" shall mean the Person/s detailed as promoter/s in Schedule II (Key Terms) of this Agreement.
- (j) "Properties" shall mean Project Properties, other Mortgaged Properties and such additional properties as may be charged / hypothecated/ mortgaged in favour of the Security Trustee/ Lenders for purposes of creation of Security contemplated hereunder;
- (k) "Purpose" shall mean purpose(s) for which the Loan has been availed / agreed to be availed by the Borrower from the Lenders as detailed in Schedule II (Key Terms) of this Agreement;
- (l) "Repayment" means the repayment of the principal amount of Loan, interest payable thereon, charges, fees or any other dues payable by the Borrower to Lenders in terms of this Agreement;
- (m) "Repayment Cheques" means the cheques issued by the Borrower or such other Person as may be accepted by the Lenders as per the terms detailed in Article 5 of this Agreement;
- (n) "Repayment Schedule" shall mean the schedule for Repayment of principal amount of the Loan as set out in Schedule IV of this Agreement;
- (o) "Sale Schedule" shall mean the projected sales schedule as detailed in the Schedule X of this Agreement;
- (p) "Secured Parties" shall mean, the Lenders, Security Trustee, Lender's agent, if any and such other Persons as may be identified by the Lenders, from time to time;
- (q) "Security" means the Mortgage, guarantee or any other security interest or any other agreement or arrangement having the effect of conferring security in favour of the Lenders for securing the Outstanding Amounts in relation to the Loan as per the terms detailed in Article 4 herein, including but not limited to a lien, charge, assignment, hypothecation or mortgage;
- (r) "Security Documents" shall mean and include without limitation any documents entered into or executed by the Borrower or other Obligor or any other Person for creating and perfecting the Security, including any:
- deed(s) of Mortgage;
  - declaration and memorandum of entry made in relation to deposit of title deeds;

 Ajman India Limited as Borrower	 PVR Prind Developers (PVA&H) Pvt. Ltd. As Co-Borrower	 I & R Finance Limited as Lender 1	 I & R Housing Finance Limited As Lender 2
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- (c) deed(s) of hypothecation;
- (d) pledge agreement(s);
- (e) Consent(s) to assignment, if any
- (f) all such other documents, deeds, power(s) of attorney, etc. in the opinion of Lenders which may be required for creating and perfecting the Security in favour of the Lenders and/ or Security Trustee for the benefit of the Lenders and in such form and manner as may be accepted by the Lenders.
- (lix) "Security Providers" shall mean such Persons who have created or agree to create Security in favour of the Lenders as per the terms of Article 4 by way of hypothecation, mortgage, pledge, assignment, etc. in such form and manner as may be accepted by the Lenders.
- (lx) "Security Trustee" shall mean such entity as may be identified by the Lenders and appointed as per the terms of the Security Trustee Agreement
- (lxi) "Security Trustee Agreement" shall mean an agreement entered between the Borrower, Co-Borrower, Lenders, Corporate Guarantor and Security Trustee;
- (lxii) "Shareholding Documents" shall mean share purchase agreement (if any), shareholders agreement (if any) and such other documents evidencing and recording the ownership & rights of the shareholders / Promoters of the Borrower;
- (lxiii) "Sold Units" or "Booked Units" means all such units being part of the Project which have been/ are being constructed/ to be constructed and are sold/ agreed to be sold and for which part or full consideration has been received by the Borrower or any Person claiming under the Borrower, which Sold Units do constitute a part of the Security for the Loan to the extent that such sale is finally concluded by the parties, as specified in Schedule III of this Agreement;
- (lxiv) "Taxes" means any taxes including income tax, sales tax, stamp duty, customs and import duties, levy, impost, octroi, duty imposed and/or levied of any nature whatsoever, whether by Government of India or any Governmental Authority and wherever and whenever charged, levied or imposed together with any interest and penalties in relation thereto within the Republic of India.
- (lxv) "Tenor" shall mean the tenor of the Loan, which shall be as stated in Schedule II (Key Terms) of this Agreement.
- (lxvi) "Term Sheet" collectively mean sanction letters all dated May 26, 2017 bearing reference no. SAN515453 and reference no: SAN839750 issued by the Lenders and as may be amended from time to time;
- (lxvii) "Transaction Documents" means and includes the Project Documents and the Financing Documents (including the Security Documents):

 Ajanta India Limited as Borrower	 PVK Prisms Developers (AVADL) Pvt. Ltd As the Co-Borrower	 L&T Finance Limited as Lender 1	 L&T Housing Finance Limited As Lender 2
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- (xviii) "Unit" means a premises or unit in the Project;
- (xix) "Unsold Units" or "Unbooked Units" means all such Units being part of the Project which have been constructed / proposed to be constructed and are not sold or encumbered / agreed to be sold or encumbered or in respect of which part or full consideration is yet to be received and sale is yet to be finally concluded by the parties, which constitutes a part of the security for the Loan, which shall include the proposed Units specified in Schedule III of this Agreement.


## 1.2 Interpretation


For the purpose of this Agreement, unless the context or meaning thereof otherwise requires, the principles of interpretation as set forth hereunder shall apply:

- (i) words importing a particular gender includes all genders
- (ii) "Singular" includes plural, and vice versa.
- (iii) "Person" includes an individual, sole proprietorship, partnership firm within the meaning of the an Partnership Act, 1932, company (as defined in section 2(20) of the Companies Act, 1956), a body corporate as defined in section 2 (11) of the Companies Act, 2013, a co-operative society, a limited liability partnership and any body or organization or individuals or persons whether incorporated or not.
- (iv) A reference to:
- (a) any Article, Clause or Schedule means an article, clause or a Schedule to this Agreement;
- (b) an Account includes a reference to any sub account of that Account;
- (c) an "amendment" includes a supplement, modification, amendment, novation, accession, replacement or re-enactment and "amended" is to be construed accordingly.
- (d) "assets" include a. properties whatsoever both present and future, (whether tangible, intangible or otherwise) (including intellectual property and intellectual property rights), investments, cash-flows, revenues, rights, benefits, interests and title of every description;
- (e) "authorization" or "consent" or "approval" or "permission" includes a clearance, resolution, licence, exemption, filing, registration, authorization, consent, approval, permission.
- (f) "encumbrance" includes a mortgage, charge, lien, pledge, hypothecation, security interest or any lien or transfer/disposal of any nature or description whatsoever;
- (g) an Article or Schedule or Annexure is, unless indicated to the contrary, a reference to an Article or Schedule or Annexure to this Agreement.
- (h) the word "including" or "including" are to be construed without limitation;
- (i) an agreement shall include all schedules, annexures and exhibits of such agreement and all of such schedules, annexures and exhibits shall be deemed to be an integral part of such agreement;
- (j) any statute shall be construed as including a. statutory provisions consolidating, amending or replacing such statute, now existing or in force hereafter;

  
Airtara India Limited  
As Borrower





  
Airtara India Limited  
As the Co-Borrower

  
L&F Finance Limited  
As Lender 1

  
L&F Finance Limited  
As Lender 2

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- (k) reference to a 'month' or 'Month' shall mean a period beginning at 00:00 hours of the first day of the calendar month of a Gregorian Year and ending at 24:00 hours on the last day of such calendar month;
- (vi) headings and the use of bold typeface shall be ignored in its construction;
- (vii) any consent, approval, determination, waiver or finding to be given or made by any of the Secured Parties shall be made or given by such Secured Party in its sole discretion;
- (viii) the words 'other', 'or otherwise' and 'whatsoever' shall not be construed *quodam generis* or be construed as any limitation upon the generality of any preceding words or matters specifically referred to;
- (ix) all references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned from time to time;
- (x) any reference to a Government Authority shall be deemed to include a reference to any successor to such Government Authority or any organisation or entity which has taken over the functions or responsibilities of such Government Authority;
- (xi) words and abbreviations, which have well known technical or trade/commercial meanings are used in this Agreement in accordance with such meanings;
- (xii) any consent or waiver required to be provided by the Secured Parties or any of them shall mean the prior written consent or waiver of each of the Secured Parties or such of those who have given such consent or waiver;
- (xiii) where any action of the Secured Parties is subject to 'reasonableness' under this Agreement or the other Financing Documents, such 'reasonableness' shall be determined solely by each Secured Party;
- (xiv) any determination with respect to the materiality or reasonableness of any matter including of any event, occurrence, circumstance, change fact, information, document, authorization, proceeding and omission, claims, breach, default or otherwise shall be made by the Secured Parties, or any of them, at their sole discretion, which determination shall in the absence of manifest error, be final and binding on all Parties;
- (xv) 'repayment' includes 'redemption' and vice-versa and repay, repaying, repay, redeemed, redeemable and redemption shall be construed accordingly;
- (xvi) a Potential Event of Default is 'continuing' if it has not been remedied or waived and an Event of Default is 'continuing' if it has not been waived; and
- (xvii) the words 'hereof', 'herein', and 'hereto' and words of similar import when used with reference to a specific Article in, or Schedule to, or Annexure to this Agreement shall refer to such Article in, or Schedule to, or Annexure to this Agreement, and when used otherwise than in connection with specific Articles or Schedules, or Annexures shall refer to this Agreement as a whole;
- (xviii) When any number of days is prescribed in any document, the same shall be reckoned exclusive of the first and inclusive of the last day unless the last day does not fall on a Business Day, in which case the last day shall be the next succeeding day which is a Business Day; and
- (xix) This Agreement shall come into effect and be binding on the Agreement date as mentioned aforesaid. This Agreement shall remain in force until termination in accordance with this Agreement or until all the amounts due and payable to the Lenders under the Transaction Documents are fully paid by the Borrower.

 Shree Lida Limited As Borrower	 JYK Prime Developers (Pvt) Ltd. As the Co-Borrower	 L&T Finance Limited As Lender 1	 L&T Housing Finance Limited As Lender 2
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## 2 FACILITY

### 2.1 Amount of Loan

The Borrower hereby agrees to borrow from the Lenders and subject to provisions of this Agreement, the Lenders agree to lend to the Borrower the Loan as mentioned in Schedule IB for the Purpose and on the terms and conditions set forth in this Agreement.

### 2.2 Details of Disbursement

2.2.1 The Lenders may disburse the Loan in one or multiple tranches or depending on the progress of the Project as may be mutually agreed upon between the Parties and subject to fulfilment of conditions set-out in Article 3 of this Agreement and such other terms and conditions as set out under other Transaction Documents and in accordance with the Disbursement Schedule.

2.2.2 Upon the fulfilment of the conditions precedents as set out under Article 3.1 of this Agreement to the satisfaction of the Lenders, the Borrower shall deliver to each of the Lenders a Drawdown Notice in respect of a Disbursement (for its portion of the Loan) at least 7 (Seven) Business Days in advance with the intended drawdown date, which notice shall be substantially in the form prescribed by the Lenders.

2.2.3 The Borrower shall deliver to the Lenders a receipt in the form satisfactory to Lenders, within two (2) Business Days following the receipt of each Disbursement.





2.2.4 Notwithstanding anything contained in this Agreement, the Lenders without assuming any liability, reserves the unconditional right to discontinue, pause, revoke, cancel, alter, modify or change at any time, the sanctioned Loan or any part thereof or any terms thereof at its sole discretion and withhold /stop any Disbursements for any reason whatsoever and without giving any notice of any reason whatsoever.

### 2.3 Procedure for Disbursements

2.3.1 Promptly after the receipt of a Drawdown Notice alongwith requisite confirmation and undertakings, the Lenders shall: (A) review such Drawdown Notice and attachments thereto to determine whether requisite documents have been provided and whether all conditions precedents as set out under Article 3 of this Agreement have been fulfilled to the satisfaction of the Lenders.

2.3.2 In the event, the Lenders determines that any of the condition precedents as set out in the Article 3 of this Agreement, which had not been satisfied, have been satisfied or waived, the Lenders shall make Disbursement to the extent of the undisbursed amount of the Loan.

2.3.3 If in connection with any Disbursement, the Lenders determines that the Drawdown Notice is erroneous or that any condition precedent as set out in the Article 3 of this Agreement have not been satisfied, the Lenders shall give notice to the Borrower in

 Akshay Ltd & Limited As Borrower	 IPR Prime Developers (PVT) Pvt. Ltd. As the Co-Borrower	 U&I Finance Limited as Lender 1	 U&I Housing Finance Limited As Lender 2
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such form or manner as it may deem fit, stating that the Lenders shall not be required to make that Disbursement pursuant to the aforementioned Drawdown Notice.

## 2.4 Mode of Disbursements

2.4.1 All Disbursements by the Lenders to the Borrower under this Agreement shall be made through credit to the account designated by the Borrower in the Drawdown Notice and maintained with the bank acceptable to the Lender (hereinafter referred to as "Designated Account").

2.4.2 The Designated Account shall be used for all the Disbursement of the Loan made by the Lenders to the Borrower under this Agreement.

2.4.3 The Disbursements made towards land payment and FAR payment shall be directly made in favor of the NOIDA Authority.

2.4.4 Notwithstanding anything contained here above, the Borrower hereby agrees and confers that during the subsistence of Term of the Loan, the Lenders shall have unequivocal right to adjust and/ or set off any overdue amount either in part or in full from the undisbursed Loan amount at its sole discretion without requiring any Disbursement Notice from the Borrower or seeking any consent or providing any notice to this effect to the Borrower.

## 2.5 Interest Rate

2.5.1 The Interest Rate applicable to the Loan provided by the Lenders shall be as set out in the Schedule II (Key Terms) hereto against the name of such Lenders and shall be payable as per the terms stipulated therein.





2.5.2 All interest accruing on amounts outstanding under the Loan shall accrue from day to day and be calculated on the basis of the actual number of days elapsed in a year of 365 (Three Hundred and Sixty five) days and be payable in arrears on the Interest Payment Date (as defined in Schedule II (Key Terms) of this Agreement).

2.5.3 The determination of the applicable Interest Rate by the Lenders, from time to time, shall be final, conclusive and binding upon the Borrower without any demur or protest.

2.5.4 If there is any interest tax levied by the Government of India or any other Authority under the Interest Tax Act, 1974, or under any other law for the time being in force, the Borrower shall reimburse Lenders such tax imposed or levied by the Government of India or any other authority on the interest Rate and/or other payments required to be made by the Borrower to Lenders under any of the Financing Documents, including this Agreement, or in connection with the Loan.

## 2.6 Interest Rate Reset

2.6.1 The Interest Rate shall be reset/ revised by the Lenders upon expiry of time stipulated in the Schedule II (Key Terms) of this Agreement. The Borrower shall then pay interest at such reset rate (the "Reset Interest Rate") with effect from the Interest Reset Date (as defined in Schedule II (Key Terms) of this Agreement).

 Ajanta India (India) as Borrower	 AV3 Prime Developers (AVADI) Pvt. Ltd. As the Co-Borrower	 L&T Finance Limited as Lender 1	 L&T Housing Finance Limited As Lender 2
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2.6.2 In addition to terms detailed in Article 2.6.1 hereinabove the Lenders may in their sole discretion, change the Interest Rate at any time during the currency of the Loan upon occurrence of any of the following events:

- (i) Adverse change in money market condition;
- (ii) RBI revising the standard provision on assets;
- (iii) RBI changing the risk weight for assets;
- (iv) The credit rating for the Loan has been downgraded to non-investment grade by an accredited external credit rating agency (as approved by the Lenders);
- (v) cost of funds acquired or raised from time to time;
- (vi) Occurrence and/or continuation of an Event of Default;
- (vii) any change in the Applicable Law in relation to the provisional norms reserve liquidity ratios and risk weightage, as may be prescribed by any competent authority, from time to time; and/or
- (viii) and for any other reasons whatsoever as Lenders deems it necessary.


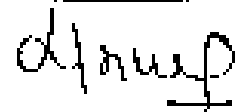


The Borrower hereby agrees that the occurrence of aforementioned events shall be determined by the Lenders at its/ their discretion and such decision of the Lenders shall be final, conclusive and binding upon the Borrower.

2.6.3 In the event of down-selling of Loan, participating New Lenders, will have an option to link the Interest Rate on expiry of 6 (six) months from the date of first Disbursement to their respective Prime Lending Rate/ Base Rate/ individual bank MCLR or any other benchmark rate. The Spread for such Lenders shall be calculated as the difference between the MCLR/ Base Rate or PLR, as the case may be, and the applicable (herein) Rate of the Original Lenders on the date of novation and/or assignment of Loan. Spread decided on this day shall be changed only as per the Article 2.6.1 (as applicable to Original Lender) and/ or Article 2.6.2 above. Participating New Lenders choosing MCLR as benchmark rate shall have option to specify interest rate reset period to give effect to any change in underlying benchmark rate(s), in line with the RBI guidelines in this regard. It is further clarified that, in no event, the Interest Rate of such participating New Lenders shall be lower than its benchmark rate(s) in line with the extant RBI guideline.

## 2.7 Additional Interest

2.7.1 Notwithstanding to the rights and remedies available to Lenders under this Agreement or otherwise, upon occurrence of any Event of Default as mentioned hereinafter, including but not limited to -

- (i) non-adherence to the Construction Schedule;
- (ii) not achieving sales of Units and sales collections in the Project as per agreed Sales Schedule;
- (iii) non-creation and/ or non-perfection of Security as per agreed timelines;
- (iv) non-closure of any existing escrow/retention account(s) of the Borrower with Existing Lenders, if any as per agreed timelines;
- (v) non-maintenance of DSI & A and not adhering to other covenants as per agreed provisions and/or breach or non-adherence of any term(s) contained in other Transaction Documents except the payment default as mentioned in the Article 2.0; and
- (vi) non-adherence of any of the Special Conditions as detailed in the Schedule II (Key Terms) hereto.

			
Ajanta India Limited as Borrower	IPR Prisms Developers (AAVAD) Pvt. Ltd. As Lending Co. Borrower	ICF Finance Limited as Lender 1	L&L Housing Finance Limited As Lender 2

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the Borrower shall pay an Additional Interest (over and above the Interest Rate) as detailed in Schedule II (Key Terms) hereto for the period beginning the date of such non-compliance until the same is cured/ remedied (if remediable) to the satisfaction of the Lenders.

2.7.2 The Additional Interest shall be payable on demand or, if not demanded, on each Interest Payment Date, falling after any such overdue amount has become due.

2.7.3 The Borrower hereby agrees that the obligation to pay Additional Interest shall neither be considered as a waiver of Event of Default nor shall absolve Borrower of its other obligations in respect of such default and/ or breach or non-adherence of the terms of Transaction Documents and the payment of said Additional Interest shall be without prejudice to Lenders' right to exercise all rights and remedies available to it under this Agreement and/ or any other Transaction Documents.

## 2.8 Default Interest

2.8.1 In the event of any payment default (i.e. non-payment of dues by the Borrower, including principal, interest or any other charges payable by the Borrower under Financing Documents), the Borrower hereby agrees to pay to the Lenders Default Interest as detailed in Schedule II (Key Terms) of his Agreement on overdue amounts (i.e. any amounts in relation to which payment has not been made (on the relevant Interest Payment Date or repayment of principal as per the Repayment Schedule or otherwise as per the terms of the Financing Documents), from the date of such default till the date of actual realization of such payment. The Borrower agrees to pay to the Lenders the Default Interest over and above the applicable Interest Rate.


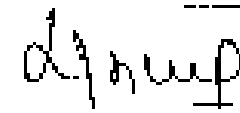


2.8.2 The Default Interest shall be calculated on daily basis on the actual number of days in the year. Without prejudice to the foregoing, and for clarity, if the Lenders recalls or accelerate payment of the Loan or any part thereof, the Borrower shall have to pay Default Interest on the Outstanding Amount due and owing to the Lenders from the date of recall or acceleration, till the date of actual realization of full payment to the Lenders.

2.8.3 Notwithstanding anything contained in any of the Financing Documents, the Additional Interest and Default Interest when payable by the Borrower to the Lenders shall be independent of each other, unless as communicated at the sole and absolute discretion of the Lenders.

## 2.9 Acknowledgement by the Borrower

2.9.1 The Borrower acknowledges that the sums, including but not limited to interest, Additional Interest and Default Interest stated herein are reasonable and that they represent genuine pre-estimates of the loss likely to be incurred by the Lenders in the event of non-payment by the Borrower.


2.9.2 The Borrower acknowledges that the Loan provided under this Agreement will be utilized specifically for the Purpose and waives any defence available under usury or other laws relating to the charging of interest.


 Apurva India Limited as Borrower	 IVR Prime Developments (AYADI) Pvt. Ltd As the Co-Borrower	 L&T Finance Limited as Lender 1	 L&T Housing Finance Limited As Lender 2
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- 2.9.3 The Borrower hereby agrees that any other use of the Loan shall require prior written consent of the Lenders.
- 2.9.4 In case any part of the Loan is utilized for the purpose other than the Purpose provided under this Agreement, without prejudice to Lender's other rights under this Agreement, including to declare it an Event of Default, the Lender shall have unconditional right to cancel, terminate, withdraw or recall the Loan forthwith and/or change Additional Interest over and above the Interest Rate.
- 2.10 Tenor and Repayment of Loan
- 2.10.1 The Tenor of the Loan shall be as detailed in Schedule II (Key Terms) of this Agreement.
- 2.10.2 Upon expiry of Moratorium Period, the Borrower agrees and undertakes to repay the principal amount from the Outstanding Amount in accordance with the Repayment Schedule, as set out in Schedule IV hereto.
- 2.10.3 The Borrower hereby agrees that the Interest Rate and other interest (including, Additional Interest and Default Interest) costs, charges, fees and expenses shall be payable as per the terms of this Agreement during the Tenor of the Loan including during Moratorium Period.
- 2.10.4 If the Repayment date or interest Payment Date falls on public holiday, then the payment shall be made on the previous Business Day falling prior to the Repayment Date or interest Payment Date (and Interest Rate will be calculated up to the actual Repayment date).
- 2.10.5 Repayment of the Loan would include all amounts actually received by the Lenders by any or all of the following modes:
- Repayment by the Borrower of the Loan and interest thereon in accordance with the Repayment Schedule;
  - Amounts received by the Lenders through electronic clearing service or on encashment of the post-dated cheques; and
  - Amounts received by the Lenders by transfer from the Escrow Account in accordance with Article 10.2 below.
- 2.10.6 Notwithstanding anything contained herein, in the event of occurrence of Event of Default or Potential Event of Default; or non-achievement of projected cash flows or deterioration or non-realisation of Project Receivables within reasonable time, the Lenders without prejudice to their other rights under the Transaction Documents shall have the right at any time and from time to time to review, accelerate and/or reschedule the Repayment terms of the Loan or of the Outstanding Amount thereof in such manner as Lenders may at its sole discretion deem fit. In such an event without any censure or protest, the Borrower shall remit payment as per such revised Repayment Schedule as revised by the Lenders for the amount outstanding at such time.
- 2.10.7 The Borrower agrees that all the Project Receivables shall be deposited in the Escrow Account without any delay or demur.

  
Ajanta India Limited  
As Borrower





  
M/s. The Developers (MADCO) Pvt. Ltd.  
As Co-Borrower

  
LST Finance Limited  
As Lender 1

  
Laxmi Housing Finance Limited  
As Lender 2

  
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- 2.10.8 The amounts lying in the Escrow Account shall be solely utilized for the Purpose and Repayment of the Loan or such other purpose as may be approved by the Lenders in writing and such Escrow Account shall be operated in accordance with Article 10.2 below.
- 2.10.9 The Repayment shall be made through an Escrow Account to be opened and established by the Borrower with the Escrow Agent in the name of the Borrower to the terms and conditions as contained in Escrow Agreement. At any point of time if the proceeds lying to the credit of the Escrow Account are not sufficient to repay Outstanding Amount of the Loan on the Repayment date, the Borrower undertakes to deposit sufficient funds to meet the shortfall amount into the Escrow Account from their income other than the Project Receivables. In the event the Borrower fails to deposit sufficient funds in the Escrow Account to make good the shortfall, Lenders shall have a right to present the Repayment Cheques in the manner specified in Article 5, of that month on the Repayment date.
- 2.10.10 Any principal amount of the Loan repaid under this Agreement may not be re-borrowed.
- 2.11 Prepayment
- 2.11.1 **Prepayment from Project cash flow:** The Borrower hereby agrees and undertakes that any Project Receivables generated from the Project by way of any sale, allotment, booking or any other kind of alienation of interest in any Units of the Project ('Said Units') either directly or indirectly or any other mode of obtaining advance against transfer of rights in the land or construction thereon in relation to the Project, shall be mandatorily credited into the Escrow Account and shall be utilized by the Lenders towards prepayment of the Loan (without payment of any prepayment penalty) at the prescribed rate ('Prescribed Rate') as may be stipulated by the Lenders by issuance of notice at such time and which shall not be less than the Prescribed Rate mentioned in Schedule II (Key Terms), hereto.
- 2.11.2 **Prepayment through re-financing and other sources:** The Borrower hereby agrees that, subject to prior written consent of the Lenders, in the event the Borrower makes any prepayment of Outstanding Amount (or any part thereof) by availing any re-financing loan from any other banks, NBFCs or financial institutions or from any other sources, it shall be done subject to prior written consent of the Lenders and shall be made along with upfront payment of prepayment charges calculated at the rate of 2 (two) % on the amount of the Loan/ Outstanding Amount so prepaid ('Prepayment Charges').
- 2.11.3 **Prepayment in view of Interest Rate Reset:** In case the Interest Rate reset (as detailed in Article 2.6, hereinabove) is not acceptable to the Borrower, the Borrower may prepay the Loan, either in full or in part thereof, within ninety (90) days of communication of the reset Interest Rate, subject to the Borrower providing an irrevocable notice of prepayment to the Lenders within thirty (30) days from the date of communication of such reset of Interest Rate. Such notice shall inter alia specify the amount to be prepaid and the date of prepayment. No prepayment penalty will be charged by the Lenders for such payments. However, till the time entire Outstanding

 Ajanta India Limited as Borrower	 AVA Prime Developments (AVADP) Pvt. Ltd As the Co-Borrower	 L&T Finance Limited as Lender 1	 L&T Housing Finance Limited As Lender 2
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Amount is paid to the Lenders to the satisfaction of the Lenders, the revised Interest Rate shall be payable by the Borrower.

2.11.4 Prepayment in view of not meeting Minimum Selling Price: The Borrower hereby agrees that subject to prior written consent of the Lenders, if for any reason, the sale of any of the Unsold Units is below the Minimum Selling Price, the Borrower shall prepay the Loan to the extent of such differential amounts without payment of any prepayment penalty.

2.11.5 The Lenders shall have right to increase the Prepayment Charges at its discretion during the Tenor of the Loan.





2.11.6 The Borrower hereby agrees that any amount prepaid under this Article shall be appropriated by the Lenders either towards the principal amount of the Loan in forward order of maturity or in such manner as it may deem fit.

2.11.7 Any principal amount of the Loan prepaid under this Agreement may not be re-advanced.

## 2.12 Imposts, Costs and Charges

2.12.1 The Borrower shall:

- (i) during the currency of the Loan, bear and pay all such imposts, duties, including stamp duties (as well as any differential stamp duty which may become payable after execution of this Agreement or Transaction Documents) and registration charges and Taxes (including interest and other taxes, if any) as may be levied from time to time by the Governmental Authority or other authority with the sanction of law pertaining to or in respect of the Loan and in respect of any of the Transaction Documents or which may be required to be paid according to the laws for the time being in force in the State in which such properties are situated or otherwise;
- (ii) pay all costs, charges and expenses incurred by the Lenders (including but not limited to all costs and expenses specified in Article 2.13 and Article 2.14 Hereof, including legal fees, technical and credit assessment, fees of consultants, stamp duty fees of Security Trustee, Lenders Agent fee, registration fees and any other statutory or regulatory fees/costs as determined by the Lender, legal fees and expenses relating to engagement of external counsel, the legal due diligence; the fee towards preparation, negotiation, execution, implementation, administration and enforcement of any of the Transaction Documents and all applicable tax thereon and also any cost or charges which Lenders shall certify as having sustained or incurred by it as a consequence of occurrence of an Event of Default, which amounts shall be paid by the Borrower promptly on demand, failing which, the Lender will be at liberty (but shall not be obliged) to incur the same and the Borrower shall reimburse the same to the Lenders along with an interest calculated @ 21% (Twenty One percent) p.a. thereon. The Lender shall have a right to recover all such costs from the Escrow Account at its discretion.

			
Akshay Sachdev As Borrower	L&T Prims Developers (A YADU) Pvt. Ltd. As the Co-Borrower	L&T Finance Limited As Lender 1	L&T Housing Finance Limited As Lender 2

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(iii) bear all costs for fulfilling its obligations under this Agreement and the Transaction Documents.

2.12.2 In the event of the Borrower failing to pay the monies referred to in sub-section (i) and (ii) of Article 2.12, Lenders will be at liberty (but shall not be obliged) to pay the same. The Borrower shall reimburse all sums paid by the Lenders or any of its agent in accordance with the provisions contained in this Agreement; and

2.12.3 Notwithstanding anything stated above Escrow Agent shall have right to recover on behalf of Lenders or its agents, all costs, charges and expenses and monies payable to Lenders under this Agreement by debiting the Escrow Account.

## 2.13 Fee(s) and other Charges

### 2.13.1 Up-Front Processing Fee:

The Borrower shall pay to Lenders an up-front processing fee (non-refundable and non-adjustable) at the rate and as per the terms more particularly mentioned in the Schedule II (Key Terms) hereto.

### 2.13.2 Legal Documentation Fees:

The Borrower shall pay to the Lenders documentation fees of such sum (as detailed in Schedule II (Key Terms) of this Agreement) towards legal due diligence, title clearance of properties and drafting of Financing Documents and as per the terms more particularly mentioned in the Schedule II (Key Terms) hereto.

### 2.13.3 Stamp duty, registration charges and other charges:





The Borrower hereby agrees that all Stamp duties and registration charges with respect to the Transaction Documents both present and future, including any penalty thereon shall be borne by the Borrower without any delay or demur.

### 2.13.4 Other Fees:

Any other fees including but not limited to, the fees payable to Security Trustee, Lender's agent, if any, other external service providers/ vendors/ consultants and other fees towards monitoring the Project/ the Loan, shall be borne by the Borrower without any delay or demur.

## 2.14 Right of Set-off

In addition to any rights now or hereafter granted under Applicable Law or otherwise, and not by way of limitation of any such rights, upon the occurrence and continuation of an event of Default Lenders are hereby authorized at any time or from time to time without presentment, demand, protest or other notice of any kind to the Borrower or to any other Person, any such presentment, demand, protest or notice being hereby expressly waived, to set off and to appropriate and apply any and all funds, deposits or assets at any time held or owing by the Lenders or any of L&T Group Companies (including, without limitation, by any branches and agencies of Lenders or any of L&T Group Companies wherever located) to or for the credit or the account of the Borrower against and on account of the obligations and liabilities of the

 Ajanta India Limited as Borrower	 L&T Prime Dev. Spcs (AYADI) Pvt. Ltd. As the Co-Borrower	 L&T Finance Limited as Lender 1	 L&T Housing Finance Limited As Lender 2
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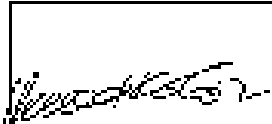
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Borrower to Lenders under this Agreement or under any of the other Transaction Documents or under any other financing documents entered by the Borrower and/ or its group entities with the Lenders and/ or L&T Group Companies wherever located, and all other claims of any nature or description arising out of or connected with this Agreement or any other Transaction Documents or any Security Documents irrespective of whether or not Lenders or any of L&T Group Companies have made any demand with respect thereto and Lenders shall be entitled to appropriate and apply any such funds, deposits and assets in terms of this Agreement and other Transaction Documents.

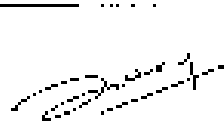
## 2.15 Suspension or Cancellation by the Lenders

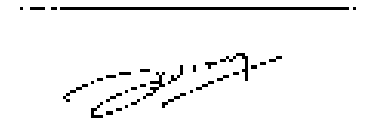
2.15.1 Notwithstanding anything to the contrary, the Lenders may, without notice to the Borrower, suspend the right of the Borrower to seek Disbursements or cancel the undischarged portion of the Loan in whole or in part and/ or the Lenders may revoke and cancel further access by the Borrower to the use of the amounts disbursed under this Agreement and other amounts on occurrence of following events:

- (i) The failure by the Borrower to provide required information in the form prescribed (approved by the Lenders from time to time) pertaining to the Mortgaged Properties or the Project constructed pursuant to the Loan or other Properties;
- (ii) In the opinion of the Lenders, there is material change in Borrower's purpose for the Purpose for which the Loan has been sanctioned/advanced;
- (iii) In the opinion of the Lenders there has been concealment of any material fact concerning the Borrower profits etc., or ability to repay or any other relevant aspect of the Borrower's application of Loan being withheld suppressed or concealed or not made known to Lenders;
- (iv) Any untrue/false statement/representation/warranty in the Borrower's loan application and/ or this Agreement, made by the Borrower;
- (v) The Transaction Documents as required by the Lenders are not executed within the timelines specified therefor in this Agreement or curing any further extension of the period as mutually agreed upon between the Parties;
- (vi) In case the Loan limits / part of the limits are not utilized by Borrower to the satisfaction of the Lenders;
- (vii) In case of non compliance of terms and conditions of Term Sheet issued by the Lenders and accepted by the Borrower and/ or Transaction Documents;
- (viii) If the first Disbursement has not been made within 90 (ninety) days from the date of execution of this Agreement to the satisfaction of the Lenders, or such later date as the Parties may mutually agree;
- (ix) If any Event of Default and/ or Potential Event of Default has occurred and is continuing or if the Event of Default specified in Article 13 (Events of Default), is in the reasonable opinion of Lenders imminent;
- (x) Any action has been taken in the opinion of the Lenders for the dissolution or establishment or suspension of the operations of the Borrower;
- (xi) The Borrower has ceased to exist in the same legal form as that prevailing as on the date of the Agreement;
- (xii) In the opinion of Lenders, the legal character ownership or control of the Borrower has changed from that prevailing as of the date of the issuance of Term Sheet resulting into a Material Adverse Effect;
- (xiii) If any event or condition has occurred resulting into a Material Adverse Effect;

  
Ajmera India Limited  
As Borrower

  
IVR Prima Developers (I.V.A.R.) Pvt. Ltd.  
As the Co-Borrower

  
ICF Finance Limited  
As Lender 1

  
L&T Clouing Finance Limited  
As Lender 2

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- on the Borrower or any of the Collators or the Project.
- (xiv) Any such right to cancel the Loan is available to the Lenders under the Applicable Laws.
- 2.15.2 The Lenders shall have an Unconditional right to cancel the undisbursed amount of the Loan in any of the following events:
- In case any part of the Loan amount is not utilized by the Borrower.
  - Upon occurrence of an Event of Default (including Potential Event of Default).
  - Upon occurrence of a Material Adverse Effect.
  - In case of deterioration in the Loan account in any manner whatsoever.
  - In case of any misrepresentation by the Borrower or any document or information furnished to the Lender is found to be incorrect or untrue.
  - In case of any other development or situation which in the opinion of Lenders will be prejudicial or detrimental to the interest of the Lenders.
- 2.15.3 The Borrower hereby agrees that exercise by the Lenders of their right of suspension shall not preclude Lenders from exercising their rights of cancellation, either for the same or any other reason specified in Article 2.15.1 or 2.15.2 and shall not limit any other provision of this Agreement. Upon any cancellation the Borrower shall pay to the Lenders all fees and other amounts accrued (whether or not then due and payable) under this Agreement up to the date of that cancellation.
- 2.15.4 In the case of any partial cancellation of the Loan pursuant to Article 2.15.1 or 2.15.2, Interest rate on the Outstanding Amount of the Loan remains payable as provided in Article 2.5.
- 2.15.5 The Borrower hereby agrees that unless the Lenders otherwise agree, the Borrower's right to make first Disbursement from the Loan shall cease upon expiry of 90 (ninety) days from the date of this Agreement.
- 2.15.6 The Loan shall be available to be withdrawn by the Borrower during the Availability Period subject to fulfilment of terms and conditions detailed in this Agreement.
- 2.15.7 Any portion of the Loan that is canceled under this Article 2.15 may not be reinstated or disbursed.

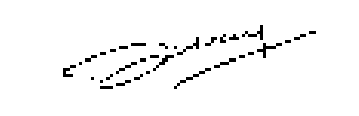
## 2.16 Appropriation of Payments

- 2.16.1 The Borrower further agrees and confirm that anything contained herein or in any other documents or instructions in writing by the Borrower or unless otherwise agreed to by the Lenders any payments due and payable under this Agreement and made by the Borrower or amount realized/received/recovered by the Lenders shall be appropriated towards such dues in the order they appear herein below:
- Costs, charges, expenses and other monies;
  - Interest payable on costs, charges, expenses and other monies;
  - Interest payable including Additional Interest/Default Interest;
  - Further interest and damages or defaulted amounts payable in terms of this Agreement; and
  - Repayment of installments of principal Loan amount

  
Ajz & India Limited  
As Borrower

  
IVR Prime Developers (IVADI) Pvt. Ltd.  
As the Co-Borrower

  
L&T Finance Limited  
As Lender 1

  
L&T Housing Finance Limited  
As Lender 2

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2.15.2 Notwithstanding anything contained in Article 2.16.1 hereinabove, Lenders may, at its discretion, appropriate such payments towards the dues, if any, payable by the Borrower and/or any of its group entities in respect of financial assistance availed/ to be availed by the Borrower and/or any of its group entities from Lenders and/ or L&T Group Companies in the order specified in the relevant loan agreement(s).

### 2.17 Joint and Several Liability

Each of the Borrower (as detailed in Schedule IA) do hereby specifically agree and undertake as follows:

- (a) That the liability of any of the Borrower is joint and several liability to the fullest extent of the liability or obligation towards the Lenders as agreed under the respective Financing Documents entered by such Obligor(s) and accordingly, the Lenders may, at the sole discretion of the Lenders, call upon and demand each Borrower to comply with any of the provisions hereof, or make payment of any sum due hereunder;
- (b) The grant of this Loan to any one of the Borrower shall be deemed to be adequate consideration in respect of all other Borrower;
- (c) Each Borrower have assumed joint and several liability to the fullest extent for any and every amount due hereunder, irrespective of the Project belonging to or being developed by any of them; Disbursement of the Loan to any of the Borrower or the practice in respect of payments of interest, principal or any other sum being paid by any particular Borrower/Obligors, or whether there is any cost sharing agreement or any other mutual agreement among such Borrower providing for any mutual sharing of liability among themselves;
- (d) Any waiver, abatement, non-prosecution or any other relaxation granted by the Lenders to any Borrower shall be of no relevance in respect of the joint and several liability of each Borrower;
- (e) Any security interest created by any Borrower shall be deemed to be respect of the joint and several obligations of the Borrower hereunder;
- (f) Any notice or other communication served on any of the Borrower shall be deemed to be served on each one of them.




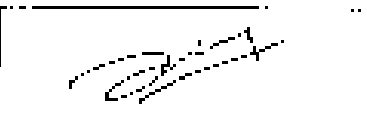
## 3 CONDITIONS PRECEDENT AND CONDITIONS SUBSEQUENT

### 3.1 Conditions Precedent to First Disbursement

The first Disbursement under the Loan shall be made at the discretion of the Lenders subject to the Borrower complying with all the conditions to the satisfaction of the Lenders, as detailed in Part A of Schedule V (Condition Precedent for First Disbursement) or such other conditions as may be prescribed by the Lenders.

### 3.2 Conditions Precedent to Subsequent Disbursements

The obligations of Lenders to make further Disbursements out of the Loan shall, inter alia be subject to the Borrower complying with the conditions to the satisfaction of the Lenders, as detailed in Part B of Schedule V (Condition Precedent for Subsequent Disbursement) or such other conditions as may be prescribed by the Lenders.

			
Aman Singh, Director As Borrower	Anoop As Co-Borrower	L&T Finance Limited As Lender 1	L&T Housing Finance Limited As Lender 2

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### 3.3 Conditions Subsequent to First Disbursement





- 3.3.1 The Borrower shall satisfy each of the conditions detailed in Part C of Schedule V (Condition Subsequent to First Disbursement) to the satisfaction of the Lenders, within 30 (Thirty) days of the first Disbursement of the Loan.
- 3.3.2 The Borrower shall satisfy each of the conditions detailed in Part D of Schedule V (Condition Subsequent to First Disbursement) to the satisfaction of the Lenders, within 3 (Three) months of the first Disbursement of the Loan.

## 4 SECURITY

- 4.1 The Outstanding Amounts in relation to the Loan including all interest, taxes, liquidated costs, charges, expenses and other sums whatsoever due and payable to Lenders hereunder shall be secured by the Security as set out in Schedule III (Security & Security Related Covenant) of this Agreement.
- 4.2 The Borrower shall deposit with the Security Trustee, all the original documents in its possession in respect of the title deeds of the Mortgaged Properties, TDR documents, Project Receivables, Project Documents or such other documents in respect of the Security requested by the Lenders from time to time.
- 4.3 The aforesaid Security shall be created in favour of Security Trustee for the benefit of the Lenders or in favour of the Lenders, in a form and manner satisfactory to Lenders.
- 4.4 The Borrower hereby agrees that the Lenders reserves the right to modify the Security structure detailed in Schedule III in its absolute discretion, prior to financial closing/execution of Financing Documents and due diligence of the transaction.
- 4.5 If, at any time during the currency of the Loan, the Lenders are of the opinion that the Security provided to Lenders have become inadequate to cover the Outstanding Amount, Lenders shall be entitled to call upon the Borrower to provide and furnish to Lenders, to the satisfaction of Lenders, such additional and/or alternate security as may be acceptable to Lenders to cover such deficiency.
- 4.6 All title deeds and other documents provided towards Security shall be vetted and cleared by empanelled lawyer / internal legal department of the Lenders.

## 5 REPAYMENT CHEQUES

- 5.1 The Borrower hereby agrees that Repayment Cheques of such number and value as may be detailed in Schedule II (Key Terms) hereto for Repayment installments shall be furnished to the Lenders by the Borrower and/or other Colligors (as the case may be). Such Repayment Cheques shall be presented to Lenders before Disbursement.
- 5.2 The Lenders shall use such Repayment Cheques only in the event of the funds in the Escrow Account being insufficient to meet the Repayment obligation of the Borrower.
- 5.3 The Borrower hereby agrees and undertakes to arrange for the funds to honour the

 Amanjinder Singh Limited As Borrower	 AMADI Private Developers (AMADI) Pvt. Ltd. As the Co-Borrower	 L&L Finance Limited As Lender 1	 L&T Holding Finance Limited As Lender 2
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post-dated cheques presented by the Lenders. The utilized undated cheque(s) shall be returned to the Borrower on the satisfaction of the entire Outstanding Amount to the satisfaction of the Lenders.

- 5.4 The Borrower hereby undertakes neither to intimate and/or instruct their bankers to stop payment of the Repayment Cheques delivered to Lenders, nor to close the account without Lenders' written consent.
- 5.5 The Borrower hereby agrees that the Lenders shall have an irrevocable right to right to present the said cheques as per the terms of this Agreement and the Borrower and/or other Obligors (as the case may be) shall never give Lenders any notice requesting Lenders to not to present the cheques as given hereunder on due dates or otherwise.
- 5.6 The Borrower hereby submits and concurs that dishonouring of any of Repayment Cheques due to any reason whatsoever shall be construed as an Event of Default under this Agreement and the Lenders shall be at liberty to take inter alia action against the Borrower or other Obligors (as the case may be) under Applicable Law including recourse under the Negotiable Instruments Act.


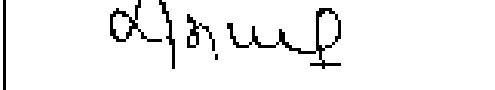


## 6 ILLEGALITY

- 6.1 The Borrower hereby agrees that nothing but continuance of the Loan, due to suspension/cancellation/revocation of any statutory approval of Lenders or for any other reason whatsoever if making funds available under the Loan to the Borrower or allowing continuance of the Outstanding Amount under the Loan disbursed or to be disbursed becomes unlawful or illegal, then the Lenders shall promptly after becoming aware of the same, deliver to the Borrower a notice to that effect and:
- (a) Thereafter, the Lenders shall not be obliged to make any Disbursement hereunder and the amount of the balance available Loan shall be immediately reduced to zero without any liability on Lenders to that effect;
- (b) The Lenders shall be entitled to recall the entire Loan and the Outstanding Amount forthwith and the Borrower shall on such date as Lenders may specify repay the Outstanding Amount owing to Lenders in respect of the Loan and / or the Security created in pursuance hereof; and
- (c) Upon Repayment of the entire outstanding Loan and upon fulfilment of all duties and obligations of the Borrower under the Transaction Documents to the satisfaction of the Lenders, the Lenders shall immediately release/ reconvey the Mortgage Properties or Securities of any part thereof as the case may be.

## 7 REPRESENTATIONS AND WARRANTIES

- 7.1 The Borrower makes the following representations and warranties as on the date of this Agreement in order to induce each of the Secured Parties to enter into the Transaction Documents. These representations and warranties shall survive the execution and delivery of the Transaction Documents and the making of the Disbursements under this Agreement and shall be repeated, by reference to the facts and circumstances then existing, on each day until the Final Settlement Date.

### 7.1.1 Organization and Authority

			
Ajay Mittal is Limited as Borrower	IPR Princes Developers (PVT) Ltd. As the Co-Borrower	L&T Finance Limited As Lender 1	L&T Housing Finance Limited As Lender 2

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Each of the Borrower and the Corporate Guarantor is a company/firm duly incorporated and validly existing under the laws of India and has the corporate power and has obtained all required authorizations to own its property and assets, conduct its business as presently conducted and to enter into and comply with its obligations under the Transaction Documents to which it is a party or will be a party as per the terms of this Agreement;

### 7.1.2 Validity

This Agreement and each Transaction Documents to which any of the Borrower and/or the other Obligors is a party has been, or will be, duly authorized and executed by the such Borrower and Obligors and constitutes, or will as and when executed constitute, a valid and legally binding obligation of the said Borrower and the other Obligors enforceable in full force and effect in accordance with the terms contained therein;

### 7.1.3 Status of Authorizations:


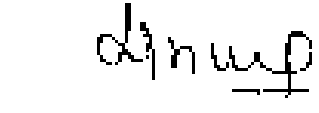


- (i) All the Borrower's and other Obligors' authorizations either statutory or contractual as may be required to execute and comply with Borrower's and other Obligors' obligations under this Agreement and each of the other Transaction Documents to which it is a party have been duly and are in full force and effect; and
- (ii) All authorizations either statutory or contractual (as the case may be) required to conduct Borrower's and other Obligors' business, currently carrying on and is contemplated to be carried on; to carry out the Project have been duly obtained by the Borrower and such other Obligors', each such authorization is in full force and effect and the Borrower is in compliance with all terms and conditions of such authorizations.

### 7.1.4 No Conflict

Neither the making of or any term of the Transaction Documents to which the Borrower and/ or any Obligor is a party nor the compliance with its terms will conflict with or result in a breach of any of the terms, conditions or provisions of or constitute a default or require any consent under, any existing indenture, mortgage, agreement or other instrument or arrangement to which the Borrower and/ or such Obligor is a party or by which it is bound, or violate any of the terms or provisions of the Borrower's or such Obligor's Charter or any authorization, judgment, decree or order or any statute, rule or regulation applicable to the Borrower save and except as may be upfront disclosed to the Lenders in writing.

### 7.1.5 No Amendments to Charter Documents

The Borrower has submitted the certified true copies of its and other Obligors' Charter documents with Lenders and confirms that these are final/ last amended documents and neither entering into the Transaction Documents by either of the Obligors including Borrower nor any terms contained therein are in breach or inconsistent to the provisions of the Charter documents of each of the Obligors.

			
Ajram Inclin Limited As Borrower	IVR Prime Developers (AVADI) Pvt. Ltd. As its Co-Borrower	IFC Finance Limited As Lender 1	IAT Housing Finance Limited As Lender 2

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### 7.1.6 Accuracy

The Borrower confirms the accuracy, correctness and validity of the information provided by the Borrower in its loan application made to the Lenders, including all other prior or subsequent explanations/information given to Lenders in this behalf and as provided in this Agreement and other Financing Documents.

### 7.1.7 Financial Condition

Since the acceptance of the Term Sheet, the Borrower:

- (i) has not suffered any change that has a Material Adverse Effect
- (ii) has not incurred any loss or liability, or undertaken or agreed to undertake any substantial obligation except for the liabilities listed in Schedule VI.

Further, no material adverse change in the Borrower's financial condition and condition in financial market has occurred since the acceptance of Term Sheet.

### 7.1.8 Financial Statements

The Unconsolidated and consolidated financial statements of the Borrower and its subsidiaries for the last three years:


- (i) have been prepared in accordance with the accounting standards and practices in force in India consistently applied during the period involved, and give a true and fair view of the financial condition of the Borrower as of the date as of which they were prepared and the results of the Borrower's operations during the period then ended; accounting standards and practices in force in India consistently applied during the periods involved and present truly and fairly the financial position and results of the operations of the Borrower and the Borrower has no liabilities; or
- (ii) disclose all material liabilities (including guarantees and other contingent liabilities) of the Borrower, and the reserves, if any, for such material liabilities and material unrealized or anticipated liabilities and material losses arising from commitments entered into by the Borrower.

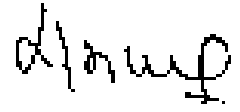
### 7.1.9 Material Agreements


Since the acceptance of Term Sheet, neither the Borrower or any other Obligor has entered into any arrangement and/or agreement of any nature or has committed to enter into, any contract which would or might affect the judgment of a prospective investor (if any) and could have resulted or result into a Material Adverse Effect.


### 7.1.10 Title to Assets and Permitted Liens

- (i) With regard to all the Securities (created or to be created in favour of the Lenders) and/or all the assets owned or purported to be owned by the Borrower and/or asset(s) leased or proposed to be leased by it, a clear, good, valid legal and marketable title exist alongwith valid ownership/leasehold interest without any Encumbrance of any nature whatsoever and no contracts or arrangements, conditional or unconditional, exist for the creation of any Encumbrance by the Borrower, except for the Permitted Security.

  
Aman, India Limited  
As Borrower

  
PVR Entertainment Developers (AVADI) Pvt. Ltd.  
As the Co-Borrower

  
L&I Finance Limited  
As Lender 1

  
A.P. Housing Finance Limited  
As Lender 2

As  
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- (ii) That no mortgages, charges, liens or other Encumbrances or any other rights of way, light or water or other easements or right of support on the whole or any part of the Mortgaged Properties and/ or other Properties and/ or the Project have been created or furnished in any manner whatsoever save and except rights created/ proposed to be created in favour of the Lenders herein;
- (iii) The Borrower represents that there are no document, judgment or legal process or other charges of any latent or patent defect affecting the title of the Mortgaged Properties and other Properties which has remained undisclosed (in writing) and/or which may unjudicially affect the interest of Lenders under the Transaction Documents in any manner whatsoever;
- (iv) The Mortgaged Properties or other Properties or the Project constructed from the proceeds of the Loan are neither included nor/ are affected by any of the schemes of the Central/ State Government or of the Improvement Trust or any other public body or local authority or any alignment, widening or construction of road under any scheme of the Central/ State Government or of any Corporation, Municipal Committee, Gram Panchayat etc.

#### 7.1.11 Taxes

All tax returns and reports of the Borrower required by law to be filed have been duly filed within the period legally specified and all Taxes, obligations, fees and other governmental charges upon the Borrower, or its properties, or its income or assets which are due and payable or to be withheld, have been paid or withheld, other than (a) those presumably payable without penalty or interest; and (b) disputed taxes, obligations, fees and other governmental charges against which sufficient reserves are maintained;

#### 7.1.12 Litigation


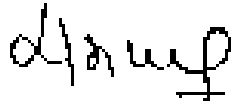

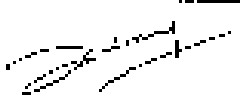
- (i) The Borrower and/ or other Obligors is/are neither engaged in nor threatened by any litigation, arbitration or administrative proceedings, the outcome of which could result into a Material Adverse Effect; and
- (ii) No judgment or order has been issued against any of the Obligors which has or may reasonably be expected to have a Material Adverse Effect;
- (iii) No suit is pending in the Municipal Magistrate's Court or any other Court of Law or forum of Judicature in respect of the Mortgaged Properties or Properties or Project constructed from the proceeds of the Loan or otherwise nor has the Borrower been served with any notice for violating the provisions of the Municipal Act or any Act relating to local bodies or Gram Panchayats or local authorities or with in any other process under any of these Acts

#### 7.1.13 Compliance with Law

The Borrower is not in violation of any statute or regulation of any Governmental Authority;

#### 7.1.14 Environmental Matters.

- (i) There are no material social or environmental risks or issues in relation to the Project; and
- (ii) It has not received nor is aware of either (A) any existing or threatened

			
Anant India Limited As Borrower	IPR Prime Developers (AVAFI) Pvt. Ltd. As the Co-Borrower	L&T Finance Limited as Lender 1	L&T Housing Finance Limited As Lender 2

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complaint, order, directive, claim, citation or notice from any authority or (B) any material written communication from any Person concerning the Project's failure which failure has, or could reasonably be expected to have, a Material Adverse Effect or a material adverse impact on the implementation or operation of the Project;

#### 7.1.15 Project Approvals

- (i) That the layout and building plans of the Project proposed to be constructed pursuant to the Loan have been duly approved by the competent Governmental Authorities and all the necessary permissions have been duly procured and are in place. The Project is built up according to building regulations/Development control rules of Municipa Corporation/Municipality/Planning authority framed by the concerned planning authority.
- (ii) The Borrower hereby represents, undertakes and confirms that all the future work will also be as per the given permission and deviation if any would be communicated to Lenders on immediate basis.
- (iii) The Lenders may at any time have the Project related details valued by its approved/Panels Valuer, at the cost of the Borrower. In the event of failure, Lenders will have the right to treat it as Event of Default and have right to restructure the facility alongwith other recourse available in Article 14 below.

#### 7.1.16 Labour Matters

There are no ongoing or threatened, strikes, slowdowns, collective labor disputes or work stoppages by employees of the Borrower or any contractor with respect to the Project.

#### 7.1.17 Group Companies Transactions

- (i) The description of all the Borrower's group companies transactions as set out in the Borrower's latest financial statements is accurate
- (ii) That the Borrower and / or its group companies have no overdue, nor defaulted in repayment of any amount due and payable to any other bank/ financial institutions.

#### 7.1.18 Use of Proceeds


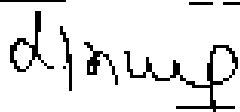


The proceeds of the Loan will be applied exclusively for the Purpose mentioned herein and in accordance with the terms of this Agreement.

#### 7.1.19 Capitalization

The description of the ownership of the Borrower as set out in the Borrower's latest financial statements is accurate and there has been no change in the same till the date of execution of this Agreement.

#### 7.1.20 No Material Omissions

None of the representations and warranties in this Article 7.1 omits any matter, the omission of which makes any of such representations and warranties misleading in

			
Ajay Inda Limited, as Borrower	DVR Prime Developers (P) VADII Pvt. Ltd. As the Co-Borrower	U & P Finance Limited, as Lender 1	U & T Housing Finance Limited As Lender 2

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any material respect.

#### 7.1.21 Other Existing Loan

There exists no outstanding default under other existing loan agreements in connection with the Existing Loan or otherwise except as disclosed to the Lenders in writing.

7.1.22 Prior to the date of seeking Disbursement, all information to the satisfaction of the Lenders have been duly made to the existing buyers or Customers about the Project and Properties being mortgaged to the Lenders and the balance payments shall be made favouring Lenders' Escrow Account

#### 7.1.23 Defaulter List; ECGC Caution List; Related Party

- (i) The Borrower, its directors, Promoters, Guarantors or Affiliates do not figure in any list of wilful defaulters circulated by RBI/CIBIL or the caution list of the Export Credit Guarantee Corporation or the specific approval list or COFEPOSA defaulters list or the Lenders defaulters list or the defaulter list of any bank or financial institution or any other Government Authority and no director of the Borrower is disqualified under Section 154 of the Companies Act, 2013.
- (ii) The Borrower confirms that none of the directors are directors in any company which has been identified as a willful defaulter by the RBI/CIBIL or any regulatory authority.
- (iii) The Borrower shall not induct a Person in the capacity of director / promoter who is a director / partner / member / trustee of a company / firm / association of persons / trust as the case may be, identified as wilful defaulter. In the event such a Person is found to be a director / partner / member / trustee of a company / firm / association of persons / trust, as the case may be, identified as wilful defaulter, the Borrower shall take expeditious and effective steps for removal of such Person.
- (iv) The Borrower confirms that none of its directors or directors of its subsidiaries or holding companies, or any of their relatives or shareholders are director(s)/member(s) of the board/senior officer of the Lenders or member of any other bank's board and no directors of any other bank holds substantial interest or is interested as director or as a guarantor of the Borrower.
- (v) The Borrower confirms that no relative of a chairman/ managing director or director of any of the Lenders or a relative of senior officer of any of the Lenders, holds substantial interest or is interested as a director or as guarantor of the Borrower.
- (vi) The Borrower confirms that no director of any of any banks or financial institutions, their subsidiaries, trustees of mutual funds, venture capital funds set up by the banks or their relatives as a director, manager, managing agent, employee or guarantor of the Borrower, or of a subsidiary of the Borrower, or of the holding company of the Borrower, or holds substantial interest, in the Borrower or a subsidiary of the holding company of the Borrower and no director of any other bank holds substantial interest or is interested as director or as a guarantor of the Borrower.
- (vii) The Borrower represents that none of its directors or directors of its Affiliates



Aditya Mittal Limited  
As Borrower



Aditya Mittal Limited  
As Co-Borrower



Finance Limited  
As Lender 1



Housing Finance Limited  
As Lender 2

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or any of their relatives or shareholders, is a director of any bank or financial institution or a near specified relation of a director of a bank or financial institution or a near specified relation of any senior officer of any bank or financial institution or has any relationship with the directors of any bank or financial institution.

#### 7.1.24 No Misleading Information

- (i) All information or documents provided by the Borrower to the Secured Parties are true, complete and accurate as at the date they have been provided or as at the date (if any) at which they have been stated and are not false or misleading nor incomplete by omitting to state any fact necessary to make such information not misleading
- (ii) No event has occurred or no information has been given or withheld by the Borrower that results in the information provided to the Secured Parties being untrue or misleading

7.1.25 With a view to monitor the use of funds, if the Lenders desires a specific certification from the Borrower's statutory auditor ("Auditor") regarding diversion's spending of funds by the Borrower, the Lenders shall be entitled to directly instruct the Auditor or procure the Borrower to instruct its Auditor to furnish the said certificate to the Lenders entirely at the cost and expenses of the Borrower

7.1.26 Neither the Borrower nor its group companies have defaulted on any loans availed from any banks/ financial institutions save and except disclosed to Lenders in writing.

7.1.27 None of the terms and conditions detailed in the Shareholding Documents is prejudicial to the rights and interest of the Lenders in any manner whatsoever and in order to ensure that the rights of the Lenders are duly protected therein, they shall amend such Shareholding Documents if so required by the Lenders.

7.2 The representations and warranties contained herein shall be deemed to be repeated by the Borrower on and as of each day from the date of this Agreement until all sums due or owing hereunder by the Borrower to Lenders have been paid in full, as if made with reference to the facts and circumstances existing on such day

#### 7.3 Basis of Agreement





The Borrower acknowledges that the representations and warranties in this Article 7 (Representations and Warranties) to the Lenders shall induce the Lenders to enter into this Agreement and that Lenders has/have entered into this Agreement on the basis of, and in full reliance on, each of such representations and warranties.

## B AFFIRMATIVE COVENANTS

The Borrower hereby covenants, undertakes and agrees to abide by and ensure continued compliance of the following on or from the date of this Agreement and until the Final Settlement Date

### 5.1 Corporate Existence; Conduct of Business

The Borrower shall maintain its corporate existence, comply with its Charter, and

 Ajay India Limited as Borrower	 AVAD Developments (AVAD) Pvt. Ltd. As the Co-Borrower	 L&T Finance Limited as Lender 1	 L&T Housing Finance Limited As Lender 2
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implement the Project and conduct their business with due diligence and efficiency and in accordance with sound financial and business practices.

### 8.2 Use of Proceeds

The Borrower shall utilize the Loan only for the Purpose set forth in this Agreement. The Borrower hereby undertakes that they shall not use the Loan, or any part thereof for any other purpose, including for any investments in stocks and scrips or stock exchanges and/or in capital markets and/or purchase of land or transferable development rights ("TDR") either directly or indirectly or to pay/repay any unsecured loans or any part thereof out of the Loan proceeds availed from advanced by the Lenders to the Borrower herein.

### 8.3 Compliance with Laws; Taxes

- (i) The Borrower shall conduct its business in compliance, in all material respects, with the Applicable Law; and
- (ii) The Borrower shall file by the date due all returns, reports and filings in respect of Taxes required to be filed by them and pay, when due, all Taxes due and payable by it.

### 8.4 Auditors

The Borrower shall:

- (i) maintain at all times a firm of independent chartered accountants acceptable to the Lenders as Auditors of the Borrower;
- (ii) irrevocably authorize the Auditors (whose fees and expenses shall be for the account of the Borrower) to communicate directly with the Lenders at any time regarding the Borrower's financial statements (both audited and unaudited), accounts and operations, and provide to Lenders a copy of that authorization; and
- (iii) no later than 30 (thirty) days after any change in Auditors, issue a similar authorization to the new Auditors and provide a copy thereof to the Lenders.

### 8.5 Accounting and Financial Management

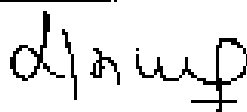
The Borrower shall maintain an accounting and control system management information system and books of account and other records, which together adequately give a fair and true view of the financial condition of the Borrower and the results of its operations in conformity with the accounting standards.

### 8.6 Sponsor Shareholding

Till the Final Settlement Date the Borrower shall cause the Promoters to hold at least: (a) 51% (fifty one percent), directly or indirectly, of the paid up share capital in the Borrower (including economic & voting interest therein) without any Encumbrances thereon and shall retain management control of the Borrower; and (b) 20% (twenty percent) directly or indirectly, of the paid up share capital in the Co-Borrower (including economic & voting interest therein) without any Encumbrances thereon.



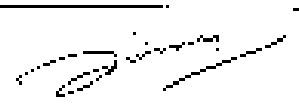
Ajanta India Limited  
As Borrower



AVR Prims Dev. ops (AVADI) Pvt. Ltd.  
As the Co-Borrower



L&T Finance Limited  
As Lender 1



L&T Housing Finance Limited  
As Lender 2

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## 8.7 Insurance

- 8.7.1 The Borrower shall maintain insurance on and in relation to its business, assets, Project and Properties with an insurance company/ or companies (acceptable to the Lenders) against such risks and to such extent as is required by the Lenders and is usual for companies carrying on the business such as that carried on by the Borrower.
- 8.7.2 The said insurance policies shall be endorsed / assigned in favour of the Lenders/ Security Trustee (as the case may be) and insurance policies shall expressly name the Lenders/ Security Trustee (as the case may be) as the first loss payee.
- 8.7.3 Insurance policies shall be assigned in favour of the Lenders at the time of next renewal of the policies or within 30(thirty) days, whichever is earlier and the Borrower shall deliver a copy of such insurance policies to the Lenders.
- 8.7.4 The Borrower shall keep the insurance policies alive till the time entire Outstanding Amount is paid to the Lenders to the satisfaction of the Lenders by making timely payment of the premium.

## 8.8 Access





During the continuance of the Loan, upon Lenders' request, and with reasonable prior notice to the Borrower, shall permit representatives of Lenders, during normal office hours, to:

- (a) visit at the Project site or Properties site or any of the sites and other premises where the business of the Borrower and its Associate Companies is conducted;
- (b) inspect, monitor or supervise any of the Borrowers and its Associate Companies sites, facilities, plants and equipment used for the Project and/or provided as Security to Lenders;
- (c) monitoring and/ or supervising and inspecting the progress of construction and the Escrow Account of construction to ensure proper utilization of the Loan;
- (d) have access to the Borrower's and its Associate Companies' books of account and all records through their representatives / audit firms and also conduct an audit to ascertain the value of the Mortgaged Properties by the Panel Valuers of Lenders; and
- (e) have access to those employees, agents, contractors and subcontractors of the Borrower and its Associate Companies who have or may have knowledge of matters with respect to which Lenders seeks information.

Provided that no such reasonable prior notice shall be necessary if an Event of Default or Potential Event of Default is continuing or if special circumstances so require.

## 8.9 Authorizations

- 8.9.1 All requisite authorizations necessary for the implementation of the Project, the carrying out of the Borrower's business and operations generally and the compliance by the Borrower with all its obligations under the Transaction Documents shall be obtained and maintained in force (and where appropriate, renewed in a timely manner) and
- 8.9.2 The Borrower shall comply with all the conditions and restrictions contained in, or imposed on the Borrower by, these authorizations. However, the Borrower shall

			
Ajnara Encls Limited As Borrower	AVR Prime Developers (AVADI) Pvt. Ltd. As the Co-Borrower	L&T Finance Limited As Lender 1	L&T Housing Finance Limited As Lender 2

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ensure that such instruction or its effect thereto shall not be prejudicial to the rights and interest of the Lenders under the Transaction Documents.

#### 8.10 Financial Ratios

The Borrower shall ensure compliance of each of the Financial Covenants detailed in Article 9 and such other terms as may be stipulated by the Lenders from time to time.

#### 8.11 Valuation

The Borrower shall provide a copy of the updated valuation report prepared by the Panel Valuer establishing the market value as of the end of each Financial Year with regard to Project Properties and other Securities within ninety (90) days after the end of each Financial Year or any date within ninety (90) days after the end of each Financial Year of the Security assets secured in favour of Lenders.

#### 8.12 Labour Laws

The Borrower shall comply with all labour law requirements including but not limited to pension and employee benefit plans and comply with all the conditions and restrictions contained in, or imposed on the Borrower.


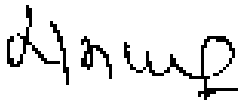
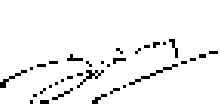
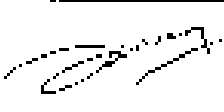
#### 8.13 Consent for sale

The Borrower shall obtain the requisite no-objection certificate ("NOC") from the Lenders prior to entering into any new agreements for sale with the Customer(s) in connection to the Units in the Project and/or Properties and any and all amounts accruing from the sale of such Units shall form part of Project Receivables and shall be deposited in the Escrow Account and shall be utilized in the manner provided in the Escrow Agreement. The Borrower shall ensure that all the draft agreements to sell shall contain the clause that the Borrower has availed construction finance loan or this Loan from the Lenders and it should be vetted by the empaneled legal vendor/legal team prior to the first Disbursement. The Borrower shall ensure incorporation of any comments or suggestions provided by the Lenders. The Borrower acknowledges that any such comments or suggestions shall be without prejudice to its rights under this Agreement and shall not be deemed to be waiver or approval in any manner whatsoever. The Borrower shall submit with the Lenders a copy of duly executed copy of such agreement within three (3) days, if so required by the Lenders.

8.14 Subject to terms of this Agreement, the Borrower shall not withdraw any part of the funds from the Escrow Account or any funds received in respect of the Project until the full repayment of the Outstanding Amount is made to the Lenders with the interest and all other dues, to the satisfaction of Lenders and in the manner provided in the Escrow Agreement.


8.15 The Borrower shall ensure that the Project Receivables and all additional inflow of sale proceeds and other receivables in connection to the Project, in any manner whatsoever are deposited into the Escrow Account.

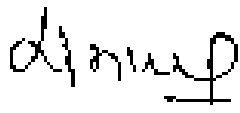
8.16 The Borrower hereby agrees that refund (if any) of Project Receivables to the


			
Agents India Limited As Borrower	IVE Finance Developers (A V.A.C.) Pvt. Ltd. As the Co-Borrower	L&T Finance Limited as Lender 1	L&T Housing Finance Limited As Lender 2


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- Customers shall be paid to the Customer(s) by the Borrower from sources other than the fund lying in the Escrow Account and the Borrower shall not divert in any manner whatsoever, funds deposited into or be deposited into the Escrow Account for the purposes of this Agreement until the Borrower repays the entire Outstanding Amount in connection with the Loan and other charges arising under this Agreement and other Transaction Documents to the satisfaction of Lenders and further that Lenders shall not in any manner whatsoever be responsible for the refund of the said Project Receivables to any of the Customer(s) under their respective sale deed or similar documents and such term shall form part of the requisite documents entered between the Customers and the Borrower. The Borrower hereby agrees to indemnify and keep Lenders indemnified for any loss, damages, demand, actions, disputes, claims, costs, charges and expenses of any nature, suffered or sustained by the Lenders, on account of non-refund of the said sale considerations.
- 8.17 The Borrower hereby unconditionally undertakes to forthwith pay the entire stamp duty and such other charges including penalty or such other fees as may be applicable in the event any competent Governmental Authority under the applicable stamp act in respective jurisdiction, adjudicates, any deficit stamp duty on the Transaction Documents. The failure of the Borrower to immediately rectify such orders shall be considered to be an Event of Default under the Transaction Documents.
- 8.18 The Borrower authorises and empowers the Lenders, to, at their sole discretion, pay stamp duty with penalty if any on the Transaction Documents and/or Security Documents and hereby unconditionally and irrevocably agrees and undertakes to reimburse the same to the Lenders alongwith interest calculated at the rate of 21 % (twenty one percent) per annum from the date of payment of such amount by the Lenders till the date of actual realization of such sum by the Lenders. Nothing contained herein shall however be construed to be the obligation of the Lenders to make such payments.
- 8.19 The Borrower shall not repay any funds brought in by the Promoters / director/principal shareholders in connection to the said Project without prior written consent of the Lenders.
- 8.20 The Borrower hereby agrees that its Promoter/ director shall not withdraw the profits and /or any proceeds earned in the business/ capital invested in the business without prior meeting the instalment to be paid to the Lenders towards payment of Outstanding Amount in connection with the Loan.
- 8.21 The Borrower shall till the Final Settlement Date, clearly disclose in the all the pamphlets/ brochures etc. the names of the Lenders to whom the Properties is/are mortgaged. Additionally, the Borrower shall append the information relating to mortgage while publishing advertisement of a particular scheme in newspaper/ magazines etc.
- 8.22 The Borrower shall share all information relating to financing assistance availed from the Lenders to the Borrower including but not limited to the nature and amount of debt with information UL Ls in a manner as may be required by the IUC and the Rules therein & update the information from time to time.

  
Ajit Lal India Finance  
As Borrower

  
AVAD Finance Developers (AVAD) Pvt. Ltd.  
As the Co-Borrower

  
U&F Finance Limited  
As Lender 1

  
U & F Housing Finance Limited  
As Lender 2





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- 8.23 The Borrower shall promptly inform Lenders, in any case not later than 2 (two) days, of receipt of any notice received from any creditor (financial or operational) seeking default payment or intimating and/or seeking remedy with respect to a potential payment default.
- 8.24 Without Lenders' consent the Borrower shall not propose any resolution seeking approval of the Board for filing application under IBC, either directly or indirectly.
- 8.25 The Borrower shall provide all support and assistance, if so required by the Lenders including furnishing of all information, execution of documents, passing of resolutions.
- 8.26 The Borrower shall at all point of time during the subsistence of this Loan adhere to the Construction Schedule and Sale Schedule.
- 8.27 The Borrower hereby agrees that it shall implement all terms and conditions specified by the Lenders pursuant to the RBI's Framework for Revitalising Distressed Assets in the Economy dated 30th January, 2014; or any scheme formulated by Reserve Bank of India (including the Strategic Debt Restructuring Scheme dated 0th June, 2015) or any other powers or rights vested with the Lenders or Joint Lenders Forum by the RBI from time to time.
- 8.28 The Borrower hereby agrees that the unsold units of the Mortgaged Properties shall be sold and/or third party rights and/or interest shall be created on the said units (subject to terms of this Agreement) at a price over and above Minimum Selling Price as defined in the Schedule II (Key Terms) hereof. Without prejudice to the Lenders right to call for an event of default under this Agreement, the Borrower hereby further agrees that, if for any reason, the sale of unsold units is below the Minimum Selling Price stipulated herein for the differential amount the Borrower shall arrange to make prepayment at the stipulated prepayment rate upfront as per Article 2.11 hereinabove.
- 8.29 The Borrower hereby agrees that in the event the Lenders in exercise of any of its/ their rights under the Transaction Documents:
- steps in or take over the Project or any right of the Borrower under the Project Documents; and/or
  - reviews the management set up or organisation of the Borrower and requires the Borrower to restructure it as may be considered necessary by the Lenders, including the formation of management committees with such powers and functions as may be considered suitable by the Lenders; the Borrower shall facilitate the same to the extent permissible under the Applicable Law.

## 9 NEGATIVE COVENANTS

The Borrower hereby covenants, undertakes and agrees to abide by and ensure continued compliance of the following on or from the date of this Agreement and until the Final Settlement Date.

### 9.1 Dividends

 Ajanta Labs Limited as Borrower	 AVR Prime Developers (AVAD) Pvt. Ltd. As the Co-Borrower	 L&F Finance Limited as Lender 1	 L&F Housing Finance Limited as Lender 2
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The Borrower hereby agrees that dividend, if any should be declared only after meeting the Lenders dues and with the prior consent of the Lenders. The Borrower shall not declare or distribute dividends, incur or maintain financial debt, unless:

- (i) No Event of Default or Potential Event of Default exists or is continuing;
- (ii) in case of dividends, the proposed payment or distribution is out of accumulated retained earnings, provided always that the retained earnings out of which any of the payments or distributions referred to in this clause may be made, shall in no event include any amount resulting from the revaluation of any of the Borrower's assets;
- (iii) in case of dividends, the USRA is maintained as per provisions of Article 10.2.5;
- (iv) total Security Cover is maintained at minimum of 1.5 times of the Outstanding Amount; and
- (v) in case of dividends, no later than thirty (30) days after the date of the Borrower's shareholder resolution approving such distribution, the Borrower certifies compliance to each of the matters referred to in Article 11 hereto to the Lenders in writing.

## 9.2 Guarantees and Other Obligations

The Borrower shall not enter into any agreement or arrangement to guarantee or, in any way or under any condition, assume or become obligated for all or any part of any financial or other obligation of another Person (including any Associate Companies of the Borrower) except for:

- (i) guarantees issued for the benefit of Associate Companies subject to prior written consent of the Lenders; and
- (ii) the existing guarantees or the facilities which have been already provided and disclosed in Schedule VI of this Agreement.

## 9.3 Arm's Length Transactions

The Borrower shall not enter into any transaction except in the ordinary course of business on the arm's length basis arrangements, including without limitation, transactions whereby the Borrower might pay more than the ordinary commercial price for any purchase or might receive less than the full ex-works commercial price (subject to normal trade discounts) for its products.





## 9.4 Profit Sharing Arrangements

Without prior written consent of the Lenders, the Borrower shall not enter into any partnership, profit-sharing or royalty agreement or other similar arrangement whereby the Borrower's income or profits are, or might be shared with any other Person.

## 9.5 Management Contracts

The Borrower shall not enter into any management contract or similar arrangement whereby the Borrower's business or operations are managed by any other Person.

## 9.6 Permitted Investments

 Ajara India Limited as Borrower	 IPR Prime Developers (PVT) Ltd. As L1 Co-Borrower	 L&L Finance Limited as Lender 1	 L&T Housing Finance Limited As Lender 2
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Without prior written consent of the Lenders, the Borrower shall not make or permit to give loans or advances to, or deposits (except commercial bank deposits) with other Persons (including Associate Companies of the Borrower) not made in the ordinary course of business and in case such loans or advances, etc. are made in ordinary course of business, same shall be duly intimated to the Lenders in writing.

### 9.7 Fundamental Changes

The Borrower shall not change

- (i) its Charter in any manner which would be inconsistent with the provisions of any Transaction Document and/ or which would prejudicially affect the rights and interest of the Lenders under the Transaction Documents;
- (ii) its Financial Year;
- (iii) the nature or scope of the Project or change the nature of its business or operations,

without prior written consent of the Lenders

### 9.8 Merger, Consolidation, etc

The Borrower shall not

- (i) Undertake or permit any consolidation, reorganization or merger where the Borrower is not the surviving entity and in cases where the Borrower is a surviving entity prior written consent from the Lenders shall be obtained by the Borrower.
- (ii) undertake or permit any consolidation, reorganization, merger or transfer of Borrower's assets which is greater than the ten per cent (10%) of total consolidated Borrower's asset without Lenders' prior written consent.

### 9.9 Amendments, Waivers, Etc., of Material Agreements

The Borrower shall not terminate, amend or grant any waiver with respect to any provision of the Transaction Document or any agreement or any documents evidencing any loan, borrowing or financial debt without prior written consent of the Lenders

### 9.10 Asset Sales

The Borrower shall not sell, mortgage transfer, lease, surrender or otherwise howsoever alienate or deal with the Mortgaged Properties and/ or Properties or any part thereof or dispose of all or a substantial part of its assets, other than inventory, whether in a single transaction or in a series of transactions, related or otherwise without prior written consent of the Lenders.

### 9.11 Borrowings

The Borrower shall not avail loans or any other borrowing (secured or unsecured) from any other source in relation to the Properties, including Mortgaged Properties and the Projects constructed pursuant to and from the proceeds of the Loan or any part thereof.



Ajita India Limited  
as Borrower



IVK Prime Develop. (A/AD) Pvt. Ltd.  
As L1 Co Borrower



L&T Finance Limited  
as Lender 1



L&T Housing Finance Limited  
As Lender 2

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### 9.12 Amalgamation

The Borrower shall not amalgamate or merge the Properties, including Mortgaged Properties with any other adjacent property nor shall create any right of way or any other easement on the Properties, including Mortgaged Properties;

### 9.13 Creation of Charge

The Borrower shall not create or permit to subsist any encumbrance, mortgage or charge in any manner whatsoever over all or any part of the Properties, including Mortgaged Properties, Project Receivables, assets or receivables of the Borrower, which are offered as Security to Lenders or which creates any interest or liability of any third party interest by related parties or group companies of the Borrower during the tenor of the Loan on the Properties, including Mortgaged Properties and the Project constructed pursuant to and from the proceeds of the Loan or any part thereof.

### 9.14 Escrow Account

The Borrower shall not withdraw any funds from the Escrow Account to repay any subordinate debt, if any, until the repayment of the Outstanding Amount by the Borrower under this Agreement to the satisfaction of the Lenders;

### 9.15 Change of Control

The Borrower shall not undertake any action resulting into a change in control of its business, management or operations either directly or indirectly.

### 9.16 Share Capital

The Borrower shall not buy back, cancel or reduce in any manner its share capital, or issue any further share capital, or change its capital structure in any manner whatsoever without prior written consent of the Lenders.





### 9.17 Change in Shareholding

The Borrower shall not permit any disposal, transfer of shares in the Borrower's share capital by any person as specified by the Lenders except as specifically permitted under this Agreement. The Borrower shall cause such persons to provide undertakings in this regard as may be required by the Lenders.

### 9.18 Liquidation

The Borrower shall not undertake or permit (either voluntarily or involuntarily) any winding up or dissolving of affairs or liquidation or the appointment of receivers or administrators over all or a substantial part of its assets or undertaking or the initiation of any other insolvency or quasi-insolvency proceeding affecting the Borrower or rights and interest of the Lenders under Transaction Documents.

9.19 The Borrower shall not, without prior written consent of the Lenders withdraw the profits earned in the business/capital invested in the business without meeting the

			
Ajanta Indus. Limited As Borrower	IVR Prime Developers (AVAD) Pvt. Ltd. As L&T Co-Borrower	L&T Finance Limited As Lender 1	L&T Housing Finance Limited As Lender 2





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instalment under the Loan, to the satisfaction of the Lenders:

## 10 SPECIAL COVENANTS

10.1 The Borrower covenants, undertake and agrees that so long as the Loan or any part thereof is outstanding, it shall comply and adhere to with the following:

- (a) The Borrower shall adhere to and follow all building norms and technical specifications for real estate exposure as laid down by the National Building Code (NBC) of India, 2005, formulated by Bureau of Indian Standards in respect of the Project constructed pursuant to the Purpose.
- (b) The Borrower shall adhere to the Ministry of Environment and Forests Notification no. S.O. 2804 (E) dated November 03, 2009 on 'fly ash' and shall continue to be in adherence to the said notification during the tenure of the Loan.
- (c) The Borrower shall ensure compliance of provisions of Applicable Law including Real Estate (Regulation and Development) Act, 2016 safeguarding the interest of the Lenders (e.g. submissions of details of charge and consequence of default or same) and to give effect to same to enter into such deeds and documents as may be required by the Lender. Without prejudice to the generality of the aforesaid, the Borrower shall ensure that the construction and development of the Project is in compliance with the Real Estate (Regulation and Development) Act, 2016 and all rules and regulations thereunder and that it obtains all approvals and registrations as required in terms thereof and complies with all terms and conditions in relation to the promoter, as specified therein.
- (d) The Borrower shall ensure that the buildings and structures comprised in the Project adhere to the National Disaster Management Authority (NDMA) guidelines on Ensuring Disaster Resilient Construction of Buildings and Infrastructure and shall continue to be in adherence to the said guidelines at all times.
- (e) The Borrower shall obtain an NOC from the Lenders before obtaining any additional funding for the Project from any bank, financial institutions and/or other Lenders. Lenders shall provide the NOC subject to repayment of the part amount as may be specified by the Lenders or compliance of such other condition as may be stipulated by the Lenders at such time.
- (f) Borrower shall display a signboard at the site of the Project at a prominent place exhibiting the following: *This Project is financed by L&T Finance Limited & L&T Housing Finance Limited and has been charged / mortgaged in its favour.*
- (g) All marketing materials of the Borrower/Project and all sale agreements with its Customers should state that the Lender has financed the Project and has a charge/mortgage of the Project assets.
- (h) The Borrower hereby agrees that the Lenders shall have the right to appoint any legal, tax, financial, technical and other consultants, and valuer for the review of the Project/Borrower/valuation of the Project as may be deemed fit and expenses for which shall be borne by the Borrower.
- (i) Without prejudice to the aforesaid, the Borrower hereby agrees that it shall appoint such persons as the chartered accountant, engineer and architect, who are required to provide certification for withdrawal of loans from the designated


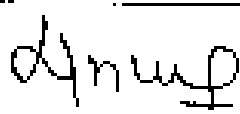


			
Ajanta Limited As Borrower	P&K Home Developers (PVT) Ltd. As Co-Borrower	L&T Finance Limited As Lender 1	L&T Housing Finance Limited As Lender 2

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account pertaining to the Project (required to be opened and maintained in accordance with the terms of Real Estate (Regulation and Development) Act, 2016), as required by the Lenders and expenses for such persons shall be borne by the Borrower.

- (j) **Inspection and Monitoring** Lenders shall check progress on sales collection, cash flow of the Project and performance of Escrow Account through independent firm appointed by Lender at the cost of the Borrower and report compliance and variance on periodic basis (quarterly) and in any event not later than ninety (90) days of each Disbursement of the Loan. The same will continue till the full repayment of the Loan or as per Lender's discretion. Borrower will provide all the information required for this purpose to the Lenders or Lenders appointed agency any time during the tenor of the loan. Borrower shall ensure availability of such information within 15 days from the end of each quarter.
- (k) Borrower to submit monthly reports (in the form and manner desired by the Lenders) in respect of sale and collection of payment of the units in the Project.
- (l) Borrower shall submit to the Lenders yearly audited financial statements latest by 30<sup>th</sup> November post the expiry of respective reporting period.
- (m) The Borrower hereby agrees that all existing loans and advances in the books of Borrower, obtained from shareholders, directors/family members and other unsecured loans shall be sub-ordinated to the Loan in all respect.
- (n) The Borrower hereby agrees that in the event of inability of the Borrower to complete the Project as per agreed Construction Schedule, the Lenders at its discretion will have right to appoint Independent Engineer/Project Management Consultant and/or substitute the Borrower in order to complete construction of the Project.
- (o) The Borrower will take permission from the Lender before selling any unsold area under various schemes/ payment plans. The Borrower hereby agrees that in the event of sale of Properties, including Mortgaged Properties either fully or partially without being developed, Lenders shall have the first exclusive right to adjust the proceeds of such sale against the Outstanding Amount in connection with the Loan in terms of the Transaction Documents including the Escrow Agreement.
- (p) The Borrower hereby agrees that in the event of Project sales dropping below expectations or not happening enough due to which the cash flows of the Borrower are getting impacted adversely the Borrower shall make arrangements from other projects cash-flows or sources to ensure that the repayment of the Loan remains regular at all times as per the terms of the Agreement.
- (q) The Borrower shall obtain prior written consent of the Lenders before availing any other financial assistance (both funded or non-funded and secured or unsecured) from any other person including any bank, NBFCs or any other financial institutions.
- (r) The Borrower hereby agrees that any NOC granted by the Lenders for sale of Units of the Project and any part amounts received pursuant to NOC, shall be without prejudice to the obligations of the Borrower set out in the Repayment Schedule.
- (s) The Borrower hereby agrees that in the event the Project qualifies for advance disbursement facility from any bank or financial institution Lenders reserves

 Ajanta Infra Limited as Borrower	 IPR Prime Developers (AMADI) Pvt. Ltd. As the Co-Borrower	 L&T Finance Limited as Lender 1	 L&T Housing Finance Limited As Lender 2
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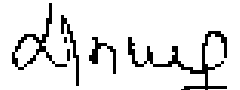


- its right to adjust such amount, at its sole discretion, against the outstanding Loan in terms of the Transaction Documents
- (c) The Borrower shall adhere to the Sales Schedule and complete the Project in accordance with the schedule as indicated by the Borrower, in its application and obtain and produce to Lenders a proper completion certificate/occupation certificate issued by the concerned Municipal Corporation or Municipality.
- (d) The Borrower shall not engage in any corrupt, fraudulent, coercive, collusive or obstructive practice in connection with its business and operations.
- (e) The Borrower hereby agrees that at any time, the Lenders may appoint a Security Trustee for the present Loan amount and all the expenses and fees to such Security Trustee shall be borne by the Borrower.
- (f) The Borrower hereby agrees that if at any time during the subsistence of the Loan, there is a change in the Sold Units i.e. cancellation of Sold Units, thereby becoming Unsold Units for the purpose of classification, the Borrower shall immediately inform Lenders about such changes immediately and undertake to execute supplementary Mortgage deed. However, Lenders is/ are deemed to have charge on the said Units irrespective of whether any supplementary agreement is executed in their favour or not and that the Borrower at no point of time shall dispute the charge of Lenders over the said Units for want of creation of supplementary Mortgage deed or otherwise. The above would also be applicable to Units which are transferred/being transferred by the existing buyer(s) to prospective buyer(s) not falling under 'near relative' category. As such cancellation/sold/unsold Units would thereafter be governed by the terms and conditions applicable to Unsold Units in the proposal.
- (g) The Borrower hereby agrees that it shall enter into such deed(s) document(s), agreement(s), etc. as may be required by the Lenders from time to time.

## 10.2 Escrow Account and Debt Service Reserve Amount

- 10.2.1 The Borrower shall open, establish and maintain an Escrow Account for depositing all the Project Receivables from the Project with the Escrow Agent.
- 10.2.2 The Escrow Account and DSRA or DSRRA account shall be maintained and operated by the Borrower during the entire tenure of the Loan and shall not be operated or closed without the prior written approval of Lenders.
- 10.2.3 All costs, charges and expenses in connection with the Escrow Account and DSRA or DSRRA account shall be borne by the Borrower. The Borrower shall enter into agreement with the Escrow Agent for the Escrow Account and Lenders/Security Trustee and such agreement shall be in a form and manner acceptable to Lenders.

## 10.3 Operation of Escrow Account:

- 10.3.1 The Borrower shall ensure that all Project Receivables and all other receivables in respect of the Project are deposited only in the aforesaid Escrow Account.
- 10.3.2 The payment schedule given by the Borrower to the Customer(s) would mandatorily provide for payments to be made by the Customers to Escrow Account only. In addition, all sale agreements for the Project with Customer(s) and demand notices to

 Ajanta Lalia Limited as Borrower	 V3 Prime Developers (AVAD) Pvt. Ltd As the Co-Borrower	 L&T Finance Limited as Lender 1	 L&T Housing Finance Limited As Lender 2
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the Customer(s) shall include a condition that all payments are required to be made in the Escrow Account.

10.3.3 The Borrower undertakes that in the event the cash flows in the Escrow Account is not sufficient to service the Repayment of the Loan amount along with interest, charges etc., and/or in the event that there is a shortage in the Project Receivables generating from the sale proceeds, lessee and/or transfer of such Units or the said Mortgaged Properties, such shortfall will be met by way of fresh infusion of funds by the Borrower from their other income in a form and manner acceptable to Lenders and as instructed by the Lenders and without any further instructions from the Borrower.

10.3.4 If the Borrower fails, neglects to deposit or route entire Project Receivables in Escrow Account or fails to obtain NOC prior to sale of Units in the Project, Lenders shall be entitled to charge Additional interest per month on the amounts not deposited in Escrow Account until the same is deposited in the Escrow Account.

10.3.5 The Borrower recognizes that the payment of Additional Interest as above does not absolve the Borrower from depositing the entire Project Receivables in Escrow Account and obtain NOC prior to sale of Units in the Project and notwithstanding the payment of any additional interest to Lenders, the Lenders shall be entitled to call non-compliance of the above terms as an Event of Default. Any delay in calling such Event of Default or acceptance of payment of Additional Interest shall not be construed as a waiver of, or an estoppel against, the right of the Lenders to call an Event of Default at their sole discretion at such time as they deem fit.


10.3.6 Lenders reserves the right to set up a standing instruction (S.I.) to transfer daily the funds coming through the Escrow Account to a collection account of Lenders in the manner as mentioned in the Agreement, the Escrow Agreement or in such other manner as may be specified by the Lenders in its/their absolute discretion from time to time.


#### 10.4 DSRRA and Operation of DSRRA Account:


10.4.1 The Borrower hereby agrees that a debt service reserve of an amount equivalent to interest and principal amounts payable in relation to the Loan for the immediately succeeding 3 (three) months (hereinafter referred as 'Debt Service Reserve Amount' or 'DSRA') shall be created upfront in such form and manner as may be acceptable to the Lenders, i.e. in form of Fixed deposit with a bank or mutual fund units or such other form as may be required by the Lender and said DSRRA shall be maintained during the continuance of the Loan.

10.4.2 Lender shall have the right to keep part/full DSRRA as and/or sourced portion under the Loan, if it so decides at its sole discretion. In such case the Borrower shall provide an undertaking that such amount may be disbursed and utilized by the Lender at its sole discretion without prior approval of the Borrower.

10.4.3 If at any time amount in the DSRRA is utilized to make payments towards making the debt service payments as a result of shortfall in the cash flows of Borrower, the

  
Ajanta India Limited  
As Borrower

  
AVR Prime Developments (AVADI) Pvt. Ltd  
As the Co-Borrower

  
L&T Finance Limited  
As Lender 1

  
L&T Housing Finance Limited  
As Lender 2



Borrower shall immediately replenish the DSRRA within 7 (seven) days, to the extent of the amounts so utilized without any delay or demur.

10.4.4 If the Borrower fails to adhere to the above, same may be construed as an Event of Default, under the Transaction Documents at the discretion of the Lenders and Additional Interest shall be applicable in case of non-compliance of the above clause.

#### 10.5 Right of First Refusal

The Borrower shall refer all its Customers to the Lenders for any of their financing needs in respect of purchase of any of the units in the Project. The Borrower shall ensure that the Lenders will have a first right of refusal in respect of the home loans to be availed by any of the Customers of the Borrower in the Project.

#### 10.6 Inspection & Monitoring

The Borrower hereby agrees that utilization of and use of previous Disbursement, cash flow of the Project and performance of Escrow Account shall be certified by an unpanelled Chartered Accountant firm and the Borrower shall report compliance and variance on periodic basis. The Lenders shall be entitled to undertake technical evaluation on quarterly basis at the cost of the Borrower, which shall include valuation report of the Project. The cost of such inspection and monitoring shall be borne by the Borrower.

#### 10.7 Cross co-lateralization

All the Securities as mentioned in this Agreement shall be available to all the L&T Group Companies as Security against all the facilities offered to the Borrower and its group companies.

#### 10.8 Recall of Credit Facilities


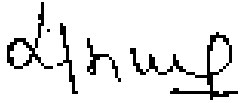


The Borrower hereby agrees that the Lenders have the option to recall the credit facilities extended to the Borrower in the event of any rating downgrade, default with the Lenders or with any other L&T Group Companies or any material adverse events which in the opinion of the Lenders warrants a recall. The Lenders's decision in this case shall be final and binding upon the Borrower.

#### 10.9 TDS

The company shall ensure deduction of TDS (if applicable) in respect of payment of TDS to the relevant Government Authorities. The Lenders shall however give credit of TDS in their books, only after receipt of original TDS receipts from the company. Any additional interest charged to the company on account of delay in submission of TDS receipts / payment of TDS shall be borne and paid by the Borrower without any delay or demur.

#### 10.10 Additional Covenants





The Borrower hereby further represents, undertakes and confirms in favour of the

 Ajanta India Limited as Borrower	 AVAD Home Developers (AVAD) Pvt. Ltd. As the Co-Borrower	 L&T Finance Limited as Lender 1	 L&T Housing Finance Limited As Lender 2
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Lenders :

- 10.10.1 That all clauses in the Shareholding Documents which are prejudicial to the rights and interest of the Lenders have been duly amended in order to ensure that the rights of the Lenders are duly protected therein.
- 10.10.2 That in case of any conflict between the Transaction Documents the terms of the Shareholding Documents, the Transaction Documents shall prevail and no further amendments to such Shareholding Documents shall be permitted without the prior written consent of the Lenders.
- 10.10.3 That it shall maintain its existence, comply with its Charter documents and conduct business with due diligence and efficiency and follow sound industry practices
- 10.10.4 It shall apply the proceeds of the Loan exclusively for the Purpose and comply with Applicable Laws;
- 10.10.5 It shall pay taxes when due and comply with Applicable Laws
- 10.10.6 It shall maintain insurance coverage for the business and assets of the Borrower as specified by Lenders.
- 10.10.7 Upon Lender's request, permit Lenders representatives to, during normal business hours, inspect all sites and to have access to its books and accounts and employees, contractors and subcontractors, provided that no such reasonable prior notice shall be necessary if an event of default or potential event of default is continuing or if special circumstances so require
- 10.10.8 It shall maintain in force and comply with, all authorizations and approvals for the Loan;
- 10.10.9 It shall comply with all labour law requirements including but not limited to pension and employee benefit plans.
- 10.10.10 It will not repay any funds brought in by the Promoters / director/principal shareholders for the said Project and the % of the means of finance would remain the same as has been submitted at the time of application i.e. own contribution / secured/unsecured loans
- 10.10.11 It shall disclose in the pamphlets/ brochures etc. the name(s) of the Lender(s) which the property is mortgaged.
- 10.10.12 It shall append the information relating to mortgage while publishing advertisement of a particular scheme in newspaper/ magazines etc.
- 10.10.13 It shall intimate the existing buyers about the Project being mortgaged to the Lenders within a period of 15 (fifteen) days from the date of first Disbursement and that the balance payments should be made favouring the Escrow Account. Further, the Borrower shall obtain upfront consent for creation of Mortgage over the Project Properties from the allottees of the Lots of the Project prior to or at the time of making such allotment.

 Agnara Incha Limited as Borrower	 PVR Prime Developers (PVT) Pvt. Ltd. As the Co-Borrower	 L&F Finance Limited as Lender 1	 J.P. Holdings Finance Limited As Lender 2
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- 10.10.14 It shall provide all required information related with Project to Lenders or any agency appointed by Lenders until the Final Settlement Date and also that it shall provide access to the Project site, documents like sales register, collection register and any other documents required for validation of information to Lender or any agency appointed by Lender as and when required.
- 10.10.15 It shall ensure that the construction is in line with the approved plan and deviation if any shall be communicated to Lenders and in the event of failure, the Lenders shall have right to restructure the Loan or revise, amend existing terms of Transaction Documents and/ or stipulated additional terms in connection with the Loan.
- 10.10.16 It shall ensure statutory compliance with respect to EWS Units and that Lenders shall have the right to regularly assess the progress with respect to the same.
- 10.10.17 It shall ensure that the Borrower is not classified as SMA by any Existing Lender.
- 10.10.18 It shall ensure that the Borrower shall seek prior written consent from the Lenders before entering into any transaction with its group companies.
- 10.10.19 It shall ensure that the funds lying in the Escrow Account shall not be used for any purpose other than the Purpose and Repayment of the Loan or such other purpose as may be approved by the Lenders in writing.
- 10.11 The Borrower hereby agrees and undertakes that in the event condition subsequent to disbursement as stipulated in Schedule V are not fulfilled within the timelines provided in Article 3.3 above, the Lenders shall have right to charge Additional Interest and/or to call back the Loan without prejudice to other rights and remedies available to the Lenders under the Transaction Documents.
- 10.12 The Borrower shall comply with all other specific conditions as are detailed in Schedule II hereto.

## 11 FINANCIAL COVENANTS

- 11.1 The Borrower shall prudently manage its financial position in accordance with the best financial practices and Applicable Laws and regulations.
- 11.2 In case the value of the Mortgaged Property secured to Lenders falls below the Security Cover (as defined in Schedule III, hereinafter), the Borrower shall create Security on additional assets in favour of Lenders in order to maintain the Security Cover specified above to the satisfaction of Lenders.
- 11.3 The Borrower agrees to honor such other financial covenants as may be stipulated by the Lenders from time to time during the continuance of the Loan.

## 12 REPORTING REQUIREMENTS

			
Anurag India Limited As Borrower	TVR Online Developers (PVT) Ltd. Ltd. As the Co-Borrower	L&T Finance Limited As Lender 1	L&T Finance Limited As Lender 2

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12.1 Unless Lenders otherwise agrees, the Borrower shall submit to the Lenders:

12.1.1 Borrower shall submit monthly reports (in the form and manner desired by the Lender) in respect of sale and collection of payment of the Units in the Project A report, or Project Receivables received and deposited in the Escrow Account and EMI adjusted certified by the Managing Director or Chief Financial Officer of the Borrower on monthly basis;

**12.1.2 Quarterly Financial Statements and Reports**

As soon as available but in any event within 90 (ninety) days from the date of expiry of each quarter.

- (i) a report (in the form pre-agreed by the Lenders), signed by the Borrower's chief financial officer concerning compliance with the financial covenants in this Agreement (including a clear description of the methodology used in the respective calculations); and
- (ii) a report on Project Receivables received and deposited in the Escrow Account for the financial year and EMI adjusted certified by a reputed Auditor;
- (iii) a report on the status of the Project and any key risks affecting the Project.





**12.1.3 Annual Financial Statements and Reports**

Borrower shall submit to the Lenders as soon as available, but in any event by 30th November from the end of respective reporting period:

- (i) two (2) copies of its complete and audited financial statements for that Financial Year (which are in agreement with its books of account) and prepared, on an unconsolidated basis and consolidated basis, in accordance with the Accounting Standards, together with the Auditors' audit report on them, all in form satisfactory to Lenders;
- (ii) a report on Project Receivables received and deposited in the Escrow Account for the financial year and EMI adjusted certified by a reputed Auditor;
- (iii) a management letter and any other relevant communication from the Auditors commenting with respect to that Financial Year, on, among other things, the adequacy of the Borrower's financial control procedures, accounting systems and management information system;
- (iv) a report (in the form pre-agreed by the Lenders), signed by the Borrower's chief financial officer and reviewed by its Auditors concerning compliance with the financial covenants in this Agreement (including a clear description of the methodology used in the respective calculations);
- (v) a statement by the Borrower of all transactions between the Borrower and each of its Associate Companies, if any during that Financial Year, and a certification by the Borrower's chief financial officer that those transactions were on the basis of arm's-length arrangements;
- (vi) a report on the status of the Project and any key risks affecting the Project.

**12.1.4 Management Letters**

Immediately upon receipt deliver to the Lenders a copy of any management letter or other relevant communication sent by the Auditors (or any other accountants retained by the Borrower) to the Borrower or its management in relation to the Borrower's

			
Ajaya India Limited As Borrower	IVR Prime Developers (IIVAD) Pvt. Ltd. As Co-Borrower	L&T Finance Limited As Lender 1	L&T Housing Finance Limited As Lender 2

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financial, accounting and other systems, management or accounts.

#### 12.1.5 Notice of Accidents, etc

Immediately upon receipt of such information but not later than three (3) days of occurrence of such incident, notify Lenders of any social, labor, health and safety, security or environmental incident, accident or circumstance having, or which could reasonably be expected to have, a Material Adverse Effect or material adverse impact on the implementation or operation of the Project specifying in each case the nature of the incident, accident, or circumstance and any affect resulting or likely to result therefrom, and the measures the Borrower is taking or plans to take to address them and to prevent any future similar event and keep Lenders informed of the on-going implementation of those measures and plans immediately.

#### 12.1.6 Shareholder Matters

Give notice to the Lenders, concurrently with the Borrower's notification to its shareholders, of any meeting of its shareholders, such notice to include the agenda of the meeting.

#### 12.1.7 Changes to Project; Material Adverse Effect

Promptly notify Lenders of any proposed change in the nature or scope of the Project or the Business or operations of the Borrower or any of its Associate Companies and of any event or condition that has or may be expected to have a Material Adverse Effect.

#### 12.1.8 Litigation, etc

Promptly upon becoming aware of any litigation or administrative proceedings before any Governmental Authority or arbitral body when litigation or may reasonably be expected to have a Material Adverse Effect or result into an Event of Default, notify Lenders by facsimile of that event specifying the nature of that litigation or those proceedings and the steps the Borrower is taking or proposes to take with respect thereto.

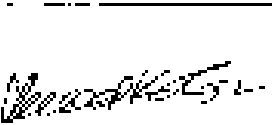


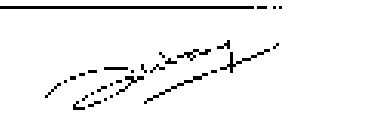
#### 12.1.9 Default

Promptly upon the occurrence of an Event of Default or Potential Event of Default, notify the Lenders by facsimile specifying the nature of that Event of Default or Potential Event of Default and any steps the Borrower is taking to remedy it.

#### 12.1.10 Promoter/Sponsors' Shares

Provide a quarterly report stating the shareholding of each of the Promoters in the Borrower and notify Lenders promptly upon receipt of any transfer of the shares of the Borrower or any other transaction in respect of the shares of the Borrower, including the details of such transfer.

#### 12.1.11 Other Information

			
Anshu India Limited as Borrower	IWR Prime Developers (WAB) Pvt. Ltd. As the Co-Borrower	L&T Finance Limited as Lender 1	L&T Housing Finance Limited as Lender 2

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Promptly provide to Lenders such other information as Lenders from time to time reasonably requests about the Borrower, any of its Associate Companies, its assets and the Project;

#### 12.1.12 Inspection and Monitoring

Independent auditors would be required to certify utilization of previous Disbursement, cash flow of the Project and performance of Escrow Account by empanelled Chartered Accountant firm and report compliance and variance on periodic basis; and (b) Lenders shall be entitled to undertake technical evaluation on quarterly basis at the cost of the Borrower, which shall include valuation report of the Project.

### 13 EVENTS OF DEFAULTS


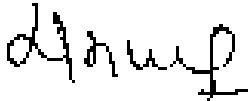


13.1 The occurrence of any one or more of the following events shall constitute an Event of Default:

- (i) If the Borrower fails to pay/ repay any sum whether principal or interest or otherwise due under this Agreement at the time stipulated here in and in the manner specified herein or in accordance with the terms of any Transaction Document executed in pursuance hereto;
- (ii) Other than defaults stipulated in this Article 13, if the Borrower and/ or other Obligors fails or neglects to observe or perform or commits or allows to be committed a breach of any of the terms, conditions, provisions, stipulations, or covenants of this Agreement or its part to be observed and performed and if such breach does not result into a Material Adverse Effect and is remediable, and fails to remedy within 30 (Thirty) days of occurrence of such breach;
- (iii) If the Borrower or any other party/person is in breach of, or does not comply with, any term or condition (whether financial performance or otherwise) of any Transaction Documents, including Project Document and same does not result into a Material Adverse Effect and is remediable and if remediable is not remedied within the period for remedy, if any, provided in such contractual documents;
- (iv) Any Project Document (unless it shall have been replaced as permitted under this Agreement) shall be terminated prior to its stated termination date or shall be repudiated or shall cease to be in full force and effect otherwise than by performance or efflux of time;
- (v) Any provision of any Project Document is or becomes invalid, illegal or unenforceable or any party thereto shall have so asserted or any Project Document ceases to be in full force and effect or shall cease to give the Borrower the rights, powers and privileges purported to be created thereby or any party thereto shall have so asserted, unless the provision has been replaced as permitted under this Agreement;
- (vi) If any information given by the Borrower in its application to Lenders for Loan or any other representation or warranty is found to be misleading or incorrect or any material fact / information concerning the Borrower's ability to repay the Loan or any other relevant fact or information is suppressed or concealed or otherwise not made known to Lenders;
- (vii) If the Borrower fails to furnish information/documents as required by the Lenders in terms of this Agreement;

			
Ajnara Ltd's Limited as Borrower	IVR Prime Developers (JVVA21) Pvt. Ltd. As L10 Co-Borrower	L&T Finance Limited as Lender 1	L&T Housing Finance Limited As Lender 2

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- (viii) If the Borrower is unable to pay its debts as they fall due, commences negotiations with any one or more of its creditors with a view to general readjustment or re-arranging in the light of financial difficulties or in contemplation of any default, event of default or potential event of default under any agreement relating to the same (howsoever described), or any indebtedness, or makes a general assignment for the benefit of or composition with its creditors or admits or is ordered to pay any liability and such liability is not paid when due;
- (ix) If any default is made by the Borrower under any other agreement between the Borrower and any other bank or financial institution or any other agreement of indebtedness of the Borrower or the performance of any covenant, term or undertaking thereunder, or any indebtedness of the Borrower are not paid when due or any creditor of the Borrower becomes entitled to declare any such indebtedness due and payable prior to the date on which it would otherwise have become due or any guarantee or indemnity given by the Borrower are not honoured when due and called upon to do so;
- (x) If the Properties, including Mortgaged Properties or any other property or assets given as Security have not been kept insured or depreciates in value to such an extent that in the opinion of Lenders further security to the satisfaction of Lenders should be given and such security is not furnished within the time limit stipulated by the Lenders;
- (xi) Any insurance contracted or taken by the Borrower is not, or ceases to be, in full force and effect at any time when it is required to be in effect or any insurance is avoided, or any insurer or re-insurer avoids or suspends or becomes entitled to avoid or suspend, any insurance or any claim under it or otherwise reduce its liability under any insurance or any insurer or any insurance is not bound, or ceases to be bound, to meet its obligations in full or in part under any insurance;
- (xii) If the Property, including Mortgaged Properties or any part thereof and/or such other Securities created in favour of the Lenders in connection with the Loan is sold, disposed of, charged, encumbered or otherwise alienated without the written consent of Lenders or is jeopardised in any manner whatsoever;
- (xiii) If an attachment or distraint is levied on the Property, including Mortgaged Properties or any part thereof and/or other Securities created in favour of the Lenders and/or certificate proceedings are taken or commenced for recovery of any dues from the Borrower;
- (xiv) If the Borrower ceases or threatens to cease to carry on the business and Project 1 carried on at the date hereof;
- (xv) If the Borrower and/or other Obligors takes any action or omission or any legal proceedings are initiated or other steps taken for (i) the Borrower and/or other Obligors to be adjudicated or found insolvent or bankrupt, (ii) the appointment of an administrator, trustee or receiver or similar officer for the Borrower and/or other Obligors or the whole or any part of their undertaking, assets and properties (i.e. charging) repudiating the effectiveness and validity of any of the Transaction Documents or causes to do any act or thing evidencing an intent to repudiate;
- (xvi) Any litigation, arbitration or administrative proceeding or claim before any court, tribunal, arbitrator or other relevant authority is commenced against the Borrower or otherwise in connection with the Property, including Mortgaged

			
Ashita India Limited As Borrower	IPR Prime Developers (PVT) Pvt. Ltd. As Co-Borrower	L&T Finance Limited As Lender 1	L&T Housing Finance Limited As Lender 2




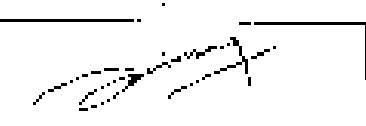
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- Properties or any part thereof and/ or such Securities created in favour of the Lenders;
- (xv) Any judgment or decree, if passed against the Borrower and/ or other Obligors or otherwise in connection with the Mortgaged Properties or other properties forming part of Security is not vacated, discharged pending appeal within a period of 30 (thirty) days from the date of such judgment or decree;
- (xviii) If all or substantially all of the undertaking, assets or properties of the Borrower and/ or of other Obligors or its interests therein are seized, nationalized or compulsorily acquired by the authority of Government;
- (xix) If there is any change in the ownership or management of the properties including Mortgaged Properties of the Borrower and/ or other Obligors, which in the sole opinion of Lenders would prejudicially affect the interest of the Lenders under the Transaction Documents;
- (xx) If there occurs any event which in the opinion of Lenders is/ are prejudicial to the interest of Lenders or in the sole opinion of Lenders is/ are likely to materially affect the financial condition of the Borrower and/ or of other Obligors or its ability to perform all or any of its obligations under this Agreement and to comply with any of the terms or conditions of the Transaction Documents;
- (xxi) If the Borrower misuses the Loan or any part thereof for any purpose other than for which the Loan has been sanctioned;
- (xxii) If an insolvency notice or bankruptcy notice is served on the Borrower or a receiver is appointed or an attachment is levied on any of the Borrower's and other Obligors' properties or assets;
- (xxiii) If any consent, authorization, approval or license of or registration with or declaration to governmental or public bodies or authorities required by the Borrower and/ or by other Obligors in connection with the execution, delivery, validity, enforceability or admissibility in evidence of this Agreement or the performance by the Borrower and/ or other Obligors of its obligations hereunder is modified in a manner unacceptable to Lenders or is not granted or revoked or terminated or expires and is not renewed or otherwise ceases to be in full force and effect;
- (xxiv) In the event the entire Project Receivables are not deposited in the Escrow Account established with Escrow Agent at all times;
- (xxv) In the event the Borrower fails to obtain NOC for sale from the Lenders prior to entering into the agreement to sale or sale deed with the Customer;
- (xxv) If there are any material changes in the proposal for which the Loan is sanctioned;
- (xxvi) Any of the construction milestones as specified in the Construction Schedule are not completed within the time lines and/ or in the manner provided in Schedule IX hereto;
- (xxviii) Any of the sales of the Units are not carried out within the time lines and/ or in the manner provided in the Sales Schedule stated in Schedule X hereto.

13.2 The Borrower agrees and undertakes to provide to Lenders an immediate notice on the happening of an Event of Default or a Potential Event of Default.

#### 14 CONSEQUENCES OF EVENT OF DEFAULT

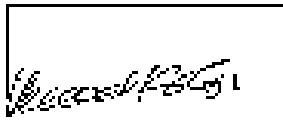

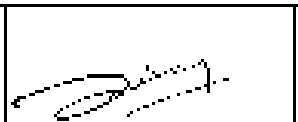
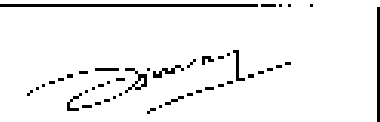
14.1 The Borrower hereby agrees that on occurrence and/ or continuation of any Event of

			
Ajanta India Limited As Borrower	Park Prime Developers (PVPD) Pvt. Ltd. As the Co-Borrower	L&T Finance Limited As Lender 1	L&T Global Finance Limited As Lender 2

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Default, the Lenders shall have following rights and the Lenders may at its sole discretion exercise any or all of the following the right(s) and remedies without any obligation to issue notice to this effect:

- (i) To recall the outstanding amount of the Loan either in part or in full and other dues payable with regard to the said Loan that may be payable by the Borrower under or in terms of this Agreement and/or any other agreement/s, documents, subsisting between the Borrower and Lenders as well as all other charges, costs, expenses and upon such declaration the same shall become due and payable forthwith enforceable notwithstanding anything to the contrary contained in this Agreement; and/or
- (ii) To enforce the Securities either in part or in full, as detailed in Article 4 and exercise all any contractual and legal rights / remedies under the Transaction Documents and/or Security Documents; and/or
- (iii) To accelerate maturity of the Loan; and/or
- (iv) To appoint a third party developer to develop, construct, operate and maintain the said Mortgaged Property/Infrastructure facilities/Project; and/or
- (v) To step into the Project or take over the Project and all the rights of the Borrower with respect to the Project under the Project Documents; and/or
- (vi) To charge Default Interest or Additional Interest without prejudice to its other right under this Article 4 and/or other Transaction Documents; and/or
- (vii) To exercise any other legal or equitable rights of Lenders's under Applicable Law; and/or
- (viii) To suspend or terminate the right of the Borrower to avail of or make Drawdowns from the Loan and upon such notice, the un-utilised amount of the Loan shall stand cancelled. Notwithstanding any suspension or termination of this Agreement as specified hereinabove, all the provisions of this Agreement for the benefit or protection of Lenders and its interests shall continue to be in full force and effect, as specifically provided in this Agreement; and/or
- (ix) To enter upon and take possession of, deploy, dispose of, transfer any/ all assets comprised within the Security created in favour of Lenders, as may be applicable by way of lease, leave and license, sale or otherwise; and/or
- (x) To repossess, sell, or otherwise dispose of/ deploy the assets comprised in the Security as may be applicable in such manner, as Lenders may deem fit; and/or
- (xi) To exercise all or any rights or remedies of the Borrower under one or more Project Documents against any parties to such Project Documents in such manner as the Lenders may determine in its/their absolute discretion; and/or
- (xii) To exercise and enforce all rights and remedies available to Lenders under this Agreement and/or the other Transaction Documents including Escrow Agreement; and/or
- (xiii) To appoint, from time to time, a Nominee Director on the Board of the Borrower; and/or
- (xiv) To review the management set up or organisation of the Borrower and to require the Borrower to restructure it as may be considered necessary by the Lenders, including the formation of management committees with such powers and functions as may be considered suitable by the Lenders; and/or
- (xv) To amend the terms of the Escrow Agreement, including priority of payments stipulated therein; and/or

 Ajiza India Limited as Borrower	 L&T Finance Limited (AVADIS) Pvt. Ltd. As the Co-Mortgagee	 L&T Finance Limited as Lender 1	 L&T Housing Finance Limited As Lender 2
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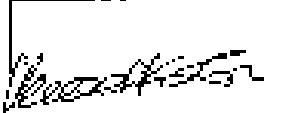



- (xvi) To instruct any Person, who is liable to make any payment to the Borrower including to pay directly to the Lenders; and/or
- (xvii) To instruct counter party(ies) to Project Documents to honor their respective obligation(s) under such Project Documents; and/or
- (xviii) To stipulate any additional condition / action as it may deem fit; and/or
- (xix) To convert Outstanding Amount either in part or full and whether the same is due or not, into fully paid-up equity voting shares of the Borrower as a consequence of Event of Default at such valuation as Lenders may deem fit subject to Applicable Law or in accordance with the Strategic Debt Restructuring Scheme (SDR) framed by Reserve Bank of India.
- (xx) To disclose or publish the details of the default/breach of such terms and conditions, name of the Borrower's, its directors, partners, as the case may be, as defaulters, in such manner and through such medium as the Lender or RB., NHB in their absolute discretion may think fit.

14.2 The Borrower hereby agrees and appoints Lenders and its officers and authorized representatives to be its duly constituted attorneys for all or any of the following purposes:

- (i) to enter into any of the Borrower's premises / Mortgaged Properties during business hours to inspect and carry out valuation of the same and/or
- (ii) on occurrence of Event of Default:
  - (a) to sign all papers, documents, agreements, indentures and writings that the Borrower would be bound to do under or in pursuance of these presents and/or in respect of the Loan and/or in respect to Project for and on behalf of the Borrower and to attend before the Sub-Registrar of Assurances or such other Government Authority and enter or admit execution thereof and/or
  - (b) generally to do, perform and execute or cause to be done, performed or executed all acts, deeds, matters, things and documents in all matters arising under or out of or concerning or relating to the presents under the Transaction Documents as the Borrower could itself do, perform or execute; and/or
  - (c) to instruct, change or modify terms of appointment of director(s), key managerial persons, statutory auditor, internal auditor etc. of the Borrower; and/or
  - (d) to appoint from time to time or generally such other Persons, bodies, companies, organizations or agencies as Lenders may think fit as its substitute(s) to do, execute and perform all or any such acts and things as as may be required to give effect to the presents of the Transaction Documents and to remove such substitute(s) at pleasure and to appoint others in their place.

14.3 The Borrower agrees that the above powers may be exercised without any prior notice to the Borrower and further agrees to ratify and confirm all the acts, deeds, or omission done by the Lenders or any substitute or substitutes appointed by the Lenders in exercise of their right(s) and power(s) under the Transaction Documents.

14.4 The Borrower further agrees to give and/or provide all assistance to the Lenders and its officers and authorized representatives for the purpose of exercising any of the

 Ajanta India Limited as Borrower	 IVX Prime Developers (AVADH) Pvt. Ltd As the Co-Borrower	 L&T Finance Limited as Lender 1	 L&T Housing Finance Limited As Lender 2
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powers set out hereinabove, including endorsing of documents, signing of papers and doing all such things as may be necessary to enable Lenders and its officers to exercise all the powers hereby conferred.




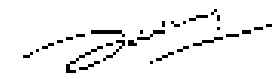
- 14.5 The Borrower further agrees that the aforesaid powers have been granted for valuable consideration and as such shall be irrevocable in nature till such time as any amount remains due and payable under or in respect of or in pursuance of the Loan and/or these presents.
- 14.6 The Borrower shall bear all costs, expenses incurred by the Lenders upon occurrence of an Event of Default in connection with:
- (i) Preservation of the Borrower's assets/Properties/Mortgaged Properties (whether now or hereafter existing); Security and/or
  - (ii) collection of amounts due under this Agreement may be charged to the Borrower and reimbursed by the Borrower, as Lenders shall specify; and/or
  - (iii) operation and maintenance of the Escrow Account, and/or
  - (iv) exercise of any of Lenders' right or power under Transaction Document(s).

## 15 INDEMNITY

- 15.1 Without prejudice to any other right of Lenders, the Borrower hereby agrees to indemnify and shall keep indemnified the Lenders, its employees, directors, officers, representatives and agents of, from and against, any and all losses, damages, costs including actual legal costs, charges and expenses, which they or any of them may suffer or incur as a result of, or in connection with, or arising out of:
- (i) of any breach, default, act of commission or omission on the part of the Borrower or any other party to the Transaction Documents or Project Documents, of the provisions of this Agreement or other Transaction Documents and/or the Project Documents; and/or
  - (ii) any loss of or damage to the Security, Properties, including Mortgaged Properties or any part thereof from whatever cause arising and whether or not such loss or damage results from the negligence or cause beyond the control of the Borrower and/or
  - (iii) claims and demands made upon the Lenders by reason of any loss, death, injury or damage suffered by any person from the operation of the Security, Properties, including Mortgaged Properties or the use thereof and/or
  - (iv) any non-compliance by the Borrower or any other person who is a party to the Transaction Documents with the Applicable Laws; and/or
  - (v) occurrence of any Potential Event of Default or Event of Default; and/or
  - (vi) exercise of any of the rights by the Lenders under this Agreement and any of the Transaction Documents.


- 15.2 The liability and responsibility as also the indemnities herein contained of the Borrower arising from anything done or any act of commission or omission occurring prior to the termination or sooner determination of this Agreement shall survive in so far as they pertain to events/occurrences that transpired during the period of this Agreement and be enforceable and carried out notwithstanding any such termination and/or sooner determination.


## 16 DISCLOSURE OF INFORMATION


 Anand India Limited as Borrower	 IRE Prime Developers (AAVAB) Pvt. Ltd. As Co-Borrower	 L&T Finance Lender as Lender 1	 L&T Finance Lender As Lender 2
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- 16.1 The Borrower hereby agrees that the Lenders at its discretion may disclose to any actual or potential assignee or transferee or to any Person who may otherwise enter into contractual relations with the Lenders in relation to this Agreement and such credit information about the Borrower as Lenders shall consider appropriate.
- 16.2 The Borrower further agrees that in addition to any other right available to Lenders in the event of the Borrower committing any act of default, Lenders shall be entitled, without prior notice to the Borrower, to disclose to the Reserve Bank of India (RBI), National Housing Bank (NHB), Credit Information Companies or to any other authority or to any third person or to be called upon to do so, the name/ identity of the Borrower and the fact of his having committed any act of default as aforesaid.
- 16.3 The Borrower understands that as a pre-condition, relating to grant of the Loan to the Borrower, the Borrower hereby agrees and gives consent for the disclosure by the Lenders of all or any such:
- Information and data relating to the Borrower and/or other Obligors;
  - the information or data relating to any loan availed of/ to be availed, by the Borrower, or
  - default if any, committed by the Borrower, in discharge of the Borrower's such obligation;
  - as Lenders may deem appropriate and necessary, to disclose and furnish to Credit Information Bureau (India) Ltd. and any other agency authorized in this behalf by RBI.
- 16.4 The Borrower undertakes that:
- the Credit Information Bureau (India) Ltd. and any other agency so authorized may use, process the said information and data disclosed in the manner as deemed fit by them; and
  - the Credit Information Bureau (India) Ltd. and any other agency so authorized may furnish for consideration, the processed information and data or products thereof prepared by them, to banks/financial institutions and other credit grantors or registered users, as may be specified by the Reserve Bank of India in this behalf.
- 16.5 The Borrower hereby consents to the Lenders, its officers and agents disclosing information relating to the Borrower / Colligor and its account(s) and/or dealing relationship(s) with the Lenders including but not limited to details of any facilities, any security taken, transactions undertaken and balances and positions with the Lenders, to:
- the head office of the Lenders, any of its subsidiaries or subsidiaries of its holding company, Affiliates representative and branch offices in any jurisdiction (together with the Lenders, the 'Permitted Parties');
  - professional advisers and service providers of the Permitted Parties who are under a duty of confidentiality to the Permitted Parties;
  - any actual or potential assignee, novatee, transferee, participant or sub-participant in relation to any of the Lenders' rights and/or obligations under any agreement (or any agent or adviser of any of the foregoing);
  - any rating agency, insurer or insurance broker/ol, or direct or indirect provider of credit protection to any Permitted Party;

  
Ajay India Limited  
As Borrower

  
V3 Prime Developments (JVADC) Pvt. Ltd.  
As the Co-Borrower

  
L&T Finance Limited  
As Lender 1

  
L & T Housing Finance Limited  
As Lender 2

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(e) any court or tribunal or regulatory supervisory governments or quasi-governmental authority with jurisdiction over the Permitted Parties or otherwise.

10.6 In case the Borrower commits default in payment or repayment of any amounts in respect of the Loan or there is breach of any of the terms and conditions of the Transaction documents, the Lender and/or RBI/NHB will have an unqualified right to disclose or publish the details of the default/breach of such terms and conditions, the name of the Borrower's directors, partners, as the case may be, as defaulters, in such manner and through such medium as the Lender or RBI, NHB in their absolute discretion may think fit.

**17 MISCELLANEOUS**

**17.1 Notice**





- (i) Every notice, request, demand or other communication to be given by one party to the other under this Agreement shall
  - (a) be in writing delivered personally or by registered post;
  - (b) be deemed to have been received when delivered personally at the time so delivered and if given by registered post, 48 hours after it has been put into post;
  - (c) be sent to the Borrower and Lenders at their addresses as detailed in Schedule I or to such other address as either party may in writing hereafter notify to the other party.
- (ii) Any notice to be given by the Lenders to the Borrower, shall be effective and deemed to have been duly and sufficiently served on the Borrower, three (3) days after the same shall have been delivered to the post office properly addressed to the Borrower at the address mentioned hereinabove and if delivered to the Borrower against acknowledgement, it shall be deemed to have been duly served as on the date of delivery.
- (iii) A certificate by an officer/representative of Lenders that the notice was posted or served, as the case may be, shall be final, conclusive and binding on the Borrower.
- (iv) Unless otherwise advised in writing by the Lenders to the Borrower, any notice to be given by the Borrower to Lenders shall be effective and deemed to have been duly and sufficiently served on Lenders if delivered at the address herein stated.

**17.2 Benefits**

The terms and provisions of this Agreement shall be binding upon, and the benefits hereof shall inure to the Borrower and Lenders successors and assigns and the Borrower's successors and assigns respectively.

17.3 The Borrower hereby agrees that the Lender shall have absolute right to review, revise, amend existing terms of Loan or stipulate additional terms and condition during the continuance of the Loan as the Lenders may deem fit.

**17.4 Assignment/Participation:**

 Anura Kumari Limited as Borrower	 IVR Prime Developers (PVT) Pte. Ltd. As the Co-Borrower	 L&T Finance Limited As Lender 1	 L&T Housing Finance Limited As Lender 2
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- 17.4.1 Any Lenders may without prior intimation to the Borrower, enter into any kind of risk participation or take out arrangement or transfer or assign or novate or securitize all or any part of its loan (or any part thereof) and/ or any of its rights and benefits hereunder and under the other Transaction Documents to another bank or financial institution or any other Person in India at any time in accordance with the provisions hereof ("New Lenders") and in such manner and on such terms as the Lenders may decide and while so transferring, assigning or securitizing, the Lenders may reserve to it a right to proceed against the Borrower on behalf of the purchaser, assignee or transferee. With all the Lenders may exercise the aforesaid right, the Lenders shall be under no obligation to do so. The Borrower shall take such action as may be necessary (including providing the necessary information and executing the relevant documents) to perfect such risk participation arrangement, assignment, transfer, novation, or securitization.
- 17.4.2 It is hereby clarified that any such risk participation, take out arrangement, transfer, assignment, novation or securitization shall be on same terms and conditions as agreed between the Lenders and the Borrower pursuant to the Transaction Documents. However, any deviation from the terms and conditions agreed between the Lenders and Borrower may be incorporated as mutually agreed between the Borrower and the New Lenders.
- 17.4.3 The Borrower agrees that it shall assist and co-operate with Lenders in completion of any formalities for assignment/novation or transfer of such rights, benefits and obligations and take all actions as may be required for this purpose, including but not limited to execution of deed of accession/adherence to one or more Transaction Documents or amendment of the this Agreement and such other deeds, documents and writings as may be required by the Lenders and/or the New Lenders or investors to facilitate or otherwise give effect to such assignment/novation or transfer.
- 17.4.4 A notification of any assignment/novation/transfer shall be provided to the Borrower at the point in time to any such assignment/novation/transfer.
- 17.4.5 The Borrower undertakes to bear all transaction costs (save and except the Up-Front Processing Fee, if the entire amount of Up-Front Processing Fee has been paid by the Borrower or the date of this Agreement) including but not limited to stamp duty, legal costs and out of pocket expenses incurred for the assignment/ transfer/ novation/ downselling.
- 17.4.6 The Borrower shall not assign or transfer any of its rights or obligations hereunder or under any of the Transaction Documents.
- 17.4.7 If any Lenders assigns all or any of its rights, obligations and benefits hereunder or under the Transaction Documents, then, unless and until the assignee has agreed with the Lenders or Lenders' agent (as the case may be) and other Lenders (if applicable) that it shall be under the same obligations towards each one of them as it would have been if it had been an original party hereto as a Lenders or Lenders' agent (as the case may be) and other Lenders shall not be obliged to recognize such assignee as having the rights against each of them which it would have had if it had been such a party thereto. The Lenders shall also have the right to freely sell down / syndicate / novate and / or assign, its entire or portion of its stance any time to other

 Ajanta India Limited as Borrower	 TVR Prime Developers (A VAD) Pvt. Ltd. As the Co-Borrower	 L&T Finance Limited as Lender 1	 L&T Housing Finance Limited As Lender 2
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banks / financial institutions during the tenor of the Loan at its sole discretion with prior intimation to the Borrower. Upon a transfer by novation etc., the transferee shall become a Lenders for a . purposes of this Loan and the Loan shall be reduced to the extent of participation by other Lenders. The Borrower must cooperate in providing required information and executing appropriate documentation in this regard.





17.4.8 If the Lenders wishes to assign or novate whole or part of its rights, benefits and obligations hereunder and under the other Transaction Documents then such novation/assignment shall be made by delivering to the Lenders or Lenders' agent (as the case may be) a duly completed, stamped and executed deed in the form set out in Schedule VII ("Novation Deed") or such assignment shall be done by way of the deed of assignment in such form and manner as may be required by the Lenders ("Deed of Assignment"). The other Transaction Documents shall also be amended in the manner set out herein in order to reflect the participation of the New Lenders. On receipt of such notice (and in the event the assignment or novation is made at the request of the Borrower, payment of application fee by the Borrower), the Borrower and the other Parties/Lenders/Lenders' agent (for and on behalf of itself and such other parties) shall countersign it and subject to the terms of that Novation Deed.

- (i) To the extent the Lenders ("Novating Lenders") seeks to novate its commitment (or any part thereof) and/or Loan (or any part thereof) under the Novation Deed the Borrower or the Novating Lenders, as the case may be, shall each be released from further obligations to each other and their respective rights against each other shall be cancelled to the extent of novation (such rights and obligations being referred to as "Novation Discharged Rights and Obligations");
- (ii) The Borrower and the Lenders shall each assume new obligations towards each other and/or acquire new rights against each other which differ from the Novation Discharged Rights and Obligations only insofar as the Borrower and the New Lenders, have assumed and acquired the same in place of the Borrower and the Novating Lenders; and
- (iii) The New Lenders and the other Parties to this Agreement and the parties to the other Transaction Documents (other than the Borrower) shall acquire the same rights and assume the same obligations between themselves as regards the Borrower as they would have acquired and assumed had that New Lenders, been an original party to this Agreement and the other Transaction Documents (upon their amendment in the manner set out herein to reflect the participation of the New Lenders) as a Lenders with the rights and/or obligations acquired or assumed by it as a result of that novation (and to the extent, of novation the Novating Lenders and those other parties shall each be released from further obligations to each other).

17.4.9 The Lenders shall charge the standard service charges in respect of different items of service as in force from time to time.

17.4.10 The Borrower agrees to, and shall ensure that each other Borrower/Oligor shall, amend the Transaction Documents to reflect any charges made as above.

17.4.11 Notwithstanding any such assignment or transfer, the Borrower shall, unless otherwise notified by the Lenders, continue to make all payments under this Agreement and the other Transaction Documents to Lenders and all such payments when made to Lenders shall constitute a full discharge to the Borrower from all its

			
Aman India Limited As Borrower	PVK Finance Developers (AVAD) Pvt. Ltd. As Co-Borrower	U&T Finance Limited as Lender 1	U&T Housing Finance Limited As Lender 2

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liabilities in respect of such payments. Lenders shall further have the right to assign, transfer, sell, pledge or hypothecate the Loan, Project Receivables, the Security rights, benefits and any other interest created in its/fair favour under the Agreement or any of the Transaction Documents or hereunder, without prior concurrence or intimation to the Borrower or any other person.

- 17.4.12 Any such assignment, transfer, sale, pledge or hypothecation shall bind the Borrower to accept such third party as creditor exclusively or as a joint creditor with Lenders, as the case may be. Any cost in this behalf, whether on account of such sale, assignment or transfer or enforcement of rights and recovery of outstanding amount, shall be to the account of the Borrower.
- 17.4.13 The Borrower hereby expressly agrees that nothing herein contained shall operate to prejudice the rights and remedies of Lenders in respect of any other obligations of the Borrower to Lenders or prejudice or effect any general or particular lien to which Lenders is/are by law or otherwise entitled to or operates to prejudice Lenders's rights or remedies in respect of any present or future security, guarantee or obligation given to Lenders by any other person for any indebtedness or liability of the Borrower.
- 17.4.14 The Borrower agrees that this Agreement and the security hereby created shall operate as a continuing security for all the obligations of the Borrower in respect of the Loan notwithstanding the existence of a credit balance in the said account or any partial payments or fluctuation of accounts.

#### 17.5 Waiver

No delay or omission to exercise any right, power or remedy accruing to Lenders upon any breach or default of the Borrower under this Agreement shall impair any such right, power or remedy of Lenders nor shall it be construed to be a waiver of any such breach or default or an acquiescence therein or of any similar breach or default thereafter occurring nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default therefore or thereafter occurring. Any waiver, permission, consent or approval on the part of Lenders in respect of any breach or default under this Agreement or any provisions or condition of this Agreement must be in writing and shall be effective only to the extent in such writing specifically set forth. All remedies either under this Agreement or by law or otherwise afforded to Lenders shall be cumulative and not alternative.

#### 17.6 Amendment

No amendment of any term or provision hereof shall be effective unless made in writing and signed by both Parties hereto either in form of an agreement or by exchange of letters as the Lenders may accept.

#### 17.7 Partial Invalidity

If at any time any provision of this Agreement becomes illegal, invalid or unenforceable in any respect, neither the legality nor the validity or enforceability of the remaining provisions of this Agreement shall in any way be affected or impaired thereby.

 Ajanta India Limited as Borrower	 AYAD Finance Developments (AYAD) Pvt. Ltd. As the Co-Borrower	 L&T Finance Limited as Lender 1	 L&T Housing Finance Limited As Lender 2
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## 17.8 Overriding Effect

This Agreement and the other documents attached hereto or referred to herein integrate all the terms and conditions mentioned herein and/or incidental hereto and supersede all oral negotiations and prior writings in respect of the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Agreement and any agreement or documents attached hereto or referred to herein, then in such event, the terms, conditions and provisions of this Agreement shall prevail.

## 17.9 Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with Indian law.

## 17.10 Arbitration

17.10.1 Any dispute or difference or claims that arises between the Parties or any of them concerning the Transaction Documents or any condition herein contained or as to the rights, duties or liabilities of Parties hereto or any of them either during the continuance of the Transaction Documents or after termination or purported termination hereof shall be referred to the sole Arbitrator to be appointed by the Lenders.





17.10.2 It is agreed between the Parties, hereto that nothing contained in section 17 of Arbitration & Conciliation Act, 1996, shall in any way affect the right of any of or preclude the Parties to / from seek / seeking such interim reliefs in any Court of competent jurisdiction, including interim relief under section 9 of the Arbitration & Conciliation Act, 1996, and the rules framed thereunder.

17.10.3 The award of the Arbitrator shall be a written award and shall be final, conclusive & binding on all the Parties whether on question of law or of fact.

17.10.4 The venue of the arbitration shall be such place where this Agreement is executed, i.e. New Delhi or such other places as the Lenders may in its/their sole discretion decide.

17.10.5 In the event of death, refusal, neglect, inability or incapability of the person so appointed to act as the sole arbitrator the Lenders may appoint a new arbitrator.

17.10.6 Notwithstanding anything contained hereinabove, in the event of change in the status of the Lenders or in the event of the law being made or amended so as to bring the Lenders under the DRT Act, or any other special legislation to enable the Lenders to proceed to recover dues from the Borrower under the DRT Act, the arbitration provisions hereinbefore contained shall at the option of the (s) cease to have any effect and if arbitration proceedings are commenced but no Award is made, then at the option of the Lenders, such proceedings shall stand terminated and the mandate of the Arbitrator shall come to an end, from the date of the making of the law or the date when amendment becomes effective or the date when the Lenders exercises the option of terminating the mandate of Arbitrator the case may be.

 Ajay India Limited as Borrower	 IVC Prime Developers (JVADG) Pvt. Ltd. As the Co-Borrower	 L&T Finance Limited as Lender 1	 L&T Housing Finance Limited As Lender 2
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17.11 Jurisdiction

This Agreement shall be governed by and construed in all respects with the Indian law and the parties hereto agree that any matter or issue arising hereunder or any dispute hereunder shall, be subject to the exclusive jurisdiction of the courts at such place where this Agreement is executed, i.e., New Delhi or such other jurisdiction that the Lenders may in its/their sole discretion decide.

IN WITNESS WHEREOF the signature of the Borrower and Lenders has/have caused these presents to be executed by its authorized signatory or themselves the day and year first hereinabove written.

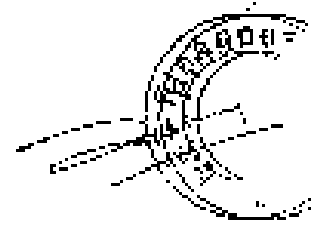
SIGNED AND DELIVERED by the  
 Within named Ajnara India Limited,  
 The Borrower through its authorized director,  
 Mr. Vinod Kumar Gupta,  
 vide Board Resolution dated 30<sup>th</sup> May 2017

For AJNARA INDIA LTD.  
  
 Authorized Signatory

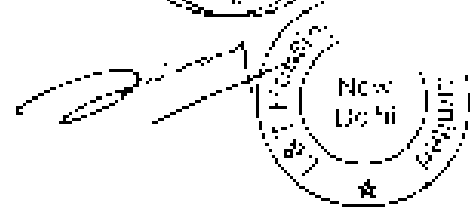
SIGNED AND DELIVERED by the  
 by the within named IVR Prime Developers  
 (AVADI) Private Limited  
 The Co-Borrower through its authorized director,  
 Mr. Anand Manibharthwal,  
 vide Board Resolution dated 30<sup>th</sup> May 2017





For IVR Prime Developers (Avadi) Pvt. Ltd.  
  
 Director

SIGNED AND DELIVERED  
 by the within named L&T Finance Limited  
 through its authorized officer  
 Mr. Sandeep Srinivasan



SIGNED AND DELIVERED  
 by the within named L&T Housing Finance Limited  
 through its authorized officer  
 Mr. Sandeep Srinivasan



 Ajnara India Limited as Borrower	 IVR Prime Developers (AVADI) Pvt. Ltd. As the Co-Borrower	 L&T Finance Limited as Lender 1	 L&T Housing Finance Limited As Lender 2
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**SCHEDULE I A  
DETAILS OF THE BORROWER**

**Ajnara India Limited**, a company incorporated under the Companies Act, 1956 having its registered address at at # 502, 5TH Floor, Sachdeva Corporate Tower, 17, Karkardoma Community Centre, Delhi - 110092 and Corporate office at D-247/28, Sector-83, Noida, Uttar Pradesh 201301 and acting through its authorized director Mr. Vinod Kumar Gupta pursuant to resolution dated 30<sup>th</sup> May 2017, hereinafter referred as Borrower

**And**

**IVR Prima Developers (AVAD) Pvt. Ltd.**, a company incorporated under the Companies Act, 1956 having its registered office at M-22/3RT, Vijayanagar Colony Hyderabad TG 500057 and Corporate office at B-28-29 Sector -58 Noida UP-201307 and acting through its authorized director Mr. Anand Manibarthwal pursuant to resolution dated 30<sup>th</sup> June 2017, hereinafter referred as Co-Borrower


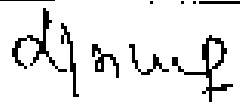

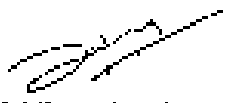
Hereinafter, as the context may require the expressions Borrower and Co-Borrower shall hereinafter collectively be referred as the Borrower.

 Ajnara India Limited as Borrower	 IVR Prima Developers (AVAD) Pvt. Ltd. As the Co-Borrower	 L&T Finance Limited as Lender 1	 L&T Housing Finance Limited As Lender 2
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**SCHEDULE I B  
LENDERS AND DETAILS OF LOAN**

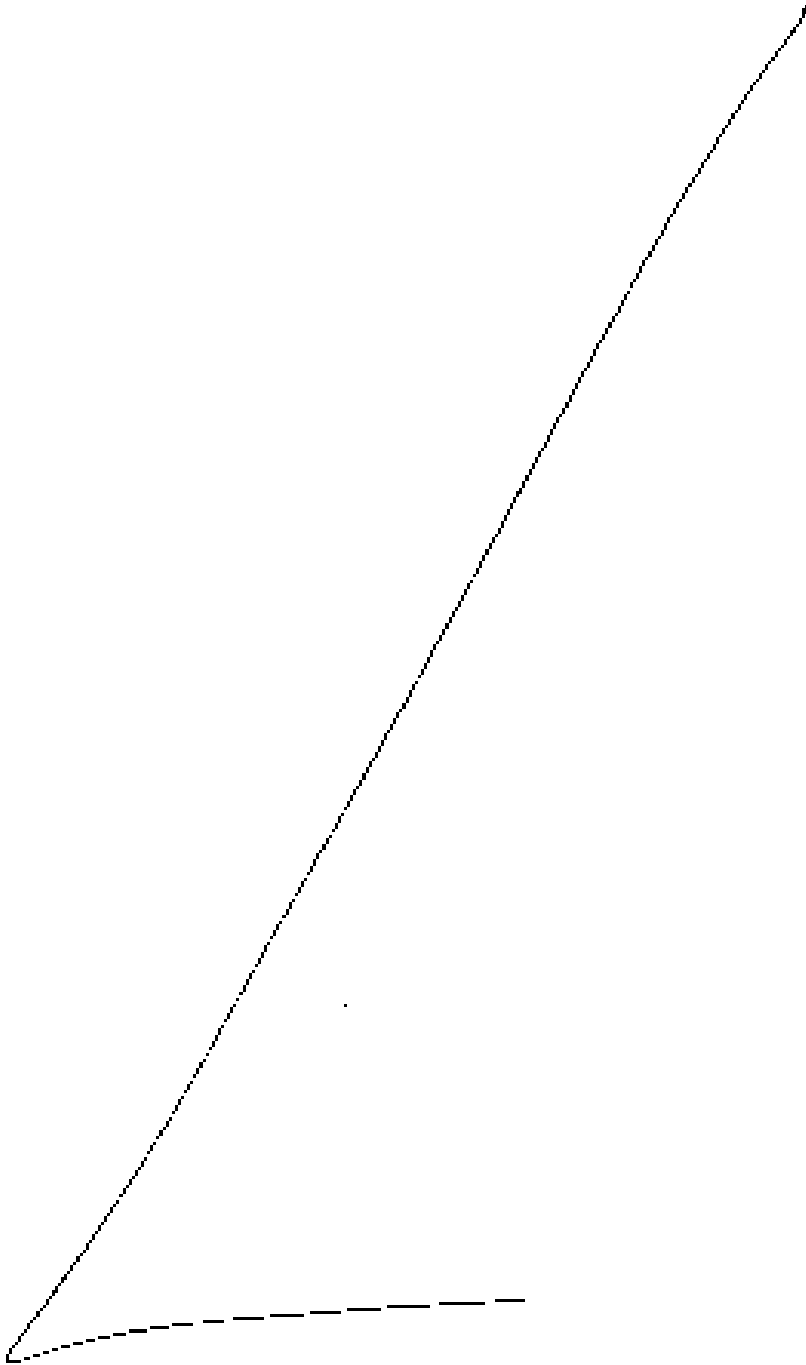
Name of the Lender	L&T Finance Limited, hereinafter referred as Lender 1
Registered Office of the Lender	Technopolis, 7 <sup>th</sup> Floor, A-Wing, Plot No 4, Block - 3P, Sector - V, Salt Lake, Kolkata - 700 091
Lending Office of the Lender and Notices details	8 <sup>th</sup> Floor DCM Building Barakhamba Road, Connaught Place, New Delhi, Delhi- 110001
Commitment/Loan	Rupee Term Loan aggregating to upto Rs.235,00,00,000/- (Rupees Two Hundred Thirty Five Crores only) which shall comprise of the following two (2) tranches each of which tranche may be drawn in one or more multiple sub-tranches:- Tranche I -of an aggregate amount of upto Rs.25,00,00,000/- (Rupees Twenty Five Crores only) Tranche II -of an aggregate amount of uptoRs 210,00,00,000/- (Rupees Two Hundred Ten Crores only) The amount under Tranche I & II may be inter se changed at the discretion of the Lender such that the aggregate exposure under Loan does not exceed Rs.235,00,00,000/- (Rupees Two Hundred Thirty Five Crores only).
Purpose	The Borrower will utilize the Loan availed from Lender for the following purposes: a) Tranche I - shall be utilized towards repayment of Existing Loans (as specified in <u>Schedule VI</u> hereto) from Corporation & Union Bank; b) Tranche II - shall be utilized towards: (i) completion of balance construction of the Project, payment of FAR cost and balance land payments as per the Disbursement Schedule (ii) payment of statutory dues, and (iii) payment of other expenses incidental to the Loan. The amount under Tranche I & Tranche II may be inter se changed at the discretion of the Lender such that the aggregate exposure under Loan does not exceed Rs 235,00,00,000/- (Rupees Two Hundred Thirty Five Crores only).




Name of the Lender	L&T Housing Finance Limited, hereinafter referred as Lender 2
Registered Office of the Lender	- & T House, N.M. Marg Ballard Estate Mumbai 400001
Lending Office of the Lender and Notices details	8 <sup>th</sup> Floor DCM Building, Barakhamba Road, Connaught Place, New Delhi, Delhi- 110001
Commitment/Loan	Rupee Term Loan aggregating to upto Rs.115,00,00,000/- (Rupees One Hundred Fifteen Crores only)
Purpose	The Borrower will utilize the Loan availed from Lender shall be utilized towards repayment of Existing Loans (as specified in

 Akura India Limited as Borrower	 IVR Prime Developers (AVADI) Pvt. Ltd. As the Co-Borrower	 L&T Finance Limited as Lender 1	 L&T Housing Finance Limited As Lender 2
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Schedule VI hereto) from Corporation Bank & Union Bank

Hereinafter, as the context may require, the expressions Lender1 and Lender2 shall hereinafter collectively be referred as the Lenders



 Ajanta India Limited as Borrower	 IVR Prime Developments (PVT) Ltd As the Co-Borrower	 L&T Finance Limited as Lender 1	 L&T Housing Finance Limited As Lender 2
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**SCHEDULE II  
KEY TERMS**

1	Promoter(s)	<p>(i) Mr. Ashok Kumar Gupta, S/o Gyan Prakash Gupta, having PAN ACMPG670GH, residing at B-189, Yojna Vihar, Delhi;</p> <p>(ii) Mr. Pramod Kumar Gupta, S/o Gyan Prakash Gupta, having PAN AFDPG6563Q, residing at B-189, Yojna Vihar, Delhi; and</p> <p>(iii) Mr. Virod Kumar Gupta, S/o Gyan Prakash Gupta, having PAN AFDPG6558H, residing at B-189, Yojna Vihar, Delhi</p>
2.	Guarantor(s)	<p><b>Corporate Guarantor:</b> Supertech Limited, a company incorporated under the Companies Act, 1956 with a corporate identification number U74899DL1995PLC074422 and permanent account number AADGS0648N, having its registered office at 1114, Hamkum Chambers, 11 Floor, 58, Nehru Place, New Delhi - 110019 and a corporate office at Supertech House, B-26-29, Sector 58, Noida - 201307 through its authorized director Mr. R K Arora.</p> <p><b>Personal Guarantor:</b></p> <p>(i) Mr. Ashok Kumar Gupta, S/o Gyan Prakash Gupta, having PAN ACMPG670GH, residing at B-189, Yojna Vihar, Delhi;</p> <p>(ii) Mr. Pramod Kumar Gupta, S/o Gyan Prakash Gupta, having PAN AFDPG6563Q, residing at B-189, Yojna Vihar, Delhi; and</p> <p>(iii) Mr. Virod Kumar Gupta, S/o Gyan Prakash Gupta, having PAN AFDPG6558H, residing at B-189, Yojna Vihar, Delhi</p>
3.	Project	A residential group housing project of the Borrower being developed in the name of 'Ajnara Ambrosia' situated at CH-01, Sector 118, Noida, U.P.
4.	Availability Period	The Borrower's right to make 1 <sup>st</sup> (first) Disbursement from the Loan shall cease upon expiry of 90 (ninety) days from the date of signing of this Agreement or such extended period as may be agreed by the Lenders at their discretion and subsequent Disbursements shall be made as per the terms stipulated in this Agreement.
5.	Interest Rate	<p>a) Each disbursed amount of the Loan will carry a fixed interest rate of 13% (Thirteen percent) p.a. payable monthly plus applicable Interest tax and other statutory levy (if any)</p> <p>b) Aforementioned interest rate shall be payable monthly, on the 15<sup>th</sup> day of each subsequent month ("Interest Payment Date") or any other date as determined by the Lenders. However, the first instalment of interest shall be for the period from the date of Disbursement till the 14<sup>th</sup> day of next month and thereafter interest shall be payable for the period commencing from 15<sup>th</sup> day of the current/next month till the 14<sup>th</sup> day of next / subsequent month</p> <p>c) In case of any default or breach of any term contained in, no benefit of reduction in interest rate as mentioned above would be passed on to the Borrower. However same shall not affect any increase in interest rate being applicable to the Borrower.</p> <p>d) The Borrower shall pay to the Lender interest as calculated above, on the outstanding amount of the Loan on the 15<sup>th</sup> day of each calendar month.</p>



Ajnara Ltd. Limited  
As Borrower



AVR Prime Developments (AVADI) Pvt. Ltd.  
As the Co-Borrower







L&T Finance Limited  
As Lender 1







L&T Housing Finance Limited  
As Lender 2

6.	<b>Reset Interest Rate</b>	Lenders shall have the right to reset the Interest Rate (as applicable) ("Reset Interest Rate") on the expiry of 12 (twelve) months from the date of first Disbursement of the Loan and every year thereafter. The Borrower shall then pay interest at such Reset Interest Rate with effect from the Interest Reset Date. Additionally, the Lenders shall have a right to reset the Interest Rate at any time during the currency of the Loan upon occurrence of any of the events specified in Article 2.8.2 of this Agreement.
7.	<b>Additional Interest</b>	Shall mean 2 (two) % per annum with monthly rests over and above the Interest Rate plus applicable taxes.
8.	<b>Default Interest</b>	Shall mean 2 (two) % per annum with monthly rests over and above the Interest Rate plus applicable taxes.
9.	<b>Repayment Cheques</b>	Shall mean 10 (ten) cheques to cover the Loan amount and 24 (twenty four) cheques of monthly interest amount as may be required by the Lenders to be issued in favour of the Lenders by the Borrower or such other Person(s) as may be acceptable to the Lenders towards Repayment of the Loan including the principal amounts and the interest amounts in relation thereto.
10.	<b>Tenor</b>	Tenor of the Loan shall be 78 (seventy eight) months from the date of first Disbursement.
11.	<b>Fees and other charges</b>	<p>a) <b>Upfront Processing Fees</b> Non-refundable and non adjustable processing fee aggregating to 0.50% of Loan amount sanctioned by Lender I and Lender II respectively along with applicable taxes at the time of acceptance of the Term Sheet;</p> <p>b) <b>Legal Documentation Fees:</b></p> <p>(i) Borrower shall pay to the Lender fees of Rs.8,00,000/- (Rupees Eight Lakhs) towards legal due diligence, title clearance of properties and drafting of Financing Documents.</p> <p>(ii) Borrower shall pay to the Lender II fees of Rs.4,00,000/- (Rupees Four Lakhs) towards legal due diligence, title clearance of properties and drafting of Financing Documents.</p>
12.	<b>Prescribed Rate &amp; Prepayment Charges</b>	<p>Subject to the terms of the Escrow Agreement, Prescribed Rates shall mean the following % (percent) of the sum realized from cash flows received from the sales receivables from the Sale Units (as detailed in Article 2.10.1) or such other revised % (percent) as may be prescribed by the Lenders at its discretion from time to time during the continuance of the Loan:</p> <p>a) Nil from all the receivables till collection of Rs. 214 Crores in the Escrow Account or till end of 2 year from 1st Disbursement, whichever is earlier;</p> <p>b) @10% from all the receivables till collection of additional Rs. 178 Crores in the Escrow Account or till end of 3 year from 1st Disbursement, whichever is earlier;</p> <p>c) @40% from all the receivables till collection of additional Rs 252 Crores in the Escrow Account or till end of 4 year from 1st Disbursement, whichever is earlier; and</p> <p>d) @75% of remaining receivables thereafter from the Project.</p>

 Ajanta India Limited as Borrower	 JVR Prime Developers (A V A D) Pvt. Ltd. As the Co-Borrower	 L&T Finance Limited as Lender 1	 L&T Housing Finance Limited As Lender 2
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13. Special Conditions	<p>(i) Any disbursements beyond Rs.45,00,000/- (Rupees Forty Five Crores) from Tranche II by Lender I will be made post receipt of approved building plans at FAR of 3.5, except sections' disbursement will be permissible for the payment of cost towards purchase of additional FAR (not exceeding 3.5) and dues towards NOIDA Authority (including land payment) provided minimum Security Cover of 1.5 is available including after the said proposed Disbursement(s).</p> <p>The aforesaid Disbursement towards land payment shall be on the basis of the demand raised by the NOIDA Authority and shall not be linked with the Construction Schedule.</p> <p>(ii) The sub lease for the land of the Project site to be done within 15 (fifteen) months from the first Disbursement post which the exclusive charge of the Lenders shall be created on the Project land within 30 (thirty) days of receipt of sub lease deed</p> <p>(iii) The Borrower/ developer shall obtain concurrence from the Lenders, within 30 (thirty) days from the date of first Disbursement, on the standard draft contract to be entered between the Borrower/ developer and the owner(s) (unit holder) ("Contract"), including terms contained therein and hereby undertakes that requisite covenants will be built therein safeguarding the interest of the Lenders and/or as may be provided by the Lender, inter alia:</p> <p>(a) stating fact with regard to creation of charge on the Project land/ Project, etc in favour of the Lender and consequence of default on same, etc.;</p> <p>(b) instructing Unit holders to deposit proceeds towards the purchase of Units in an identified account (duly charged in favour of the Lender);</p>
14. Option	<p>In the Event of Default by the Borrower in (a) payment of the principal and/or interest on the Loan for more than 30 (thirty) days from the respective due date for payment or (b) in complying with Construction Schedule or Sales Schedule, in addition to other rights and remedies available to the Lenders under law, contract or otherwise, the Lenders shall be entitled, but not obliged, to take over and retain and/or dispose of any unsold area of the Project proportionate to the outstanding Loan amount. The price, at which such unsold area of the Project will be acquired by the Lender, shall be at a discount of 30% (Thirty Percent) on an average rate of the previous 3 (three) market transactions. The decision of the Lenders in this regard (including determination of the value of such sale transactions) shall be final and binding on the Borrower.</p>
15. Minimum Selling Price	<p>The Borrower shall ensure that any Unsold Units in the Project are sold at a price not less than the following ("Minimum Selling Price")-</p> <p>(a) Residential Units- Rs. 4,200/- (Rupees Four Thousand Two Hundred) sq.Ft. of saleable area</p> <p>(b) Commercial units- Rs. 16,500/- (Rupees Sixteen Thousand Five Hundred) sq Ft. of saleable area</p>

 Ajanta Infratech Limited as Borrower	 AVR Prime Developers (AVADI) Pvt. Ltd. As the Co-Borrower	 L&T Finance Limited as Lender 1	 L&T Housing Finance Limited As Lender 2
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Ajnara India Limited  
As Borrower



LVR Prime Developers (AVADI) Pvt. Ltd.  
As the Co-Borrower



L&T Finance Limited  
As Lender 1







L&T Housing Finance Limited  
As Lender 2





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**SCHEDULE III**  
**SECURITY AND SECURITY RELATED COVENANTS**

1. The Outstanding Amount in connection with the Loan, including the principal, interest, Additional Interest, Default Interest, and all other monies and charges in relation thereto, shall be duly secured by following in such form and manner as may be acceptable to the Lenders:
- (a) Second pari passu charge by way of Mortgage on the Mortgaged Properties (1st charge holder being NCIRA Authority) being the land admeasuring 1,42,987 (One Lakh Forty Two Thousand Nine Hundred and Sixty Seven) sq.mts. situated at Plot No. GH D1, Sector-11B, Noida, Uttar Pradesh, on which the Project is being developed, together with a buildings and structures standing thereon, both present and future in the said Project, excluding the units for which the home loans have been availed ("Mortgaged Properties").
  - (b) First pari passu charge by way of hypothecation on all the movable assets of the Borrower, including but not limited to plant & machinery, machinery spares, tools & accessories, present and future pertaining to the Project;
  - (c) First pari passu charge on Transferable Development Rights ("TDR") in connection with the said Project and also in case where TDR are purchased by the Borrower till the same is not being consumed/loaded on the said Project;
  - (d) First pari passu charge on the entire Project Receivables including receivables emanating from (i) insurance contracts, (ii) sale of units from the Project, (iii) other documents in relation to the Project, both present and future;
  - (e) First pari passu charge/assignment (by way of security interest) of all rights, title, interest, claims, benefits, demands under all Project Documents, both present and future;
  - (f) First pari passu charge on the Escrow Account and the DSRA account, all monies credited/deposited therein and monies deposited thereon (including over any investments made from the Escrow Account or in lieu of the DSRA, as the case may be (in whatever form the same may be);
  - (g) Unconditional and irrevocable personal Guarantee of (each "Personal Guarantor" and collectively "Personal Guarantors"):
    - (i) Mr. Ashok Kumar Gupta, S/o Gyan Prakash Gupta, having PAN ACMPG6706H, residing at B-189, Yojna Vihar, Delhi;
    - (ii) Mr. Pramod Kumar Gupta, S/o Gyan Prakash Gupta, having PAN AFDPG2583Q, residing at B-189, Yojna Vihar, Delhi; and
    - (iii) Mr. Vinod Kumar Gupta, S/o Gyan Prakash Gupta, having PAN AFDPG8558R, residing at B-189, Yojna Vihar, Delhi
 which shall guarantee due repayment of the Outstanding Amount to the satisfaction of the Lenders;
  - (h) Unconditional and irrevocable corporate Guarantee of **Supertech Limited**, a company incorporated under the Companies Act, 1956 with a corporate identification number U74899DL1995PLC074422 and permanent account number AABC80548N, having its registered office at 114, Hamkund Chambers, 11 Floor, 89, Nehru Place, New Delhi - 110019 and a corporate office at Supertech House, E 25-29, Sector 58, Noida - 201307 through its authorized director Mr. R.K. Arora ("Corporate Guarantor") which shall





 Ajanta India Limited as Borrower	 AVR Prime Developers (AVAID) Pvt. Ltd. As the Co-Borrower	 L&T Finance Limited as Lender 1	 L&T Housing Finance Limited As Lender 2
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- guarantee due repayment of the Outstanding Amount to the satisfaction of the Lenders;
- (i) Demand promissory note for the principal and interest amounts payable in relation to the Loan. The demand promissory note shall be in form and manner acceptable to the Lenders;
  - (ii) Pledge by the Borrower of 50% (Fifty Percent) of the fully paid up share capital of the Co-Borrower, in dematerialized form (free from all restrictive covenants, lien or other Encumbrance or any other rights under any contract or arrangement including but not limited to any shareholders agreement), together with all accretions thereon, if permitted under Applicable Laws.
2. The security interest in favour of the Security Trustee/ Lenders shall be created in a form and manner and on the terms and conditions satisfactory to the Lenders;
  3. The Borrower hereby undertakes to ensure that the value of the Security provided to the Lenders by way of Mortgaged Properties ("Security Cover") be a minimum of at least 1.5 times of the Outstanding Amounts in relation to the Loan, failing which it shall be considered as an Event of Default.
  4. The Borrower shall create and perfect the Security stipulated in Clauses 1 (g) to (i) hereinabove in this Schedule III prior to first Disbursement in a form and manner satisfactory to the Lenders.
  5. The Borrower shall create the Security stipulated in Clauses 1 (d) to (f) hereinabove in this Schedule III prior to first Disbursement and perfect the same within 30 (Thirty) days of first disbursement, in a form and manner satisfactory to the Lenders.
  6. The Borrower shall create the Security stipulated in Clauses 1 (a) to (c) hereinabove in this Schedule III within 30 (Thirty) days of the first Disbursement, and perfect the same within 90 (ninety) days of first Disbursement, in the form and manner satisfactory to the Lenders.
  7. The Security stipulated Clauses 1 (j) shall be created and perfected by the Borrower within 90 (Ninety) days of the first Disbursement.
  8. In case any Security being held with Existing Lender mentioned in Schedule VI, such Security shall be created in favour of Security Trustee/ Lenders within a period of 30 (Thirty) days from the date of first Disbursement and shall be perfected within 90 (ninety) days of first Disbursement.
  9. Without prejudice to the Lender's right to call an Event of Default, in the event the Security is not created and/ or perfected within the prescribed days hereinabove in Clauses 5 to 8 hereinabove in this Schedule III, the Borrower shall be obligated to pay an Additional Interest on the Outstanding Amounts plus applicable taxes in relation to the Loan till the time such Security is created and perfected to the Lenders satisfaction.
  10. Upon occurrence of an Event of Default (including a potential Event of Default), the Lenders shall be entitled to stipulate additional security interest and upon such

 Ajmera Intra Limited As Borrower	 L&T Prime Developers (A MAH) Pvt. Ltd. As the Co-Borrower	 L&T Finance Limited as Lender 1	 L&T Housing Finance Limited As Lender 2
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instructions from the Lenders, the Borrower shall not later than 15 (fifteen) days, create & perfect such additional security interest to the satisfaction of the Lenders.

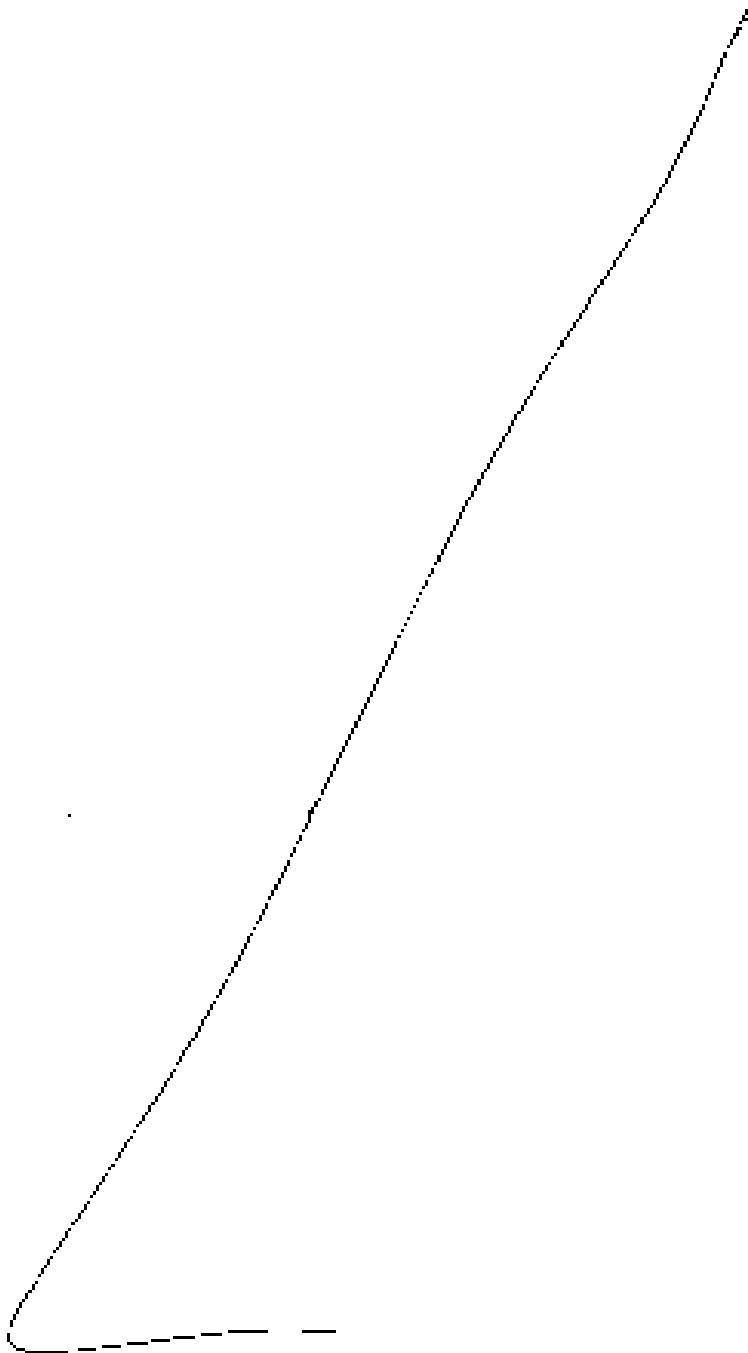
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 Ajanta India Limited As Borrower	 L&T Housing Developers (AVADY) Pvt. Ltd. As the Co-Borrower	 L&T Finance Limited As Lender 1	 L&T Housing Finance Limited As Lender 2
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*As per*  
**TRUE COPY**

List of Sold / Unsold units to be mortgaged to the Lenders

As per annexure I



 Ajanta India Limited As Borrower	 TVR Prims Developers (JVADI) Pvt Ltd As the Co-Borrower	 L&I Finance Limited as Lender 1	 L&I Housing Finance Limited As Lender 2
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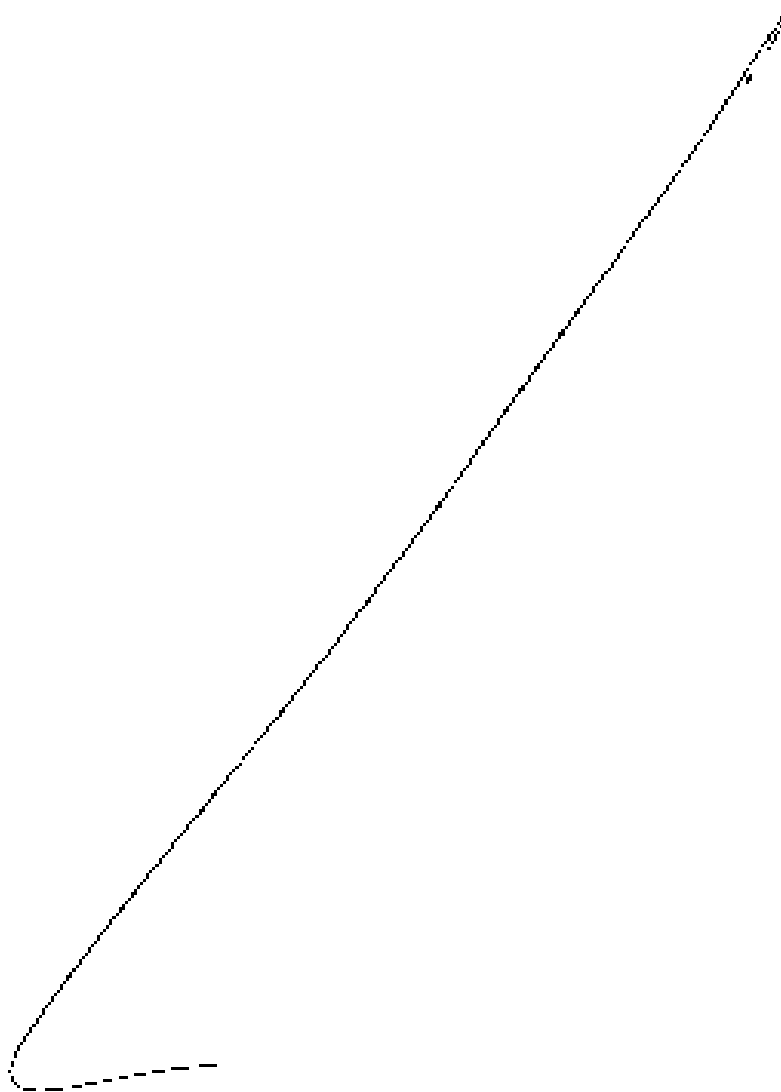
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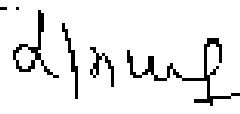




**SCHEDULE IV  
REPAYMENT SCHEDULE**

Principal Moratorium period shall be for a period of 48 (Forty-Eight) months after the date of first Disbursement of the Loan ("Moratorium Period")

Quarter from Disbursement	1*	Amount to be repaid in each Quarter (Rs. Crs.) to Lender I	Amount to be repaid in each Quarter (Rs. Crs.) to Lender II
Q 17 - Q 28		23.50	11.50
<b>Total</b>		<b>235.0</b>	<b>115.0</b>



 <b>Aindra Industries Limited</b> As Borrower	 <b>INR Prime Developers (AVALB) Pvt. Ltd.</b> As the Co-Borrower	 <b>L&amp;T Finance Limited</b> As Lender 1	 <b>L&amp;T Housing Finance Limited</b> As Lender 2
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As  
**TRUE COPY**

**SCHEDULE V  
PART A**

**CONDITION PRÉCEDENT FOR DISBURSEMENT**





Subject to the joint and several performances by the Borrower and other Obligors of their respective undertakings and obligations under this Agreement and other Transaction Documents prior to making of Disbursement and fulfilment of following conditions to the satisfaction of the Lenders, the any Disbursement will be made at the discretion of the Lenders:

- (i) Towards repayment of the Loan amount, Interest and other charges thereon, as applicable, the Borrower shall have provided 10 (ten) cheques to cover the Loan & 24 (twenty four) cheques of monthly interest amount in favour of the Lenders.
- (ii) The Borrower shall have submitted to the Lenders, following:
  - a. Updated details of Sold Units and Unsold Units and collection data of the Project. It is clarified that the Lenders shall have absolute right to revise the Prepayment Charges (from time to time) on the basis the updated details of Sold Units and Unsold Units in the Project.
  - b. Net worth certificate of each of the Promoters and Guarantors, which statement shall not be more than 6 (six) months old, duly certified by the chartered accountant.
  - c. Construction Schedule, cost of Project and means of finance (including details of cost incurred till date) duly certified by the authorised director of the Borrower/chartered accountant / auditor of the Borrower.
  - d. Sale Schedule in respect of Unsold Units in the Project duly certified by the authorised director of the Borrower / chartered accountant / auditor of the Borrower.
  - e. Certified true copies of constitutional / Charter documents (viz. Memorandum and Articles of Association) of the Borrower.
  - f. Statutory Auditor's / Chartered Accountant's certificate (from Borrower, Co-Borrower and Corporate Guarantor) stating non-applicability / no dues under section 281(1) (ii) of the Income Tax Act, 1961 alongwith the duly acknowledged copy of the application for permission u/s 281 (1) (ii) of the Income Tax Act.
  - g. Certified true copy of the resolution passed by the Board of Directors of (i) the Borrower for obtaining Loan and providing Security and other comforts from the Borrower; (ii) other Security Provider(s) and other Obligor(s) in relation to the transactions contemplated in the Financing Documents, alongwith resolution passed by the shareholders' of the Borrower under section 180(1)(a) and section 180(1) (c) of the Companies Act 2013 to give effect to the terms of the Financing Documents and confirmation that all these authorizations are in full force and effect (as may be applicable);
  - h. Certified copy of the special resolution of the shareholders approving the option to convert the Outstanding Amounts into equity under section 62(3) of Companies Act, 2013 and resolution giving effect to provisions of any regulations, rule and/or or guideline issues by the Reserve Bank of India for the benefit of Lenders in terms of asset management and recovery (including strategic debt restructuring) in case of a default under the Loan at a value determined at the sole discretion of the Lenders in accordance with Applicable

 Ajmera India Limited as Borrower	 IVR Prime Developers (AAVAD) Pvt. Ltd. As the Co-Borrower	 L&T Finance Limited as Lender 1	 L&T Housing Finance Limited As Lender 2
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Laws as well as approving the option for invocation of Strategic Debt Restructuring as per the extant guideline on Strategic Debt Restructuring Scheme as issued by the Reserve Bank of India (and as amended from time to time) at a value determined at the sole discretion of the Lender in accordance with applicable laws from Borrower (including Borrower and Co-Borrower).

- i. Certified true copies of resolutions of the board of directors and/ or of its shareholders, as applicable, regarding compliance of provisions of Section 180 and 186 by Borrower and Corporate Guarantor, as applicable. The Borrower and Corporate Guarantor shall have provided a certificate from its Director confirming that provision of Security in terms of the Transaction Documents is in compliance with the terms of Section 185 of the Companies Act, 2013.
  - j. Acknowledged copy of the application made to the NOIDA Authority for revised building plan at 3.5 FAR.
  - k. No Objection Certificate from Corporation Bank stating that on takeover of the loan of Existing Lenders on the Project, they as lead banker and on behalf of Union Bank, will have no charge on the Project land and construction thereon along with all current asset related to the Project.
  - l. A letter from Corporation Bank agreeing on the arrangement of Security Trustee to hold the title deeds on behalf of the Lenders.
  - m. Indemnity/undertaking from Corporate Guarantor for regular payment of land to the NOIDA Authority and timely application and payment for purchase of additional FAR of 1.5 (over and above on existing 2 FAR) along with the Borrower.
- (iii) Satisfaction of all KYC requirements of the Borrower and the Guarantors, wherever applicable.
  - (iv) All applicable governmental, corporate and creditors' (including any relevant waivers) consents/approvals as may be required by the Lender have been obtained and submitted with the Lenders in form and substance satisfactory to the Lenders in connection to the Loan and Security.
  - (v) The Lenders shall have received all the fees, charges, payments, etc. as may be payable under the Transaction Documents which are required to be paid before the date of the first Disbursement and as stipulated in Article 2.12 and Article 2.13 above.
  - (vi) The Borrower and other Obligor shall have executed and entered into all the Transaction Documents (including this Agreement), as required to be executed prior to first Disbursement in terms hereof, in such form, manner and substance as may be satisfactory to the Lenders and all such Transaction Documents have become (or, as the case may be, remain) fully effective and binding upon the parties to said Transaction Documents in accordance with their respective terms.
  - (vii) The Security stipulated under Article 4 read with Schedule III hereto shall have been created and perfected as per agreed timelines, including filing/registration thereof with applicable statutory and Governmental Authorities.
  - (viii) The Borrower shall have provided additional collateral, if required to the satisfaction of Lenders to ensure a minimum Security Cover of 1.5 times.
  - (ix) A Borrower shall have submitted an undertaking in favour of the Lenders, in the form and manner acceptable to the Lenders, certifying that there is no material adverse change in the Borrower's financial condition and condition in financial market.
  - (x) The Lenders shall have received satisfactory title clearance report in respect of the Mortgaged Properties.
  - (xi) The Borrower shall have furnished an undertaking in favour of the Lenders that it shall

 Anura Incha Limited as Borrower	 PVR Prime Developers (A V A) Pvt. Ltd. As the Co-Borrower	 L&T Finance Limited as Lender 1	 L&T Housing Finance Limited As Lender 2
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**BEFORE THE NATIONAL COMPANY LAW APPELLATE  
TRIBUNAL, NEW DELHI**

I.A. NO. \_\_\_\_\_ OF 2023

IN

**COMPANY APPEAL (AT) (INSOLVENCY) NO. 406 OF 2022**

**IN THE MATTER OF:**

**RAM KISHOR ARORA  
SUSPENDED DIRECTOR OF  
SUPERTECH LIMITED**

**...APPELLANT**

**VERSUS**

**UNION BANK OF INDIA & ANR.**

**...RESPONDENTS**

**AND IN THE MATTER OF:**

**L&T FINANCE LIMITED**



**...APPLICANT**

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**VOLUME-III**





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17.	<b><u>ANNEXURE A- 14:</u></b> Copy of the Deed of Corporate Guarantee executed with regards to the loan transaction with Ajnara India Limited.	538- 554
18.	<b><u>ANNEXURE A-15:</u></b> Copy of the email dated 30 December 2022 issued by the Applicant.	555- 556
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22.	<b><u>ANNEXURE A- 19:</u></b> Copy of the judgment passed by the Hon'ble Supreme Court in <b><i>Ghanshyam Mishra v. Edelweiss Asset Reconstruction Company Limited, (2021) 9 SCC 657</i></b>	572-644
23.	<b><u>ANNEXURE A-20:</u></b> Copy of the judgment passed by the Hon'ble Supreme Court in <b><i>Swiss Ribbons Private Limited and Another v. Union of India &amp; Others (2019) 4 SCC 17</i></b>	645-740
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28.	E-filing receipt	750



  
**AJAY BHARGAVA/ WAMIKA TREHAN/ MAITHILI MOONDRA**  
**[D/186/1997(R)]/ [D/2176/2014]/ [R/2051/2018]**  
**SIDDHANT KUMAR**  
**[D/1572/2020]**  
**KHAITAN & CO LLP**  
**ADVOCATES FOR THE APPLICANT**  
**MAX TOWERS, 7<sup>TH</sup> FLOOR,**  
**SECTOR 16B, NOIDA**  
**GAUTAM BUDDH NAGAR - 201 301**  
**PH.: 8826307196/ 9953771820**  
**EMAIL: [maithili.moondra@khaitanco.com](mailto:maithili.moondra@khaitanco.com)**

**PLACE: NEW DELHI**  
**DATE: 29 MARCH 2023**

- intimate the existing Customers about the Project being mortgaged to the Lenders within a period of 15 (fifteen) days from the date of first Disbursement and that the balance payments should be made favouring the Escrow Account.
- (xi) The Borrower shall have furnished an undertaking in favour of the Lenders that it shall ensure statutory compliance with respect to EWS Units and that Lenders shall have the right to regularly assess the progress with respect to the same, if applicable.
- (xii) The Borrower shall have furnished an undertaking in favour of the Lenders that it shall provide all required information related with Project to Lenders or any agency appointed by Lender until the Final Settlement Date and also that it shall provide access to the Project site, documents like sales register, collection register and any other documents required for validation of Information to Lender or any agency appointed by Lender as and when required.
- (xiii) The valuation of the Properties/ Mortgaged Properties shall have been done to the satisfaction of the Lenders, from one or two valuers as may be decided by the Lenders.
- (xiv) The Promoters shall have provided an undertaking (duly confirmed by the Borrower) to the effect that so long as any part of the Loan amount is outstanding :
- The Promoters will hold atleast (51) % (fifty one percent) of the paid up share capital of the Borrower (including economic & voting interest therein) without any Encumbrances thereon and shall retain management control of the Borrower;
  - The Promoters will not dispose of or transfer (directly or indirectly) any of their shareholding of the Borrower;
  - The Promoters will infuse additional equity fund in the Borrower in event of any shortfall in the resources of the Borrower for successful completion of the Project (including any shortfall in its working capital requirement or any cost overrun of the Project); and
  - The Promoters shall bring in additional funds to meet any shortfall towards Project completion and pay penalty as well as service the debt obligations towards the Loan, if any, arising due to the delay in the Project without any recourse to the Project.
  - The Promoters will infuse funds additional equity fund in the Borrower as per the base case cashflow attached in Schedule XI hereto.
  - The Promoters will ensure that none of the clauses of the existing Shareholders' Documents, if any, and the constitutional documents of the Borrower shall be prejudicial to the interest of the Lenders and in case of any inconsistencies between such documents and the terms of the Financing Documents, the same shall be amended to ensure that the terms of the Financing Documents executed in favour of the Lenders shall prevail.
- (xv) Absence of a Material Adverse Effect on the Borrower and the Project.
- (xvi) The Borrower shall have authorized their external auditors in writing to communicate directly with the Lenders regarding Borrower financial statements, accounts and operations of the Project and confirm that any costs payable to the auditors in this regard shall be borne by the Borrower.
- (xvii) The Borrower shall have arranged and shall have provided to the Lenders acknowledgement cum acceptance letter from counter parties of the Project Documents (if so required under such Project Document) in such form and manner as may be acceptable to the Lenders.
- (xix) The Borrower shall have furnished a letter from the Existing Lenders, who are being refinanced providing:-
- Confirmation/ certification of outstanding loan amount at their end being

 Ajnara India Limited As Borrower	 IVR Prime Developers (AVADI) Pvt. Ltd. As the Co-Borrower	 L&T Finance Limited as Lender 1	 L&T Housing Finance Limited As Lender 2
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- refinanced from the Lenders;
- (b) Confirmation that the loan account in their record is 'standard' as per extant RBI regulations;
- (c) Details of security and title deeds of properties held in their possession; and
- (d) Confirmation that upon receipt of full prepayment towards their loans as mentioned above, they will release their charge from the Project.





**PART B**  
**CONDITION PRECEDENT FOR SUBSEQUENT DISBURSEMENT**

The obligations of Lenders to make further disbursement out of the Loan shall *inter alia*, be subject to the Borrower complying with the following conditions precedent to the satisfaction of the Lenders:

- (i) The Borrower shall have submitted an expense statement duly certified by an independent chartered accountant duly stating the proposed utilization of the Loan proceeds to be availed from the Lenders.
- (ii) **End Use Certificate.** The Borrower shall have submitted with the Lenders a End Use Certificate from an auditor/reputed chartered accountant firm before the date of any subsequent Disbursement duly certifying that the disbursed part Loan has been utilized for the Purpose, defined herein.
- (iii) All the disbursements towards land payment and FAR payment shall have been made directly in favor of the NO.DA Authority.
- (iv) The Borrower shall have complied with all condition of milestones sales, technical progress and achievement of Project cost (to the satisfaction of the Lenders) before seeking subsequent Disbursements.
- (v) The Disbursement shall be made as per the Construction Schedule and Disbursement Schedule and subject to Borrower shall have achieved the projected costs as per the said schedule.
- (vi) The Borrower shall have submitted with the Lenders complete booking details with the number of Units of Project or Properties sold alongwith details of sum realized therefrom.
- (vii) All the conditions precedent detailed in Part A, hereinabove have been duly complied with and are in full force and effect.

**PART C**  
**CONDITIONS TO BE COMPLIED WITHIN 30 DAYS FROM THE DATE OF FIRST DISBURSEMENT OF THE LOAN:**

- (i) The Borrower shall have arranged and submitted with Lenders a No dues letter from Existing Lenders, being refinanced out of the proceeds of the Loan and also satisfying their charge on the properties provided to the Lenders as a security (including filing of satisfaction of charge with the ROC, as applicable).
- (ii) The Borrower shall have submitted letter from lenders being refinanced out of the proceeds of the Loan confirming no dues and also satisfying their charge on the properties provided to the Lenders as a Security (including filing of satisfaction of charge with the ROC, as applicable).
- (iii) Any escrow / retent an account opened for the benefit of the Existing Lenders being re-financed shall have been closed and a statement of account and confirmation that any amount standing to the credit of any such


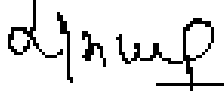


 Akshara India Limited as Borrower	 IPR Deems Developers (AVAD) Pvt. Ltd. As the Co-Borrower	 L&T Finance Limited as Lender 1	 L&T Housing Finance Limited As Lender 2
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- escrow/retention account is duly transferred to the Escrow Account created/opened for the benefit of the Lender pursuant to the Loan shall have been provided to the Lenders. Till the time the closure of the said escrow / retention account opened for the benefit of lenders is in process, the Borrower will ensure creation of lien on all the previous escrow account(s) in favor of Lenders.
- (iv) Project assets shall have been insured and insurance policies (including renewal thereof) in respect of the Borrower/Project shall be assigned in favour of the Lender/Security Trustee (as applicable) and they shall have been endorsed by stating the Lender/Security Trustee as the "first loss payee". The Borrower shall have inserted a clause in all its sale agreement(s) with its customers of the Project stating that L&T Finance Limited and L&T Housing Finance Limited is the Lenders of the Project and the properties of the Project have been charged / mortgaged in favour of the Lender and any sale consideration in respect of the units in the Project shall be deposited by such customers directly in the Escrow Account.
- (v) The Borrower shall have established Escrow Account with Escrow Bank of Lenders choice and also established DSRA or DSRA Account (if so required by the Lenders) in such form and manner and as per such terms and conditions as may be required by the Lenders.

#### PART D

#### CONDITIONS TO BE COMPLIED WITHIN SPECIFIED TIMEFRAME, AS STATED HEREIN, FROM THE DATE OF FIRST DISBURSEMENT OF THE LOAN:

- (i) The Borrower shall have provided a copy of permission to mortgage in favor of the Lenders/ Security Trustee from NOIDA Authority.
- (ii) Filing of Charge with Registrar of Companies ("ROC") and CERSAI shall have been made within 30 (thirty) days from the date of creation of charge by the Borrower to the satisfaction of the Lender/Security Trustee, a Charge Creation Confirmation Certificate shall have been submitted with Lender/Security Trustee in this regard.
- (iii) The Borrower shall obtain clearance of overdue payment of land payment or letter from the NOIDA Authority for re-scheduling of pending land payment instalment. Revised building plan on 3.5 FAR shall be approved within 3 months from the date of first Disbursement; pending the FAR approval, the Disbursement will be restricted to an amount where minimum Security Cover comes to 1.5 times on approved plans of 2 FAR;
- (iv) The Borrower shall apply for revised environmental clearance on the basis of 3.5 FAR within 15 (fifteen) days on receipt of approval of revised building plan and revised environmental clearance shall be received within 3 (three) months.
- (v) All other requisite approvals to be applied on the basis of 3.5 FAR within 15 (fifteen) days on receipt of revised building plans and revised requisite approvals to be received within 3 months of such application.





 Ajayaz India Limited As Borrower	 IVR Prime Developers (AVADC) Pvt. Ltd. As the Co-Borrower	 L&T Finance Limited as Lender 1	 L&T Housing Finance Limited As Lender 2
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**SCHEDULE VI  
EXISTING LOAN & EXISTING GUARANTEES**

S. No.	Name of the Existing Lenders	Respective Loans of Existing Lenders (in Rs.)
1.	Cooperation Bank	Rs. 70,00,00,000/-
2.	Union Bank	Rs. 70,00,00,000/-

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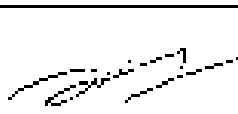
 <b>Aindra Jaiswal Limited</b> as Borrower	 <b>AVR Prime Developer (AVADI) Pvt. Ltd.</b> as the Co-Borrower	 <b>I &amp; F Finance Limited</b> as Lender 1	 <b>L&amp;T Housing Finance Limited</b> as Lender 2
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**SCHEDULE VII  
NOVATION DEED**

To Lenders/ Lenders' Agent,

1. This Novation Deed dated [\*] (hereinafter referred to as "Deed") relates to the Loan Agreement dated [\*] ("Agreement") as may be amended from time to time. Except as defined in this Deed, the capitalized terms defined in the Agreement shall have the same meaning in this Novation Deed and:
  - (a) "Novating Lenders" shall mean [\*] (which expression shall, unless it be repugnant to the subject or context thereof, include its successors and assigns);
  - (b) "New Lenders" shall mean [\*] (which expression shall, unless it be repugnant to the subject or context thereof, include its successors and assigns).
  
2. The Novating Lenders hereby
  - (a) confirms that, to the extent details appear below under the heading "Rights and/ or Obligations to be Novated", those details accurately summarize the rights and/ or obligations which are to be novated and which are, upon execution and delivery of this Novation Deed to Lenders/ Lenders' Agent (but subject to paragraph 3 below), cancelled and discharged in accordance with the Article 17.4 of the Agreement;
  - (b) confirms that consent, if any, required in accordance with the Article 17.4 of the Agreement has been duly obtained for this novation, and
  - (c) gives notice to the undersigned New Lenders that the Novating Lenders is/ are under no obligation to repurchase or/ or any part of those Rights and/ or Obligations to be Novated at any time nor to support any losses suffered by the New Lenders.
  
3. The undersigned New Lenders agrees that it assumes and acquires new rights and/ or obligations stated under the heading "Rights and/ or Obligations to be Novated" in accordance with the Article 17.4 of the Agreement on and with effect from [\*]
  
4. The New Lenders:
  - (a) confirms that, until further notice, its office and details for communication are set out below and the contents of Schedule I, Part B of this Agreement shall be amended to make the following addition:
 

For:           [\*]  
Address:       [\*]  
Attention:     [\*]  
Tel. No.       [\*]  
Fax:           [\*]
  - (b) agrees to perform and comply with the obligations expressed to be imposed on it by the Article 17.4 of the Agreement as a result of this Deed taking effect;
  - (c) acknowledges and accepts paragraph 2(c) above;
  - (d) agrees to be bound by the Agreement, and other Financing Documents (upon their amendment in the manner set out therein to reflect the participation of the New Lenders) in relation to the matters stated under the heading "Rights and/ or Obligations to be Novated" as if the New Lenders was a Party thereto in

 Avana Ltd a Limited as Borrower	 AVR Prime Developers (AVAD) Pvt. Ltd. as the Co-Borrower	 L&T Finance Limited as Lender 1	 L&T Housing Finance Limited as Lender 2
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- place and stead of the Novating Lenders except in relation to the rights of the Novating Lenders in respect of the said matters which shall accrue to the New Lenders with effect from the date hereof; and
- (e) confirms: on the basis of the facts then known to it that the novation will not give rights to any requirement for any withholding or Increased Cost or other cost or expenses to the Borrower which would not be incurred by the Borrower if the novation did not take place.
5. The above continuations and documents are given to and for the benefit of and made with each of the other parties to the Agreement.
6. **'Rights and/or Obligations to be Novated'** shall mean and include:  
The Novating Lenders' Commitment to the extent of Rs. [●] and/or loans to the extent of [●], to be novated in accordance with this Deed and the Agreement.
7. This Deed shall be governed by and construed in accordance with the laws of India.
8. Schedule 1B - LENDERS AND DETAILS OF LOAN of the Agreement shall stand amended in the following manner: [●]
9. Schedule II Key Terms the Agreement shall stand amended to make the following addition: [●]
10. This Deed shall be a Financing Document and shall be read in unison with the terms and conditions as more fully set out in the Agreement: as may be amended from time to time.

\_\_\_\_\_  
For the Novating Lenders

\_\_\_\_\_  
For New Lenders


\_\_\_\_\_  
For Borrower


Agreed for and on behalf of the other parties to the Agreement and Financing Agreements

\_\_\_\_\_  
Lenders

  
Ajitara India Limited  
As Borrower

  
IVR Prisco Developers (A VADU) Pvt. Ltd.  
As the Co-Borrower

  
L&T Finance Limited  
As Lender 1

  
L&T Housing Finance Limited  
As Lender 2

**SCHEDULE VIII  
DISBURSEMENT SCHEDULE**

**For Lender 1**

The Lender 1 may disburse total Rs.235 Crs. to 'Ajnara India Limited' for the Project 'Ajnara Anandrosia' after completing legal and other document formalities, as per schedule given below:

**1<sup>st</sup> Disbursement not exceeding Rs.67 Crs**

• For Takeover of existing loan Loan& for Completion of Tower wise work as below:-

- Tower A to H, J & K:-
- For Completion of Brickwork upto 22<sup>nd</sup> Upper Floor
- For Completion of Internal Plastering, Electrical & plumbing upto 15<sup>th</sup> Upper Floor
- For Completion of Internal Flooring & Tiling work upto 2<sup>nd</sup> Upper Floor
- Tower I:-
- For Completion of 50% plinth Work

**2<sup>nd</sup> Disbursement not exceeding Rs.20Crs**


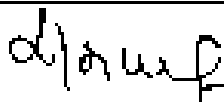


- Tower A to H, J & K:-
- For Completion of entire Brickwork
- For Completion of Internal Plastering, Electrical & plumbing upto 20<sup>th</sup> Upper Floor
- For Completion of Internal Flooring & Tiling work upto 5<sup>th</sup> Upper Floor
- For Completion of Doors, Windows & Fire Fighting work upto 5<sup>th</sup> Upper Floor
- Tower I:-
- For Completion of entire plinth Work

**3<sup>rd</sup> Disbursement not exceeding Rs.38Crs**

- Tower A to D:-
- For Completion of entire Internal Plastering, Electrical & plumbing
- For Completion of Internal Flooring & Tiling work upto 14<sup>th</sup> Upper Floor
- For Completion of Doors, Windows & Fire Fighting work upto 12<sup>th</sup> Upper Floor
- For Completion of 50% External Plastering work
- Tower F to H, J & K:-
- For Completion of Internal Plastering, Electrical & plumbing upto 22<sup>nd</sup> Upper Floor
- For Completion of Internal Flooring & Tiling work upto 9<sup>th</sup> Upper Floor
- For Completion of Doors, Windows & Fire Fighting work upto 7<sup>th</sup> Upper Floor
- Tower I:-
- For Completion of RCC work upto 4<sup>th</sup> Floor

**4<sup>th</sup> Disbursement not exceeding Rs.28Crs**

- Tower A to D:-

 Ajnara India Limited As Borrower	 AVR Prime Developer (AVADI) Pvt. Ltd. As the Co-Borrower	 L&T Finance Limited As Lender 1	 L&T Housing Finance Limited As Lender 2
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- For Completion of Internal Flooring & Tiling work upto 20<sup>th</sup> Upper Floor
- For Completion of Doors, Windows & Fire Fighting work upto 15<sup>th</sup> Upper Floor
- For Completion of entire External Plastering work
- For Commencement of Lift Installation & Painting work

• **Tower F to H, J & K:-**

- For Completion of entire Internal Plastering, Electrical & plumbing work
- For Completion of Internal Flooring & Tiling work upto 14<sup>th</sup> Upper Floor
- For Completion of Doors, Windows & Fire Fighting work upto 12<sup>th</sup> Upper Floor

• **Tower I:-**

- For Completion of RCC work upto 9<sup>th</sup> Floor
- For Completion of Brickwork upto 5<sup>th</sup> Floor

• **Tower M & N:-**

- For Completion of RCC work upto 10<sup>th</sup> Floor

**6<sup>th</sup> Disbursement not exceeding Rs.17Cr**

• **Tower A to D:-**

- For Completion of Buildings ready for handover in all respects

• **Tower F to H, J & K:-**

- For Completion of 25% External Plastering work
- For Completion of Internal Flooring & Tiling work upto 18<sup>th</sup> Upper Floor
- For Completion of Doors, Windows & Fire Fighting work upto 15<sup>th</sup> Upper Floor

• **Tower I:-**

- For Completion of RCC work upto 13<sup>th</sup> Floor
- For Completion of Brickwork upto 8<sup>th</sup> Floor
- For Completion of Internal Plastering, Electrical & plumbing upto 2<sup>nd</sup> Upper Floor

• **Tower M & N:-**

- For Completion of RCC work upto 13<sup>th</sup> Floor
- For Completion of Brickwork upto 3<sup>rd</sup> Floor

• **Tower O & P:-**

- For Completion of 50% Plinth Work

• **Tower Q1 & Q2:-**

- For Completion of 50% excavation Work

• **Commercial Tower:-**

- For Completion of 50% excavation Work

**6<sup>th</sup> Disbursement not exceeding Rs.30Cr**


• **Tower F to H, J & K:-**

- For Completion of 60% External Plastering work
- For Completion of Internal Flooring & Tiling work upto 22<sup>nd</sup> Upper Floor

  
Ajcara India Limited  
As Notary

  
IVR Prime Developers (A VAIIB) Pvt. Ltd.  
As the Co-Borrower

  
L&T Finance Limited  
as Lender 1

  
L&T Housing Finance Limited  
As Lender 2

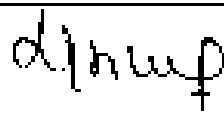
- For Completion of Doors, Windows & Fire Fighting work upto 18<sup>th</sup> Upper Floor
- For Commencement of Lift Installation
- **Tower I:-**
- For Completion of RCC work upto 16<sup>th</sup> Floor
- For Completion of Brickwork upto 10<sup>th</sup> Floor
- For Completion of Internal Plastering, Electrical & plumbing upto 7<sup>th</sup> Upper Floor
- For Completion of Internal Flooring & Tiling work upto 4<sup>th</sup> Upper Floor
- **Tower M & N:-**
- For Completion of RCC work upto 17<sup>th</sup> Floor
- For Completion of Brickwork upto 10<sup>th</sup> Floor
- For Completion of Internal Plastering, Electrical & plumbing upto 4<sup>th</sup> Upper Floor
- **Tower O & P:-**
- For Completion of entire Plinth Work
- **Tower Q1 & Q2:-**
- For Completion of entire excavation Work
- **Commercial Tower:-**
- For Completion of entire excavation Work

7<sup>th</sup> Disbursement not exceeding Rs.8Cr\$

- **Tower F to H, J & K:-**
- For Completion of entire External Plastering work
- For Completion of entire Internal Flooring & Tiling work
- For Completion of entire Doors, Windows & Fire Fighting work
- For Completion of 50% Lift Installation
- For Commencement of Painting work
- **Tower I:-**
- For Completion of RCC work upto 19<sup>th</sup> Floor
- For Completion of Brickwork upto 15<sup>th</sup> Floor
- For Completion of Internal Plastering, Electrical & plumbing upto 11<sup>th</sup> Upper Floor
- For Completion of Internal Flooring & Tiling work upto 8<sup>th</sup> Upper Floor
- For Completion of Doors, Windows & Fire Fighting work upto 4<sup>th</sup> Floor
- **Tower M & N:-**
- For Completion of RCC work upto 19<sup>th</sup> Floor
- For Completion of Brickwork upto 13<sup>th</sup> Floor
- For Completion of Internal Plastering, Electrical & plumbing upto 7<sup>th</sup> Upper Floor
- **Tower O & P:-**
- For Completion of RCC work upto 4<sup>th</sup> Floor
- **Tower Q1 & Q2:-**
- For Completion of entire plinth Work



Akshay India Limited  
As Borrower



IVRCL Infrastructure Development (AVAD) Pvt. Ltd.  
As the Co-Borrower



L&T Finance Limited  
As Lender 1



L&T Housing Finance Limited  
As Lender 2


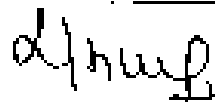


- **Commercial Tower:-**  
For Completion of entire excavation Work

**8<sup>th</sup> Disbursement not exceeding Rs. 18Cr**

- **Tower F to H, J & K:-**
- For Completion of Buildings ready for handover in all respects
- **Tower I:-**
- For Completion of entire RCC & Brickwork
- For Completion of Internal Plastering, Electrical & plumbing upto 20<sup>th</sup> Upper Floor
- For Completion of Internal Flooring & Tiling work upto 13<sup>th</sup> Upper Floor
- For Completion of Doors, Windows & Fire Fighting work upto 8<sup>th</sup> Floor
- **Tower M & N:-**
- For Completion of entire RCC work
- For Completion of Brickwork upto 20<sup>th</sup> Floor
- For Completion of Internal Plastering, Electrical & plumbing upto 15<sup>th</sup> Upper Floor
- For Completion of Internal Flooring & Tiling work upto 12<sup>th</sup> Upper Floor
- For Completion of Doors, Windows & Fire Fighting work upto 8<sup>th</sup> Floor
- **Tower O & P:-**
- For Completion of RCC work upto 11<sup>th</sup> Floor
- For Completion of Brickwork upto 8<sup>th</sup> Floor
- For Completion of Internal Plastering, Electrical & plumbing upto 2<sup>nd</sup> Upper Floor
- **Tower Q1 & Q2:-**
- For Completion of RCC work upto 8<sup>th</sup> Floor
- For Completion of Brickwork upto 3<sup>rd</sup> Floor
- **Commercial Tower:-**  
For Completion of entire Foundation Work

**8<sup>th</sup> Disbursement not exceeding Rs.3Cr**

- **Tower I:-**
- For Completion of entire Internal Plastering, Electrical & plumbing
- For Completion of Internal Flooring & Tiling work upto 20<sup>th</sup> Upper Floor
- For Completion of Doors, Windows & Fire Fighting work upto 18<sup>th</sup> Floor
- For Completion of 50% External Plastering work
- For Commencement of Lift Installation
- **Tower M & N:-**
- For Completion of entire Brickwork
- For Completion of Internal Plastering, Electrical & plumbing upto 20<sup>th</sup> Upper Floor
- For Completion of Internal Flooring & Tiling work upto 17<sup>th</sup> Upper Floor
- For Completion of Doors, Windows & Fire Fighting work upto 15<sup>th</sup> Floor
- **Tower O & P:-**

 Anurag Jain Limited as Borrower	 AVR Prime Developers (AVADI) Pvt. Ltd. As the Co-Borrower	 T&T Finance Limited as Lender 1	 WIT Housing Finance Limited As Lender 2
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- For Completion of RCC work upto 16<sup>th</sup> Floor
- For Completion of Brickwork upto 11<sup>th</sup> Floor
- For Completion of Internal Plastering, Electrical & plumbing upto 8<sup>th</sup> Upper Floor
- For Completion of Internal Flooring & Tiling work upto 5<sup>th</sup> Upper Floor
- For Completion of Doors, Windows & Fire Fighting work upto 3<sup>rd</sup> Floor
- **Tower Q1 & Q2:-**
- For Completion of RCC work upto 11<sup>th</sup> Floor
- For Completion of Brickwork upto 7<sup>th</sup> Floor
- For Completion of Internal Plastering, Electrical & plumbing upto 3<sup>rd</sup> Upper Floor
- **Commercial Tower:-**
- For Completion of entire Basement Work





**10<sup>th</sup> Disbursement not exceeding Rs.3Cr**

- **Tower I, M & N:-**
- For Completion of entire Internal Flooring & Tiling work
- For Completion of entire Doors, Windows & Fire Fighting work
- For Completion of entire External Plastering work
- For Completion of 70% of Lift Installation
- For Commencement of Painting work
- **Tower D & P:-**
- For Completion of RCC work upto 20<sup>th</sup> Floor
- For Completion of Brickwork upto 16<sup>th</sup> Floor
- For Completion of Internal Plastering, Electrical & plumbing upto 13<sup>th</sup> Upper Floor
- For Completion of Internal Flooring & Tiling work upto 10<sup>th</sup> Upper Floor
- For Completion of Doors, Windows & Fire Fighting work upto 8<sup>th</sup> Floor
- **Tower Q1 & Q2:-**
- For Completion of RCC work upto 16<sup>th</sup> Floor
- For Completion of Brickwork upto 13<sup>th</sup> Floor
- For Completion of Internal Plastering, Electrical & plumbing upto 8<sup>th</sup> Upper Floor
- For Completion of Internal Flooring & Tiling work upto 4<sup>th</sup> Upper Floor
- For Completion of Doors, Windows & Fire Fighting work upto 2<sup>nd</sup> Floor
- **Commercial Tower:-**
- For Completion of entire RCC work

**11<sup>th</sup> Disbursement not exceeding Rs.3Cr**

- **Tower I, M, N, O & P, Q1, Q2 & Commercial Tower:-**
- For Completion of Buildings ready for handover in all respects


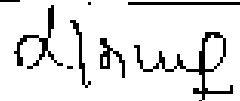


**For Lender II**

 Ajmera India Limited as Borrower	 AVR Prime Developments (AVADI) Pvt. Ltd. As the Co-Borrower	 L&T Finance Limited as Lender 1	 L&I Housing Finance Limited As Lender 2
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The Lender II may disburse total Rs.115 Crs. to 'Ajmera India Limited' for the Project 'Ajmera Ambrosia' after completing legal and other document formalities, for takeover of existing loan.

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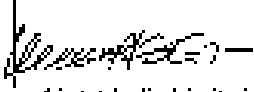
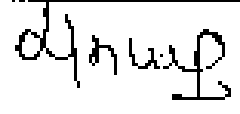


 Ajmera India Limited as Borrower	 IV & P Developers (AMAD) Pvt. Ltd. As the Co-Borrower	 L&T Finance Limited as Lender 1	 L & T Housing Finance Limited As Lender 2
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*As*  
**TRUE COPY**



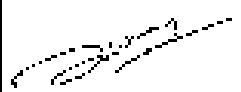

**SCHEDULE IX  
CONSTRUCTION SCHEDULE**

**Projected Progress of Work**

- **Tower A to D:-**
- Entire Brickwork should get over before end of 7<sup>th</sup> month from date of 1<sup>st</sup> disbursement
- Entire Internal Plastering should get over before end of 12<sup>th</sup> month from date of 1<sup>st</sup> disbursement
- Entire External Plastering, Electrical & plumbing should get over before end of 15<sup>th</sup> month from date of 1<sup>st</sup> disbursement
- Entire Flooring, Tiling & Fixing of Doors, Windows & Fire Fighting work should get over before end of 17<sup>th</sup> month from date of 1<sup>st</sup> disbursement
- Entire Lift Installation & Painting should get over before end of 18<sup>th</sup> month from date of 1<sup>st</sup> disbursement
- Entire Buildings should be ready for handover in all respects before end of 18<sup>th</sup> month from date of 1<sup>st</sup> disbursement
  
- **Tower F to H, J & K:-**
- Entire Brickwork should get over before end of 7<sup>th</sup> month from date of 1<sup>st</sup> disbursement
- Entire Internal Plastering should get over before end of 15<sup>th</sup> month from date of 1<sup>st</sup> disbursement
- Entire External Plastering, Electrical & plumbing should get over before end of 18<sup>th</sup> month from date of 1<sup>st</sup> disbursement
- Entire Flooring, Tiling & Fixing of Doors, Windows & Fire Fighting work should get over before end of 23<sup>rd</sup> month from date of 1<sup>st</sup> disbursement
- Entire Lift Installation & Painting should get over before end of 24<sup>th</sup> month from date of 1<sup>st</sup> disbursement
- Entire Buildings should be ready for handover in all respects before end of 24<sup>th</sup> month from date of 1<sup>st</sup> disbursement
  
- **Tower I, M & N:-**
- Entire RCC work should get over before end of 22<sup>nd</sup> month from date of 1<sup>st</sup> disbursement
- Entire Brickwork should get over before end of 33<sup>rd</sup> month from date of 1<sup>st</sup> disbursement
- Entire Internal Plastering should get over before end of 36<sup>th</sup> month from date of 1<sup>st</sup> disbursement
- Entire External Plastering, Electrical & plumbing should get over before end of 39<sup>th</sup> month from date of 1<sup>st</sup> disbursement
- Entire Flooring, Tiling & Fixing of Doors, Windows & Fire Fighting work should get over before end of 39<sup>th</sup> month from date of 1<sup>st</sup> disbursement
- Entire Lift Installation & Painting should get over before end of 43<sup>rd</sup> month from date of 1<sup>st</sup> disbursement
- Entire Buildings should be ready for handover in all respects before end of 44<sup>th</sup> month from date of 1<sup>st</sup> disbursement
  
- **Tower O & P:-**
- Entire Plinth work should get over before end of 21<sup>st</sup> month from date of 1<sup>st</sup> disbursement
- Entire RCC work should get over before end of 39<sup>th</sup> month from date of 1<sup>st</sup> disbursement

 Ajanta Ltd. Limited as Owner	 AVR Prime Developers (AVADI) Pvt. Ltd. As the Co-Borrower	 L&T Finance Limited as Lender 1	 L&T Housing Finance Limited As Lender 2
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- Entire Brickwork should get over before end of 42<sup>nd</sup> month from date of 1<sup>st</sup> disbursement
  - Entire Internal Plastering should get over before end of 45<sup>th</sup> month from date of 1<sup>st</sup> disbursement
  - Entire External Plastering, Electrical & plumbing should get over before end of 47<sup>th</sup> month from date of 1<sup>st</sup> disbursement
  - Entire Flooring, Tiling & Fixing of Doors, Windows & Fire Fighting work should get over before end of 48<sup>th</sup> month from date of 1<sup>st</sup> disbursement
  - Entire Lift Installation & Painting should get over before end of 51<sup>st</sup> month from date of 1<sup>st</sup> disbursement
  - Entire Buildings should be ready for handover in all respects before end of 52<sup>nd</sup> month from date of 1<sup>st</sup> disbursement
- **Tower Q1 & Q2:-**
  - Entire Plinth work should get over before end of 24<sup>th</sup> month from date of 1<sup>st</sup> disbursement
  - Entire RCC work should get over before end of 42<sup>nd</sup> month from date of 1<sup>st</sup> disbursement
  - Entire Brickwork should get over before end of 45<sup>th</sup> month from date of 1<sup>st</sup> disbursement
  - Entire Internal Plastering should get over before end of 48<sup>th</sup> month from date of 1<sup>st</sup> disbursement
  - Entire External Plastering, Electrical & plumbing should get over before end of 51<sup>st</sup> month from date of 1<sup>st</sup> disbursement
  - Entire Flooring, Tiling & Fixing of Doors, Windows & Fire Fighting work should get over before end of 52<sup>nd</sup> month from date of 1<sup>st</sup> disbursement
  - Entire Lift Installation & Painting should get over before end of 54<sup>th</sup> month from date of 1<sup>st</sup> disbursement
  - Entire Buildings should be ready for handover in all respects before end of 55<sup>th</sup> month from date of 1<sup>st</sup> disbursement
- **Commercial Tower:-**
  - Entire Basement work should get over before end of 42<sup>nd</sup> month from date of 1<sup>st</sup> disbursement
  - Entire RCC work should get over before end of 45<sup>th</sup> month from date of 1<sup>st</sup> disbursement
  - Entire Brickwork & Internal Plastering should get over before end of 48<sup>th</sup> month from date of 1<sup>st</sup> disbursement
  - Entire Electrical & plumbing should get over before end of 51<sup>st</sup> month from date of 1<sup>st</sup> disbursement
  - Entire Flooring, Tiling & Fixing of Doors, Windows & Fire Fighting work should get over before end of 52<sup>nd</sup> month from date of 1<sup>st</sup> disbursement
  - Entire Lift Installation & Painting should get over before end of 51<sup>st</sup> month from date of 1<sup>st</sup> disbursement
  - Entire Cladding should get over before end of 54<sup>th</sup> month from date of 1<sup>st</sup> disbursement
  - Entire Buildings should be ready for handover in all respects before end of 54<sup>th</sup> month from date of 1<sup>st</sup> disbursement

 Ajanta Housing Limited as Borrower	 L&T Prime Developers (A.M.S.D.) Pvt. Ltd. As the Co-Borrower	 L&T Finance Limited as Lender 1	 L&T Housing Finance Limited As Lender 2
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**SCHEDULE X  
SALES SCHEDULE**

Total area in the Project- 3707240 sq.ft.

Area sold/booked – 1173555 sq.ft.

Unsold Area: 2533685 sq.ft. including commercial

No of Qtr From 1 <sup>st</sup> disbursement:	Trigger for Right to levy additional interest		Trigger for Right to recall	
	Cumulative Area to be sold (sq.ft.)	Cumulative Sales Inflow (Rs In cr)	Cumulative Area to be sold (sq.ft.)	Cumulative Sales Inflow (Rs In cr)
1	0	0	0	0
2	51200	9	0	0
3	62400	27	31200	9
4	106079	49	62400	27
5	149759	73	106079	49
6	199679	103	149759	73
7	249599	135	199679	103
8	324478	172	249599	135
9	390358	214	324478	172
10	499107	246	390358	214
11	599036	284	499107	246
12	723836	333	599036	284
13	851115	392	723836	333
14	965914	454	851115	392
15	1110713	513	965914	454
16	1235513	576	1110713	513
17	1360312	644	1235513	576
18	1485071	722	1360312	644
19	1617430	797	1485071	722
20	1745890	875	1617430	797
21	1899509	952	1745890	875
22	2053028	1021	1899509	952
23	2206427	1093	2053028	1021
24	2363826	1165	2206427	1093
25	2533585	1246	2363826	1165
26			2533585	1246

Anand Infra Limited  
as Borrower


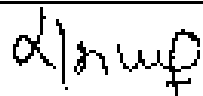


IWR Prime Developers (AAVAB) Pvt. Ltd.  
As the Co-Borrower

L&T Finance Limited  
as Lender 1

L&T Housing Finance Limited  
As Lender 2

**SCHEDULE XI  
QUARTERLY CASHFLOW STATEMENT**

Particulars	Qtr	17				18				19				20				21				22					
		Total	Mar-17	Jun-17	Sep-17	Dec-17	Mar-18	Jun-18	Sep-18	Dec-18	Mar-19	Jun-19	Sep-19	Dec-19	Mar-20	Jun-20	Sep-20	Dec-20	Mar-21	Jun-21	Sep-21	Dec-21	Mar-22	Jun-22	Sep-22	Dec-22	Mar-23
Employers Contribution	-125	-125																									
Project Loan Interest	145	145																									
Project Loan - LTHF	392		183	20	24	28	17	30	5		3	3															
Receivable - Govt	672	377	2	17	16	18	20	33	23	70																	
Receivable - Other	170		1	4	8	8	10	11	17	23	37	37															
<b>Total Receipts</b>	<b>1,089</b>	<b>392</b>	<b>191</b>	<b>27</b>	<b>60</b>	<b>62</b>	<b>47</b>	<b>62</b>	<b>46</b>	<b>42</b>	<b>60</b>	<b>40</b>	<b>62</b>	<b>62</b>	<b>62</b>	<b>62</b>	<b>62</b>	<b>67</b>	<b>78</b>	<b>75</b>	<b>78</b>	<b>75</b>	<b>81</b>	<b>72</b>	<b>72</b>	<b>81</b>	
Land Cost	158	158	15	5	4	6	4	5	6	7	3	4	9	2													
Cost of Current Assets	228	228	16	24	20	24	20	20	20	20	18	21	20	28	17	15	15	18	18	2	4	4					
Dividend Income	10	4												1	1	1	1	1									
FAIR Charges	28				18			11			14			12			12										
Adm & Contingency Exp	31	5	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	2	6	3	2	2	2	2	2	2	2
Marketing Charges	54	21	0	6	6	2	2	1	0	2	2	0	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Consultant charges	12	6	1		1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Interest	138	22	4	8	7	8	8	12	11	11	11	11	11	11	11	11	11	11	11	11	11	11	11	11	11	11	11
Processing Fee	7		5																								
DSRA	1																										
<b>Total Expenditure</b>	<b>1,173</b>	<b>243</b>	<b>48</b>	<b>28</b>	<b>33</b>	<b>50</b>	<b>45</b>	<b>60</b>	<b>49</b>	<b>48</b>	<b>49</b>	<b>35</b>	<b>47</b>	<b>57</b>	<b>53</b>	<b>59</b>	<b>61</b>	<b>65</b>	<b>62</b>	<b>60</b>	<b>66</b>	<b>66</b>	<b>66</b>	<b>66</b>	<b>66</b>	<b>66</b>	<b>66</b>
Finance Expenses	150																										
Equipment contribution	154	142																									
<b>Total Outflow</b>	<b>1,669</b>	<b>385</b>	<b>142</b>	<b>16</b>	<b>63</b>	<b>50</b>	<b>45</b>	<b>60</b>	<b>49</b>	<b>48</b>	<b>49</b>	<b>35</b>	<b>47</b>	<b>57</b>	<b>53</b>	<b>59</b>	<b>61</b>	<b>65</b>	<b>62</b>	<b>60</b>	<b>66</b>	<b>66</b>	<b>66</b>	<b>66</b>	<b>66</b>	<b>66</b>	<b>66</b>
Net Cash Inflow	324		1	0	2	2	2	2	3	1	2	2	0	1	6	8	3	18	2	8	1	1	1	1	1	1	1
Cum. Net Surplus/Deficit	224		1	1	3	5	7	9	11	7	9	11	11	11	17	25	28	46	48	56	57	58	59	60	61	62	63

 Ajanta India Limited as Borrower	 IPR Private Developers (AVADI) Pvt. Ltd. As the Co Borrower	 L&T Finance Limited as Leader 1	 L&T Housing Finance Limited As Leader 2
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## Annexure I

Sales Unit No.	Tower	Area (sq.ft.)	Sale value (Rs.)	Received (Rs.)	Receivable (Rs.)
AMDH000206	DH	1254	5,359,681	4,746,097	607,584
AMDH0009004	DD	1255	5,290,986	4,943,723	347,263
AMDR013301	DK	1650	7,276,309	6,239,002	1,037,309
AMDH0004005	DF	1475	6,815,675	5,296,783	718,892
AMDC017001	DC	1095	5,572,424	3,809,020	1,663,809
AMDA0217001	DA	1095	4,349,747	1,973,441	2,370,306
AMDS022005	DS	1255	4,888,252	1,913,998	2,974,354
AMDS005005	DS	1255	5,672,114	2,784,532	2,887,587
AMDF006001	DF	1475	7,059,577	6,268,486	791,091
AMDB015002	DB	1095	5,195,572	361,365	4,834,207
AMDH006001	DH	1255	5,672,000	2,784,474	2,887,527
AMDC015008	DC	1095	4,230,805	3,733,951	496,854
AMDB011004	DB	1095	5,060,945	4,480,305	570,640
AMDS007003	DS	1255	5,838,698	2,864,424	2,973,674
AMDS008005	DS	1255	5,883,641	5,218,997	664,644
AMDH010002	DH	1255	5,731,347	511,787	4,719,560
AMDF003005	DF	1475	7,318,371	6,494,796	823,575
AMDA011006	DA	1095	4,342,614	3,765,685	576,929
AMDF010003	DF	1475	6,728,148	6,309,413	418,736
AMDF008002	DF	1475	6,251,061	1,832,805	4,418,256
AMDS007005	DS	1255	6,068,668	5,391,623	677,045
AMDH009004	DE	1475	6,884,998	5,761,007	1,123,992
AMDH003003	DE	1254	5,554,983	4,934,472	620,511
AMDB0028004	DB	1095	4,628,024	4,309,105	310,919
AMDC003001	DC	1095	4,402,605	3,533,616	868,989
AMDR017001	DK	1650	6,767,727	3,320,061	3,447,666
AMDC002203	DC	1095	5,036,505	50,000	4,986,506
AMDC0011006	DD	1255	4,876,637	4,312,963	563,674
AMDC0012006	DD	1255	5,149,581	4,814,011	335,570
AMDA011001	DA	1095	4,415,152	3,900,416	514,737
AMCE015005	DE	1475	6,743,374	2,418,783	3,824,592
AMCC015002	DC	1095	4,716,772	4,134,456	582,317
AMJ002005	DJ	1795	8,674,030	7,710,281	963,749
AMDF010003	DF	1475	6,093,611	5,098,913	995,298
AMDC014001	DD	1255	5,152,685	3,029,508	2,123,177
AMDH007006	DH	1255	5,537,559	4,474,895	1,062,564
AMDA007007	DA	1095	4,955,188	4,635,017	320,170
AMJ005005	DJ	1795	8,012,518	3,066,381	4,946,137
AMDA003004	DA	1095	5,126,953	2,260,550	2,866,403
AMDF010402	DE	1475	7,492,185	6,282,770	1,209,415
AMCC002006	CC	1095	4,987,931	2,442,437	2,545,494
AMDB007004	DB	1095	5,230,795	4,465,104	765,691

  
Ajman India Limited  
As Borrower

  
IVR Prime Developers (AYAD) Pvt. Ltd.  
As the Co-Borrower

  
L&T Finance Limited  
As Lender 1

  
L&T Housing Finance Limited  
As Lender 2

Sales Unit No.	Tower	Area (sq.ft.)	Sale value (Rs.)	Received (Rs.)	Receivable (Rs.)
AMDB012006	DB	1095	5,371,214	4,087,152	584,062
AMDF012002	DF	1475	6,319,461	5,926,568	392,896
AMDHD14005	DH	1255	5,359,856	5,013,178	346,678
AMDA008007	DA	1095	5,019,307	2,457,900	2,561,407
AMGCG12008	CG	1255	5,513,400	7,457,721	3,055,679
AMCF005001	CF	1475	7,144,721	6,345,241	799,480
AMQF026005	QF	1475	6,915,671	6,480,846	434,825
AMQB005009	QB	1095	4,693,565	4,097,257	596,207
AMQB003002	QB	1095	5,637,275	2,766,885	2,870,390
AMQFD19306	QF	1475	6,718,315	6,258,027	460,288
AMOK012005	OK	1650	7,920,912	6,739,647	1,190,265
AMDA006004	DA	1095	5,088,029	2,501,072	2,586,958
AMQF022001	QF	1475	6,131,567	2,597,082	3,534,485
AMQCG07003	CG	1255	5,702,324	2,799,635	2,902,689
AMQD006005	QD	1475	6,185,195	1,515,474	4,669,721
AMOH017005	OH	1255	5,771,738	5,127,155	644,583
AMOC014008	OC	1095	4,309,335	3,990,412	318,923
AMDA0012005	DA	1095	4,261,554	3,968,282	293,272
AMDH012002	DH	1255	5,435,088	2,559,513	2,875,575
AMDE010007	DE	1475	5,343,971	4,500,000	843,971
AMDK014005	DK	1650	7,157,860	5,713,432	1,444,428
AMGCG03003	CG	1255	5,158,892	4,568,754	590,138
AMQC005007	QC	1095	4,385,529	3,873,655	511,864
AMQF024301	QF	1475	7,024,750	6,237,093	787,657
AMQA001008	QA	1095	4,538,387	3,785,771	752,616
AMQC007006	QC	1095	4,548,741	4,245,427	303,314
AMQC017008	QC	1095	3,560,100	3,688,410	271,991
AMUG007008	UG	1255	4,405,795	3,888,671	517,125
AMQAD12006	QA	1095	4,499,551	4,181,538	318,012
AMQED1G006	QE	1475	6,508,522	2,838,066	3,670,456
AMQK009006	QK	1650	7,539,504	4,105,949	3,433,554
AMOK012306	OK	1650	7,240,727	3,551,565	3,689,057
AMDK006501	DK	1650	7,190,233	706,219	6,484,014
AMDA009006	DA	1095	5,062,441	4,737,073	325,368
AMDE007001	DE	1475	7,943,894	5,269,122	2,674,772
AMQA016006	QA	1095	5,124,266	4,383,735	740,531
AMGCG09005	CG	1255	5,745,680	5,203,736	541,944
AMQH011003	QH	1255	5,797,647	5,140,807	656,840
AMQCG07006	CG	1095	4,834,809	2,831,703	2,002,106
AMOH020003	OH	1255	5,504,053	4,882,401	621,652
AMDH019003	DH	1255	5,712,082	5,074,111	637,971
AMGCG02007	CG	1255	4,942,640	2,119,800	2,822,840
AMQA023005	QA	1095	4,337,337		4,337,337
AMQD004002	QD	1095	4,507,611	3,983,929	523,682

  
Ajanta India Limited  
as Borrower

  
TVR Prime Developers (AVAD) Pvt. Ltd.  
As Co-Borrower

  
L&T Finance Limited  
as Lender 1

  
L&T Housing Finance Limited  
As Lender 2

Sales Unit No.	Tower	Area (sq.ft.)	Sale value (Rs.)	Received (Rs.)	Receivable (Rs.)
AM00008007	GD	1255	5,255,340	4,409,198	752,147
AM00006505	DC	1095	4,769,885	4,456,008	313,878
AM00007002	GE	1255	5,313,533	2,609,246	2,704,288
AM00016002	DE	1255	4,999,293	3,916,631	1,082,662
AM00009005	GA	1095	4,697,875	4,157,656	540,218
AM00004007	DD	1255	4,948,210	4,377,879	570,331
AM00011001	DK	1650	6,942,926	3,062,482	3,880,444
AM00009009	DF	1475	5,586,863	3,709,323	1,877,540
AM00018003	DC	1095	5,006,884	2,403,000	2,603,884
AM00004001	DD	1255	6,182,982	5,486,000	696,982
AM00004005	DC	1095	4,448,141	3,330,202	1,117,939
AM00011009	DF	1475	6,634,760	3,263,229	3,371,531
AM00010001	DK	1650	7,768,829	6,907,239	861,590
AM00020004	DC	1095	5,399,151	4,381,345	1,017,806
AM00006001	DD	1255	5,914,557	3,990,000	1,924,557
AM00010003	DB	1095	5,110,818	4,527,797	583,021
AM00015005	DI	1255	5,965,900	4,992,678	973,222
AM00003008	DA	1095	5,094,707	4,768,821	325,886
AM00020007	DK	1650	6,275,305	2,148,264	4,127,042
AM00012003	DC	1095	5,292,140	4,535,620	756,520
AM00008004	GA	1095	4,678,038	3,430,949	1,247,089
AM00014007	DE	1095	5,329,139	4,006,428	1,322,711
AM00010006	DE	1475	5,764,075	5,106,478	657,597
AM00012005	DC	1095	4,752,000	3,859,399	892,602
AM00014001	DF	1475	5,188,379	5,227,395	660,979
AM00015005	DE	1255	5,812,242	4,982,119	830,123
AM00016006	DH	1255	5,815,136	4,926,268	888,868
AM00014004	DG	1255	5,069,053	5,796,829	667,234
AM00004003	DI	1255	5,481,084	4,847,554	633,530
AM00001001	DA	1095	4,738,680	3,528,507	1,210,173
AM00018006	DF	1475	6,726,576	6,308,777	417,799
AM00014007	DI	1255	5,353,139	2,697,802	2,655,337
AM00009005	DC	1095	5,050,585	4,475,812	574,773
AM00007006	DA	1095	4,757,656	4,422,850	334,807
AM00005002	DH	1255	5,776,915	5,122,474	654,441
AM00018004	DC	1095	5,003,303	4,505,690	497,613
AM00010004	DE	1255	5,098,155	4,504,769	593,386
AM00015003	DB	1095	4,680,371	200,000	4,480,371
AM00001001	DF	1475	7,382,963	6,337,295	1,045,668
AM00011006	DK	1650	7,171,076	3,517,593	3,653,483
AM00009004	DF	1475	6,874,745	6,045,252	829,493
AM00020004	DA	1095	4,448,141	2,507,383	1,940,758
AM00003003	DD	1255	4,879,470	2,752,298	2,127,172
AM00006002	DC	1095	4,355,865	2,454,376	1,901,489

  
Ajnara India Limited  
As Borrower

  
AVR Prime Developments (AVADI) Pvt. Ltd.  
As the Co-Borrower

  
L&T Finance Limited  
As Lender 1


  
L&T Housing Finance Limited  
As Lender 2



Sales Unit No.	Tower	Area (sq.Fts.)	Sale value (Rs.)	Received (Rs.)	Receivable (Rs.)
AMCH007001	CH	1255	5,332,667	4,666,053	666,599
AMCH007004	CA	1095	4,245,910	3,928,154	317,717
AMCH010002	CH	1255	5,824,145	5,170,884	653,261
AMCH016005	CH	1255	5,809,579	5,157,099	652,480
AMCD009002	CD	1255	6,122,732	4,645,928	1,465,804
AMCC002007	CC	1095	5,276,150	4,001,634	1,274,516
AMCK007002	CK	1650	7,503,975	726,000	6,577,975
AMCC010006	CC	1095	5,018,401	4,443,671	574,731
AMCC016003	CC	1095	4,561,067	4,257,105	303,962
AMCH005005	CA	1095	4,768,977	4,221,735	547,192
AMCA014001	CA	1095	4,623,700	400,000	4,223,700
AMCG003006	CG	1255	4,824,475	4,355,896	468,579
AMCG011004	CG	1255	5,560,655	5,314,071	246,585
AMCG0052003	CG	1255	5,519,976	51,000	5,858,976
AMCK022001	CK	1650	6,767,033	5,730,700	1,027,333
AMCC003004	CC	1095	4,591,416	4,039,291	552,125
AMCA016003	CA	1095	4,322,676	3,817,092	505,585
AMCE015006	CE	1475	6,832,754	5,824,963	1,007,801
AMCC016006	CC	1095	4,773,545	4,459,159	314,386
AMCG003004	CG	1255	6,014,566	5,354,476	659,991
AMCF014005	CF	1475	5,754,075	5,290,692	472,383
AMCC008004	CC	1095	4,500,657	1,985,751	2,514,905
AMCG005008	CG	1255	5,913,342	2,614,428	3,298,914
AMCA022003	CA	1095	3,868,586	1,094,495	2,774,091
AMCF003006	CF	1475	6,116,729	5,737,777	388,952
AMCG006601	CG	1255	5,330,282	4,452,585	877,697
AMCF011001	CF	1475	6,935,133	5,803,245	1,131,888
AMDG012A004	DG	1795	6,002,120	5,325,747	676,373
AMDB009006	DB	1095	4,890,109	2,402,510	2,487,600
AMCF003006	CF	1475	6,281,401	5,854,775	426,626
AMCC017003	CC	1095	5,404,235	4,750,873	653,362
AMCF021004	CF	1475	5,695,491	2,796,968	2,898,523
AMDK014005	DK	1650	6,788,550	716,056	6,072,494
AMCE003002	CE	1475	6,812,210	300,000	6,512,210
AMCK010002	CK	1650	7,384,029	3,553,722	3,831,307
AMCG015004	CG	1255	5,290,986	4,685,514	605,472
AMCH016005	CH	1255	5,720,301	5,380,347	349,954
AMCD002008	CD	1255	5,193,913	4,589,877	594,036
AMCH004003	CH	1095	5,095,160	4,514,349	580,811
AMCD012003	CD	1255	9,285,743	8,267,336	1,018,407
AMCC001003	CC	1095	4,568,945	4,039,292	529,653
AMCH022002	CH	1255	5,544,740	4,920,895	623,845
AMCK004005	CK	1650	7,914,718	7,039,487	875,261
AMCH009006	CH	1255	5,163,047	4,754,679	408,368



Ajanta Exits Limited  
As Borrower



AVR Prime Developments (AVAD) Pvt. Ltd.  
As the Co-Borrower



L&T Finance Limited  
As Lender 1



L&T Housing Finance Limited  
As Lender 2

Sales Unit No.	Tower	Area (sq.fts.)	Sale value (Rs.)	Received (Rs.)	Receivable (Rs.)
AMDD0016008	OD	1255	6,091,630	4,611,204	1,480,425
AMDD010001	OC	1095	5,168,547	4,579,087	589,460
AMDD009003	OB	1095	4,890,991	1,977,199	2,913,792
AMDD0019002	OK	1650	7,043,672	3,452,852	3,590,820
AMDD022005	OK	1650	6,474,196	2,534,475	3,939,721
AMDD012003	OC	1095	4,959,655	3,844,867	1,114,788
AMDD003002	OC	1095	4,507,427	3,983,742	523,685
AMDH015003	DII	1255	5,749,718	5,105,796	643,922
AMDG12A002	OG	1795	6,076,853	5,107,204	969,649
AMDH025006	OH	1255	5,100,128	4,517,405	582,723
AMDD012002	DD	1255	5,531,711	2,967,323	2,564,388
AMDF011002	OF	1475	6,826,323	6,067,255	759,068
AMDF007002	OF	1475	6,424,380	2,844,487	3,579,893
AMDF021005	OF	1475	6,504,638	5,559,193	945,445
AMDK005001	UK	1550	7,520,493	47,000	7,473,493
AMDA023002	DA	1095	4,240,373	1,861,456	2,378,917
AMDH021006	OH	1255	5,291,099	2,510,975	2,780,124
AMDK020001	OK	1650	6,284,502	3,073,599	3,210,903
AMDC014003	OE	1475	5,696,002	5,045,728	650,274
AMDC006002	OE	1475	6,012,616	5,331,244	681,372
AMDC023007	OC	1095	4,150,947	1,522,576	2,628,371
AMSHD20002	CH	1255	5,396,055	4,450,066	945,989
AMZAC14004	DA	1095	4,561,067	4,457,105	103,962
AMZGG02005	GG	1255	5,193,866	4,600,355	593,511
AMZGD10007	GG	1255	4,912,121	4,345,517	566,604
AMGE012001	OE	1475	6,915,900	5,792,540	1,123,360
AMZJD05002	DJ	1795	6,520,992	5,918,597	602,395
AMZAD02005	GA	1095	4,244,674	-	4,244,674
AMDF009005	OF	1475	7,085,932	6,293,319	792,613
AMDB003004	OH	1095	5,101,999	4,521,892	580,107
AMDL023004	OJ	1995	7,797,553	2,681,053	5,116,500
AMDL006004	OJ	1995	8,127,016	6,289,940	1,837,076
AMJH009005	OH	1255	5,579,425	5,194,251	385,174
AMDD005003	OD	1255	5,199,812	2,553,476	2,646,336
AMDD006002	OD	1255	5,053,218	4,422,477	630,741
AMDD007001	DD	1255	5,072,583	4,488,418	584,165
AMDH012001	OH	1255	5,396,061	2,982,857	2,413,204
AMDG005002	OG	1255	5,904,997	5,250,321	654,676
AMDA005007	DA	1095	4,384,394	3,872,641	511,753
AMDH006003	OH	1255	5,919,885	5,259,147	660,738
AMDK012001	OK	1650	5,872,001	2,580,466	3,291,535
AMZDD003001	GD	1255	5,939,644	4,626,263	1,313,381
AMZDD01002	OB	1095	5,181,225	4,492,150	689,075
AMGH009002	OB	1095	5,072,588	4,794,356	278,232

*[Signature]*  
Ajanta Mkt. Limited  
as Borrower


*[Signature]*  
SVR Prince Developers (PVT) Ltd  
As the Co-Borrower

*[Signature]*  
L&T Finance Limited  
as Lender 1

*[Signature]*  
L&T Housing Finance Limited  
as Lender 2

*[Signature]*  
TRUE COPY

Sales Unit No.	Tower	Area (sq.fts.)	Sale value (Rs.)	Received (Rs.)	Receivable (Rs.)
AMCK011005	OK	1650	7,639,560	3,250,000	4,389,560
AMGD02001	OD	1255	6,194,633	5,319,885	874,748
AMCH03001	OH	1255	6,159,257	5,467,091	692,166
AMCC04006	OC	1095	5,062,490	4,737,064	325,426
AMDH01007	OH	1255	5,807,862	5,162,502	645,360
AMDC01008	OC	1095	4,487,396	4,186,908	300,488
AMDC017001	OC	1095	4,922,876	3,817,091	1,105,785
AMDF007006	OF	1475	7,044,210	6,254,635	789,575
AMDC12A001	OC	1095	4,737,855	3,244,343	1,493,512
AMDA03A004	OA	1095	4,912,267	2,413,198	2,499,069
AMDH017004	OH	1255	5,797,408	5,123,218	674,190
AMDF015004	OF	1475	6,415,192	3,138,894	3,276,298
AMDA030056	OA	1095	4,231,128	3,734,354	496,774
AMCC032004	OC	1095	5,364,992	4,751,552	613,440
AMDH039001	OH	1095	5,213,686	4,622,499	591,187
AMDC03001	OE	1475	6,207,644	5,507,183	700,461
AMGD010008	OG	1255	5,603,353	2,750,149	2,853,204
AMDA05007	OA	1094	4,384,394	3,872,541	511,853
AMGE04004	OE	1475	6,959,304	2,016,352	4,942,952
AMCH516002	OII	1255	5,715,051	5,075,784	639,267
AMGF001003	OF	1475	6,817,141	3,384,864	3,432,277
AMGR005002	OK	1650	6,905,742	3,058,638	3,847,104
AMCC04006	OC	1095	4,375,640	2,944,085	1,431,555
AMCC04005	OG	1245	5,052,902	4,472,872	580,030
AMCC02005	OC	1095	4,583,842	4,316,900	266,942
AMCC007007	OC	1095	4,954,197	4,634,071	320,126
AMDH003001	OH	1255	5,932,147	5,279,176	652,971
AMDA039002	OA	1095	4,343,747	3,896,014	447,733
AMDE000003	DE	1475	5,888,373	5,218,886	669,487
AMDA011204	OA	1095	5,317,391	4,028,269	1,289,122
AMDC04004	OJ	1995	8,927,567	3,482,771	5,444,796
AMGG010005	OG	1255	5,782,698	5,144,780	637,918
AMCC005003	OC	1095	5,236,238	4,641,087	595,151
AMDC014004	OC	1095	4,708,367	4,397,346	311,021
AMDR012004	OK	1795	7,205,635	6,400,130	805,505
AMDF011006	OF	1475	5,820,301	5,160,157	660,144
AMDC010001	OF	1475	5,886,646	5,214,134	672,512
AMDF070001	OF	1475	7,079,254	6,280,816	798,438
AMDB005003	OB	1094	5,117,746	4,789,883	327,863
AMGG014006	OG	1255	5,215,635	312,080	4,903,555
AMDH012005	OH	1095	5,036,774	4,481,198	555,576
AMGD014004	OJ	1995	6,797,890	5,440,000	1,357,890
AMDA014006	OA	1094	5,034,150	4,460,840	573,310
AMGR015005	OK	1650	7,200,873	6,728,485	472,388

  
Ajnara India Limited  
18, Bhubaneswar

  
VR Prime Developers (AVADP) Pvt. Ltd.  
As the Co-Borrower

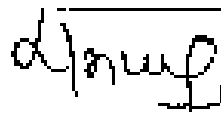
  
L&T Finance Limited  
as Lender 1

  
L&T Housing Finance Limited  
As Lender 2

Sales Unit No.	Tower	Area (sq. fts.)	Sale value (Rs.)	Received (Rs.)	Receivable (Rs.)
AMDK021006	OK	1650	7,428,466	3,996,296	3,432,170
AMOD019008	OD	1255	5,757,024	4,859,853	897,171
AMUD007008	OD	1255	5,129,208	3,132,572	1,996,636
AMDB011002	OB	1095	5,185,457	4,597,537	587,920
AMDK024502	OK	1650	6,000,442	636,245	5,364,197
AMDC011002	OC	1095	4,621,474	4,314,636	306,798
AMDH012006	OH	1255	5,785,124	5,123,294	661,830
AMOC000005	OI	1295	7,256,597	6,449,374	807,223
AMDA001003	OA	1095	5,079,176	2,462,556	2,596,610
AMOD003004	OD	1255	5,795,352	2,846,921	2,948,431
AMOC000905	OC	1095	5,123,947	4,795,607	328,250
AMDH001007	OH	1255	5,579,347	2,719,754	2,859,593
AMOC008002	OC	1095	4,495,910	3,928,194	517,717
AMDH019006	OH	1255	5,734,935	4,895,640	839,296
AMDG002008	OG	1255	5,790,986	3,118,062	2,172,104
AMDG0016005	OG	1255	5,209,123	2,042,248	3,166,875
AMDH006001	OH	1255	5,730,017	5,115,246	614,765
AMCG012006	CG	1255	5,813,995	4,590,495	1,313,501
AMCG004003	CG	1255	5,431,998	4,811,815	620,163
AMOC001007	OC	1095	5,358,887	4,585,884	773,003
AMDC011005	OC	1255	5,664,377	4,465,263	1,199,114
AMDE001006	DE	1475	5,470,959	2,533,182	2,937,777
AMDF002005	DF	1475	7,448,985	6,606,198	842,797
AMOD014000	OD	1255	4,841,337	4,291,048	550,289
AMDF012006	DF	1475	6,388,989	5,715,655	673,334
AMDH014005	DE	1475	5,691,209	5,031,542	649,667
AMDA002007	OA	1095	5,118,857	4,535,153	583,714
AMDH010001	OH	1255	5,091,710	4,509,011	582,700
AMDA001004	OA	1095	3,560,242	3,135,001	425,241
AMDH012004	OH	1095	8,725,431	4,316,319	4,411,113
AMDH029002	OH	1255	4,955,979	500,000	4,454,979
AMCC005006	OC	1095	4,386,624	3,874,650	511,974
AMCA006009	CA	1095	5,285,824	4,691,199	604,625
AMOK021005	OK	1650	6,550,330	3,236,454	3,313,846
AMOD005004	OD	1255	5,123,361	4,536,074	587,287
AMDF009001	DF	1475	5,861,734	4,300,000	1,561,734
AMDK003006	OK	1650	7,042,325	6,590,714	451,611
AMDB020006	OB	1095	4,450,594	51,000	4,399,594
AMDC012008	OC	1095	4,261,561	3,761,727	499,837
AMDF007006	DF	1475	6,132,709	6,367,076	465,633
AMDF027001	DF	1475	6,448,468	-	6,448,468
AMDA005001	OA	1095	5,309,063	4,700,871	608,192
AMDF010002	DF	1475	5,656,003	5,047,573	608,430
AMCC12A004	OC	1095	5,252,532	4,637,248	614,585



Ajaya Ind's Limited  
as Borrower



IVR Prime Developers (AV 410) Pvt. Ltd.  
As the Co-Borrower



L&T Finance Limited  
as Lender 1



L&T Housing Finance Limited  
As Lender 2

Sales Unit No.	Tower	Area (sq.fts.)	Sale value (Rs.)	Received (Rs.)	Receivable (Rs.)
AMOC018005	OC	1095	5,198,581	4,407,307	761,575
AMOK016005	OK	1650	7,224,810	6,784,132	440,678
AMOH019001	OH	1255	5,893,532	5,108,539	784,973
AMOH024002	OH	1255	4,772,343	51,020	4,721,343
AMOG009004	OG	1255	5,213,645	4,619,533	564,112
AMOH038002	OH	1255	5,829,465	5,173,522	649,943
AMOG020001	OG	1255	5,552,658	2,730,708	2,831,960
AMOB012001	OB	1095	4,439,691	3,922,249	517,442
AMOD015005	OD	1255	5,550,498	5,198,567	351,991
AMOK027002	OK	1650	6,284,975	2,448,186	3,826,189
AMOB006004	OB	1095	5,114,929	4,512,551	601,375
AMOG015003	OG	1255	5,534,159	4,866,568	667,601
AMOD009001	OD	1255	6,309,918	4,779,297	1,530,621
AMOG004008	OG	1255	5,700,974	4,516,218	584,756
AMOD011007	OD	1255	4,876,590	4,112,921	463,668
AMOB004005	OB	1095	5,235,121	4,547,782	587,341
AMOC003002	OC	1475	6,703,629	2,954,538	3,749,091
AMUC011007	OC	1095	4,636,853	3,870,626	766,228
AMOD035003	OE	1475	5,588,554	500,000	5,488,554
AMOK003006	OK	1650	6,859,086	6,092,771	766,314
AMDC014001	DC	1095	4,712,344	4,170,364	541,180
AMDH008006	DH	1255	6,009,836	4,776,946	1,316,856
AMDA005005	DA	1095	5,242,105	4,491,672	750,433
AMOC018001	OC	1095	4,725,849	4,486,519	315,330
AMOE012003	OE	1475	7,025,855	3,458,599	3,567,316
AMGD016004	GD	1095	4,889,767	4,303,159	546,069
AMCH014004	CH	1255	5,393,908	4,672,464	657,444
AMOG016007	OG	1255	4,702,926	4,156,683	546,243
AMGF002005	GF	1475	7,695,862	6,053,795	1,642,067
AMOH017005	OH	1255	5,785,143	5,411,166	373,977
AMOD005005	OD	1255	5,017,890	4,440,649	577,191
AMOH022004	OH	1255	5,697,346	5,060,644	636,702
AMNE009002	NE	1795	8,263,612	7,246,526	917,077
AMOF020005	OF	1475	6,217,498	81,000	6,236,489
AMOB004005	OB	1095	5,139,129	4,547,782	587,341
AMOD011004	OD	1495	8,358,266	7,844,329	508,938
AMOD000006	OD	1255	5,208,705	4,868,176	348,079
AMDA001006	DA	1095	4,476,870	3,955,966	520,704
AMOK009005	OK	1650	6,942,406	5,167,208	775,198
AMOG014005	OG	1255	5,666,291	4,700,030	966,291
AMOC011005	OC	1095	4,413,723	3,004,030	1,429,723
AMOG012001	OG	1255	5,881,519	5,217,168	664,351
AMOD007002	OD	1255	5,017,649	2,450,000	2,567,649
AMOF011005	OF	1475	6,733,022	6,317,255	415,767



Airtel India Limited  
As Borrower



IVR Prime Developers (AVAD) Pvt. Ltd.  
As the Co-Borrower



L&T Finance Limited  
As Lender 1





L&T Housing Finance Limited  
As Lender 2

Sales Unit No.	Tower	Area (sq.Fts.)	Sale value (Rs.)	Received (Rs.)	Receivable (Rs.)
AMOG007026	OG	1255	4,982,396	4,409,087	573,309
AMOE008006	OE	1475	7,231,143	6,146,719	1,084,424
AMOH021021	OH	1255	5,360,169	2,640,572	2,719,607
AMOH007004	OA	1095	4,569,149	4,039,478	529,671
AMOH011207	OA	1095	4,585,335	4,072,319	513,016
AMOE005005	OF	1475	5,124,987	4,843,943	281,043
AMOR002005	OB	1095	5,112,924	3,972,923	1,139,981
AMOB006003	OD	1095	4,858,218	4,540,205	318,013
AMOF008004	OF	1475	7,152,326	6,362,307	790,029
AMOC003007	OD	1255	6,201,366	5,581,373	619,993
AMOC016024	OC	1095	4,344,881	3,837,035	507,846
AMOC009001	OC	1095	5,171,245	4,391,054	780,181
AMOC014003	OD	1255	5,220,136	4,746,397	473,739
AMOR001001	OB	1095	4,741,246	4,471,578	269,668
AMOE009002	OE	1475	7,021,061	3,423,579	3,597,482
AMOG007007	OG	1255	4,902,396	4,409,087	573,309
AMOR008002	OB	1650	6,562,540	51,000	6,511,540
AMOG003004	OG	1255	6,385,826	5,307,370	1,078,456
AMOC003002	OD	1255	6,373,310	5,066,682	1,306,628
AMOF008009	OF	1475	6,962,983	6,171,778	791,205
AMOC007007	OD	1255	5,331,847	4,730,907	600,940
AMOF016005	OF	1475	6,787,362	6,366,636	420,726
AMOG020004	OG	1255	6,106,819	5,264,265	842,554
AMOF012005	OF	1475	5,750,755	5,060,473	690,282
AMOH021004	OH	1255	5,956,371	5,111,098	845,273
AMOG004002	OG	1255	5,406,549	4,815,313	591,236
AMOC009001	OD	1255	5,262,779	4,920,191	342,588
AMOG005004	OG	1255	5,565,790	3,283,720	2,282,070
AMOH019005	OH	1255	4,322,885	4,025,521	297,364
AMOH009003	OA	1095	5,046,905	2,475,664	2,571,241
AMOG015007	OG	1255	4,592,732	4,959,912	632,820
AMCH011001	OH	1255	5,930,667	5,091,441	839,226
AMOC006001	OD	1475	6,231,622	3,160,754	3,070,868
AMOC016008	OD	1255	5,530,423	5,102,094	428,329
AMOG021024	OG	1255	5,849,090	5,188,163	660,927
AMOC012007	OC	1095	3,821,971	3,350,326	471,646
AMOC124002	OC	1095	4,322,876	3,817,092	505,785
AMOH022001	OH	1255	5,509,415	4,882,840	626,575
AMOE008009	OE	1475	5,952,938	4,578,508	1,374,430
AMOC007004	OC	1095	5,213,119	4,360,647	852,472
AMOE003006	OE	1475	6,784,945	3,311,667	3,473,278
AMOE018001	OE	1475	6,556,852	2,574,045	3,982,807
AMOH002001	OF	1475	6,032,673	3,412,186	2,620,487
AMOR001005	OB	1650	7,234,392	3,193,543	4,040,849





  
Anand India Limited  
As Borrower

  
IVN Pans Developers (AMAD) Pvt. Ltd.  
As the Co-Borrower

  
L&T Finance Limited  
as Lender 1

  
L&T Housing Finance Limited  
As Lender 2

Sales Unit No.	Tower	Area (sq.fts.)	Sale value (Rs.)	Received (Rs.)	Receivable (Rs.)
AMDAD00025	DA	1095	5,071,456	4,492,442	579,014
AMDK006004	OK	1795	7,407,321	6,150,616	1,256,705
AMDD010005	DD	1255	5,842,574	5,197,412	644,162
AMOG064007	OG	1295	5,434,660	4,823,541	610,519
AMDR015005	OR	1095	5,022,924	4,450,689	572,234
AMOE005004	OE	1475	5,888,373	5,218,884	669,489
AMDA012008	DA	1095	4,960,291	4,639,469	320,329
AMDE008001	OF	1475	6,540,261	3,201,778	3,338,183
AMDA030903	DA	1095	4,384,393	3,872,644	511,750
AMDF020004	OF	1475	6,126,275	20,000	6,106,275
AMDC014003	OC	1095	4,646,830	4,336,166	307,664
AMDH006002	OH	1255	6,518,385	5,142,494	875,891
AMDH009002	OH	1255	6,357,439	5,176,409	880,555
AMDF007005	OF	1475	6,899,241	3,380,930	3,518,315
AMDF006008	OD	1255	5,468,573	2,691,853	2,777,720
AMDK003001	OK	1690	7,533,342	4,007,675	3,525,667
AMDH001004	OH	1255	5,488,526	500,000	4,988,526
AMDF012003	OF	1475	7,089,273	6,048,129	1,041,149
AMDE015001	OE	1475	6,918,920	5,795,418	1,123,801
AMDG015006	OG	1795	5,165,733	2,413,003	3,052,730
AMDH007005	OH	1255	4,083,984	3,516,710	467,275
AMDC004001	OC	1095	5,311,889	4,708,182	603,707
AMDA016007	DA	1095	4,230,501	4,234,765	436,837
AMDF014006	OF	1475	6,151,060	5,438,051	713,009
AMCC009003	OC	1095	4,303,101	3,789,385	503,716
AMDI003003	OI	1995	9,252,929	7,910,575	1,342,353
AMOG018004	OG	1295	5,904,441	5,237,826	666,615
AMDF004004	OF	1475	7,029,472	6,240,715	788,757
AMOB015004	OB	1095	4,451,843	3,933,142	518,701
AMDF002006	OF	1475	6,912,057	6,135,510	776,547
AMOG005007	OG	1295	5,365,999	2,300,000	3,065,999
AMDC016001	OC	1095	4,645,349	4,115,151	530,202
AMDD010004	DD	1255	5,123,721	5,123,721	-
AMDH012003	OH	1255	5,011,747	411,787	5,099,560
AMDC014005	OC	1095	5,012,847	2,200,203	2,812,643
AMDH002006	OII	1255	5,510,390	5,120,128	390,262
AMDB011007	OR	1095	4,531,560	4,005,575	526,350
AMDD012003	DD	1255	4,482,996	4,408,505	573,787
AMDH011006	OH	1295	5,899,785	5,257,256	642,527
AMOG010006	OG	1255	5,185,227	4,592,338	592,889
AMDF004003	OF	1475	7,167,502	6,143,262	1,024,240
AMDE006004	OE	1475	6,338,423	5,354,162	684,261
AMDH016003	OH	1255	5,785,557	5,139,582	645,935
AMDG016001	OG	1295	5,638,583	2,780,126	2,858,457

 Ajanta India Limited As Borrower	 TVR Prime Developers (AVAD) Pvt. Ltd. As the Co-Borrower	 L&T Finance Limited as Lender 1	 L&T Housing Finance Limited As Lender 2
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Sales Unit No.	Tower	Area (sq.ft.)	Sale value (Rs.)	Received (Rs.)	Receivable (Rs.)
AM30013001	OC	1095	5,089,574	4,498,370	585,304
AM3002002	OE	1475	6,886,376	3,374,487	3,511,889
AM30010008	OD	1755	6,615,222	4,565,850	2,049,372
AM10H018004	OH	1255	5,598,692	2,162,969	3,435,724
AM10F015002	OF	1475	6,511,606	2,868,121	3,643,485
AM10E010004	OE	1475	6,268,150	5,554,753	713,397
AM10C008005	OC	1095	4,820,774	4,246,310	574,464
AM10B018003	OB	1095	4,806,546	3,881,215	925,331
AM10A000002	OA	1095	4,364,618	2,345,500	2,019,618
AM10H008005	OH	1095	4,813,956	2,884,179	1,929,777
AM10H007004	OH	1255	6,393,371	5,629,907	763,464
AM10H015006	OH	1755	5,072,633	4,745,510	327,123
AM10A003005	OA	1095	4,384,678	3,972,455	412,223
AM10C010003	OC	1095	4,622,581	3,854,841	767,740
AM10H125006	OH	1255	5,178,283	4,446,352	731,931
AM10A022008	OA	1095	4,317,628	1,685,643	2,631,985
AM10I012005	OI	1755	8,295,245	7,791,495	503,810
AM10C014002	OC	1095	4,909,248	4,585,775	323,473
AM10C015001	OC	1095	5,270,617	3,997,574	1,273,043
AM10C006007	OC	1095	4,384,394	3,872,541	511,754
AM10G002008	OG	1255	5,123,360	4,516,614	606,746
AM10G010002	OG	1255	5,143,139	4,554,737	588,401
AM10F006003	OF	1475	6,826,157	6,056,422	769,735
AM10B003003	OB	1095	5,281,428	4,684,041	597,386
AM10C003004	OC	1475	6,320,895	5,591,734	729,631
AM10H014002	OH	1255	6,040,474	5,185,670	854,804
AM10G003007	OG	1255	5,005,687	4,411,235	594,451
AM10C007009	OC	1095	4,239,192	3,949,665	289,527
AM10B017002	OB	1095	5,296,241	4,643,321	652,920
AM10C014005	OC	1755	4,841,615	4,281,240	560,375
AM10C015007	OC	1095	4,602,217	1,799,625	2,802,592
AM10G005003	OG	1255	5,712,198	5,075,382	636,816
AM10B011003	OB	1255	5,207,886	4,523,016	684,869
AM10H003006	OH	1255	5,387,051	5,046,707	340,344
AM10H005001	OH	1255	5,473,518	4,833,511	640,007
AM10X008006	OK	1450	7,256,585	3,554,595	3,699,990
AM10G009007	OG	1255	5,817,880	4,191,465	1,626,415
AM10A004002	OA	1095	4,386,623	3,874,074	512,549
AM10B020005	OB	1095	4,721,263	3,870,499	850,764
AM10H022009	OH	1255	5,585,072	4,786,010	799,062
AM10F002004	OF	1475	7,034,834	6,253,456	781,378
AM10F020001	OF	1475	6,053,740	2,958,169	3,095,571
AM10G002004	OG	1255	5,589,400	4,511,850	1,077,550
AM10B002005	OB	1095	4,803,578	2,357,525	2,446,053

Ajanta Estate Limited  
As Borrower


AVR Prime Developers (PVT) Ltd.  
As Co-Borrower

L&T Finance Limited  
As Lender 1

L&T Housing Finance Limited  
As Lender 2



Sales Unit No.	Tower	Area (sq.ft.)	Sale value (Rs.)	Received (Rs.)	Receivable (Rs.)
AMDG029007	DG	1295	5,260,750	5,260,750	-
AMV00036006	DG	1255	5,668,359	7,499,656	3,175,003
AMDB011005	DB	1095	4,648,137	1,112,880	593,257
AMIX009008	DC	1095	4,293,259	4,000,000	291,023
AMDE014002	DE	1475	5,696,002	4,761,534	934,468
AMDF004004	DF	1475	7,001,130	6,189,944	817,187
AMDH009009	DH	1255	5,882,832	5,214,820	667,943
AMDC009004	DC	1095	4,684,057	1,374,333	309,725
AMDF009001	DF	1475	7,102,917	6,258,996	1,042,921
AMDE009005	DE	1475	6,262,793	5,056,694	705,698
AMDC009002	DC	1095	5,157,269	4,827,488	329,701
AMDB012002	DB	1095	4,574,877	4,304,244	590,693
AMDF002003	DF	1475	6,809,472	3,304,100	3,505,370
AMIX015005	DC	1095	4,652,016	1,343,799	308,417
AMDK021002	DK	1650	7,282,561	6,216,640	1,065,921
AMDB012001	DB	1095	5,008,044	1,071,269	1,133,774
AMGH015001	GI	1295	5,192,320	4,050,000	1,142,320
AMGH011005	GH	1255	5,806,643	5,158,857	647,746
AMGH014003	GH	1255	5,860,333	5,214,869	645,469
AMQB003001	DB	1035	4,769,644	4,450,507	118,247
AMDF019009	DF	1475	5,884,271	3,415,379	2,458,892
AMDK009004	DK	1495	8,960,003	7,968,857	591,146
AMQA009009	QA	1095	4,400,427	3,983,743	479,685
AMQH019005	QH	1475	6,018,604	6,131,079	787,525
AMQC022005	QC	1095	4,717,563	4,408,995	308,573
AMQA019004	QA	1095	5,083,624	4,190,560	593,064
AMQC022004	QC	1095	5,163,048	4,417,474	745,574
AMOK016002	OK	1650	7,034,613	3,448,599	3,586,014
AMDB11A000	DB	1255	5,201,977	1,347,441	854,495
AMIX022002	IJ	1795	6,339,625	4,291,349	2,048,276
AMDB009002	DB	1255	5,018,502	3,873,013	1,145,484
AMDH018009	DH	1255	5,677,526	1,996,236	681,790
AMDE015002	DE	1475	7,102,279	5,884,996	1,717,283
AMDF011001	DF	1475	5,929,806	5,512,059	397,747
AMGH12A001	GI	1754	5,514,862	4,299,825	616,036
AMCC005002	CC	1095	5,178,348	1,573,283	605,064
AMQA014005	QA	1095	4,589,075	3,198,456	1,450,619
AMQC006001	CC	1095	4,717,399	413,096	3,803,844
AMDH009004	DH	1255	5,630,288	5,274,744	355,545
AMDB010004	DB	1095	5,158,008	4,009,088	1,148,920
AMDB009008	DB	1255	5,146,027	4,556,317	589,710
AMDH005005	DH	1255	5,349,892	4,767,327	632,465
AMDB008003	DB	1095	4,827,159	4,510,786	316,373
AMOK016006	OK	1650	7,009,732	3,464,719	3,625,013


  
Anand Jais Limited  
as Borrower

  
FVR Prime Developers (AVADI) Pvt. Ltd.  
As the Co-Borrower


  
L&T Finance Limited  
as Lender 1

  
L&T Housing Finance Limited  
As Lender 2

Sales Unit No.	Tower	Area (sq. fts.)	Sale value (Rs.)	Received (Rs.)	Receivable (Rs.)
AMDB12A03	OB	1095	4,557,737	4,238,003	319,735
AMDKD23D02	OK	1650	5,852,846	571,485	5,281,360
AMDFU17094	OF	1475	6,157,057	51,000	6,106,057
AMDAC09008	OA	1095	5,005,429	4,682,314	323,115
AMDF004016	OE	1475	7,218,275	5,451,821	1,766,454
AMDC007005	OC	1095	5,466,093	4,833,320	632,773
AMDFU10026	OF	1475	7,073,254	6,280,816	792,438
AMDFG14025	OF	1475	7,016,580	6,177,238	839,042
AMDKD06002	OK	1650	7,406,128	6,929,871	476,257
AMDFH091006	OH	1255	6,008,788	5,332,489	676,299
AMDG014003	OG	1255	5,072,633	4,490,917	581,716
AMDAC01002	OA	1095	4,591,417	4,260,649	330,775
AMDFU11003	OC	1095	5,183,190	4,593,354	589,836
AMDD010203	OD	1255	5,017,649	4,440,478	577,171
AMDKD07001	OK	1650	7,044,911	3,112,967	3,931,944
AMDC012004	OC	1095	4,765,063	4,451,385	313,678
AMDAC11003	OA	1095	4,353,635	3,628,566	725,069
AMDFH08004	OH	1255	4,748,909	1,750,000	2,998,909
AMDF12A05	OF	1475	6,992,580	5,988,911	1,003,669
AMDC003009	OC	1095	5,268,983	4,572,536	696,447
AMDB005004	OB	1095	4,563,067	4,034,655	528,411
AMSKD023004	OK	1755	8,168,745	7,272,832	895,914
AMCHG17003	OH	1255	5,711,228	5,094,688	616,540
AMDF011002	OE	1475	7,146,285	5,425,204	1,721,081
AMDC001006	OC	1095	5,123,407	4,596,119	527,288
AMCH12A001	OH	1255	5,982,697	5,131,303	851,395
AMDKD08001	OK	1650	7,005,001	3,433,756	3,571,206
AMDFG20006	OH	1255	5,240,667	2,322,240	2,918,437
AMGG016006	OG	1255	4,702,926	4,156,683	546,243
AMDFU04003	OD	1255	6,611,373	250,000	6,361,373
AMDF018004	OF	1475	6,518,578	3,140,588	3,377,990
AMDF007003	OF	1475	5,952,948	3,802,136	2,150,812
AMDFU09005	OD	1255	5,086,514	4,754,057	332,457
AMDC016007	OC	1095	4,271,209	3,770,359	500,849
AMDFH07006	OB	1095	4,574,761	4,046,754	528,007
AMDG019001	OG	1255	5,211,760	2,554,129	2,657,631
AMDFU17007	OC	1095	4,271,209	3,770,359	500,849
AMDAC003007	OA	1095	4,739,127	4,426,589	312,538
AMDFU05003	OG	1995	7,838,431	6,967,784	870,647
AMDB009004	OB	1095	4,407,183	3,872,764	534,419
AMDC014008	OD	1255	5,434,671	2,411,953	3,022,718
AMDF009024	OE	1475	5,340,424	4,182,748	1,157,676
AMDC013009	OC	1095	4,499,881	3,000,000	1,499,881
AMCHG10003	OH	1255	5,717,952	5,368,243	349,709



Ajnara India Limited  
As Borrower



YK Price Developers (AVAD) Pvt. Ltd.  
As Co-Borrower



L&T Finance Limited  
as Lender 1




L&T Housing Finance Limited  
As Lender 2

Sales Unit No.	Tower	Area (sq.ft.)	Sale value (Rs.)	Received (Rs.)	Receivable (Rs.)
AMOH014001	OH	1255	5,898,180	5,053,145	835,035
AMDC032006	OC	1095	4,791,786	4,001,085	790,701
AMDF015005	OF	1475	5,688,372	5,221,395	566,979
AMOD023002	OJ	1195	6,841,561	3,352,085	3,489,477
AMDF006005	OF	1475	7,306,651	6,170,826	1,035,826
AMDC011002	OC	1095	4,577,795	4,656,714	321,081
AMOD005002	OD	1255	5,199,812	4,869,479	336,389
AMDH031003	OH	1255	6,012,319	5,157,818	854,501
AMDK038005	OK	1650	7,079,514	6,211,031	802,483
AMDC010007	OC	1095	4,292,322	3,785,503	502,819
AMDC034007	OC	1095	5,208,114	4,462,064	746,050
AMDA017006	OA	1095	5,012,055	4,579,668	432,387
AMDH036001	OH	1255	5,536,168	4,633,295	902,873
AMDCD12005	OE	1475	6,558,179	3,180,600	3,378,179
AMDS011002	OS	1255	4,139,630	3,686,832	452,798
AMDD020006	OD	1255	5,187,882	951,000	4,236,882
AMDA006003	OA	1095	4,935,161	20,000	4,915,161
AMDF014002	OF	1475	6,918,904	2,781,004	3,537,499
AMDEC01001	OE	1475	7,176,757	5,408,104	1,768,653
AMDD005005	OD	1255	4,972,363	4,399,555	572,708
AMDS036001	OS	1095	4,612,130	4,070,044	534,086
AMDF005005	OF	1475	6,287,518	5,854,288	433,230
AMDA002008	OA	1095	4,519,441	4,084,744	534,697
AMCE008002	OE	1475	6,693,774	3,319,381	3,374,393
AMDK008002	OK	1650	6,153,189	2,965,080	3,188,189
AMDC006005	OC	1255	5,290,593	4,688,274	602,319
AMOR016005	OB	1095	5,146,776	4,388,047	758,729
AMOF038006	OF	1475	7,030,713	6,240,501	790,214
AMOK009001	OK	1650	7,293,188	2,888,045	4,345,063
AMOC009007	OC	1095	4,530,629	4,228,090	302,513
AMOB0214002	OB	1095	3,895,095	1,943,781	2,041,254
AMDE008005	OE	1475	6,061,349	2,669,607	3,391,742
AMDA006005	OA	1095	4,729,964	3,037,230	1,692,834
AMDC007001	OC	1095	5,217,653	4,533,033	584,620
AMDA015006	OA	1095	4,468,748	3,924,977	543,771
AMDF006002	OF	1475	5,971,239	3,030,000	2,891,239
AMDF015003	OF	1475	6,626,007	3,240,545	3,386,362
AMDC008008	OC	1095	4,506,041	4,204,798	301,243
AMOD008004	OD	1095	7,949,476	6,752,641	1,196,835
AMDD002004	OD	1255	5,524,975	5,150,866	374,110
AMOK015001	OK	1650	6,588,472	2,582,184	4,009,288
AMDCD16002	OC	1095	4,819,553	4,509,072	316,482
AMDG009001	OG	1255	5,019,097	4,928,567	690,530
AMDCD17003	OC	1095	4,324,944	2,436,543	1,888,401


  
Ajara India Limited  
as Borrower

  
IVR Prime Developers (AVAD) Pvt. Ltd.  
As the Co-Borrower


  
L&F Finance Limited  
as Lender 1


  
E&T Housing Finance Limited  
As Lender 2

Sales Unit No.	Tower	Area (sq. fts.)	Sale value (Rs.)	Received (Rs.)	Receivable (Rs.)
AMDH028005	DH	1255	4,567,219	4,409,597	557,622
AMDF027003	DF	1475	6,579,768	6,186,038	793,730
AMDC015003	DC	1095	4,475,782	3,955,148	520,633
AMDA032007	DA	1095	4,598,806	3,769,727	1,229,079
AMDH023005	DH	1255	5,313,515	2,610,525	2,702,990
AMDC021004	DC	1095	5,194,540	4,450,758	743,782
AMDA017005	DA	1255	5,614,520	4,987,081	627,438
AMDH022006	DH	1255	5,484,000	4,864,036	619,964
AMDA011005	DA	1095	4,413,723	4,116,822	296,901
AMDA017004	DA	1095	4,202,072	3,708,024	493,849
AMDH022005	DH	1255	5,482,741	4,862,902	619,839
AMDH011002	DH	1255	5,012,482	4,989,965	22,517
AMDF005004	DF	1475	6,711,076	3,305,509	3,405,567
AMDA012001	DA	1095	4,333,860	2,760,159	1,573,701
AMDH022001	DH	1095	4,856,769	4,298,660	558,094
AMDH022004	DH	1255	5,837,653	5,016,399	821,254
AMDD011003	DD	1255	6,277,104	5,229,491	853,613
AMDA007003	DA	1095	5,747,344	4,815,588	931,756
AMDK017005	DK	1650	7,502,878	6,118,516	1,384,362
AMDD007002	DD	1255	6,125,502	4,656,921	1,468,571
AMDH017007	DH	1255	5,300,800	2,346,754	2,954,046
AMDC006008	DC	1095	5,242,105	4,401,572	750,433
AMDD015001	DD	1095	4,704,425	4,391,528	312,897
AMDC014001	DC	1255	5,017,880	4,690,410	327,470
AMDF012001	DF	1475	6,943,960	6,513,870	430,090
AMDF029003	DF	1475	6,749,315	6,323,861	425,454
AMDK022005	DK	1650	6,729,983	3,296,289	3,433,694
AMDF009005	DF	1475	6,285,506	5,203,738	1,081,768
AMDF018005	DF	1475	6,703,485	3,274,792	3,428,693
AMDH015002	DH	1255	5,550,498	3,890,709	1,719,789
AMDC001004	DC	1095	5,286,084	4,509,235	776,849
AMDC010001	DC	1255	5,361,432	5,016,274	345,158
AMDA007005	DA	1095	4,977,660	4,695,017	282,643
AMDA012002	DA	1095	4,541,826	4,284,481	257,345
AMDC008002	DC	1095	5,084,151	4,757,914	326,237
AMDH007003	DH	1255	5,802,139	5,448,443	353,696
AMDC005001	DC	1255	5,833,648	5,185,083	648,565
AMDC007004	DC	1095	4,776,333	3,763,317	1,013,016
AMDF012004	DF	1475	6,523,669	2,863,514	3,660,156
AMDD012005	DD	1255	5,825,226	4,406,071	1,419,155
AMDB011003	DB	1595	5,033,078	4,709,905	323,173
AMDD007001	DD	1795	8,295,136	6,549,462	1,745,674
AMDK020006	DK	1650	6,528,245	2,895,084	3,633,161
AMDE011005	DE	1475	7,332,060	5,539,878	1,792,174

  
Ajmera Infratech Limited  
As Borrower

  
IPR Prime Developers (P) Pvt. Ltd.  
As the Co-Borrower

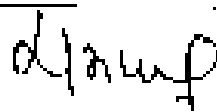
  
L&T Finance Limited  
As Lender 1

  
L&T Housing Finance Limited  
As Lender 2

Sales Unit No.	Tower	Area (sq.fts.)	Sale value (Rs.)	Received (Rs.)	Receivable (Rs.)
AMDD017004	DD	1255	6,004,369	4,549,780	1,460,290
AMDC032002	DC	1095	5,419,523	4,106,915	1,312,608
AMDC032001	DC	1095	5,419,523	4,106,915	1,312,608
AMDH005004	DH	1255	4,250,451	3,785,600	465,451
AMDG019001	DG	1255	5,979,048	3,041,520	2,934,528
AMDC036006	DC	1095	4,729,964	3,551,150	1,178,809
AMDC104006	DC	1095	5,208,114	4,462,069	746,051
AMDD006005	DD	1255	5,290,642	4,948,633	341,989
AMDKD15004	DK	1795	7,463,037	2,950,967	4,512,071
AMDD008003	DD	1255	5,088,108	4,504,195	583,913
AMDK023001	DK	1550	6,720,605	5,586,557	1,134,048
AMSGD05003	DG	1255	6,150,518	4,675,940	1,482,578
AMSD009006	DD	1255	5,086,574	4,754,057	332,457
AMCHS17006	CH	1255	5,917,206	4,507,869	1,399,341
AMDFD05006	DF	1475	7,144,721	6,343,239	801,481
AMGG020064	DG	1255	5,299,572	4,400,000	899,572
AMDB007001	DB	1095	4,300,906	2,107,707	2,193,199
AMDR002003	DR	1095	5,134,361	5,036,457	97,904
AMGG010054	DG	1255	6,289,975	4,381,315	1,908,660
AMDKD02006	DK	1650	7,370,094	3,630,869	3,739,164
AMDFD17005	DF	1475	5,733,093	3,264,411	2,468,682
AMDG10002	DJ	1795	7,794,401	6,362,748	1,431,653
AMDKD04001	DK	1650	7,595,491	51,000	7,544,491
AMDKD04004	DK	1795	7,941,849	5,509,125	2,432,724
AMDKD10005	DK	1650	6,545,561	5,807,024	738,537
AMDG022004	DG	1255	5,175,898	2,559,510	2,616,388
AMDHU20001	DH	1255	5,419,595	4,625,737	793,858
AMDA010002	DA	1095	5,202,411	4,612,832	589,578
AMDA007001	DA	1095	4,782,825	4,468,594	314,231
AMDA007008	DA	1095	4,415,152	3,900,419	514,733
AMSD008004	DC	1095	4,010,834	700,000	3,310,834
AMGG012005	DG	1255	5,758,524	51,000	5,707,524
AMDC006007	DD	1255	5,241,458	4,859,722	381,736
AMDAUC8003	GA	1095	4,025,654	2,165,468	1,860,186
AMJD011005	DJ	1795	7,408,077	6,579,521	828,556
AMDC012004	DD	1255	5,354,702	4,742,315	612,387
AMOC005008	GC	1095	4,622,505	3,678,004	944,491
AMOC019004	GC	1095	4,928,446	2,424,705	2,503,741
AMDF005003	GF	1475	7,008,759	6,212,995	795,764
AMGG002007	DG	1255	5,078,121	4,495,877	582,244
AMDKD21001	DK	1650	7,232,561	6,275,950	956,611
AMDC002001	DE	2475	6,457,819	5,730,961	726,858
AMDKK04004	DK	1795	7,457,344	6,626,123	831,221
AMDHD10004	DH	1255	5,950,892	5,287,532	663,360



Ajnara India Limited  
As Borrower



IVR Prime Developers (AVADIP) Pvt. Ltd  
As Co-Borrower



L&T Finance Limited  
As Lender 1





L&T Housing Finance Limited  
As Lender 2

Sales Unit No.	Tower	Area (sq.fts.)	Sale value (Rs.)	Received (Rs.)	Receivable (Rs.)
AMOF006003	0F	1475	6,706,501	2,639,280	4,067,221
AMDA006008	0A	1095	5,077,984	4,704,377	373,607
AMOB017025	0B	1095	4,890,156	500,000	4,390,156
AMOC004033	0C	1095	4,507,631	3,204,614	1,303,017
AMOG004005	0G	1255	6,098,894	5,131,334	867,560
AMOD004006	0D	1255	5,126,239	4,972,180	154,059
AMOG004008	0G	1255	5,843,917	5,226,262	617,655
AMQ006003	0J	1495	8,758,619	3,415,286	5,343,333
AMDED07004	0E	1475	6,350,264	5,628,782	721,482
AMOC014036	0C	1095	4,703,619	4,392,626	310,993
AMOG011005	0G	1255	4,900,556	3,829,258	1,071,298
AMOG012007	0G	1255	5,821,514	5,217,168	604,346
AMOB004004	0B	1095	4,997,511	4,651,182	346,329
AMOC011001	0C	1095	4,354,773	3,945,891	408,882
AMDA007007	0A	1095	4,476,663	3,955,967	520,696
AMDF008004	0F	1475	6,686,205	3,288,714	3,397,491
AMDF0014006	0H	1255	5,229,427	4,607,675	621,752
AMCA002003	0A	1095	4,650,199	4,000,000	650,199
AMCH004001	0H	1255	5,918,966	2,920,260	2,998,706
AMGS026005	0G	1255	5,400,350	20,000	5,380,350
AMDC002006	0D	1255	4,123,360	4,516,079	392,719
AMGA017002	0A	1095	4,282,230	3,780,467	501,763
AMOC018002	0C	1095	4,704,311	4,372,025	332,286
AMOH009003	0H	1255	5,874,406	5,215,339	659,067
AMQED14006	0E	1475	5,694,971	606,697	5,088,274
AMOC005008	0D	1255	5,083,155	4,752,059	331,096
AMOH005005	0H	1255	5,475,289	4,809,044	666,245
AMHOC008032	0C	1095	4,754,215	4,451,054	303,161
AMOB124001	0B	1095	4,729,686	4,183,702	545,984
AMOH018502	0H	1255	6,032,592	5,130,538	902,054
AMOK011004	0K	1795	8,944,723	5,762,080	3,182,643
AMQOL15003	0L	1995	8,623,122	1,000,000	7,623,122
AMDC008007	0C	1095	4,949,912	4,377,974	571,938
AMCG004001	0G	1255	5,917,867	5,249,886	667,981
AMGA010007	0A	1095	4,617,826	4,034,573	583,253
AMGA009009	0A	1095	4,915,669	1,924,872	2,990,797
AMGA005005	0A	1095	4,384,394	3,872,639	511,755
AMOF016004	0F	1475	7,208,627	6,420,292	788,335
AMOB010005	0B	1095	4,428,632	3,917,396	511,236
AMOK022006	0K	1650	6,426,173	3,159,767	3,266,406
AMOC014007	0C	1095	5,122,720	4,628,702	494,018
AMOH016001	0H	1255	5,152,637	420,000	4,732,637
AMOD017001	0D	1255	5,501,914	4,478,182	1,023,732
AMUXX00004	0C	1095	4,871,075	4,314,125	556,950

  
Ajrara India Ltd. Ltd  
As Borrower

  
JVR Prime Developers (AVA 1) Pvt. Ltd.  
As the Co-Borrower

  
L&T Finance Limited  
As Lender 1

  
L&T Housing Finance Limited  
As Lender 2

Sales Unit No.	Tower	Area (sq.fts.)	Sale value (Rs.)	Received (Rs.)	Receivable (Rs.)
AMOG011001	OG	1255	5,736,001	5,088,543	647,458
AMOG009009	OA	1095	4,994,101	4,672,136	321,965
AMOH002001	OH	1255	5,069,691	5,190,978	878,703
AMOG001001	OG	1255	5,916,183	5,255,653	660,529
AMOD004008	OC	1095	5,090,664	3,861,736	1,228,928
AMOG008003	OG	1255	5,904,862	5,238,198	666,664
AMOH011002	OH	1255	5,581,537	4,955,413	626,094
AMOG004004	OG	1255	5,229,398	4,690,023	599,375
AMOE011003	OC	1475	5,531,711	-	5,531,711
AMOB014005	OB	1095	4,724,912	4,361,499	363,413
AMOG009005	OG	1255	5,955,641	5,097,876	918,765
AMOE004001	OC	1475	6,408,026	5,681,320	726,706
AMOC002008	OC	1095	4,176,670	3,955,966	220,704
AMOG020015	OG	1255	5,041,236	2,221,977	2,819,259
AMOG003002	OG	1255	4,590,467	4,504,462	86,005
AMOB004002	OB	1095	4,957,798	2,184,640	2,773,158
AMUB007005	OB	1095	4,826,619	1,895,650	2,930,969
AMOF010005	OF	1475	6,893,811	6,458,064	415,747
AMDH007003	OB	1295	4,733,154	1,651,070	3,082,084
AMDC003005	OG	1255	5,894,413	5,218,346	676,067
AMDK008001	OK	1795	6,122,673	5,471,927	648,746
AMDF007024	OF	1475	7,132,776	5,408,479	1,724,297
AMDB006006	OB	1095	5,136,801	4,528,062	608,739
AMDA011002	OA	1094	4,434,989	3,972,283	561,606
AMDC008006	OC	1095	5,039,824	4,071,868	947,956
AMDD024003	OD	1255	5,220,387	4,881,290	338,797
AMDH002002	OH	1254	6,017,535	5,146,671	900,864
AMDG001001	OG	1255	5,229,397	4,532,536	696,861
AMCH0010005	CH	1255	4,772,035	4,883,129	338,916
AMCH004005	CH	1254	5,570,147	3,841,124	1,823,012
AMCG001008	OG	1255	5,123,407	4,595,654	586,753
AMCA0019007	CA	1095	5,190,156	4,547,327	682,829
AMCC012002	OC	1095	4,505,041	4,386,908	119,133
AMCE007002	OE	1475	5,532,924	5,777,741	754,784
AMOH023003	OH	1254	3,950,164	1,937,012	2,013,152
AMDK007005	OK	1650	6,216,922	4,507,520	1,909,402
AMCND0B006	DA	1095	4,465,525	694,812	3,770,713
AMDKU03005	OK	1650	6,909,802	5,282,657	1,077,145
AMDF007001	OF	1475	6,332,283	6,198,814	783,469
AMDG010009	OG	1255	5,012,644	4,689,053	328,596
AMOH011001	OH	1255	6,080,823	5,347,721	713,101
AMCG014007	OG	1255	4,934,509	4,365,488	569,021
AMDF020036	OF	1475	6,360,963	5,601,271	759,692
AMDU0015006	OD	1255	5,114,328	4,777,781	335,548

 Ajanta India Limited As Borrower	 IPR Plans Developers (AMAD) Pvt. Ltd. As the Co-Borrower	 L&T Finance Limited As Lender 1	 L&T Housing Finance Limited As Lender 2
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Sales Unit No.	Tower	Area (sq.fts.)	Sale value (Rs.)	Received (Rs.)	Receivable (Rs.)
AMOK005005	DK	1650	7,257,667	5,238,346	2,019,321
AMOG008006	OG	1255	5,929,139	400,500	5,528,639
AMOH012001	OH	1255	4,713,741	2,854,397	1,859,344
AMOH112001	OH	1255	5,644,488	2,770,490	2,873,999
AMOD015004	OD	1255	6,061,530	5,399,470	672,059
AMOG007001	OG	1255	6,044,903	5,342,024	702,879
AMOD019001	OD	1095	5,512,821	4,876,556	636,266
AMOD020005	OD	1475	6,083,208	2,675,584	3,407,624
AMOD017004	OD	1255	5,987,234	5,318,513	668,721
AMOD001003	OD	1095	4,791,246	4,133,392	657,854
AMOG010001	OG	1255	5,017,649	4,440,978	576,671
AMOD005004	OD	1095	4,714,860	4,435,915	278,945
AMOD017004	OD	1095	4,560,981	4,257,026	303,955
AMOD012002	OD	1475	6,416,208	-	6,416,108
AMOK015001	DK	1650	6,638,805	3,249,407	3,389,398
AMOH005003	OH	1255	5,782,730	5,129,962	652,768
AMOH008001	OH	1255	5,725,515	3,132,935	2,592,580
AMOD017004	OD	1095	5,279,077	4,549,528	729,549
AMOD014001	OD	1475	7,217,564	5,390,766	1,826,797
AMOD006009	OD	1255	5,047,894	4,210,222	837,672
AMOD004006	OD	1095	5,156,209	4,556,514	599,695
AMOD014001	OD	1095	4,544,118	4,016,469	527,649
AMOD016005	OD	1255	5,259,371	2,979,478	2,279,893
AMOD016005	OD	1095	5,358,096	4,182,058	1,176,038
AMOD004005	OD	1650	7,870,415	6,439,016	1,431,399
AMOD010005	OD	1095	4,748,514	4,203,541	544,973
AMOD005001	OD	1475	6,775,714	5,566,579	1,209,135
AMOD022006	OD	1795	8,353,332	7,153,086	1,200,246
AMOD011001	OD	1255	5,763,397	3,974,693	1,788,704
AMOD020002	OD	1795	6,936,422	2,729,608	4,206,814
AMOD005006	OD	1095	5,073,892	4,578,495	495,397
AMOD005001	OD	1095	5,168,595	4,562,304	606,291
AMOD016002	OD	1475	6,721,255	5,673,827	1,047,428
AMOD004009	OD	1475	6,054,104	5,368,759	685,345
AMOD003007	OD	1095	4,415,356	3,950,622	464,734
AMOD014002	OD	1095	4,322,876	2,495,357	1,827,519
AMOD120006	OD	1475	6,512,178	5,778,295	733,883
AMOD019003	OD	1095	5,292,535	4,442,801	849,734
AMOH007003	OH	1255	5,874,406	3,025,706	2,848,700
AMOD014007	OD	1095	4,408,669	4,149,051	259,618
AMOD014008	OD	1095	4,682,363	4,150,144	532,219
AMOD002007	OD	1255	5,170,521	4,574,956	595,565
AMOD018001	OD	1255	5,716,682	102,002	5,614,680
AMOD020005	OD	1095	4,182,813	1,742,523	2,440,290



Ajmera India Limited  
as Borrower



IPR Prime Developers (AVADH) Pvt. Ltd.  
As the Co-Borrower



L&T Finance Limited  
as Lender 1



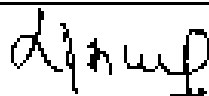
L&T Housing Finance Limited  
As Lender 2



Sales Unit No.	Tower	Area (sq.fts.)	Sale value (Rs.)	Received (Rs.)	Receivable (Rs.)
AMOFD16005	DF	1475	6,902,937	6,048,023	854,914
AMQBD09001	DE	1095	5,213,735	3,948,747	1,264,988
AMQFG15001	QH	1255	5,663,022	5,270,433	392,589
AMJF015005	OF	1475	6,931,857	6,133,171	798,686
AMQCD07002	DC	1095	5,355,625	4,025,290	1,330,335
AMQCD22001	DC	1095	5,022,343	4,371,587	650,756
AMQCD11005	DC	1095	4,561,068	4,257,125	303,943
AMQD007001	DD	1255	5,143,089	745,000	4,398,089
AMQGD15001	GG	1255	4,545,524	3,508,668	1,036,856
AMQD002005	DD	1255	5,123,360	4,277,838	845,522
AMQHC021003	QH	1255	5,491,605	4,874,644	616,961
AMQHC04002	QH	1255	5,873,151	5,218,258	654,893
AMQGG06004	GG	1255	5,343,972	4,736,420	607,552
AMQAH19008	QA	1095	4,888,504	2,401,556	2,487,048
AMQGS20002	GG	1255	5,083,724	1,997,085	3,086,639
AMQGD16004	GG	1255	5,787,553	5,102,853	684,700
AMOF12A001	DF	1475	6,534,327	5,757,698	776,629
AMQCD05003	DC	1095	5,105,301	4,778,043	327,258
AMQCD15004	DC	1095	4,263,589	3,763,777	499,812
AMQI020006	DI	1475	6,858,852	3,038,449	3,820,402
AMQD008001	DD	1255	5,950,114	5,282,895	667,219
AMQD008004	DD	1255	5,681,573	2,789,259	2,892,314
AMQCD12001	DC	1095	4,969,751	4,550,475	419,275
AMQGG02001	GG	1255	5,283,753	2,605,273	2,678,480
AMQHI2A005	QH	1255	5,991,912	5,322,053	669,859
AMQHS16004	QH	1255	5,505,849	4,862,668	643,181
AMQD009003	DD	1255	4,832,612	4,273,662	558,950
AMQGI2A005	GG	1255	5,474,024	51,000	5,423,024
AMQFD17004	DF	1475	6,043,318	5,356,521	686,797
AMQAD04008	QA	1095	4,475,669	3,955,968	519,701
AMQK014002	DK	1650	7,073,097	3,146,326	3,926,771
AMQCD20003	DC	1095	5,784,790	200,000	5,584,790
AMQED15003	DE	1255	5,967,244	5,117,678	849,566
AMQK004001	DK	1650	4,729,781	4,784,122	54,341
AMQK006005	DK	1650	7,055,939	2,779,292	4,276,647
AMQHD09002	QH	1255	5,705,915	3,332,918	2,372,997
AMQHD03004	QH	1255	5,334,479	4,866,247	468,232
AMQGD09002	GG	1255	5,740,288	2,254,712	3,485,576
AMQGD14002	GG	1255	5,832,258	5,178,808	653,450
AMQAD15007	QA	1095	4,966,489	4,397,888	568,601
AMQAD16005	QA	1095	4,469,058	4,170,239	298,819
AMQAD14003	QA	1095	4,404,130	3,890,317	513,813
AMQED16003	DE	1095	4,544,118	3,780,420	763,698
AMQD002007	DD	1255	5,123,638	4,536,330	587,308



Ajnara India Limited  
As Borrower



AVR Prime Developments (AVADI) Pvt. Ltd.  
As Co-Borrower







L&T Finance Limited  
As Lender 1



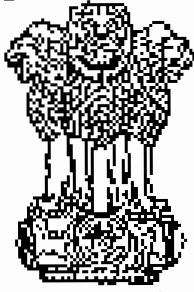
L&T Housing Finance Limited  
As Lender 2

Sales/Prnt.No.	Tower	Area (sq.ft.)	Sale value (Rs.)	Received (Rs.)	Receivable (Rs.)
AM05015003	OE	1475	6,925,920	6,159,055	765,565
AM05021006	OF	1475	6,975,904	6,161,509	814,395
AM00011002	OD	1255	5,611,783	2,475,275	3,136,508
AM05040006	OF	1475	6,959,795	5,507,179	852,616
AM00016001	OD	1255	4,745,927	500,000	4,245,927
AM00080003	OJ	1995	7,781,158	6,606,383	1,174,575
AM05012008	OG	1255	5,726,454	2,711,473	2,914,580
AM05015001	OF	1475	5,888,373	5,221,995	666,979
AM00080008	OC	1995	5,273,047	4,519,322	754,526
AM04004001	OA	1095	5,995,956	4,778,889	616,477
AM0A020007	OA	1095	4,716,030	3,510,216	775,811
AM00022006	OE	1475	5,854,781	2,572,550	3,282,231
AM00015006	OC	1095	4,705,780	100,000	4,605,780
AM0A005008	OA	1095	4,598,317	4,292,750	305,567
AM00016008	OC	1095	4,773,545	4,221,634	551,911
AM06071006	OG	1255	5,788,021	5,741,665	46,356
AM00017006	OC	1095	3,920,181	3,157,229	763,352
AM0K000005	OK	1650	7,743,667	3,817,449	3,926,218
AM00004004	OD	1255	6,014,163	5,346,759	667,404
AM0F014004	OF	1475	5,404,766	3,747,945	3,256,771
AM0F022006	OF	1475	6,715,256	5,965,022	759,234
AM0B018001	OB	1095	5,078,748	4,500,770	577,378
AM0B017006	OB	1095	4,337,328	436,500	3,900,828
AM0G015008	OG	1255	5,034,642	451,000	4,583,642
AM0K012002	OK	1650	7,118,383	25,000	7,093,383
AM0F023006	OF	1475	5,586,884	544,888	5,041,996
AM05009001	OE	1475	6,600,990	500,000	6,100,990
AM00017002	OD	1255	5,215,685	425,000	4,790,685
AM0E011004	OE	1475	6,118,531	598,053	5,520,478
AM0F030004	OF	1475	6,356,074	50,000	6,306,074

Additional unsold saleable area to be mortgaged in favor of the Lenders upon receipt of the revised building plans at FAR of 3.5 times.

 Ajanta India Limited as Borrower	 UVA Plans Developers (UVADE) Pvt. Ltd. As the Co-Borrower	 L&T Finance Limited as Lender 1	 L&T Housing Finance Limited As Lender 2
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## INDIA NON JUDICIAL

## Government of National Capital Territory of Delhi

## e-Stamp

Certificate No.	सत्यमेव जयते	IN-DL91344399895244P
Certificate Issued Date		: 08-Jun-2017 05:25 PM
Account Reference		: IMPACC (IV)/ dl804303/ DELHI/ DL-DLH
Unique Doc. Reference		: SUBIN-DL80430383562542644853P
Purchased by		: SUPERTECH LIMITED
Description of Document		: Article Others
Property Description		: AS ANNEXED
Consideration Price (Rs.)		: 0 : (Zero)
First Party		: SUPERTECH LIMITED
Second Party		: L AND T FINANCE LIMITED
Stamp Duty Paid By		: SUPERTECH LIMITED
Stamp Duty Amount(Rs.)		: 200 : (Two Hundred only)



Please write or type below this line.

This stamp paper forms an integral part of "Corporate Guarantee"

For Supertec

h Limited

Authorised Signatory

## Statutory Alert:

1. The authenticity of this Stamp Ce available on the website renders
2. The onus of checking the legitim
3. In case of any discrepancy pleas

ified at "www.shcilestamp.com". Any discrepancy in the details on this Certificate and as the certificate. nt Authority.

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## CORPORATE GUARANTEE

THIS DEED OF CORPORATE GUARANTEE ("Guarantee") is entered into, at Delhi on 9<sup>th</sup> June 2017 by:

**SUPERTECH LIMITED**, hereto (hereinafter referred as the "Guarantor", which expression shall, unless it be repugnant to the subject or context thereof, be deemed to include its successors and permitted assigns) of the **FIRST PART**;

## IN FAVOUR OF

The Person set out in **Schedule I**, hereto in their capacity as the Lenders (hereinafter referred to as the "Lenders", which expression shall, unless repugnant to the subject or context thereof, be deemed to mean and include their respective successors, transferees, assigns and assigns) of the **SECOND PART**;

## IN RESPECT OF OBLIGATIONS OF

The "Borrower", details of which are as mentioned in the **Schedule I** hereto (which expression shall, unless it be repugnant to the subject or context thereof, include permissible successors and assigns)

## WHEREAS:

- A. The Borrower is engaged in the business of construction, development and execution of real estate projects in India ("Business"). In furtherance of its Business, the Company is undertaking construction and development of a residential project being developed in the name of "Ajanta Ambrosia" (hereinafter referred to as the "Project", more particularly detailed in **Schedule II** hereto);
- B. The Borrower now requires certain funds for the Project, for which purpose the Lender has agreed to lend and advance a Rupee term loan facility of upto Rs.350,00,00,000/- as mentioned in **Schedule I** hereto ("Loan") (Rupees Three Hundred Fifty Crores only) pursuant to loan agreement executed on or about the date hereof, executed by and between the Borrower and the Lenders (hereinafter referred to as "the Loan Agreement");
- C. One of the conditions on which the Loan will be disbursed to the Borrower is that the Borrower shall procure the Guarantor to execute a corporate guarantee in favour and for the benefit of the Lenders whereby the payment, repayment or reimbursement, as the case may be, of the principal amount of the Loan, interest thereon and all other moneys due and payable by the Borrower in terms of the Loan Agreement (collectively "the Outstanding Amount") shall be secured, *inter-alia*, by such guarantee and the Lenders would not have granted and disbursed the Loan to the Borrower in the absence of the Borrower undertaking to causing the Guarantor to execute such a guarantee.

For Supertech Limited

  
Authorized Signatory

Supertech Limited  
Mr. Yogesh Goswami

  
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- D. In consideration of the Loan that has been made available to the Borrower by the Lenders, the Guarantor, at the request of the Borrower, has agreed to issue and execute this Guarantee, the terms and limits whereof are more particularly set out hereinafter, in favour of the Lenders as security, to secure the repayment of the Outstanding Amount, in the manner as hereinafter appearing.

**NOW THEREFORE THIS GUARANTEE WITNESSES** that in consideration of the premises aforesaid, the Guarantor hereby unconditionally, absolutely and irrevocably guarantees to and agree with the Lenders as follows:

1. In this Guarantee, unless the contrary intention appears or the context otherwise requires:
  - a) any references to a 'person' or 'persons' shall be construed as a reference to any person, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality), as the context may require; and
  - b) capitalized terms used but not specifically defined herein shall have the same meaning assigned / attributable to them under the Loan Agreement.
2. The Lenders shall have the sole discretion:
  - a) to make disbursement(s) and/or interim disbursement(s) to the Borrower from out of the Loan; and/or;
  - b) to lend and advance to the Borrower, the Loan at such time on such conditions and in such manner as the Lenders may decide.
3. The Guarantor guarantees, as primary obligor and not merely as surety to the Lenders, the payment by the Borrower of the Outstanding Amount and hereby guarantees, assures and undertakes to unconditionally and irrevocably pay on demand from time to time by the Lenders, and no later than 7 (seven) days, all of which demands shall be made in the manner set out in this Guarantee, all sums payable by the Borrower to the Lenders, under the Loan Documents, including the principal amount of the Loan together with interest, additional interest, default interest costs, charges and other amounts payable by the Borrower under the Loan Documents (the 'Guarantee Amount').
4. The Guarantor hereby agrees that the Borrower shall duly and punctually repay the Loan together with all interest, additional interest, liquidated damages, front-end fees and other monies payable in accordance with the Loan Agreement and perform and comply with all the other terms, conditions and covenants contained in the Loan Documents.
5. The Guarantor hereby agrees, undertakes and confirms as follows:
  - a) In the event of any default on the part of the Borrower in payment / repayment of any of the monies referred in Schedule II hereto, or in the event of any default on the part of the Borrower to comply with or perform any of the terms, conditions and covenants contained in the Transaction Documents, the

For Supertech Limited

Authorized Signatory  
Supertech Limited  
Mr. Yogesh Goswami

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Lenders is entitled to proceed against the Guarantor even without exhausting the available remedies against the Borrower & the Guarantor shall, upon demand to the Guarantor forthwith pay to the Lenders without demur all part of the amounts as demanded by the Lenders payable by the Borrower under the Transaction Documents. Any such demand made by the Lenders on the Guarantor shall be final, conclusive and binding notwithstanding any difference or any dispute between the Lenders and the Borrower, arbitration or any other legal proceedings, pending before any court, tribunal, arbitrator or any other authority. The enforcement of this Guarantee in part by the Lenders, for any reason whatsoever, shall not amount to discharge of the obligations of the Guarantor under this Guarantee to the extent of the balance (unenforced) amount(s) of the Guarantee;

- b) in the event of failure by the Guarantor to make payment as stated above, the Guarantor shall pay Default Interest at the same rate/s as specified in relation to the Loan for the Borrower till receipt of the aforesaid amounts by the Lenders to its satisfaction.
  - c) If the Guarantor refuses to comply with the demand made by the Lenders, then the Guarantor would be treated as a wilful defaulter as per the NHB's circular no. NHB (ND)ORS/Policy Circular No.74/2015-16 dated December 31, 2015,
  - d) to pay all the amounts to the Co-Borrower under the tripartite agreement dated 30<sup>th</sup> August 2012, including all amendments made to the said tripartite agreement in a timely manner without any delay, to enable the Co-borrower to make timely payments to the NCIDA Authority in respect to the Project land.
  - e) that it shall not indulge into or do any such act deed or thing which is detrimental or prejudicial to the interest of the Borrower/Co-Borrower and Lenders.
6. The Guarantor shall indemnify and keep the Lenders indemnified against all losses, damages, costs, claims and expenses whatsoever which the Lenders may suffer, pay or incur by reason of or in connection with any default on the part of the Borrower and/or the Guarantor in performance of their respective obligations under the Transaction Documents and this Guarantee, including legal proceedings taken against the Borrower and/or the Guarantor for recovery of the Outstanding Amount.
7. The Guarantor hereby agrees that, without the concurrence of the Guarantor, the Borrower and the Lenders shall be at liberty to vary, alter or modify the terms and conditions of the Transaction Documents and of the security created and of the security documents executed by the Borrower in favour of the Lenders and in particular to defer, postpone or revise the repayment of the Loan or payment of interest and other monies payable by the Borrower to the Lenders on such terms and conditions as may be considered necessary by the Lenders including any increase in the rate of interest. The Lenders shall also be at liberty to absolutely dispense with or release all or any of the security/securities furnished or required to be furnished by

for Supertech Limited

By  
Supertech Secretary  
Supertech Limited  
Mr. Yogesh Goswami

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the Borrower to the Lenders to secure the Loan. The Guarantor agrees that the liability under this Guarantee shall in no manner be affected by any such variations, alterations, modifications, waiver, dispensation with or release of security and that no further consent of the Guarantor is required for giving effect to any such variation, alteration, modification, waiver, dispensation with, or release of security.

8. The Lenders shall have full liberty, without notice to the Guarantor and without in any way affecting this guarantee, to exercise at any time and in any manner any power or powers reserved to the Lenders under the Loan Agreement to enforce or forbear to enforce payment of the Loan or any part thereof or interest or other monies due to the Lenders from the Borrower or any of the remedies or securities available to the Lenders, to enter into any composition or compound with or to grant time or any other indulgence or Loan to the Borrower, to give / grant temporary or extra overdrafts or other advances / credit facilities to the Borrower and to appropriate payments made to it by the Borrower towards repayment / payment of such overdrafts / advances / credit facilities from time to time and the Guarantor shall not be entitled to question such appropriation or to require the Lenders to appropriate such payments towards previous disbursements under the Loan, so as to reduce the liability of the Guarantor hereunder on account of any such payments and the Guarantor shall not be released by the exercise by the Lenders of their liberty in regard to the matters referred to above or by any act or omission on the part of the Lenders or by any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of so releasing the Guarantor and the Guarantor hereby waives in favour of the Lenders so far as may be necessary to give effect to any of the provisions of this Guarantee, all the surety ship and other rights which the Guarantor might otherwise be entitled to enforce.
9. The Guarantor also agrees that it will not be entitled to the benefit of subrogation vis-à-vis securities or otherwise until all the monies due to the Lenders under the Loan are fully repaid / paid.
10. This Guarantee shall be enforceable against the Guarantor notwithstanding that any security or securities comprised in any instrument(s) executed or to be executed by the Borrower in favour of the Lenders shall, at the time when the proceedings are taken against the Guarantor on this Guarantee, be outstanding or unrealised or lost.
11. The Guarantor hereby agrees and give consent to the sale, mortgage, lease, release etc. of any of the assets by the Borrower from time to time as may be approved by the Lenders or the transfer of any of the assets of the Borrower from one unit to the other or to the release or leasing out by the Lenders any or whole of the assets charged to the Lenders on such terms and conditions as the Lenders may deem fit and this may be treated as a standing and continuing consent for each and every individual act of transfer, mortgage, release or lease of any of such assets of the Borrower. The Guarantor hereby declares and agrees that no separate consent for each such transfer, mortgage, release or lease of any of such assets would be necessary in future.
12. The Guarantor hereby agrees and declares that the Borrower will be free to avail of further loans or other facilities from the Lenders or any other financial institution or bank in addition to the Loan or to secure the same during the subsistence of this

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guarantee and in that event the guarantee herein contained will not be affected or violated in any way whatsoever but will remain in full force and effect and binding on the Guarantor.

13. The rights of the Lenders against the Guarantor shall remain in full force and effect notwithstanding any arrangement which may be reached between the Lenders and the other Guarantors, if any, or notwithstanding the release of that other or others from liability and notwithstanding that any time hereafter the other Guarantors may cease for any reason whatsoever to be liable to the Lenders, the Lenders shall be at liberty to require the performance by the Guarantor of their obligations hereunder to the same extent in all respects as if the Guarantor had at all times been solely liable to perform the said obligations.
14. To give effect to this Guarantee, the Lenders may act as though the Guarantor were the principal debtors to the Lenders.
15. The Guarantor hereby declares and agrees that they have not received and shall not, without the prior consent in writing of the Lenders receive any security or commission from the Borrower for giving this guarantee so long any monies remain due and payable by the Borrower to the Lenders under the Loan Agreement.
16. The Guarantor shall not in the event of the liquidation of the Borrower prove in competition with the Lenders in the liquidation proceedings.
17. A certificate in writing signed by a duly authorized official of the Lenders shall be conclusive evidence against the Guarantor of the amount for the time being due to the Lenders from the Borrower in any action or proceeding brought on this Guarantee against the Guarantor.
18. This Guarantee shall not be wholly or partially satisfied or exhausted by any payments made to or settled with the Lenders by the Borrower and shall be valid and binding on the Guarantor and operative until repayment in full of all monies due to the Lenders under the Loan Agreement and/or other Transaction Documents.
19. This Guarantee shall be irrevocable and the obligations of the Guarantor hereunder shall not be conditional on the receipt of any prior notice by the Guarantor or by the Borrower and the demand or notice by the Lenders shall be sufficient notice to or demand on the Guarantor.
20. The Guarantor's obligations under this Guarantee and Lenders's rights under this Guarantee shall not be affected or impaired or waived or precluded for accidental or future exercise, by any act, omission, circumstance, matter or thing (other than full and irrevocable payment of the Outstanding Amount) which, but for this provision, would reduce, release or prejudice any of its obligations under this Guarantee or which might otherwise constitute a legal or equitable discharge or defence of a Guarantor or any other legal or equitable discharge or defence otherwise available to it, or otherwise discharge, impact or affect the obligations of the Guarantor or the rights of the Lenders, including but not limited to (whether or not known to the Guarantor or to the Lenders):

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- a. any time, waiver, composition, forbearance or concession given to the Borrower or any other Person;
  - b. any assertion of, or failure to assert, or delay in asserting, any right, power or remedy against the Borrower or any other Person, in respect of any security for the Loan(s) or under this Guarantee or the Loan Agreement or any other Transaction Document or of the Guarantor;
  - c. any amplification, amendment (however fundamental), variation or replacement of the provisions of any Loan Document or of any other agreement or security between the Borrower and the Lenders, the Guarantor or the Borrower;
  - d. any failure of any of the Borrower or the Guarantor to comply with any requirement of any law, regulation or order;
  - e. bankruptcy, the dissolution, liquidation, reorganization or other alteration of the legal status or structure of the Borrower or the Guarantor (as applicable);
  - f. any purported or actual assignment of the Loan(s) by the Lenders to any Person;
  - g. the Loan Agreement or any of the other Transaction Documents being in whole or in part illegal, void, voidable, evaded, invalid, unenforceable or otherwise of limited force and effect; or
  - h. any failure by any of the Borrower and the Lenders to take, enforce, release, discharge, exchange or substitute, or to realise the full value of, any security taken in respect of the obligations of the Guarantor herein.
21. Further, the liability of the Guarantor under this Guarantee shall also not be affected by:
- a. any change in the constitution or winding up of the Borrower or any absorption, merger or amalgamation of the Borrower with any other company, corporation or concern; or
  - b. any change in the management of the Borrower or takeover of the management of the Borrower by Central or State Government or by any other authority; or
  - c. acquisition or nationalisation of the Borrower and/or of any of its undertaking(s) pursuant to any law; or
  - d. any change in the constitution of the Lenders; or
  - e. the absence or deficiency of powers on the part of the Guarantor to give Guarantees and/or Indemnities or any irregularity in the exercise of such power.

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The Guarantor undertakes not to revoke this Guarantee during the subsistence of the Loan and the Transaction Documents.

22. The Guarantor waives any right the Guarantor may have of first requiring the Lenders (or any trustee, agent, receiver or other person acting on behalf of the Lenders), and the Lenders shall not be required at any time, to:
- give any notice to make a demand upon, or take any action against the Borrower;
  - give any prior notice to the Guarantor with regard to any default by the Borrower, or
  - proceed against, obtain a judgment, file a proof in a winding-up or dissolution of the Borrower, enforce any other rights or security or make a demand or claim payment from any Person, before making a claim against the Guarantor under this Guarantee.
23. The guarantee and indemnity contained in this Guarantee is each a continuing, primary, absolute, unconditional, separate and independent obligation of the Guarantor, notwithstanding any settlement of account or the occurrence of any other event or thing, and shall remain in full force and effect till such time the Borrower repays in full the Loan together with all interest, liquidated damages, front-end fees, costs, charges and all other monies that may from time to time become due and payable and remain unpaid to the Lenders under the Loan Agreement and other Transaction Documents.
24. All payments which the Guarantor is required to make under this Guarantee shall be made without any set-off, withholding, reservation, counterclaim, deduction or condition.
25. This Guarantee shall be enforceable against the Guarantor notwithstanding that any post-dated cheque, negotiable instrument, security and/or securities comprised in any instrument(s) executed or to be executed in favour of the Lenders shall, at the time when the proceedings are taken against the Guarantor on this Guarantee, be outstanding or unrealised or lost.
26. The Lenders and its group companies shall have the paramount right of set-off and lien, irrespective of any other lien or charge, present as well as future, on the deposits of any kind and nature (including fixed deposits) held/ balances lying in any accounts of the Guarantor, whether in single name or joint name(s), and on any monies, securities, bonds and all other assets, documents and properties held by / under the control of the Lenders and/or its group companies (whether by way of security or otherwise pursuant to any contract entered/ to be entered into by the Guarantor in any capacity), to the extent of all outstanding dues whatsoever, arising as a result of any of the Lenders's and/or its group companies' services extended to and/or used by the Guarantor and/or as a result of any other facilities that may be granted by the Lenders and/or its group companies to the Guarantor. The Lenders and/or its group companies are entitled without any notice to the Guarantor to settle any indebtedness whatsoever owed by the Guarantor to the Lenders and/or its group

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companies, (whether actual or contingent or whether primary or collateral, or whether joint and/or several) hereunder or under any other document/ agreement, by adjusting, setting-off any deposit(s) and/or transferring monies lying to the balance of any account(s) held by the Guarantor with the Lenders and/or its group companies notwithstanding that the deposit(s)/ balances lying in such account(s) may not be expressed in the same currency as such indebtedness.

The Lenders' and its group companies' rights hereunder shall not be affected by the Guarantor's bankruptcy, death or winding-up. It shall be the Guarantor's sole responsibility and liability to settle all disputes/ objections with any such joint account holders. In addition to the above mentioned right or any other right which the Lenders and its group companies may at any time be entitled whether by operation of law, contract or otherwise, the Guarantor authorise the Lenders: (a) to combine or consolidate at any time all or any of the accounts and liabilities of the Guarantor with or to any branch of the Lenders and/or its group companies; (b) to sell any of the Guarantor's securities or properties held by the Lenders by way of public or private sale without having to institute any judicial proceeding whatsoever and retain/appropriate from the proceeds derived there from the total amounts outstanding to the Lenders and/or its group companies from the Guarantor, including costs and expenses in connection with such sale; and (c) in case of cross currency set-off, to convert an obligation in one currency to another currency at a rate determined at the sole discretion of the Lenders and/or its group companies.

27. Any admission or acknowledgement in writing given or any part payment made by the Borrower in respect of the Loan shall be binding on the Guarantor and shall be treated as given on behalf of the Guarantor also.
28. This Guarantee is in addition to and not by way of limitation of or substitution for, any other guarantee(s) that the Guarantor may have previously given or may hereafter give to the Lenders (whether alone or jointly with other parties) and this Guarantee shall not revoke or limit any such other guarantee(s).
29. The Guarantor agrees that any legal action or proceedings arising out of this Guarantee may be brought by the Lenders, in its absolute discretion, in any competent court, tribunal or other appropriate forum having jurisdiction. The Guarantor shall not exercise any rights which they may have acquired by way of subrogation or otherwise, or take any action or make any claim in competition with an action or a claim of the Lenders.
30. The Guarantor acknowledges and confirms that the Guarantor has read and understood the Loan Documents and this Guarantee as set out and/or referred to in the applications submitted on behalf of the Borrower to the Lenders.

**31. Representations and Warranties:**

The Guarantor represents and warrants to the Lenders that as of the date hereof:

- a. it has full power, competence and authority to issue this Guarantee and perform its obligations under the terms of the Guarantee and has the authority to execute, assign, transfer, mortgage, hypothecate, pledge, charge, encumber, or otherwise dispose of its assets and to conduct the business, which it conducts and/or

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proposes to conduct and has taken all legal and other actions necessary or advisable to authorise the execution, delivery and performance of this Guarantee.

- b. It has been duly and validly executed by the Guarantor and this Guarantee constitutes legal, valid and binding obligations of the Guarantor;
- c. the entry into, delivery and performance by the Guarantor of and the transactions contemplated by, this Guarantee will not result in the existence of, nor oblige the Guarantor to create, any encumbrance over all or any of its present or future revenues or assets;
- d. neither the execution and delivery of this Guarantee nor the performance of the obligations of the Guarantor under this Guarantee conflicts or will conflict with or result in any breach of any of the terms, conditions or provisions of, or violate or constitute a default or require any consent under:
  - i) any law or the constitutional documents of the Guarantor or any document which is binding upon the Guarantor or on any of its assets;
  - ii) any indenture, mortgage, contract, agreement or other instrument or arrangement to which it is a party or which purports to be binding upon the Guarantor or any of its property or assets, and will not result in the imposition or creation of any lien, charge, or encumbrance on or security interest in, any part thereof pursuant to the provisions of any such agreement, instrument or arrangement; or
  - iii) any statute, rule or regulation or any judgment, decree or order of any court, governmental authority, bureau or agency binding on or applicable to the Guarantor
- e. all acts, conditions and things required to be done, fulfilled and all authorisations required or essential for the execution of this Guarantee or for the performance of the Guarantor's obligations in terms of and under this Guarantee are performed in order (i) to enable the Guarantor lawfully to enter into, exercise its rights under and perform and comply with the obligations expressed to be assumed by the Guarantor in this Guarantee, (ii) to ensure that the obligations expressed to be assumed by the Guarantor in this Guarantee are legal, valid and binding, and (iii) to make this Guarantee admissible in evidence in the Court of Law have been done, fulfilled and performed and are in full force and effect and further no such authorisation has been, or is threatened to be, revoked or cancelled;
- f. neither the Guarantor nor any of its properties enjoys any right of immunity from set off, suit or execution with respect to such Guarantor's assets or its obligations under this Guarantee;
- g. all amounts payable by the Guarantor under this Guarantee will be made free and clear of and without deduction / withholding for or on account of any tax or duty and without any set off;

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- h. no litigation, arbitration, administrative or other proceedings are pending or threatened against the Guarantor or their assets, which, if adversely determined, might have a Material Adverse Effect in relation to the Guarantor;
- i. the Guarantor has received a copy of the Loan Agreement and each of the other Transaction Documents;
- j. all information communicated to or supplied by or on behalf of the Guarantor to the Lenders from time to time in a form and manner acceptable to the Lenders, are true and fair / true, correct and complete in all respects as on the date on which it was communicated or supplied and nothing has occurred since the date of communication or supply of any information to the Lenders which renders such information untrue or misleading in any respect; and
- k. in the event of any disagreement or dispute between the Lenders and the Guarantor regarding the materiality or reasonableness of any matter including of any event, occurrence, circumstance, change, fact, information, document, authorisation, proceeding, act, omission, claims, breach, default or otherwise the opinion of the Lenders as to the materiality or reasonableness of any of the foregoing shall be final and binding on the Guarantor.
32. The Guarantor shall create / provide security as may be considered appropriate by the Lenders in favour of the Lenders / the Security Trustee / agent nominated by the Lenders and in such manner and form as the Lenders may, in its sole discretion, require as security for performance of the obligations of the Borrower and the Guarantor, in a form and manner satisfactory to the Lenders. All such security
- shall not be discharged by intermediate payment by the Borrower / Guarantor or any settlement of accounts by the Borrower / Guarantor;
  - shall be in addition to and not in derogation of any other security which the Lenders may at any time hold in respect of the dues of the Borrower / Guarantor;
  - shall be available to the Lenders until all accounts between the Lenders and the Borrower / Guarantor in respect of the Loan) are discharged in full to the satisfaction of the Lenders;
  - shall operate as continuing security for all monies, indebtedness and liabilities as specified herein notwithstanding the existence of a 'nil' balance or a credit balance in the Borrower's account under the Transaction Documents at any time or from time to time or at all times or any partial payments or fluctuations of accounts.
33. In the event the security furnished by the Guarantor is found to be insufficient / incorrect in value, the Guarantor shall furnish additional security as may be required by the Lenders. Without prejudice to the above, in the event the security furnished by the Guarantor is subsequently found to be of inferior value to that as declared by the Guarantor, the Lenders shall be entitled to declare the same as an 'event of default'.

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under the Loan Agreement and call for repayment / payment of the Outstanding Amount.

34. The Guarantor hereby agrees that the Lenders has an absolute right to call upon the Guarantor to declare on oath the details of its assets and when called upon, the Guarantor will unconditionally, within a period of three (3) days, declare on oath, the details its assets (whether moveable or immoveable, whether tangible or intangible), whether held solely or jointly, and, whether constitutes security for this Guarantee or not, in a form and manner satisfactory to the Lenders. The Guarantor agrees and undertakes that such disclosed assets should not be encumbered or disposed off by the Guarantor without the prior written approval of the Lenders, till the Guarantor discharge its obligation herein or till the Lenders discharges the Guarantor.
35. The Guarantor shall bear all taxes, stamp duties and charges in relation to the transactions contemplated under this Guarantee and indemnify the Lenders against any loss.
36. All documents provided by the Guarantor in connection with this Guarantee are genuine. The Lenders may at any time, call for or require verification of originals of any / of such copies. Any such copy in possession of the Lenders shall be deemed to have been given by the Guarantor.
37. The Guarantor shall provide such documents and shall do all such acts, deeds and things as may be necessary or required in connection with this Guarantee.
38. The Guarantor acknowledges that it has made the representations in Section 31 with the intention of inducing the Borrower and the Lenders to enter into the Loan Agreement and the other Transaction Documents and that the Lenders has entered into the Loan Agreement and the other Transaction Documents on the basis of, and in full reliance on, each of such representations set out in this Guarantee. And the Guarantor warrants to the Lenders that each of such representations is true and correct in all material respects as of the date hereof and that none of the representations omit any matter the omission of which makes any such representation misleading.
39. The Guarantor shall do or cause to be done anything which aids the exercise of any power, right or remedy of the Lenders under this Guarantee including, but not limited to the following:
- when requested by the Lenders, execute, acknowledge and deliver or cause to be executed, acknowledged or delivered such further instruments, or otherwise do or cause to be done anything, in order to enable the Guarantor to comply with its obligations herein and to enable the Lenders to exercise any power, right or remedy of the Lenders under this Guarantee; and
  - obtain, maintain, comply with and renew when necessary all authorizations required to enable it to perform its obligations under this Guarantee; or for the validity or enforceability of this Guarantee

40. Any demand, payment or notice under this Guarantee shall be sufficiently given, if

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sent by Regd. Post/Courier to or left at the last known address of the Guarantor or their respective personal representative's, as the case may be, such demand or notice is to be made or given, and shall be assumed to have reached the addressee in the course of post, if given by post and no period of limitation shall commence to run in favour of the Guarantor until after demand for payment in writing shall have been made or given as aforesaid and in proving such notice when sent by post it shall be sufficiently proved that the envelope containing the notice was posted and a certificate by any of the responsible officers of the Lenders that to the best of his knowledge and belief the envelope containing the said notice was so posted shall be conclusive as against the Guarantor even though it was returned unserved on account of refusal of the Guarantor or otherwise.

41. No course of dealing and no failure or delay by the Lenders in exercising, in whole or in part, any power, remedy, discretion, authority or other right under this Guarantee, any other Transaction Document or any other agreement shall waive or impair, or be construed to be a waiver of or an acquiescence in such or any other power, remedy, discretion, authority or right under this Guarantee or any other Transaction Document, or in any manner preclude its additional or future exercise; nor shall the action of the Lenders with respect to any default, or any acquiescence by it therein, affect or impair any right, power or remedy of the Lenders with respect to any other default.
42. This Guarantee binds and inures to the benefit of the respective successors and assignees of the Guarantor, Borrower and the Lenders, except that the Guarantor may not assign or otherwise transfer all or any part of its rights or obligations under this Guarantee without the prior written consent of the Lenders. The benefit of this Guarantee may be freely and unconditionally assigned, transferred or otherwise disposed of, in whole or in part, by the Lenders to any other Person.
43. Any amendment or waiver of, or any consent given under, any provision of this Guarantee shall be in writing and, in the case of an amendment, signed by the Parties.
44. If at any time, any provision of this Guarantee is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Guarantee nor of such provisions under the law of any other jurisdiction shall in any way be affected or impaired thereby.
45. It shall be an Event of Default under the Loan Agreement and the Transaction Documents if the Guarantor fails to observe or perform any of its obligations under this Guarantee, and any such failure continues for a period of 30 (thirty) days after the date on which the Lenders notifies the Guarantor and the Borrower of that failure.
46. Subject to Clause 47 below, this Guarantee shall be construed and interpreted in accordance with the laws of the India. The Parties hereto irrevocably submit to the non-exclusive jurisdiction of Court of Delh. in the event of any dispute in connection with, related to or in any way arising from this Guarantee.
47. The Parties agree to negotiate in good faith to resolve any and all disputes,

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differences, controversies or claims arising out of or in connection with the interpretation, performance or non-performance, or termination of this Guarantee. If the negotiations do not resolve the dispute to the reasonable satisfaction of Parties, then, the Parties agree that all such disputes, differences, controversies and claims shall be resolved through arbitration under the Arbitration and Conciliation Act, 1996

48. The arbitration shall be conducted before a sole arbitrator, who shall be appointed by the Lenders in its sole discretion. Such arbitrator shall be retired judge of any High Court or Supreme Court of India.
49. The seat of the arbitration shall be at Delhi and shall be conducted under and in accordance with the Arbitration and Conciliation Act, 1996 and rules made thereunder. The language of the arbitration shall be English.
50. The award rendered shall be in writing and shall set out the reasons for the arbitrator's decision. The award shall allocate or apportion the costs of the arbitration as the arbitrator deems fair. The Parties agree that the arbitration award shall be final and binding on the Parties. The Parties agree that no Party shall have any right to commence or maintain any suit or legal proceedings (other than for interim or conservatory measures) until the Dispute has been determined in accordance with the arbitration procedure provided herein and then only for enforcement of the award rendered in the arbitration. Judgment upon the arbitration award may be rendered in any court of competent jurisdiction or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be.
51. Notwithstanding the provisions set out in the Guarantee, nothing contained in this Guarantee or the Transaction Documents shall operate or be regarded as a waiver, renunciation or other modification of any right, privilege, or immunity of the Lenders under SARFAESI Act, 2002 or under any other applicable laws.
52. Notwithstanding any of the provisions of the Indian Contract Act, 1872 or any other applicable law, or any terms and conditions to the contrary contained in the Transaction Documents and/or this Guarantee, the Lenders may, at its absolute discretion, appropriate any payments made by the Borrower or Guarantor and any amounts realised by the Lenders by enforcement of security or otherwise, towards the dues payable by the Borrower to the Lenders under the Loan Documents and/or any other agreements whatsoever between the Borrower and the Lenders and in any manner whatsoever. Notwithstanding any such appropriation by the Lenders towards settlement of any dues payable by the Borrower to the Lenders under any other agreements between the Borrower and the Lenders, the Guarantor shall continue to remain liable to the Lenders for all outstanding/remaining amounts in respect of the Loan.
53. Disclosure of Information:

- a. The Guarantor agree(s) that in case of the Guarantor failing, in discharging the liability of the Borrower in repayment of the principal amount of the Loan(s) or payment of interest or other monies as demanded by the Lenders, the Lenders and/or Reserve Bank of India shall have an unqualified right to disclose or publish the details of the default and the name of the Guarantor as

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defaulter in such manner and through such medium as the Lenders and/or Reserve Bank of India may think fit;

- b. The Guarantor hereby agrees and gives consent for the disclosure by the Lenders of all or any such information and data relating to the Guarantor or to the Loan or defaults, if any, committed by the Borrower/Guarantor in discharge of its obligations as the Lenders may deem appropriate and necessary to the Credit Information Bureau (India) Limited, Credit Information Companies or any institution or any other agencies authorized in this behalf by the Reserve Bank of India/RHB or any other agencies authorized under the Applicable Law.
- c. The Guarantor hereby further undertakes(s) and acknowledges that-
- (i) the Credit Information Bureau (India) Limited or any institution or any other agency so authorised by the Reserve Bank of India may use, process the said information and data disclosed by the Lenders, and
  - (ii) the Credit Information Bureau (India) Limited, or any institution or any other agency may furnish on consideration, the processed information and data or products thereof prepared by them to banks, financial institutions and other credit grantors as may be specified by the Reserve Bank of India in this behalf.
- d. The Guarantor hereby gives his/her consent to the Lenders its officers and agents to disclose information relating to the Guarantor and his account(s) and/or dealing relationship(s) with the Lenders, including but not limited to details of any facilities, any security taken, transactions undertaken and balances and positions with the Lenders, to:
- (i) the head office of the Lenders, any of its subsidiaries or subsidiaries of its holding company, Affiliates, representative and branch offices in any jurisdiction (together with the Lenders, the 'Permitted Parties');
  - (ii) professional advisers and service providers of the Permitted Parties who are under a duty of confidentiality to the Permitted Parties;
  - (iii) any actual or potential assignee, novatee transferee, participant or sub-participant in relation to any of the Lenders's rights and/or obligations under any agreement (or any agent or adviser of any of the foregoing);
  - (iv) any rating agency, insurer or insurance broker of, or direct or indirect provider of credit protection to any Permitted Party;
  - (v) any court or tribunal or regulatory, supervisory, governmental or quasi-governmental authority with jurisdiction over the Permitted Parties.

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SCHEDULE I

1. Details of the Lenders	<p>Lender I: L&amp;T Finance Ltd. a company incorporated under the provisions of the Companies Act, 1956. and having its registered office at Technopolis, 7th Floor, A-Wing Plot No - 4, Block - BP, Sector -V, Salt Lake Kolkata WB 700091 through its office located at DCM Building, 6th Floor, Barakhamba Road, New Delhi. And</p> <p>Lender II: L&amp;T Housing Finance Ltd. a company incorporated under the provisions of the Companies Act, 1956. and having its registered office at L&amp;T House, Ballard Estate, N.M. Marg, Mumbai 400001 through its office located at DCM Building, 6th Floor, Barakhamba Road, New Delhi.</p>
2. Details of the Borrower	<p>Ainara India Limited, a company incorporated under the Companies Act, 1956 having its registered address at # 502, 5<sup>th</sup> Floor, Sachdeva Corporate Tower 17, Kankarpoone Community Centre, Delhi - 110082 and Corporate office at D-247/26, Sector-53, Noida, Uttar Pradesh 201301 acting through its authorized director/officer Mr. Vinod Kumar Gupta, pursuant to resolution dated 30<sup>th</sup> May 2017.</p>
3. Details of the Co-Borrower	<p>IVR Prime Developers (AAAD) Pvt. Ltd., a company incorporated under the Companies Act, 1956 having its registered office at M-22/3RT, Vijayanagar Colony Hyderabad TG 500057 and Corporate office at B-28-29 Sector -58 Noida UP-201307 and acting through its authorized director Mr. Anand Mani Batiwal pursuant to resolution dated 30<sup>th</sup> May 2017.</p>
4. Details of the Guarantor	<p>Supertech Limited, a company incorporated under the Companies Act, 1956 having its registered address at 1114 Hanakund Chambers, 11 Floor, 89, Nehru Place, New Delhi - 110019 and a corporate office at Supertech House, B 28-29, Sector 58, Noida 201307 through its authorized director Mr. Yogesh Goswami, pursuant to resolution dated</p>
5. Loan amount and rate of interest	<p>Rupee Term Loan aggregating to upto Rs.235,00,00,000/- (Rupees Two Hundred Thirty Five Crores only) by Lender I which shall comprise of the following two (2) tranches, each of which tranche may be drawn in one or more multiple sub-tranches:-</p> <p>Tranche I - of an aggregate amount of upto Rs.25,00,00,000/- (Rupees Twenty Five Crores only)</p> <p>Tranche II - of an aggregate amount of upto Rs.210,00,00,000/- (Rupees Two Hundred Ten Crores only)</p> <p>The amount under Tranche I &amp; II may be altered as changed at the discretion of the Lender I such that the aggregate exposure under Loan does not exceed Rs.235,00,00,000/- (Rupees Two Hundred Thirty Five Crores only).</p>

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			AND Rupee Term Loan aggregating to upto Rs.115 00,00,000/- (Rupees One Hundred Fifteen Crores only) by Lender II.
			<u>Rate of Interest</u> :- The Loan by Lender I & II will carry a fixed interest rate / coupon of 13% p.a. payable monthly.
6.	Details of Sheet (date & no.)	Term & ref.	May 26, 2017 Ref No: SANS15468
7.	Date of Agreement	Loan	9 <sup>th</sup> June 2017

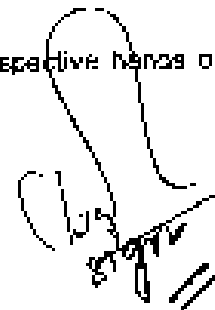
**SCHEDULE II**

A residential project of the Borrower being developed in the name of 'Aarava Ambrosia' situated at GH-D1, Sector 116, Noida, U.P

IN WITNESS WHERE of the Guarantor have hereunto set their respective hands on the day, month and year first hereinabove written.

Signed and Delivered by  
The above named Guarantor  
Supertech Limited  
Through their authorized director(s) **Mr. Yogesh Goswami**  
Vide board resolution dated \_\_\_\_\_

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Mr. Yogesh Goswami

**Maithili Moondra**

**From:** Jay Bhupali <jaybhupali@lts.com>  
**Sent:** 30 December 2022 18:45  
**To:** CIRP Supertech Non Eco-Village 2  
**Cc:** Gaurav Luhadia; Ruchir Jauhari; Aparna Rawat; Hitesh Goel; teamsupertech  
**Subject:** Re: L&T Housing Finance Limited (LTHF) - Financial Creditor Claim update  
**Attachments:** Order- 12.09.22.pdf; Order- SC-23.01.2019.pdf; Axis Bank Limited v. Edu Smart Services Private Limited.pdf; Andhra Bank Vs F. M. Hammerle Textile Ltd..pdf

Dear Mr Goel

This is with reference to your email dated November 16, 2022 admitting our claims of **INR 18,957,734,490** & surprising and shocking email dated 19 December 2022, whereby, you have unfairly reversed your earlier final claim admission and baselessly rejected our claim of **INR 6,30,04,98,903** (Indian Rupees Six Hundred and Thirty Crores Four Lakhs Ninety Eight Thousand Nine Hundred and Three only). That the said claims pertain to the loans extended by our company to Poise Realtech Private Limited and Ajnara India Limited and IVR Prime Developers, whereby Supertech Limited had duly executed Corporate Guarantees in favour of our company for securing the aforesaid loans. You may be aware that under both the loans, the Principal Borrowers and the Corporate Guarantor i.e. Supertech Limited have already defaulted in paying the amount due towards our company in terms of the Loan Agreements, financing documents and the Deeds of Corporate Guarantees. You may also be aware that Corporate Insolvency Resolution Process ("**CIRP**") has already been initiated against Ajnara India Limited.

As you may be aware, the **IDBI Trusteeship Services Limited v. Mr. Abhinav Mukherji & Ors, C.A. (AT) (INS.) No. 356 of 2022 ("IDBI Trusteeship")** was challenged before the Hon'ble Supreme Court in Civil Appeal No. 6268 of 2022, whereby vide an order dated 12 September 2022, the Hon'ble Supreme Court has stayed operation of the the same. It is also pertinent to note that in **IDBI Trusteeship**, the Appeal was dismissed on the ground that the Appellant had acted hand in glove with the Borrower to the detriment of homebuyers and most important ground that the Appellant is a 'related party' of the Corporate Debtor, and hence, the Appellant would be in the position to control the affairs of the Corporate Debtor. In the present scenario, our company is has nowhere even remotely acted in concert with the Borrower and it is a undisputed fact that our company not a related party of either the Corporate Debtor or the Corporate Guarantor and that only creditor-surety relationship exists between our company and the Corporate Guarantor. Therefore, in view of the aforesaid, the facts of **IDBI Trusteeship** are different and cannot be applied to the while admitting our claims

That our company's claims including the claims against Ajnara India Limited and IVR Prime Developers for the default committed by them were already admitted by you vide an email dated 16 November 2022 and that the rejection of the same at a belated stage is untenable.

In addition, you may also be aware that the Hon'ble NCLAT in **Axis Bank Limited v. Edu Smart Services Private Limited, Company Appeal (AT) (Insolvency) No. 302 of 2017**, had held that for the creditor to lodge its claim with the Interim Resolution Professional, it's not necessary that the creditor should have invoked the corporate guarantee prior to initiation of CIRP of corporate guarantor. The Hon'ble NCLAT further rejected the arguments that for such claim to be admitted, the creditor is required to serve a demand notice on the corporate guarantor or the creditor's debt has to be due and payable. The Hon'ble NCLAT held that the claim of the creditor should be as on the date of initiation of the CIRP (date of order of admission and moratorium) and any person who has a right to claim payment, as defined under Section 3(6) of the Insolvency and Bankruptcy Code, 2016, is supposed to file the claim whether matured or unmatured. The question as to whether there is a default or not is not to be seen. You may also be aware that an appeal challenging the said judgment, was dismissed by the Hon'ble Supreme Court vide an order dated 23 January 2019.

Further, in **Andhra Bank v. M/s F.M. Hammerle Textile Ltd., Company Appeal (AT) (Insolvency) No. 61 of 2018**, the Hon'ble NCLAT observed that "*it is not necessary that all the claims as are submitted by the Creditor should be a claim matured on the date of initiation of Resolution Process/admission, even in respect of debt, which is due in future on its maturity, the 'Financial Creditor' or 'Operational Creditor' or 'Secured Creditor' or 'Unsecured Creditor' can file such claim. Therefore, the definition of 'Claim' as defined under Section 3(6) is to be read along with Section 13 read with Section 15 of the 'I&B Code'.*"

In view thereof, it is submitted that it is a settled legal position that claims can be admitted even in cases where corporate guarantees have not been invoked.

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In view of the settled legal position as aforesaid, the rejection of our company's claims is contrary to law and therefore, we request you to kindly admit the claims amounting to INR 6,30,04,98,903 (Indian Rupees Six Hundred and Thirty Crores Four Lakhs Ninety-Eight Thousand Nine Hundred and Three only) there by taking the total admitted claims to INR 18,957,734,490 (Subject to upward revisions on clarifications to be provided by company) which are due and payable to our company namely L&T Finance Limited and confirm the admission of our claims, at the earliest.

Jay Bhupali

Chief Manager - Legal, Special Situations Group

### L&T Financial Services

On Fri, Dec 23, 2022 at 7:16 PM CIRP Supertech Non Eco-Village 2 <[cirpsupertech.nonev2@gmail.com](mailto:cirpsupertech.nonev2@gmail.com)> wrote:

Dear team,

As you are aware, we have been following from quite some time, we would like to let you know that we have now concluded the claim verification process, based on the available details and information provided by you, below are the amounts of claim filed, admitted and not admitted for your records:

The revised amount of Claim stands as below:

**Amount of Claim filed:** INR 19,635,316,080

**Amount of Claim admitted:** INR 12,746,538,316

**Amount of Claim not admitted:** INR 6,888,777,764

Please find the borrower wise, project wise break-up of amounts:

Name of Borrower	Project Name	Type of Facility	Amount claimed	Amount of claim admitted
Supertech Limited	Eco village I; North eye, Capetown; Crown tower; Upcountry	Term Loan	4,105,971,029	3,744,127,210
<b>Total (A)</b>			<b>4,105,971,029</b>	<b>3,744,127,210</b>
Poise Realtech Pvt. Ltd	Up Country & Capetown	Corporate Guarantee	2,479,943,863	-
Perpendicular Construction Pvt Ltd	Eco-Village-II, III & Golf country	Corporate Guarantee	1,317,080,249	1,285,873,611
Coast Realtors Pvt Ltd	Radiant Tower	Corporate Guarantee	1,008,956,076	984,691,720
Brownish Reality Pvt Ltd	Eco-Village-I	Corporate Guarantee	1,974,785,711	1,922,464,610
Coast Town planners Pvt ltd	North Eye	Corporate Guarantee	2,475,535,096	2,416,508,664
Mabsoot Buildhomes India Pvt Ltd	North Eye	Corporate Guarantee	2,452,489,015	2,392,872,500
Ajnara & IVR Prime developers	Ajnara Ambrosia Ajnara Panorama	Corporate Guarantee	3,820,555,040	-
<b>Total (B)</b>			<b>15,529,345,051</b>	<b>9,002,411,105</b>
<b>Grand Total (A+B)</b>			<b>19,635,316,080</b>	<b>12,746,538,316</b>

Do let us know in case of any queries.

For or on behalf of,

**Hitesh Goel**

**Interim Resolution Professional of Supertech Limited**

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

AFA Certificate Number: AA1/12224/02/160223/103895 (Valid till 16 February 2023)

**Registered Address:**

C4/1002 The Legend Apartments,

Sector 57, Gurgaon,

Haryana, 122011

E-mail: [iphiteshgoel@gmail.com](mailto:iphiteshgoel@gmail.com)

**Correspondence Address:**

Supertech Limited

21st-25th Floor, E-Square, Plot

*Handwritten Signature*  
**TRUE COPY**

ITEM NO.64

COURT NO.4

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). 6268/2022

ECL FINANCE LTD. & ANR.

Appellant(s)

VERSUS

ABHINAV MUKHERJEE & ORS.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.130268/2022-EX-PARTE STAY)

WITH C.A. No. 6273/2022

(FOR ADMISSION and IA No.130605/2022-EX-PARTE STAY)

Date : 12-09-2022 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. ABDUL NAZEER  
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

For Appellant(s)  
in CA 6268/2022

Mr. C.A.Sundaram, Sr.adv.  
Mr. Atul Sharma, Adv.  
Ms. Renuka Iyer, Adv.  
Mr. Aditya Vashisth, Adv.  
Ms. Himanshi Rajput, Adv.  
Mr. Anand Singh Sengar, Adv.  
Mr. Zafar Inayat, Adv.  
Ms. Rohini Musa, Adv.  
Mr. Abhishek Agarwal, AOR

in CA 6273/2022

Dr. Abhishek Manu Singhvi, Sr.adv.  
Mr. Ramakrishna Veeraraghavan, Sr.Adv.  
Mr. Atul Sharma, Adv.  
Ms. Renuka Iyer, Adv.  
Mr. Aditya Vashisth, Adv.  
Mr. Krishna Kumar, Adv.  
Mr. Abhishek Agarwal, AOR

For Respondent(s)  
No.1

Mr. Neeraj Kishan Kaul, Sr.Adv.  
Mr. Raghavendra Mohan Bajaj, Adv.  
Mr. Deepak Joshi, Adv.  
Mr. Agnish Aditya, Adv.  
Ms. Garima Bajaj, AOR

Res.No.3

Mr. Atul Sharma, Adv.  
Ms. Renuka Iyer, Adv.  
Mr. Aditya Vashisth, Adv.  
Mr. Abhishek Agarwal, AOR

Validly e-signed  
Digitally signed by  
DEEPAK JOSHI  
Date: 2022.09.14  
19:04:56 IST  
Reason:

UPON hearing the counsel the Court made the following  
O R D E R

Issue notice.

The parties are directed to maintain *status quo*,  
until further orders.

List after eight weeks.

(ANITA MALHOTRA)  
AR-CUM-PS

(KAMLESH RAWAT)  
COURT MASTER

**2018 SCC OnLine NCLAT 465**

**In the National Company Law Appellate Tribunal**

(BEFORE SUDHANSU JYOTI MUKHOPADHAYA, CHAIRPERSON AND BANSI LAL BHAT, MEMBER  
(JUDICIAL))

Company Appeal (AT) (Insolvency) No. 304 of 2017

[Arising out of Order dated 27<sup>th</sup> November, 2017 passed by the Adjudicating  
Authority (National Company Law Tribunal), Allahabad Bench in CA No. 159/2017  
in CP No. 24/ALD/2017]

In the Matter of:

Export Import Bank of India Centre One Building, Floor 21, World  
Trade Centre, Cuffe Parade, Mumbai - 400 005 ... Appellant;

*Versus*

Resolution Professional JEKPL Private Limited Plot No. 51,  
Knowledge Park II, Greater Noida, Gautam Buddha Nagar -  
201306 Uttar Pradesh, India ... Respondent.

Present:

For Appellant: Mr. Pallav Shishodia, Senior Advocate with Mr. Ashish Rana,  
Advocate.

For Respondent: Mr. Rohit Chaudhary, Advocate. Mr. Nesar Ahmad, PCS.

Mr. A.S. Chandhiok, Senior Advocate with Mr. Dhiraj Nair, Mr. Mohit Bakshi and Mr.  
Kumar Kislay, Advocates for Resolution Applicant.

With

Company Appeal (AT) (Insolvency) No. 16 of 2018

[Arising out of Order dated 15<sup>th</sup> December, 2017 passed by the Adjudicating  
Authority (National Company Law Tribunal), Allahabad Bench in CA No. 223/2017  
in CP No. 24/ALD/2017]

In the Matter of:

Export Import Bank of India Centre One Building, Floor 21, World  
Trade Centre, Cuffe Parade, Mumbai - 400 005 ... Appellant;

*Versus*

Resolution Professional JEKPL Private Limited Plot No. 51,  
Knowledge Park II, Greater Noida, Gautam Buddha Nagar -  
201306 Uttar Pradesh, India ... Respondent.

Present:

For Appellant: Mr. Pallav Shishodia, Senior Advocate with Mr. Ashish Rana,  
Advocate.

For Respondent: Mr. Rohit Chaudhary, Advocate. Mr. Nesar Ahmad, PCS.

Mr. A.S. Chandhiok, Senior Advocate with Mr. Dhiraj Nair, Mr. Mohit Bakshi and Mr.  
Kumar Kislay, Advocates for Resolution Applicant.

And

**Company Appeal (AT) (Insolvency) No. 302 of 2017**

[Arising out of Order dated 27<sup>th</sup> August, 2017 passed by the Adjudicating  
Authority (National Company Law Tribunal), Principal Bench, New Delhi in CP IB-  
102(PB)/2017]

In the Matter of:



Axis Bank Limited, Having its registered Office at: Trishul, 3<sup>rd</sup> Floor, Opposite Samartheshwar Temple, Law Garden, Ellisbridge, Ahmedabad - 380006, Gujarat and Stressed Assets Department (North) At Plot No. 114, Tower 1, IV Floor, Sector 128, Noida And acting through its Corporate Banking Branch-Delhi, Red Fort Capital Parsvnath Tower, 2<sup>nd</sup> Floor, Gole Market, New Delhi - 110001 Through its Assistant Vice President ... Appellant;

*Versus*

Edu Smart Services Private Limited Having its registered Office at L-74, Mahipalpur Extension, New Delhi - 110037 Through its Resolution Professional ... Respondent.

DBS Bank Limited Having its Head Office at 12 Marina Boulevard, Marina Bay Financial Centre, Tower III, Singapore - 018982 and Registered address at Ground Floor, Express Towers, Nariman Point, Mumbai - 400021 and Its Branch Office at Capital Point, Baba Kharak Singh Marg, Connaught Place, New Delhi - 110001 ... Proforma Respondent.

Present:

For Appellant: Mr. Amit Sibal, Senior Advocate with Mr. Shantanu Chaturvedi, Mr. Rajeev Khatana, Advocates and Mr. Jogendra, Legal Manager, Axis Bank.

For Respondents: Dr. U.K. Choudhary, Senior Advocate with Mr. Ajay Jain, Mr. Himanshu Vij, Advocates for CoC.

Ms. Vatsala Kak, Ms. Charu Sharma and Ms. Ritu Rastogi, Advocates for Resolution Professional.

Company Appeal (AT) (Insolvency) No. 304 of 2017; Company Appeal (AT) (Insolvency) No. 16 of 2018 and Company Appeal (AT) (Insolvency) No. 302 of 2017

Decided on August 14, 2018

The Judgment of the Court was delivered by

**SUDHANSU JYOTI MUKHOPADHAYA, CHAIRPERSON:**— Two appeals preferred by 'Export Import Bank of India' (hereinafter referred to as 'EXIM Bank') relates to Corporate Insolvency Resolution Process initiated against 'JEKPL Private Limited', whereas appeal preferred by 'Axis Bank Limited' relates to Corporate Insolvency Resolution Process against 'Edu Smart Services Private Limited'. However, as the question of law is common, they were heard together and are decided by this common judgment.

*EXIM Bank v. Resolution Professional, JEKPL Private Limited:*

**2.** The JEKPL Pvt. Ltd. filed an application under Section 10 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') for initiation of Corporate Insolvency Resolution Process against itself. It was admitted by the Adjudicating Authority (National Company Law Tribunal), Allahabad Bench and one Mr. Mukesh Mohan was appointed as Resolution Professional replacing one Mr. Dinkar T. Venkatasubramanian.

**3.** Pursuant to the advertisement, the creditors including 'Financial Creditors' and 'Operational Creditors' filed their respective claim including EXIM Bank. However, the EXIM Bank was not treated to be the 'Financial Creditor'.

**4.** EXIM Bank filed an application under Section 60(5), before the Adjudicating Authority for direction to the Resolution Professional to treat its claim as 'Financial Debt' and to include the EXIM Bank in the 'Committee of Creditors' with voting share proportionate to its amount of claim. It was alleged that the Resolution Professional through its email communicated decision dated 04.08.2017 rejecting claim of EXIM

Bank as a 'Financial Creditor' without calling for any explanation including the objections/comments from it.

**5.** Case of the *EXIM Bank* is that it disbursed Dollar Loan to the tune of US\$ 50 Million to a Netherlands based company, namely, Jubilant Energy N.V., ('JENV' for short) (Principal Borrower) by its Letter dated 13.04.2011 as modified by letter dated 18.05.2011 for which 'Corporate Guarantee' was executed by the Jubilant Enpro Private Limited ('JEPL' for short) on 01.08.2011 in favour of the EXIM Bank. Contractual obligation of 'JEPL' (Corporate Guarantor) was further secured by the execution of 'Corporate Guarantor Guarantee' with 'Counter Corporate Guarantee' by JEKPL (Corporate Debtor) on 01.08.2011 in favour of the EXIM Bank.

**6.** The EXIM Bank invoked its 'Counter Corporate Guarantee' on 30.03.2017 which led to the present dispute and its claim to treat it as a 'Financial Creditor' has not been accepted by the Resolution Professional.

**7.** The EXIM Bank declared the amount of loan advanced to Principal Borrower (JENV, Netherlands) as Non-Performing Asset (NPA) on 17.05.2016. Therefore, the EXIM Bank recalled the loan facilities advanced to JENV by letter dated 30.03.2017. Consequently, it had invoked its 'Corporate Guarantee' as well as the 'Counter Corporate Guarantee' against the JEPL and JEKPL by its letters dated 30.03.2017. Thus, according to EXIM Bank Principal Borrower having defaulted and the liability of Corporate Guarantee as 'Counter Corporate Guarantee' being joint and co-extensive with Principal Borrower, the EXIM Bank comes within the meaning of 'Financial Creditor' of JEKPL (Corporate Debtor), in terms of Section 5(7) r/w Section 5(8)(h) of I&B Code.

**8.** The Adjudicating Authority by the impugned order dated 27.11.2017 taking into consideration the objection raised by the 'Resolution Professional' and the 'Committee of Creditors', affirmed the decision of the Resolution Professional and rejected the claim of EXIM Bank.

**9.** The question arises for consideration is as to whether the EXIM Bank, which has been provided with 'Counter Corporate Guarantee' by JEKPL (Corporate Debtor) comes within the meaning of 'Financial Creditor'?

**Stand of EXIM Bank:—**

**10.** Mr. Pallav Shishodia, learned senior counsel for EXIM Bank referred to loan agreement dated 01.08.2011 entered by the parties with the EXIM Bank and submitted that the Dollar Loan in question was granted to 'Jubilant Energy N.V., Netherlands' (JENV). There is inter-relationship between 'Jubilant Energy N.V., Netherlands' (JENV) with 'Jubilant Energy (Holding) B.V.' (JEHBV), 'Jubilant Enpro Private Limited' (JEPL), 'Jubilant Energy (Kharsang) Private Limited' (JEKPL) and 'Jubilant Offshore Drilling Private Limited' (JODPL) who are members of group entities and overall corporate structure of the said Jubilant Group. According to the learned senior counsel, in terms of the agreements dated 01.08.2011, the Counter Guarantee granted in favour of EXIM Bank on behalf of Principal Borrower jointly and severally by the Corporate Guarantor and Counter Corporate Guarantor, the EXIM Bank comes within the meaning of 'Financial Creditor' as defined in Section 5(7) r/w Section 5(8)(h) of I&B Code.

**Stand of Successful Resolution Applicant:—**

**11.** According to learned senior counsel for the Resolution Applicant, EXIM Bank is not covered within the definition of 'Financial Creditor' under Section 5(7) r/w Section 5(8) of the I&B Code. It was submitted that 'Financial Debt' defined under Section 5(8) means a debt which is disbursed against the consideration for time value of the money. The EXIM Bank has not disbursed any amount (including interest) against the consideration for time value of money to the 'Corporate Guarantor' i.e. JEPL or the 'Counter Corporate Guarantor' i.e. JEKPL. The Corporate Debtor (JEKPL) has only

furnished 'Counter Corporate Guarantee' for due performance and discharge of JEPL's obligations and liabilities in respect of Corporate Guarantee furnished by it.

**12.** Further, according to learned senior counsel the 'Counter Guarantee' do not fall in the ambit of Section 5(8)(a) to (h) of the I&B Code. Section 5(8)(h) deals with counter indemnity obligation in respect of a guarantee, provided the same was issued by a bank or financial institution, and not by a company incorporated under the Companies Act.

**13.** According to the learned senior counsel, JEKPL is neither regulated by the Reserve Bank of India nor governed or licensed under the Banking Regulation Act. For the purposes of Section 5(8)(h), JEKPL can neither be considered as a bank nor as a financial institution. Therefore, both the requirements of Section 5(8) are not met.

**14.** It was further submitted that 'Counter Corporate Guarantee' is not liable for any 'Financial Debt' owed to EXIM Bank. As a matter of fact the liability, if any, of JEKPL, in its capacity as a Counter Guarantor, would come into effect only when the Corporate Guarantor (JEPL) has defaulted in its obligations under the Corporate Guarantee. The further plea has been taken that debts under 'Counter Corporate Guarantee' become due only on valid invocation and are limited as per the provisions of 'Counter Corporate Guarantee'.

**Analysis of Case of EXIM Bank**

**15.** It is not in dispute that the term loan of US\$ 50 million was granted by 'EXIM Bank' to 'Jubilant Energy N.V., Netherlands' (JENV) under Appellant's 'Overseas Investment Finance Program' by Sanction Letter dated 13.04.2011 as modified by subsequent letter dated 11.04.2011.

**16.** The said term loan was secured by a 'Corporate Guarantee' executed by JEPL in favour of Appellant - EXIM Bank on 01.08.2011. The liability of JEPL under its 'Corporate Guarantee' is limited to the amount which could be realized from investments held by its subsidiaries such as 'Jubilant Energy (Kharsang) Private Limited' (JEKPL), 'Jubilant Offshore Drilling Private Limited' (JODPL), 'Jubilant Oil & Gas Private Limited' and 'Jubilant Energy (NELP-V) Private Limited'.

**17.** The obligation of JEPL was further secured by execution of 'Counter Corporate Guarantee' by JEKPL in favour of the Appellant on 01.08.2011. The JEKPL executed the 'Counter Corporate Guarantee' to ensure the fulfillment of JEPL's obligation wherein JEPL has guaranteed the term loan facility availed by JENV and JEBHV. Therefore, as per terms of 'Counter Corporate Guarantee', JEKPL's obligation also is limited to the amount of the value of investments, assets and receivables therefrom from JEHBV, JENV, JODPL, Jubilant Oil & Gas Pvt. Ltd., Jubilant Energy (NELP-V) Pvt. Ltd. and itself.

**18.** The 'Deed of Guarantee' dated 01.08.2011 was executed between the 'Principal Borrower' - 'JENV, Netherlands' and Appellant - 'EXIM Bank' by sanction of Dollar Loan to the tune of US\$ 50 Million.

**19.** On the same date i.e. 01.08.2011 a 'Deed of Guarantee' was executed at Noida by JEPL in favour of Appellant EXIM Bank. In Schedule II, JENV, Netherlands has been shown to be the borrower in whose favour loan has been sanctioned by the EXIM Bank. In the said Deed of Guarantee it is mentioned that the general condition in annexure therein forms integral part of 'Counter Guarantor Agreement' and bound to all the parties therein.

**20.** Simultaneously, on 01.08.2011 another 'Deed of Counter Guarantee' was executed by 'Jubilant Energy (Kharsang) Pvt. Ltd' (JEKPL). In the said 'Deed of Counter Guarantee' JENV, Netherlands has been shown as the 'Principal Borrower' in Schedule II, having granted Dollar Loan by the EXIM Bank aggregating to US\$ 50 Million. It is also mentioned therein that in consideration of EXIM Bank granting the loan to the 'Principal Borrower', JEPL at the request of the 'Principal Borrower', has agreed to execute and deliver its 'Counter Guarantee' in favour of EXIM Bank for the

12/20/22  
TRUE COPY

due performance and discharge by JEPL of its obligations and liabilities to EXIM Bank in respect of the Guarantee in the manner shown therein. In Schedule I, JEKPL has been shown to be a 'Counter Guarantor'. In Schedule II, JENV has been shown to be a 'Principal Borrower' and Appellant - EXIM Bank has been shown to have been granted Dollar Loan in favour of the 'Principal Borrower'.

**21.** From the cross checking of the respective deeds of JEPL and JEKPL, we find that both are liable jointly and severally as 'Principal Debtor' for the EXIM Bank. Thus, the 'Corporate Counter Guarantee' in question in respect of due performance and discharge of obligations and liabilities of JEPL to EXIM Bank, essentially comes within the ambit of its 'Supplementary/Additional Guarantee'.

**22.** If the General Condition No. 6 & 10(iii)(iv) in one of the Guarantee Deed dated 01.08.2011 is seen, we find that to give effect to the Guarantee, EXIM Bank has been allowed to act and the Guarantors of the 'Principal Borrower' are jointly and severally liable with the 'Principal Borrower'.

**23.** There is admitted default by 'Principal Borrower' - JENV, Netherlands and JEHNV in the payment of respective Dollar Loans. The account of JEHNV has been declared NPA since 01.05.2016 and JENV since 07.05.2016. The liability under both the 'Corporate Guarantee' has been acknowledged by JEKPL in its Annual Report for the year 2016-17.

**24.** Therefore, for all purpose we find that the 'Counter Corporate Guarantee' given by Corporate Debtor (JEKPL) amounts to 'Guarantee'.

**Axis Bank Limited v. Edu Smart Services Private Limited:—**

**25.** One DBS Bank Limited filed an application under Section 7 against Edu Smart Services Private Limited (Corporate Debtor) which was admitted. Pursuant to the public announcement, the claims invited on 27.06.2017. Appellant - 'Axis Bank Ltd.' submitted its claim in prescribed Form C alongwith supporting documents before the Resolution Professional for amount aggregating to Rs. 396,76,07,676.68/-.

**26.** On 22.07.2017, the Resolution Professional rejected the claim of the Appellant on the ground that the 'Corporate Guarantee' cannot be invoked during ongoing Corporate Insolvency Resolution Process and order of moratorium.

**27.** The Axis Bank Ltd. submitted updated claim on 11.08.2017 in Form C explaining the position of law to the Resolution Professional, which was rejected by Resolution Professional by email dated 06.09.2017 stating that the 'so-called claim' of the Appellant cannot be accepted/estimated/entertained in accordance with the provisions of law and facts. The Appellant - 'Axis Bank Ltd.', thereafter, filed an application under Section 60(5) before the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi to set aside the decision of the Resolution Professional.

**28.** The Adjudicating Authority by impugned order dated 27.12.2017 rejected the claim holding that the claim of Appellant - 'Axis Bank Ltd.' was contingent on the date of commencement of Corporate Insolvency Resolution Process in respect to the Corporate Debtor, therefore, the same cannot be accepted as 'Financial Debt' of the Corporate Debtor. The Adjudicating Authority further held that moratorium imposed under Section 14 in respect of Corporate Debtor applies at time of invocation of the Corporate Guarantee.

**29.** The questions arises in the present case are:—

- (i) Whether the 'Axis Bank Ltd.' was also 'Counter Corporate Guarantor', comes within the meaning of 'Financial Creditor' as defined under Section 5(7) & (8) of I&B Code? and
- (ii) Whether invocation of Corporate Guarantee has any relationship with claim of a Financial Creditor?

**30.** Learned senior counsel for Axis Bank Ltd., referring to Master Restructuring Agreement and the Corporate Guarantee, submitted that the terms and conditions shown therein show that the Appellant 'Axis Bank Ltd.' come within the definition of 'Financial Creditor' of 'Edu Smart Services Pvt. Ltd.' (Corporate Debtor).

**31.** A Master Restructuring Agreement was executed by one 'Educomp Solutions Limited' on 25.03.2014 with the Axis Bank Ltd. for restructuring and reconstitution of the existing loans and working capital facilities given to it by consortium of lenders. Thereafter, three addendums dated 03.09.2014, 29.09.2014 and 31.03.2015 were signed between the 'Educomp Solutions Limited' and 'Axis Bank Ltd'.

**32.** A Security Trustee Agreement was executed on 03.06.2015 between Axis Bank Ltd. and the Principal Borrower pursuant to Master Restructuring Agreement appointing SBICAP and lenders under Master Restructuring Agreement and the SBICAP Loan Agreement.

**33.** The Corporate Guarantee dated 03.06.2015, by the Appellant - Axis Bank Ltd. reached between 'Edu Smart Services Pvt. Ltd.' (Corporate Debtor) in favour of SBICAP Trustee Ltd., therein it stipulated as follows:—

**"CORPORATE GUARANTEE**

**THIS CORPORATE GUARANTEE** executed at New Delhi this 3<sup>rd</sup> day of June 2015 ("**this Guarantee**") by

**EDU SMART SERVICES PRIVATE LIMITED**, a company registered under the Companies Act, 1956 (1 of 1956) having its Corporate Identity Number U80902DL2009PTC191840 and having its Registered Office at L-74, Mahipal Pur Extension, New Delhi-110037, India (hereinafter referred to as the "**Guarantor**", which expression shall, unless it be repugnant to the subject or context thereof, include its successors in title and permitted assigns).

**IN FAVOUR OF**

**SBICAP TRUSTEE COMPANY LIMITED**, a company incorporated under the company Act, 1956 (1 of 1956) and having its Registered Office at 202, Maker Tower "E" Cuffe Parade, Mumbai-400005, in the state of Maharashtra, India and its corporate office at Appeejay House, 6<sup>th</sup> Floor, West Wing, 3 Dinshaw Wachha Road, Churchgate, Mumbai-400 020, in the state of Maharashtra, India and its branch office at 424-425, 4<sup>th</sup> Floor, World Trade Centre, Babar Lane, New Delhi-110 001, India (hereinafter referred to as the "**Security Trustee**", which expression shall, unless it be repugnant to the subject or context thereof, include its successors, assigns, substitutes and replacements) in its capacity as the Security Trustee acting for the benefit of the CDR Lenders and Standard Chartered Bank as the Non CDR Lender, as detailed in **Schedule I.**"

**34.** The terms of the guarantee show that in the event of any default on the part of the Principal Borrower in payment or repayment and reimbursement of any of the monies referred to in the same or in the event of any default on the part of the Borrower to comply with or perform any of the terms, conditions and covenants contained in the Restructuring Documents, the Guarantor (Edu Smart Services Pvt. Ltd.) shall, upon demand from the Security Trustee/Lenders, forthwith pay to the Security Trustee/Lenders without demur all the amounts payable by the 'Principal Borrower' under the Restructuring Documents. In clause 12 of the Terms of Guarantee for giving effect to the Guarantee, the Security Trustee/Lenders have been allowed to act as if the Guarantor (Edu Smart Services Pvt. Ltd.) was the 'Principal Debtor' to the Lenders. As per clause 21 of Terms of Guarantee, the Guarantee shall be a continuing one and shall remain in full force and effect till such time the 'Principal Borrower' repays in full the Loans together with all interest, liquidated damages, costs, charges and all other monies that may be payable.

**35.** Schedule I to the Corporate Guarantee dated 03.06.2015 provides the

'Particulars of Lenders'. Part I relates to 'Particulars of the CDR Lenders', while Part A under the same relates to 'Particulars of the CDR Term Loan Lenders', Part B related to 'Particulars of the CDR Working Capital Lenders' and Part C relates to 'Particulars of Corporate Lenders', which reads as follows:—

**"SCHEDULE I**

**PARTICULARS OF LENDERS**

**PART I - PARTICULARS OF THE CDR LENDERS PART A - PARTICULARS OF THE CDR TERM LOAN LENDERS**

1) **CANARA BANK**, a body corporate constituted by and under the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970 and having its Head Office at Canara Bank Buildings, 112 JC Road, P.B. No. - 6648, Bangalore - 560002, Karnataka, India and having its Prime Corporate Branch-II, Barakhamba, World Trade Tower, 2<sup>nd</sup> Floor, New Delhi, India (hereinafter referred to as the "**CB**", which expression shall unless it be repugnant to the subject or context thereof include its successors and assigns);

X

X

X

**PART B - PARTICULARS OF THE CDR WORKING CAPITAL LENDERS**

1) **AXIS BANK LIMITED**, a company incorporated under the Companies Act, 1956 and a banking company within the meaning of Section 5(c) of the Banking Regulation Act, 1949 and having its Registered Office at Trishul, Opp. Samartheswar Temple, Law Garden, Ellisbridge, Ahmedabad 380 006 in the State of Gujarat, India and having its Central Office at Axis House, 2<sup>nd</sup> Floor, Wadia International Centre, Pandurang Budhkar Marg, Worli, Mumbai 400025, in the State of Maharashtra, India and Mini Credit Management center at Ground Floor, Shop No. 1-6 & 8-10, Ninex Time Centre Suncity, Sector 54, Golf Course Road, Gurgaon-122002, in the State of Haryana, India (hereinafter referred to as "**Axis**", which expression shall unless it be repugnant to the subject or context thereof include its successors and assigns);

X

X

X

**PART C - PARTICULARS OF THE CORPORATE LENDERS**

2) **AXIS BANK LIMITED**, a company incorporated under the Companies Act, 1956 and a banking company within the meaning of Section 5(c) of the Banking Regulation Act, 1949 and having its Registered Office at Trishul, Opp. Samartheswar Temple, Law Garden, Ellisbridge, Ahmedabad 380 006 in the State of Gujarat, India and having its Central Office at Axis House, 2<sup>nd</sup> Floor, Wadia International Centre, Pandurang Budhkar Marg, Worli, Mumbai 400025, in the State of Maharashtra, India and Mini Credit Management center at Ground Floor, Shop No. 1-6 & 8-10, Ninex Time Centre Suncity, Sector 54, Golf Course Road, Gurgaon-122002, in the State of Haryana, India (hereinafter referred to as "**Axis**", which expression shall unless it be repugnant to the subject or context thereof include its successors and assigns);"

**36.** From the aforesaid Particulars of the Lender it is clear that 'Axis Bank Ltd.' is lender of the Corporate Guarantor (Edu Smart Services Pvt. Ltd. - Corporate Debtor herein) and in terms of the Corporate Guarantee dated 03.06.2015, to give effect to the Guarantee, the Lenders (including Axis Bank Ltd.) may act and treat the Guarantor (Edu Smart Services Pvt. Ltd.-Corporate Debtor) as the Principal Debtor to the Lenders (Axis Bank Ltd.) (Clause 12 of the Terms of the Guarantee).

**Stand taken up by Committee of Creditors in the Case of AXIS Bank**

**37.** The Committee of Creditors have taken plea that unmatured claim at the time of insolvency commencement cannot be accepted. According to the learned senior counsel for the Committee of Creditors right to claim any debt only arises when the

Creditor's debt is due and payable. In case of a Guarantee, the debt becomes due only when a Creditor invokes a Guarantee. Therefore, according to him a conjoint reading of the I&B Code shows that the amount/claims in Corporate Insolvency Resolution Process which are due and payable before the commencement of insolvency process can only be taken into consideration. The Appellant - Axis Bank Ltd. having not invoked its Corporate Guarantee given by the Corporate Debtor, no amount was due till insolvency commencement date, hence, it cannot form part of claim during the Corporate Insolvency Resolution Process.

**38.** Reliance has also been placed on definition of 'claim' - Section 3(6); 'creditor' - Section 3(10); 'debt' - Section 3(11) of the I&B Code and plea has been taken that the Resolution Professional has power to reject any claim in terms of Regulation 13 or revise the claim under Regulation 14 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016. It was submitted that Appellant - Axis Bank Ltd. having filed the application directly, without invoking the guarantee cannot be treated to be a 'Financial Creditor'.

**39.** It was further submitted that the Corporate Guarantee executed between the Appellant - Axis Bank Ltd. and Corporate Debtor (Edu Smart Services Pvt. Ltd.) on 25.03.2014, 31.03.2014 and 03.06.2015 in favour of Appellant, the Axis Bank Ltd. was contractually bound to give demand notice before claiming any amount. Reliance has been placed on Section 14 to suggest that during the period of moratorium, the Corporate Guarantee cannot be invoked.

**40.** Further, according to learned counsel for the Committee of Creditors, the same amount cannot be claimed simultaneously against the 'Principal Borrower' and the 'Corporate Guarantor'.

**Relevant Provisions of Law:—**

**41.** Section 3(6) defines claim as:—

"3(6) "claim" means—

- (a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;
- (b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured."

**42.** From the aforesaid definition it is clear that a right of payment whether secured or unsecured come within the meaning of claim.

**43.** The debt on the other hand as defined under Section 3(11), means:

"3(11) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;"

**44.** From the aforesaid definition it is clear that liability or obligation in respect of a claim which is due from any person includes both the 'Financial Debt' and 'Operational Debt'.

**45.** Whether there is a 'default' of debt required to be noticed before initiation of Corporate Insolvency Resolution Process, and the default has been defined in Section 3(12) as under:

"3(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be;"

**46.** Thus, it is clear that default of debt has nothing to do with the claim of a person, whether secured or unsecured.

**47.** Section 5(7) defines 'Financial Creditor', which means a person to whom a financial debt is owed and includes a person to whom such debt has been legally

assigned or transferred to.

**48.** 'Financial Debt', on the other hand defined under Section 5(8) means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of the money and includes the clauses (a) to (i) as quoted below:

*"5(8) "financial debt" means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of the money and includes—*

- (a) money borrowed against the payment of interest;*
- (b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;*
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds notes, debentures, loan stock or any similar instrument;*
- (d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;*
- (e) receivables sold or discounted other than any receivables sold or non-recourse basis;*
- (f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;*
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;*
- (i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;"*

**49.** From the aforesaid provision, it is clear that Section 5(8)(h) includes any counter-indemnity obligation in respect of—

- (i) a guarantee,
- (ii) indemnity,
- (iii) bond,
- (iv) documentary letter of credit and
- (v) includes any other instrument issued by a bank or financial institution

**50.** From the aforesaid provision it is clear that 'Counter-Indemnity Obligation' in respect of a guarantee or indemnity or bond or documentary letter of credit is not necessarily to be issued by a bank or 'financial institution', but can be issued by any person to whom 'Financial Debt' is owed.

**51.** Whether claim, means the claim matured or not is one of the question raised.

**52.** While declaring moratorium under Section 13 in terms of 13(1)(b), the Adjudicating Authority is required to cause a public announcement for initiation of Corporate Insolvency Resolution Process and call for submission of claims under Section 15. As per Section 15 when public announcement is made, in terms of sub-section (1)(c) of Section 15, the claim as on the last date of submission is required to be shown.

**53.** Duties of Interim Resolution Professional have been prescribed under Section 18 and as per clause (b) therein the Interim Resolution Professional is required to receive and collate all the claims submitted by creditors to him pursuant to the public announcement made under Section 13 r/w Section

**15.** The claim of the parties should be as on the date of initiation of the Corporate



Insolvency Resolution Process (date of order of admission and moratorium). Any person who has right to claim payment, as defined under Section 3(6), is supposed to file the claim whether matured or unmatured. The question as to whether there is a default or not is not to be seen.

**54.** Therefore, stand taken by the respondents that the claim has not been matured cannot be ground to reject the claim.

**55.** Section 25 provides the duties of Resolution Professional. As per Section 25(2) (e), the Resolution Professional is required to maintain an updated list of all the claims. Aforesaid fact also suggests that the maturity of a claim or default of debt are not the guiding factors to be noticed for collating or updating the claims. The matter can be looked from another angle. It is only in case of 'debt' and 'default', a 'Financial Creditor' or 'Operational Creditor', may file applications under Section 7 or 9. The 'Corporate Applicant' has also right to file application under Section 10 for initiation of Corporate Insolvency Resolution Process against itself, if it has defaulted to pay the 'debt'. It does not mean that the persons whose debt has not been matured cannot file claim. The 'Financial Creditors' or 'Operational Creditors' or 'secured or unsecured creditors' all are entitled to file claim.

**56.** Therefore, we hold that maturity of claim or default of claim or invocation of guarantee for claiming the amount has no nexus with filing of claim pursuant to public announcement made under Section 13(1)(b) r/w Section 15(1)(c) or for collating the claim under Section 18(1)(b) or for updating claim under Section 25(2)(e). For the purpose of collating information relating to assets, finances and operations of Corporate Debtor or financial position of the Corporate Debtor, including the liabilities as on the date of initiation of the Resolution Process as per Section 18(1), it is the duty of the Resolution Professional to collate all the claims and to verify the same from the records of assets and liabilities maintained by the Corporate Debtor.

**EXIM Bank Matter:—**

**57.** Admittedly, JEKPL has given the 'Counter-Indemnity Obligation' by way of Guarantee (Counter Guarantee) and thereby it falls within clause (h) of Section 5(8). Such 'Counter-Indemnity Obligation' in respect of Counter Guarantee has been given by JEKPL as the EXIM Bank disbursed the debt against the consideration for the time value of money in favour of the Principal Borrower (JENV).

**58.** In view of the said provision we hold that EXIM Bank come within the meaning of 'Financial Creditor' as defined under Section 5(7) r/w Section 5(8) of the I&B Code.

**59.** In view of finding aforesaid, the claim of EXIM Bank having been wrongly rejected by the Adjudicating Authority by impugned order dated 27.11.2017 in CA No. 159/2017 in CP No. 24/ALD/2017, the said order is set aside.

**60.** So far as order dated 15.12.2017 passed in CA No. 223/2017 in CP No. 24/ALD/2017 having been passed in violation of the order passed by this Appellate Tribunal on 08.12.2017 and resolution plan having been approved by the Committee of Creditors which was not competent in absence of 'Export Import Bank of India', and taking into consideration that the claim of one of the Resolution Applicant viz. Hindustan Oil Exploration Company Limited has been wrongly not considered, the judgment dated 15.12.2017 is also set aside.

**Axis Bank:—**

**61.** In regard to Axis Bank Ltd., we have also noticed the 'Corporate Guarantee' dated 03.06.2015, terms of which have already been noticed and discussed above. From the terms and conditions it is clear that one of the lender - Axis Bank Ltd. is treated to be the 'Financial Creditor' of the 'Edu Smart Services Pvt. Ltd.' (Corporate Debtor). Therefore, in terms of agreement 'Edu Smart Services Pvt. Ltd.' (Corporate Debtor) also can be said to be the 'Principal Borrower'.

**62.** The Adjudicating Authority by impugned order/judgment dated 27.10.2017 in

CP No. IB-102(PB)/2017 having failed to appreciate the case of the *Axis Bank Ltd.*, we have no other option but to set aside the judgement dated 27.10.2017 passed in the case of 'Axis Bank Limited.

**63.** Having held that the 'Export Import Bank of India' is 'Financial Creditor' in relation to 'JEKPL Pvt. Ltd.' (Corporate Debtor) and 'Axis Bank Limited' is 'Financial Creditor' in relation to 'Edu Smart Services Pvt. Ltd.' (Corporate Debtor), we hold and direct respective 'Resolution Professionals' and 'Adjudicating Authorities' to treat the Appellant Banks as members of their respective Committee of Creditors, who in their turn are directed to hold meeting of Committee of Creditors in accordance with law and reconsider/consider the Resolution Plan(s) submitted in each Corporate Insolvency Resolution Process which are in accordance with Section 30(2) of the I&B Code.

**64.** Both the 'Committee of Creditors' now cannot go for rebidding, the respective Resolution Plans, having already been opened.

**65.** All the appeals are allowed with aforesaid observations and directions. However, in the facts and circumstances there shall be no order as to costs.

— — —

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**Maithili Moondra**

**From:** CIRP Supertech Non Eco-Village 2 <cirpsupertech.nonev2@gmail.com>  
**Sent:** 03 January 2023 08:54  
**To:** Gaurav Luhadia; Jay Bhupali  
**Cc:** Hitesh Goel; Ruchir Jauhari; Aparna Rawat; teamsupertech  
**Subject:** Re: L&T Housing Finance Limited (LTHF) - Financial Creditor Claim update  
**Attachments:** IDBI TRUSTEESHIP SERVICES LIMITED VS ABHINAV MUKHERJI (NCLAT 2022)- para 29- Uninvoked Corporate Guarantee as on date of filing .pdf;  
 Ghanashyam\_Mishra\_And\_Sons\_vs\_Edelweiss\_Asset\_Reconstruction\_on\_13\_April\_2021.pdf

Dear Gaurav and Jay,

Thank you for your email. We have gone through the same and have noted the contents thereof. Albeit, we have the following reservations against the judgments shared by you:

1. In the Supreme Court order dated September 12, 2022, the parties therein have only been directed to maintain *status quo* but no observation has been made regarding the position adopted by the NCLAT in the *Abhinav Mukherjee* judgment, and therefore the observations therein continue to remain binding.
2. Kindly refer to paragraph 25 of the *Abhinav Mukherjee* judgment (attached herewith). Both the judgments relied upon by LTHF, namely *Axis Bank v Edu Smart* and *Andhra Bank v F.M. Hammerle Textiles* have been distinguished and stated to be inapplicable in view of the NCLAT's subsequent judgment in ***Edelweiss Asset Reconstruction Co. Ltd. v. OMML***, subsequently upheld by the **Hon'ble Supreme Court in *Ghanshyam Mishra v. EARC, (2021) 9 SCC 657***, wherein the said NCLAT decision was upheld and it was observed that the Corporate Guarantee not having been invoked prior to the moratorium, the Corporate Guarantee holder's claim was rightly rejected by the Resolution Professional. The said judgment is attached herewith for your reference. Relevant observations in this regard may be seen from para 25 of the *Abhinav Mukherjee* judgment (order dated 14th March 2022), as the Supreme Court observations in this regard have been reproduced therein. In any case, *Ghanshyam Mishra* judgment being a Supreme Court judgment and later in time, the judgments cited by LTHF no longer have a bearing on the issue.

We therefore would like to re-state that the claims position maintained by the Interim Resolution professional remains and its status thereof does not change. Please reach out if you need any further clarifications in this regard.

For or on behalf of,

**Hitesh Goel**

**Interim Resolution Professional of Supertech Limited**

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

AFA Certificate Number: AA1/12224/02/160223/103895 (Valid till 16 February 2023)

**Registered Address:**

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On Mon, Jan 2, 2023 at 1:05 PM Gaurav Luhadia <[gauravluhadia@lths.com](mailto:gauravluhadia@lths.com)> wrote:

Dear Hitesh,

Look forward to your response on the email sent by Mr Jay Bhupali

 TRUE COPY

**Maithili Moondra**

Regards

*Asl*  
TRUE COPY

GHANASHYAM MISHRA & SONS (P) LTD. v. EDLWEISS ASSET RECONSTRUCTION CO. LTD. 657

(2021) 9 Supreme Court Cases 657

(BEFORE ROHINTON FALI NARIMAN, B.R. GAVAI AND HRISHIKESH ROY, JJ.) 31

GHANASHYAM MISHRA AND SONS PRIVATE LIMITED THROUGH THE AUTHORISED SIGNATORY ... Appellants;  
Versus  
EDLWEISS ASSET RECONSTRUCTION COMPANY LIMITED THROUGH THE DIRECTOR AND OTHERS ... Respondents.  
Civil Appeals Nos. 8129 of 2019<sup>1</sup> with Nos. 1550-53 of 2021<sup>2</sup> and 1554 of 2021<sup>3</sup>, decided on April 13, 2021

**A. Insolvency and Bankruptcy Code, 2016 — S. 31 r/w Ss. 3(10), 5(20) and 5(21) — S. 31 before and after its amendment by S. 7 of Act 26 of 2019 — Approved resolution plan — Bindingness of, on Central Government, State Government and local authorities, including tax authorities — Amendment of S. 31, held, is clarificatory in nature — Thus, the approved resolution plan shall be binding in the abovesaid manner even prior to the amendment coming into effect i.e. before 16-8-2019**

**— Claims/statutory/tax dues, including those of Central Government, State Government and local authorities — Extinguishment of, when they are not a part of the approved resolution plan**

**— Held, the legislative intent of making the resolution plan binding on all the stakeholders after it gets the seal of approval from the adjudicating authority, is that after the approval of the resolution plan, no surprise claims should be hung on the successful resolution applicant — That is to say, the dominant purpose is that the successful resolution applicant should start with fresh slate on the basis of the resolution plan approved — Further, the words "other stakeholders" squarely cover the Central Government, any State Government or any local authorities, including tax authorities**

**Held, once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of S. 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders — On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a**

<sup>1</sup> Arising from the Judgment and Order in *Edlweiss Asset Reconstruction Co. Ltd. v. Ghanshyam Mangrulkar & Associates Ltd.*, 2019 SCC Online NCI 761 (National Company Law Appellate Tribunal, Company Appeal (AT) (Insolvency) No. 437 of 2018, dt. 23-4-2019)

<sup>2</sup> Arising out of SLPs Nos. 1117-50 of 2020, Arising from the Judgment and Order in *Edlweiss Asset Reconstruction Co. Ltd. v. State of Jharkhand*, 2021 SCC Online Jh 454 (Jharkhand High Court, WP (T) No. 6124 of 2019, dt. 15-3-2021)

<sup>3</sup> Arising out of SLP No. 11232 of 2020, Arising from the Judgment and Order in *Edlweiss Asset Reconstruction Co. Ltd. v. State of Orissa*, 2021 SCC Online Or 1174 (Odisha High Court, Writ Pet. No. 257 of 2020, dt. 6-7-2020)

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claim, which is not part of the resolution plan. Further, the 2019 Amendment to S. 31 IBC is clarificatory and declaratory in nature and therefore will be effective from the date on which IBC has come into effect. Therefore, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority including tax authorities, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under S. 31 could be continued. This is equally true of resolution plans approved before the coming into force of 2019 Amendment as it is true for those coming into force thereafter. — Statute Law — Declaratory/Clarificatory Provision

**B. Insolvency and Bankruptcy Laws — Insolvency and Bankruptcy Code, 2016 — S. 31(1) — Amendment of, by S. 7 of Act 26 of 2019 — Held, is clarificatory and thus, retrospective — Held, if legislature by an amendment supplies an obvious omission in a former statute or explains a former statute, the subsequent statute has a relation back to the time when the prior Act was passed — Interpretation of Statutes — Particular Statutes or Provisions — Declaratory/Clarificatory provision**

**C. Interpretation of Statutes — External Aids — Parliamentary debates and Minister's speeches — Speech made by the Minister — Extent to which may be relied on — Amendment of S. 31 IBC by S. 7 of Act 26 of 2019 — Reasons for bringing such amendment — Explained — Held, the speech made by Hon'ble Finance Minister while explaining the amendment can be referred to for ascertaining what was the reason for moving the Bill and it can be used for finding out: (1) What were the circumstances in which the amendment was carried out; (2) What was the mischief for which the unamended section did not provide; and (3) What was sought to be remedied by amended enactment**

In the present case, held, the mischief, which was noticed prior to amendment of S. 31 IBC was, that though the legislative intent was to extinguish all such debts owed to the Central Government, any State Government or any local authority, including the tax authorities, once an approval was granted to the resolution plan by NCLT. However, on account of there being some ambiguity, the State/Central Government authorities continued with the proceedings in respect of the debts owed to them. Further, in order to remedy the said mischief, the legislature thought it appropriate to clarify the position that once such a resolution plan was approved by the adjudicating authority, all such claims/dues owed to the State/Central Government or any local authority including tax authorities, which were not part of the resolution plan shall stand extinguished.

**D. Insolvency and Bankruptcy Laws — Insolvency and Bankruptcy Code, 2016 — S. 31 r/w Ss. 3(10), 5(20) and 5(21) — Dues of Central Government, any State Government or any local authority, including tax authorities, held, amount to "operational debt"**

— Held, it is a cardinal principle of law that a statute has to be read as a whole. Held, harmonious construction of cl. (10) of S. 3 with cls. (20) and

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(21) of S. 5 would reveal that even a claim in respect of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority would come within the ambit of "operational debt". Further, the Central Government, any State Government or any local authority to whom an operational debt is owed would come within the ambit of "operational creditor" as defined under cl. (20) of S. 5. Consequently, a person to whom a debt is owed would be covered by the definition of "creditor" as defined under S. 3(10). Interpretation of Statutes Basic Rules Harmonious construction (Para 98)

The issues before the Supreme Court were:

- (a) As to whether any creditor including the Central Government, State Government or any local authority is bound by the resolution plan once it is approved by an adjudicating authority under Section 31(1) of the Insolvency and Bankruptcy Code, 2016 ("IBC")?
- (b) As to whether the amendment to Section 31 by Section 7 of Act 26 of 2019 is clarificatory/declaratory in substance in nature?
- (c) As to whether after approval of resolution plan by the adjudicating authority a creditor including the Central Government, the State Government or any local authority is entitled to initiate any proceedings for recovery of any of the dues from the corporate debtor, which are not a part of the resolution plan approved by the adjudicating authority?

**Held :**

One of the dominant objects of IBC is to see to it that an attempt has to be made to revive the corporate debtor and make it a running concern. For that, a resolution applicant has to prepare a resolution plan on the basis of the information memorandum. The information memorandum which is required to be prepared in accordance with Section 29 IBC along with Regulation 36 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("the 2016 Regulations") is required to contain various details which have been gathered by RP after receipt of various claims in response to the statutorily mandated public notice. The resolution plan is required to provide for the payment of insolvency resolution process costs, management of the affairs of the corporate debtor after approval of the resolution plan; the implementation and supervision of the resolution plan. It is only after the adjudicating authority satisfies itself that the plan as approved by CoC with the requisite voting share of financial creditors meets the requirement as referred to in sub-section (2) of Section 30, grants its approval to it. It is only thereafter that the said plan is binding on the corporate debtor as well as its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. The moratorium order passed by the adjudicating authority under Section 14 shall cease to operate once the adjudicating authority approves the resolution plan. The scheme of IBC therefore is, to make an attempt, by divesting the erstwhile management of its powers and vesting it in a professional agency to continue the business of the corporate debtor as a going concern until a resolution plan is drawn up. Once the resolution plan is approved,

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the management is handed over under the plan to the successful applicant so that the corporate debtor is able to pay back its debts and get back on its feet. (Para 61)

*Monnate e Industries Ltd. v. ICICI Bank*, (2018) 1 SCC 707; (2018) 1 SCC (Cri) 326, affirmed

The commercial wisdom of CoC is not to be interfered with, excepting the limited scope as provided under Sections 30 and 31 IBC. (Para 62)

If all the factors that need to be taken into account for determining whether or not the corporate debtor can be kept running as a going concern have been placed before the Committee of Creditors and CoC has taken a conscious decision to approve the resolution plan, then the adjudicating authority will have to switch over to the hands off mode. (Para 63)

The legislature has given paramount importance to the commercial wisdom of CoC and the scope of judicial review by adjudicating authority is limited to the extent provided under Section 31 IBC and of the appellate authority is limited to the extent provided under sub-section (3) of Section 61 IBC, is no more res integra. (Para 64)

*Kripa of Dharamshi v. Kotak Investment Advisors Ltd.*, (2021) 9 SCC 401; (2021) SCC Online SC 201, *Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta*, (2021) 8 SCC 231; (2021) 2 SCC (Cri) 443; *Maharashtra Securities Ltd. v. Maharashtra Securities Co.*, (2020) 11 SCC 467; (2021) 1 SCC (Cri) 798; *Karol Union Coop. Bank Ltd. v. Surendra Bhingordey*, (2022) 9 SCC 729; (2021) 2 SCC (Cri) 797, followed

*K. Suresh Babu v. Indian Overseas Bank*, (2019) 12 SCC 150; (2019) 4 SCC (Cri) 222, affirmed *Kamdhani Steel & Power (India) (P) Ltd. v. Indian Bank*, 2018 SCC Online NCLT 654; *Accidentalal (India) (P) Ltd. v. Satish Kumar Gupta*, (2019) 7 SCC 1; *United Securities Fabrics (P) Ltd. Resolution Proceedings v. Indian Bank*, 2019 SCC Online NCLT 73; *Patelwasthani Bankers v. V. Venkateshwar*, 2019 SCC Online No. 285, cited

Rare reading of Section 31 IBC would also make it abundantly clear that once the resolution plan is approved by the adjudicating authority, after it is satisfied, that the resolution plan as approved by CoC meets the requirements as referred to in sub-section (2) of Section 30, it shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders. Such a provision is necessitated since one of the dominant purposes of IBC is revival of the corporate debtor and to make it a running concern. (Para 65)

The resolution plan submitted by the successful resolution applicant is required to contain various provisions viz. provision for payment of insolvency resolution process costs, provision for payment of debts of operational creditors, which shall not be less than the amount to be paid to such creditors in the event of liquidation of the corporate debtor under Section 53; or the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of Section 53, whichever is higher. The resolution plan is also required to provide for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, which also shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of Section 53 in the event of a liquidation of the corporate debtor. Explanation 1 to clause (b) of sub-section (2) of Section 30 IBC clarifies for the removal of doubts that a distribution in accordance with the provisions of the said clause shall be fair and equitable to such creditors. The resolution plan is also required to provide for the management



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of the affairs of the corporate debtor after approval of the resolution plan and also the implementation and supervision of the resolution plan. Clause (e) of sub-section (2) of Section 30 IBC also casts a duty on RP to examine that the resolution plan does not contravene any of the provisions of the law for the time being in force. (Para 66)

Purusal of Section 29 IBC read with Regulation 36 of the 2016 Regulations would reveal that it requires RP to prepare an information memorandum containing various details of the corporate debtor so that the resolution applicant submitting a plan is aware of the assets and liabilities of the corporate debtor, including the details about the creditors and the amounts claimed by them. It is also required to contain the details of guarantees that have been given in relation to the debts of the corporate debtor by other persons. The details with regard to all material litigation and an ongoing investigation or proceeding initiated by the Government and statutory authorities are also required to be contained in the information memorandum. So also the details regarding the number of workers and employees and liabilities of the corporate debtor towards them are required to be contained in the information memorandum. (Para 67)

All these details are required to be contained in the information memorandum so that the resolution applicant is aware as to what are the liabilities that he may have to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure that the corporate debtor is revived and made a running establishment. The legislative intent of making the resolution plan binding on all the stakeholders after it gets the seal of approval from the adjudicating authority upon its satisfaction that the resolution plan approved by CoC meets the requirement as referred to in sub-section (2) of Section 30 is that after the approval of the resolution plan, no surprise claims should be flung on the successful resolution applicant. The dominant purpose is that he should start with fresh slate on the basis of the resolution plan approval. (Para 68)

*East Steel (India) Ltd. (CoC) v. Satish Kumar Gupta*, (2022) 8 SCC 49 : (2021) 2 SCC (Cr) 415, *inter alia*

*Sunder Chhotchand Rand v. Satish Kumar Gupta*, 2022 SCC Online No. 47788, *id est*

In view of the provisions of Section 238 IBC, the provisions thereof will have an overriding effect, if there is any inconsistency with any of the provisions of the law for the time being in force or any instrument having effect by virtue of any such law. As such, the observations made by NCT AT to the aforesaid effect, if permitted to remain, would frustrate the very purpose for which IBC is enacted. (Para 71)

*CO v. Manganese Export & Energy Ltd.*, (2018) 18 SCC 788 : (2019) 1 SCC (Cr) 243, *affirmed*

Vide Section 7 of Act 26 of 2019 [vide S.O. 2953(T), dated 16-8-2019 with effect from 16-8-2019], the following words have been inserted in Section 31 IBC:

"including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed," (Para 73)

As such, with respect to the proceedings, which arise after 16-8-2019, there will be no difficulty. After the amendment, any debt in respect of the payment of

dues arising under any law for the time being in force including the ones owed to the Central Government, any State Government or any local authority, which does not form a part of the approved resolution plan, shall stand extinguished. (Para 74)

Perusal of the SOR ["Statement of Objects and Reasons" of the Insolvency and Bankruptcy Code (Amendment) Bill, 2019] would reveal that one of the prime objects of IBC was to provide for implementation of the insolvency resolution process in a time bound manner for maximisation of value of assets in order to balance the interests of all stakeholders. However, it was noticed that in some cases there was extensive litigation causing undue delays resultant in hampering the value maximisation. It was also found necessary to ensure that all creditors are treated fairly. It was therefore in view of the various difficulties faced and in order to fill the critical gaps in the corporate insolvency framework, it was necessary to amend certain provisions of IBC. Clause (f) of Para 3 of the SOR of the Insolvency and Bankruptcy Code (Amendment) Bill, 2019 would amply make it clear that the legislative intent in amending sub-section (1) of Section 31 IBC was to clarify that the resolution plan approved by the adjudicating authority shall also be binding on the Central Government, any State Government or any local authority to whom a debt is owed in respect of payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, including tax authorities. (Para 78)

In the Rajya Sabha Debates, on 29-7-2019, when the Bill for amending IBC came up for discussion, there were certain issues raised by certain members. (Para 79)

In the speech the Hon'ble Finance Minister has categorically stated that Section 238 provides that IBC will prevail in case of inconsistency between two laws. She also stated that there was question about indemnity for successful resolution applicant and that the amendment was clearly making it binding on the Government. She stated that the Government will not make any further claim after the resolution plan is approved. So, that is going to be a major sense of assurance for the people who are using the resolution plan. She has categorically stated that she would want all the Hon'ble Members to recognise this message and communicate further that IBC gives that comfort to all new bidders. They need not be scared that the taxman will come after them for the faults of the earlier promoters. She further states that once the resolution plan is accepted, the earlier promoters will be dealt with as individuals for their criminality but not the new bidder who is trying to restore the company. (Para 80)

The speech made by Hon'ble Finance Minister while explaining the amendment could be referred to for ascertaining what was the reason for moving the Bill. The speech can be used for finding out:

- (1) What were the circumstances in which the amendment was carried out;
- (2) What was the mischief for which the unamended section did not provide; and
- (3) What was sought to be remedied by amended enactment. (Para 84)

*A.B. Vignese v. CIT*, (1981) 7 SCC 133; 1981 SCC (Tax) 294; *Union of India v. Martin Luther Evangelical Ltd.*, (2005) 7 SCC 209, approved

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*Loe Shikshane Trust v. CIT*, (1976) 1 SCC 251; (1976) SCC (Tax) 11; *Indian Chamber of Commerce v. CIT*, (1976) 1 SCC 324; (1976) SCC (Tax) 41; *CIT v. State Air S&S Co. & Mangalorem*, (1982) 2 SCC 11; (1982) SCC (Tax) 70; *ibid*.

It is clear that the mischief which was noticed prior to amendment of Section 31 IBC was that though the legislative intent was to extinguish all such debts owed to the Central Government, any State Government or any local authority, including the tax authorities once an approval was granted to the resolution plan by NCLT; on account of there being some ambiguity, the State/Central Government authorities continued with the proceedings in respect of the debts owed to them. In order to remedy the said mischief, the legislature thought it appropriate to clarify the position that once such a resolution plan was approved by the adjudicating authority, all such claims/dues owed to the State/Central Government or any local authority including tax authorities, which were not part of the resolution plan shall stand extinguished. (Para 84)

An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law, retrospective operation is generally intended. The language "shall be deemed always to have meant" or "shall be deemed never to have included" is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law when the Constitution came into force, the amending Act also will be part of the existing law. (Para 85)

*Central Bank of India v. Workmen*, AIR 1960 SC 12, 27; (1960) 1 SCR 200; *Jones v. Bennett*, (1891) 11 LT 705, 708; *Marius Mader & Co. v. State of Madras*, (1966) 3 SCC 552, 563; (1966) SCC (Tax) 530; *Sarwan Overseas (Export) v. State of Haryana*, (2003) 1 SCC 551, 559; *Harding v. Queenland Stamp Commissioners*, 1898 AC 105; *R. v. Darnley*, (1852) 3 B & Ad 461; 1 C. ER 168, 169; *Kivkandil Industrial Staff (2) v. Maharashtra Bhandaris*, AIR 1968 SC 1346, 1355; (1968) 3 SCR 523; *S.A. Gumbhar & Sons v. CIT*, (2011) 1 SCC 451, 465; *Birla Cottons Works v. CIT*, (2001) 9 SCC 25; *CIT v. Shree Pesticides*, (2005) 5 SCC 151; *Chaman Singh v. Jankari*, (1969) 2 SCC 123, 133; *CIT v. Sugar Producers Ltd.*, AIR 1966 SC 1113; (1966) 2 SCR 881; *Union of India v. N. Mahipala Reddy*, (1999) 7 SCC 545, 546-47; *Seabra v. Tanaji*, (1985) 2 SCC 500; *Punjab Treasury v. State of Punjab*, (1991) 1 SCC 604; *R. Rajagopal Reddy v. Padmini Choudhary*, (1992) 2 SCC 636, 646; *Alloy Motors (P) Ltd. v. CIT*, (1997) 1 SCC 473, 479-80; *CIT v. Bafra Cement (P) Ltd.*, (1997) 5 SCC 432, 506-07; *Sigant Sunder v. Ram Kumar*, (2003) 3 SCC 21, 45-50; *Zile Singh v. State of Haryana*, (2004) 4 SCC 1, 7; *CIT v. Gold Coin Health Food (P) Ltd.*, (2006) 9 SCC 522; *S.B. Bhattacharjee v. S.D. Majumdar*, (2007) 10 SCC 513; (2006) SCC (L&S) 21; *Mahesh Kumar v. Prem Bahari Khos.*, (1989) 2 SCC 95, 108; *CIT v. Nandh & Gupta*, (2008) 4 SCC 752; *CIT v. Home Exports Ltd.*, (2010) 1 SCC 439; *Beif Homan Day Laxman Das v. CIT*, (1997) 1 SCC 322, 326; *Sundari Anandlal Das v. CIT*, (1997) 1 SCC 89; *CIT v. Kaji Singh & Co.*, (2000) 2 SCC 253, *ibid*.

*In re G.D. Singh: The Principles of Statutory Interpretation*, 11th Edn., *issued on Order on Appeal*, 711 Edn., *ibid*.

The presumption against retrospective operation is not applicable to declaratory statutes. In determining, therefore, the nature of the Act, regard must be

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had to the substance rather than to the form. If a new Act is "to explain" an earlier Act, it would be without object unless construed retrospectively. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. (Para 88)

What is material is to ascertain the legislative intent. If the legislature by an amendment supplies an obvious omission in a former statute or explains a former statute, the subsequent statute has a relation back to the time when the prior Act was passed. (Para 89)

*Zila Singh v. State of Haryana*, (2004) 8 SCC 1; *CFE v. Gold Coin Hotel (P) Ltd.*, (2008) 3 SCC 622, followed

*Abanow General v. Hagan*, (1961) 2 Price 381; 148 IR 130; *National Agricultural Coop. Mktg. Federation of India Ltd. v. Union of India*, (2003) 5 SCC 23; *Shyam Sunder v. Ram Kumar*, (2007) 18 SCC 24; *Bangal Insurance Co. Ltd. v. State of Bihar*, (1955) 2 SCR 633; AIR 1955 SC 66; *London case*, (1984) 7 Co. Rep. 70; 76 IR 677; *Allied Motors (P) Ltd. v. CIT*, (1997) 5 SCC 172, cited

Amendment made to Section 14 of the Code, in which the memorandum prescribed by Section 14 was held not to apply to guarantors, was held to be clarificatory, and therefore, retrospective in nature, the object being that an overbroad interpretation of Section 14 ought to be set at rest by clarifying that this was never the intention of Section 14 from the very inception. (Para 92)

*SBI v. V. Ramakrishnan*, (2018) 17 SCC 391; (2019) 3 SCC 100; *Sh. B.R. Educational Services (P) Ltd. v. Praveen Gupta & Associates*, (2019) 1 SCC 679; (2018) 5 SCC 516; 528, affirmed

*Singh v. SBI*, 2017 SCC Online AI 2717; (2018) 2 AI 11769; (2017) 9 AID 723; *SBI v. V. Ramakrishnan*, 2018 SCC Online No. 2438; *National Project Construction Corp. Ltd. v. Madhu and Co.*, 1989 SCC Online Pcdl 1059; AIR 1990 Pcdl 300; *Chakrabarti Chatterjee v. Dandachandrasekhar Chatterjee*, 1978 SCC Online Mad 276; AIR 1978 Mad 262; *Bank of Bihar Ltd. v. Dhanraj Prasad*, AIR 1969 SC 257, cited

After CoC approves the plan, the adjudicating authority is required to arrive at a subjective satisfaction that the plan conforms to the requirements as are provided in sub-section (2) of Section 30 IBC. Only thereafter the adjudicating authority can grant its approval to the plan. It is at this stage that the plan becomes binding on corporate debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. The legislative intent behind this is to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans would go haywire and the plan would be unworkable. (Para 94)

The words "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities. The legislature, noticing that on account of obvious omission, certain tax authorities were not abiding by the mandate of IBC and continuing with the proceedings, has brought out the 2019 Amendment so as to cure the said mischief. We therefore hold that the 2019 Amendment is declaratory and clarificatory in nature and therefore retrospective in operation. (Para 94)

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er "Creditor" has been defined to mean "any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder". "Operational creditor" has been defined to mean a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred. "Operational debt" has been defined to mean a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority. (Para 97)

b It is a cardinal principle of law that a statute has to be read as a whole. Harmonious construction of clause (10) of Section 3 IBC read with clauses (20) and (21) of Section 5 thereof would reveal that even a claim in respect of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority would come within the ambit of "operational debt". The Central Government, any State Government or any local authority to whom an operational debt is owed would come within the ambit of "operational creditor" as defined under clause (20) of Section 5 IBC. Consequently, a person to whom a debt is owed would be covered by the definition of "creditor" as defined under clause (10) of Section 3 IBC. As such, even without the 2019 Amendment, the Central Government, any State Government or any local authority to whom a debt is owed, including the statutory dues, would be covered by the term "creditor" and in any case, by the term "other stakeholders" as provided in sub-section (1) of Section 31 IBC. (Para 98)

c Demand notices issued by the Central Goods and Service Tax Department for a period prior to the date on which NCLT has granted its approval to the resolution plan are not permissible in law. (Para 99)

e *Shri Teek Nathdara Group Ltd v. Union of India*, 2020 SCC Online Raj 1097, approved

The claim of operational creditor will also include a claim of a statutory authority on account of money receivable pursuant to an imposition by a statute. (Para 100)

*Waring Jiranghmal's v. Union of India*, 2018 SCC Online Cal 40, approved

f The 2019 Amendment is declaratory and clarificatory in nature. Even if the 2019 Amendment was not effected, still the Central Government, any State Government or any local authority would be bound by the resolution plan, once it is approved by the adjudicating authority (i.e. NCLT). (Para 101)

**Conclusion**

g Thus, it is held that once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not h part of the resolution plan. (Para 102.1)

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The 2019 Amendment to Section 31 IBC is clarificatory and declaratory in nature and therefore will be effective from the date on which IBC has come into effect. (Para 102.2)

Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued. (Para 102.3)

**L. Insolvency and Bankruptcy Laws — Insolvency and Bankruptcy Code, 2016 — Ss. 61(3) and 31 — Appeal against an order approving a resolution plan under S. 31 — Scope of — Held, such appeal is maintainable only on the grounds specified in Ss. 61(3)(i) to (v) — Once it is found that none of these grounds are made out, NCLAT cannot grant any relief to appellant — Hence, in present case, relief granted by NCLAT in essence undoing the binding effect of the approved resolution plan, being clearly beyond the scope of S. 61(3) and rulings of Supreme Court thereon, set aside**

While the impugnal judgment and order dated 23.4.2019, NCLAT found that as no ground was made out in terms of Section 61(3) IBC, no relief could be granted in the appeals. However, while doing so, NCLAT observed thus:

“28. However, we make it clear that the rejection of the claim for the purpose of collating the claim and making it part of the “resolution plan” will not affect the right of the appellant “Lidewiss Asset Reconstruction Ltd.” to invoke the bank guarantee against the “corporate debtor” in case the “principal borrower” failed to pay the debt amount, the “Moratorium” period having come to an end.

× × ×

“29. From the aforesaid provisions, it is clear that after period of Moratorium it is open to the person to move before a civil court or to move an application before the court of competent jurisdiction against the “corporate debtor”.

“30. In the present case, since it is not possible either for the adjudicating authority or for this Appellate Tribunal to give any specific finding, we are of the view that the appellant may move before the civil court or court of competent jurisdiction and may file an application before the Labour Court for appropriate relief in favour of the workmen concerned or against the “corporate debtor” if they have actually worked and have not been taken care in the “resolution plan” due to lack of knowledge and non-filing of the claim within time.

× × ×

“31. In the present case, as no ground has been made out in terms of sub-section (3) of Section 61 of the “IBC Code” and the decision of the “resolution professional” was not challenged by the appellant, no relief can be granted. However, this order will not come in the way of the appellant to move before appropriate forum for appropriate relief if the claim is not barred by limitation.

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52. Insofar dues of the State of Jharkhand are concerned, we held that the statutory dues shall be payable to the State of Jharkhand in terms of existing law which comes within the meaning of "operational debt" as defined in Section 5(20) read with Section 5(21) and held in *Spariek Ceramics (India) Ltd.*, 2018 SCC OnLine NCLAT 289. Except the aforesaid observations, in absence of any appeal filed by the State of Jharkhand, no order is passed." (Para 118)

*Held -*

The aforesaid observations are beyond the scope of the powers available with NCLAT under sub-section (3) of Section 61 IBC. The said observations run totally contrary to the consistent view taken by the Supreme Court in the line of judgments starting from *K. Sashidhar*, (2019) 12 SCC 150 to *Kalpraj Dhanrajshi*, (2021) 10 SCC 401. (Para 119)

*K. Sashidhar v Indian Overseas Bank*, (2019) 12 SCC 150; (2019) 7 SCC (Cr) 22, affirmed *Kalpraj Dhanrajshi v. K. Ashok Kumar Ashok Das*, (2021) 10 SCC 401; 2021 SCC OnLine SC 201, relied on.

NCLAT has categorically found that no ground as is available under sub-section (3) of Section 61 IBC has been made out and has also categorically found that the resolution plan submitted by GMSPL was a better offer than the other two resolution applicants, including EARC and that the adjudicating authority has rightly approved the resolution plan of GMSPL. After coming to such finding, the only option available with NCLAT was to dismiss the appeals. The observations made in the aforesaid paragraphs, if permitted to remain, would totally frustrate the object of IBC of revival of a corporate debtor and to resurrect it as a going concern. The successful resolution applicant cannot be thung with surprise claims which are not part of the resolution plan. (Para 120)

According to the resolution plan submitted by EARC itself, had it been a successful applicant, then in that event, the claims made by it would have been irrevocably waived and permanently extinguished and written off in full with effect from the effective date. Had the resolution plan of EARC been approved, then all such debts would have stood extinguished without any further act or deed and approval of the said plan by NCLAT would have been a sufficient notice required to be given to any person for such matter. Undisputedly, the resolution plan submitted by EARC was on the basis of the information memorandum submitted by RP wherein it was specifically clarified that the claims of EARC were not admitted by RP. It is thus clear that EARC is trying to blow hot and cold at the same time. According to it, had its resolution plan been approved by CoC and NCLAT, then the claims, which are now insisted by EARC would have stood extinguished. However, on its failure to become a successful resolution applicant and approval of other applicant as a successful resolution applicant, its claim would survive. A party cannot be permitted to apply two different yardsticks. (Para 123)

EARC was taking chances. After rejection of its claim, it did not choose to challenge the same by an application under Section 60(5) but waited till the decision of CoC. During this period, it was actually pursuing its resolution plan. Only after its resolution plan was not approved and the resolution plan of GMSPL was approved, it filed the aforesaid two applications. Apart from that in the

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resolution plan of EARC itself, it has provided for extinguishment of all claims not forming part of resolution plan. (Para 129)

*Capital Inquest Bank of India v. JEKPL (P) Ltd. Resolution Professional*, 2019 SCC Online NCLT 465, distinguished

*Arcelormittal (India) Pvt. Ltd. v. JEKPL (P) Ltd. Resolution Professional*, 2019 SCC Online SC 2025, distinguished

Even otherwise, if for the sake of argument, it is held that EARC was entitled to be treated as a "financial creditor" and entitled for a participation in CoC, still its share was about 9% and as such, the resolution plan of GEMM, would have been passed by a majority of 80%, which is much above the statutory requirement. (Para 130)

The appeal deserves to be allowed by expunging SCC Online NCLT paras 28, 42, 43, 51 and 52 from the judgment of NCLT dated 23-4-2019 (Para 133)

*SBI v. Orissa Mangalore & Minerals Ltd.*, 2013 SCC Online NCLT 20883, affirmed

*Uttarakhand State Reconstruction Co. Ltd. v. Orissa Mangalore & Minerals Ltd.*, 2013 SCC Online NCLT 761, *per se* reversed

*SBI v. Orissa Mangalore & Minerals Ltd.*, 2017 SCC Online NCLT 22885; *Bank of India v. Manu Paul*, (2013) 9 SCC 605, *referred to*

*CI v. Sanyal Coromandel India Ltd.*, 2018 SCC Online NCLT 289, cited

**F. Constitution of India — Art. 226 — Maintainability of writ petition — Existence of alternative remedy — When not a bar to writ remedy — Principles reiterated**

— Held, relegating the appellant to the alternative remedy in the present case would serve no purpose — Furthermore, a party cannot be made to run from one forum to another forum in respect of the proceedings and the claims, which are not permissible in law

— Hence, allowing the appeal, held, since the subject-matter of the writ petition are the proceedings which relate to the tax claims of the respondents against the corporate debtor prior to the approval of the resolution plan under S. 31 IBC, the same cannot be continued — Equally the tax claims, which are not part of the resolution plan approved under S. 31 IBC, shall stand extinguished (see in detail Shortnotes A to C)

— Held, non-exercise of jurisdiction under Art. 226 is a rule of self-restraint and alternative remedy would not operate as a bar in at least three contingencies, namely, (1) where the writ petition has been filed for the enforcement of any of the fundamental rights; (2) where there has been a violation of the principle(s) of natural justice; and (3) where the order or proceedings are wholly without jurisdiction or the vices of an Act is challenged

— Appellant had filed a writ petition inter alia challenging the order passed by the Additional Commissioner Grade 2 (Appeal) to the effect that the recovery proceedings in the State of Uttar Pradesh would remain unaffected irrespective of the approval of the resolution plan of the appellant by NCLT — The main ground raised on behalf of the respondent was with regard to availability of alternative remedy — Insolvency and Bankruptcy Code, 2016, S. 31(1) r/w Ss. 3(10), 5(20) and 5(21) (Paras 24, 25 and 131 to 136)



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The appellant filed Civil Miscellaneous Writ Petition No. 354 of 2020 before the High Court challenging the order passed by the Additional Commissioner (Grade 2 (Appeal), Commercial Taxes dated 30-1-2020, to the effect that the proceedings in the State of Uttar Pradesh would remain unaffected irrespective of the approval of the resolution plan of the appellant by NCLT. The appellant also prayed for a declaration that all the proceedings pending before different authorities stand abated in terms of the approval of the resolution plan by NCLT. A prayer was also made for refund of Rs 248.92 Lakhs deposited by the appellant under protest and for return of the bank guarantee.

The Division Bench of the High Court vide order dated 6-7-2020 observed that the contention of the appellant with regard to the approval of the resolution plan by NCLT has been dealt with by the assessing authority as well as by the appellate authority and therefore, it was in the fitness of things that the appellant should avail of the alternative remedy of filing a second appeal available under the VAT Act. Being aggrieved by the same, the appellant filed the present appeal.

Allowing the appeal, the Supreme Court

*Held:*

The main ground raised on behalf of the respondent is with regard to availability of alternative remedy. The second ground raised is, since the transfer date is prior to the 2019 Amendment to Section 31 IBC, the said amendment would not be applicable to the debts owed to the State Government or the Central Government. (Para 136)

Non-exercise of jurisdiction under Article 226 of the Constitution is a rule of self-restraint. It has been consistently held that the alternative remedy would not operate as a bar in at least three contingencies, namely:

- (1) Where the writ petition has been filed for the enforcement of any of the fundamental rights;
- (2) Where there has been a violation of the principle of natural justice; and
- (3) Where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (Para 137)

*Babron, Prakash Chander Maheshwari v. Anarim Zila Parishad, Meerathogari*, (1960) 1 SCR 518 : AIR 1959 SC 555; *Juchang Property Development (P) Ltd. v. State of Karnataka*, (2020) 11 SCC 208; *Kalraj Dharamdas v. Keshi Investment Advisors Ltd.*, (2021) 10 SCC 101 : 2021 SCC Online SC 201, *reliaed on*.

*Wikiped Corpn. v. Registrar of Trade Marks*, (1998) 8 SCC 1; *Wiredia Sharma v. CMAA*, (2011) 11 SCC 331 : (2012) 4 SCC 100 : 547, *affirmed*.

The 2019 Amendment to Section 31 IBC is clarificatory and declaratory in nature and therefore will have a retrospective operation. As such, when the resolution plan is approved by NCLT, the claims, which are not part of the resolution plan, shall stand extinguished and the proceedings related thereto shall stand terminated. Since the subject-matter of the petition are the proceedings which relate to the claims of the respondents prior to the approval of the plan, the same cannot be continued. Equally the claims, which are not part of the resolution plan, shall stand extinguished. (Para 138)

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Relegating the appellant to the alternative remedy would serve no purpose. A party cannot be made to run from one forum to another forum in respect of the proceedings and the claims, which are not permissible in law. (Para 139)

*Oliva Tech Industries Cement Ltd. v. State of U.P.*, 2020 SCC Online 411724, *reversed*

*Bank of Baroda v. Bikanri Cement Ltd.*, 2017 SCC Online 1897; *Bikanri Industries Ltd. v. Bank of Baroda*, 2018 SCC Online 1803; *Bajajans Properties (P) Ltd. v. Bikaneri Cement Ltd.*, 2018 SCC Online 3556; *ICI v. Bikanri Industries Ltd.*, 2019 SCC Online 3008; *CCE (CST) v. Bikanri Industries Ltd.*, 2020 SCC Online 3185, *referred to*.

**11. Insolvency and Bankruptcy Code, 2016 — S. 31(1) r/w Ss. 3(10), 5(20) and 5(21) — Approved resolution plan — Bindingness of, on Central Government, State Government and local authorities, including tax authorities — Amendment to S. 31 — Clarificatory in nature, thereby rendering the approved resolution plan binding even prior to the amendment coming into effect i.e. before 16-8-2019**

After the completion of CIRP on 5-1-2019, R-2 issued a reminder to the petitioner corporate debtor to pay an amount of Rs. 4,49,34,917 towards the service tax deposited by it towards royalty, District Mineral Foundation and National Mineral Exploration Trust for the period between 1-4-2016 and 30-6-2017. Held, the respondents are not entitled to recover any claims or claim any debts owed to them from the corporate debtor accruing prior to the date of approval of the resolution plan. (Paras 36 and 147 to 148)

*CI v. Monnet Ispat & Energy Ltd.*, (2018) 13 SCC 736 (2019) 3 SCC (Civ) 253, *affirmed*

*Monnet Ispat & Energy Ltd. Resolution Professional, In re.*, 2018 SCC Online 123789, *referred to*

*Dena Bank v. Bhikshaba Prabhakar Prasad & Co.*, (2006) 2 SCC 694; *CI v. Monnet Ispat & Energy Ltd.*, 2017 SCC Online 12759, *cited*

The petitioner Company is a corporate debtor in respect of which CIRP proceedings commenced in July 2017 and ended in July 2018, when NCLT approved the resolution plan submitted by a consortium of Aion Investment (P) Ltd. and JSW Steel Ltd. ("Aion JSW" for short). Prior to approval by NCLT, CoC had granted approval to the said resolution plan by a voting majority of 98.97%. It was the contention of the petitioner that in accordance with the provisions of IBC, RP had made a public announcement thereby, inviting claims from the creditors. Contending that the demand notices issued by the respondents for recovery of service tax towards royalty, District Mineral Foundation and National Mineral Exploration Trust against the iron ore purchased by the petitioner Company are contrary to the law laid down by the Court in *Satish Kumar Gupta*, (2020) 8 SCC 531. Allowing the writ petition. The Supreme Court held as above.

**11. Insolvency and Bankruptcy Code, 2016 — S. 31(1) r/w Ss. 3(10), 5(20) and 5(21) — Approved resolution plan — Bindingness of, on Central Government, State Government and local authorities, including tax authorities — Service tax dues — Non-recoverability of, when not included in approved resolution plan**

— NCLT vide order dt. 17-1-2018 approved the resolution plan of Vedanta Ltd. Challenging the notices issued by the respondent State authorities and

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tr the order of SBI asking it to pay an amount of Rs 37,41,41,602 on account of tax  
penalty due under the Jharkhand VAT Act for the period 2011-12 and 2012-13,  
the appellant approached the High Court. — Held, the finding of the High Court  
that the dues owed to the State Government and Central Government would not  
come within the definition of "operational debt", is incorrect in law. — Also the  
finding that since the order of NCLT is prior to the date on which S. 31(1) IBC  
was amended, the provisions of S. 31 would not be applicable, cannot stand. —  
b In the present case, held, the respondents are not entitled to recover any claims  
or claim any debts owed to them from the corporate debtor accruing prior to  
the transfer date. (Paras 27 to 29 and 150 to 157)

c 1. Constitution of India — Art. 226 — Maintainability of writ petition —  
Standing/Locus standi — Corporate debtor — Locus standi of to invoke writ  
jurisdiction challenging levy of tax/penalty, even after change of management  
after approval of resolution plan under provisions of IBC

d Appellant was a corporate debtor in respect of which the proceedings  
under S. 7 IBC were initiated by SBI. — High Court, inter alia held that since the  
management of the appellant was taken over by M/s Vedanta Ltd. (resolution  
applicant) on 4-6-2018, it was only M/s Vedanta Ltd., which had locus to  
file writ petitions. — Held, the High Court erred in holding that the appellant  
Company does not have locus to file the writ petitions. — The approved  
resolution plan was in respect of the corporate debtor and the successful  
resolution applicant only takes over the management of the corporate debtor in  
accordance with the resolution plan. — Further, the resolution applicant steps  
into the shoes of the corporate debtor. — Insolvency and Bankruptcy Code,  
2016, Ss. 7 and 9. (Paras 151 and 153)

f NCLT vide order dated 17-4-2018 approved the resolution plan of Vedanta  
Ltd. The appeal being Company Appeal (AT) (Insolvency) No. 1/3 of 2018 filed  
by one Renaissance Steel India (P) Ltd. challenging the order of NCLT came to be  
dismissed by NCLAT vide order dated 10-8-2018. Challenging the notices issued  
by the respondent State authorities and the order of SBI asking it to pay an amount  
of Rs 37,41,41,602 on account of tax penalty due under the Jharkhand VAT Act  
for the period 2011-12 and 2012-13, the appellant corporate debtor approached the  
High Court. The appellant had also challenged the letter dated 22-11-2019 issued  
by State Tax Officer, Bokaro to deposit the amount of Rs 75,57,000.

Held:

g The appellant challenges the judgment and order passed by the Division Bench  
of the High Court dated 1-5-2020 vide which the petitions filed by the appellant,  
challenging the action of the respondent authorities thereby, seeking to recover  
the Jharkhand Value Added Tax ("JH VAT") for the period between 2011-2012 and  
2012-2013, have been rejected. (Para 150)

h The finding of the High Court that the dues owed to the State Government  
and the Central Government would not come within the definition of "operational  
debt", is incorrect in law. So also the finding that since the order of NCLT is prior  
to the date on which Section 31(1) IBC was amended, the provisions of Section 31

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would not be applicable, also cannot stand in view of the foregoing observations made hereinabove. (Para 152)

The High Court has erred in holding that the appellant Company does not have locus to file the writ petitions inasmuch as the management has been taken over by M/s Madanta Ltd. The resolution plan is in respect of the corporate debtor and the successful resolution applicant only takes over the management of the corporate debtor in accordance with the resolution plan. The resolution applicant steps into the shoes of the corporate debtor. As such, the finding in this respect would also not be sustainable in law. (Para 153)

The respondents are not entitled to recover any claims or claim any debts owed to them from the corporate debtor accruing prior to the transfer date. Needless to state that the consequences thereof shall follow. (Para 157)

*Electrosteel Steels Ltd. v. State of Karnataka*, 2020 SCC OnLine 11 at 12-1, *reversed*  
*SRI v. Educational Steels Ltd.*, 2017 SCC OnLine NCTT 16085; *SRI v. Educational Steels Ltd.*, 2018 SCC OnLine NCTT 1150; *Hindustan Steel (India) (P) Ltd. v. Electrosteel Steel (India) Ltd.*, 2018 SCC OnLine NCTT 901, *referred to*

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The Judgment of the Court was delivered by

a **B.R. GAVAI, J.** Leave granted in Special Leave Petitions (Civil) Nos. 11232 of 2020 and 7147-50 of 2020.

2. The short but important questions, that arise for consideration in this batch of matters, are as under:

b **2.1. (i)** As to whether any creditor including the Central Government, State Government or any local authority is bound by the resolution plan once it is approved by an adjudicating authority under sub section (1) of Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the I&B Code")?

**2.2. (ii)** As to whether the amendment to Section 31 by Section 7 of Act 26 of 2019 is clarificatory/declaratory or substantive in nature?

c **2.3. (iii)** As to whether after approval of resolution plan by the adjudicating authority a creditor including the Central Government, State Government or any local authority is entitled to initiate any proceedings for recovery of any of the dues from the corporate debtor, which are not a part of the resolution plan approved by the adjudicating authority?

3. We will first refer to the facts in each of these matters.

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e 4. Orissa Manganese & Minerals Ltd. (hereinafter referred to as "the corporate debtor" or "OMML") was engaged in the business of mining iron ore, graphite, manganese ore and agglomerating iron fines into pellets through its facilities in Orissa and Jharkhand. The corporate insolvency resolution process (hereinafter referred to as "CIRP") was initiated in respect of the corporate debtor by an application under Section 7 of the I&B Code filed by State Bank of India (hereinafter referred to as "SBI") before the National Company Law Tribunal, Kolkata Bench, Kolkata (hereinafter referred to as "NCLT").

f 5. Vide order dated 3-8-2017, Company Petition (IB) No. 371/KB/2017 filed by SBI was admitted. Shri Sumit Binnani was appointed as interim resolution professional (hereinafter referred to as "IRP"). Upon admission of the said company petition, CIRP was initiated with effect from 3-8-2017. The appointment of IRP was confirmed by the Committee of Creditors (hereinafter referred to as "CoC") in their meeting held on 4-9-2017. The resolution professional (hereinafter referred to as "RP") continued with the resolution process by inviting expression of interest (hereinafter referred to as "EoI") and applications for resolution plan in accordance with the provisions of the I&B Code and the Regulations framed thereunder. The initial period of CIRP of 180 days expired on 29-1-2018. At the request of CoC, RP moved an application for extension of CIRP period, which came to be extended by 90 days i.e. till 29-1-2018.

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6. In response to the invitation, three resolution plans were received by RP each from, Edelweiss Asset Reconstruction Company Ltd. (hereinafter referred to as "EARC"), Respondent 1 herein, Orissa Mining (P) Ltd. (hereinafter referred to as "OMPL") and Ghanashtyam Mishra & Sons (P) Ltd. (hereinafter referred to as "GMSPL"), the appellant herein, respectively. In the 8th meeting of the CoC held on 14-3-2018, EARC was declared as II bidder. However, EARC failed to satisfy CoC in the negotiations and as such, the resolution plan submitted by EARC came to be rejected in the 9th meeting of CoC held on 31-3-2018.

7. CoC thereafter proceeded for negotiations with the II bidder i.e. GMSPL. However, the resolution plan of GMSPL was also found to be unacceptable to CoC and therefore, in its 10th meeting held on 3-4-2018, it decided to annul the existing process and initiate a fresh process for invitation of resolution plan only from the applicants, which had earlier submitted their LoI. Accordingly, a communication was sent to the applicants, which had submitted their LoI. In response to the said invitation, three resolution plans were received each from GMSPL, EARC and Srei Infrastructure Finance Ltd. (hereinafter referred to as "SIFL") respectively. These resolution plans were considered by CoC in its 11th meeting held on 13-4-2018. After evaluation of the resolution plans, CoC ranked GMSPL as the III bidder.

8. Further negotiations were held by CoC with GMSPL. After several rounds of negotiations, the resolution plan of GMSPL was considered by CoC for its approval. In its 12th meeting held on 21-4-2018, CoC unanimously took a decision to convene a meeting of CoC on 25-4-2018 at 9 p.m., for voting on the resolution plan proposed by GMSPL. After being satisfied, that the resolution plan submitted by GMSPL meets all the requirements under sub-section (2) of Section 30 of the I&B Code, the same was placed before the members of CoC for voting, and the resolution plan came to be approved by more than 89.24% of the voting share of financial creditors of the corporate debtor.

9. Accordingly, a company application being CA (IB) No. 402/KB/2018 came to be filed by RP for approval of the resolution plan submitted by GMSPL.

9.1. One application being CA (IB) No. 398/KB/2018 came to be filed by EARC, Respondent 1 herein, challenging the approval of the resolution plan of GMSPL.

9.2. One more application came to be filed by EARC, being CA (IB) No. 470/KB/2018 challenging the decision of RP in not admitting its claim. The said application was filed, contending, that its claim stood on the strength of corporate guarantee provided by the corporate debtor against the take-out facility provided to Adhunik Power and Natural Resources Ltd. (hereinafter referred to as "APNRL"), being sister concern of the corporate debtor. It was contended, that in not admitting the claim on the strength of corporate guarantee, RP violated Regulations 13 and 14 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as "the Regulations"). It was prayed in the application for a direction to the successful resolution applicant



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tr i.e. GMSPL, to undertake to pay the full amount due and payable under the said corporate guarantee and further to issue directions for protecting the rights of the lenders of APNRI as pledgee.

9.3. One more application being CA (IB) No. 509/KB/2018 was filed by the District Mining Officer, Department of Mining and Geology, Jharkhand challenging non-admission of its claim to the tune of Rs 93,51,91,724 and Rs 762.51 crores.

b 10. NCLT by an elaborate order dated 22-6-2018<sup>2</sup> approved the resolution plan of GMSPL, which was duly approved by CoC by voting share of more than 89.23%. Rest of the applications including the two filed by EARC. Respondent 1 herein, came to be rejected.

c 11. Being aggrieved by the order<sup>2</sup> passed by NCLT, EARC preferred company appeal being Company Appeals (AT) (Insolvency) Nos. 437 of 2018 and 444 of 2018 before the National Company Law Appellate Tribunal, New Delhi (hereinafter referred to as "NCLAT"). Company Appeal (AT) (Insolvency) No. 437 of 2018 was against the rejection of claims of EARC as financial creditor and thereby its non-inclusion in CoC. Company Appeal (AT) (Insolvency) No. 444 of 2018 came to be filed with the grievance, that RP and CoC had erroneously held, that the plan of GMSPL was better than that of EARC. One more company appeal being Company Appeal (AT) (Insolvency) No. 500 of 2018 came to be filed by Sundargarh Mines & Transport Workers Union (hereinafter referred to as "SMTWU") on behalf of the workmen of the corporate debtor. Another company appeal being Company Appeal (AT) (Insolvency) No. 438 of 2018 came to be filed by one Deepak Singh, an employee of APNRI, claiming dues of his salary.

d e 12. By the impugned judgment and order dated 23-4-2019<sup>3</sup>, NCLAT while holding that RP was justified in not accepting the claim of EARC and that NCLT had rightly rejected the application filed by EARC, however, observed that the rejection of the claim for the purpose of collating and making it part of the resolution plan will not affect the right of EARC to invoke the bank guarantee against the corporate debtor, in case the principal borrower failed to pay the debt amount, since the moratorium period had come to an end. NCLAT on comparison of the plans submitted by EARC and GMSPL further held, that the resolution plan submitted by GMSPL was a better one than the one submitted by other applicants and there was no illegality in accepting the resolution plan of GMSPL.

f g 13. Insofar as Company Appeal (AT) (Insolvency) No. 500 of 2018 is concerned, the grievance was that though there were around 1476 workmen, RP ignored their rightful wages, statutory dues and other benefits. NCLAT, in the said order<sup>3</sup>, observed, that after the period of moratorium, it was open for the persons to move before a civil court or to move an application before the

h <sup>2</sup> *SBS v. District Mangalore & Minerals Ltd.*, 2018 SCC OnLine NCLT 20888

<sup>3</sup> *Edlweiss Asset Reconstruction Co. Ltd. v. District Mangalore & Minerals Ltd.*, 2019 SCC OnLine NCLAT 361

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court of competent jurisdiction against the corporate debtor. NCTAT therefore observed that the appellant therein may move before the civil court or a court of competent jurisdiction and may file an application before the Labour Court for appropriate reliefs in favour of the workmen concerned or against the corporate debtor, if they have actually worked and had not been taken care of in the resolution plan.

14. Insofar as Company Appeal (AT) (Insolvency) No. 438 of 2018 is concerned, it was the claim of Deepak Singh, appellant therein, that he had joined APNRL, the holding company of the corporate debtor, as the President-Group Head HR from 2-6-2014 to 9-3-2015. It was his claim that he had an amount of Rs 17,03,000 recoverable from the said APNRL and as such, was an operational creditor. It was submitted that though the claim of the said appellant was valid, it was illegally rejected by RP. NCTAT held that insofar as the said appeal is concerned, no ground as is permissible under sub-section (3) of Section 61 of the I&B Code is made out and as such, relief could not be granted in the appeal. However, it was observed that the said order passed in the appeal would not come in the way of the appellant to move the appropriate forum for appropriate relief.

15. CMSPL, thus, aggrieved by the observations made by NCTAT to the effect that the claims of the parties, which are not included in the resolution plan could be agitated by them before the other forums, has preferred the present appeal.

*Civil appeal arising out of Special Leave Petition (Civil) No. 11232 of 2020 (Ultratech Nathdwara Cement Ltd. v. State of U.P.)*

16. The appellant is a wholly owned subsidiary of UltraTech Cement Ltd. and is engaged in the business of manufacturing and marketing of cement and allied products.

17. On 19-12-2015, the Additional Commissioner, Commercial Taxes, Ghaziabad passed an order in the appeal preferred by Binani Cement Ltd., thereby, allowing the appeal filed by Binani Cement and setting aside the order of imposition of fine of Rs 24,71,885. Vide another order dated 22-12-2015, passed in the appeal filed by Binani Cement, the order of imposition of fine of Rs 59,61,445 also came to be set aside. Vide order dated 2-8-2017, the Deputy Commissioner, Commercial Taxes, Division-10, Ghaziabad held, that Binani Cement was liable to pay entry tax of Rs 40,47,344 for Assessment Year 2003-2004. By another Order dated 7-8-2017, the Deputy Commissioner, Commercial Taxes, Division-10, Ghaziabad further held, that Binani Cement was liable to pay entry tax of Rs 43,06,715 for Assessment Year 2004-2005.

18. Since the said Binani Cement was unable to pay the debt to Bank of Baroda, Bank of Baroda filed an application being CA (IB) No. 359/KB/2017 before NCLT, Kolkata Bench under Section 7 of the I&B Code. Vide order dated 25-7-2017<sup>4</sup>, NCLT admitted the petition for initiating the CIRP process. Vide the said order, NCLT also declared moratorium for the purposes referred to in Section 14 of the I&B Code.

<sup>4</sup> *Bank of Baroda v. Binani Cement Ltd.*, 2017 SCUOLLine NCLT 7191

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19. Vide communication dated 10-11-2017, the authorities were informed about the initiation of the CIRP. However, the authority by an endorsement made on the application of the appellant herein stated, that there was no stay granted by NCLT on tax assessment process. It was observed that if there was any clear order passed by NCLT, the same should be produced or Binani Cement should appear on the next date i.e. 27-11-2017 for hearing of tax assessment process.

20. On 28-7-2017, RP made a public announcement inviting claims from all the creditors of the corporate debtor, as is required under Section 15 of the I&B Code. The last date for submission of claims was 8-8-2017. RP upon receipt of the claims maintained a list of creditors alongside the amount claimed by them and the security interest. RP also invited Ld. In response, various entities including the present appellant submitted their EoI as well as resolution plans. CoC in its meeting dated 28-5-2018, unanimously approved the resolution plan submitted by the present appellant. Pursuant to the approval by CoC, NCLAT granted approval to the resolution plan of the appellant vide order dated 14-11-2018<sup>5</sup>. The said order came to be challenged before this Court in Civil Appeal No. 10998 of 2018, which was dismissed by this Court vide order dated 19-11-2018<sup>6</sup>.

21. On 13-12-2018, the name of the corporate debtor was changed to UltraTech Nathdwara Cement Ltd. from Binani Cement Ltd. and the management of the corporate debtor was taken over by Ultratech Cement Ltd. with effect from 20-11-2018. Thereafter, the appellant addressed various communications to the tax authorities, who are the respondents herein informing them, that after the resolution plan was approved by NCLT, all proceedings instituted against the corporate debtor, arising and pending before the transfer date shall stand withdrawn. It was also informed that all the liabilities towards operational creditors shall be deemed to have been settled by discharge and payment of the resolution amount by the corporate debtor. However, it was insisted by the tax authorities that since there was no specific stay, proceedings could not be dropped.

22. After various communications addressed by the appellant to the Joint Commissioner, Commercial Taxes (Corporate Circle), Ghaziabad dated 26-4-2019, the following endorsements came to be made by the authority on 29-4-2019:

"After consideration on the application presented by you, it is found that, by Hon'ble NCLT/NCLAT after transfer, neither stay is imposed on tax assessment nor on creation of demand. So the created demand is payable by you. If you do not agree with it, preferring an appeal before higher authority, present its copy to us. Disposal is done of the application presented by you."

<sup>5</sup> *Binani Industries Ltd. v. Bank of Baroda*, 2018 SCC OnLine No. 5113

<sup>6</sup> *Rajpurohit Properties (P) Ltd. v. Ultratech Cement Ltd.*, 2018 SCC OnLine SC 5599

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23. The Commercial Tax Department of the State of Rajasthan filed Civil Appeal No. 5889 of 2019 challenging the resolution plan. However, the said appeal came to be dismissed vide order of this Court dated 26-7-2019<sup>7</sup>. The appeals being Civil Appeals Nos. 630-34 of 2020 were also preferred by the Commissioner of Central Excise, Goods and Services Tax, Jodhpur challenging the resolution plan. The same also came to be dismissed by this Court vide order dated 24-1-2020<sup>8</sup>.

24. The appellant therefore filed Civil Miscellaneous Writ Petition No. 354 of 2020 before the High Court of Allahabad challenging the order passed by the Additional Commissioner (Grade 2 (Appeal)) dated 30-1-2020, to the effect, that the proceedings in the State of Uttar Pradesh would remain unaffected irrespective of the approval of the resolution plan of the appellant by NCLT. The appellant also prayed for a declaration that all the proceedings pending before different authorities stand abated in terms of the approval of the resolution plan by NCLT. A prayer was also made for refund of Rs 248.92 lakhs deposited by the appellant under protest and for return of the bank guarantee.

25. The Division Bench of the Allahabad High Court vide order dated 6-7-2020<sup>9</sup> observed that the contention of the appellant with regard to the approval of the resolution plan by NCLT has been dealt with by the assessing authority as well as by the appellate authority and therefore, it was in the fitness of things that the appellant should avail of the alternative remedy of filing a second appeal available under the VAT Act. Being aggrieved by the same, the appellant has filed the present appeal.

*Writ Petition (Civil) No. 1177 of 2020 (Monnet Ispat & Energy Ltd. v. State of Odisha)*

26. The petitioner Company is a corporate debtor in respect of which CIRP proceedings commenced in July 2017 and ended in July 2018, when NCLT approved<sup>10</sup> the resolution plan submitted by a consortium of Aion Investment (P) Ltd. and JSW Steel Ltd. ("Aion-JSW" for short). Prior to approval by NCLT, CoC had granted approval to the said resolution plan by a voting majority of 98.97%. It is the contention of the petitioner that in accordance with the provisions of the I&B Code, RP had made a public announcement thereby, inviting claims from the creditors. Contending that the demand notices issued by the respondents for recovery of service tax towards royalty, District Mineral Foundation ("DMF" for short) and National Mineral Exploration Trust ("NMET" for short) against the iron ore purchased by the petitioner Company are contrary to the law laid down by this Court in *Rasari Steel (India) Ltd. (CoC) v. Sushil Kumar Gupta*<sup>11</sup>, the petitioner has directly approached this Court by filing a writ petition under Article 32 of the Constitution of India.

<sup>7</sup> *CCF v. Bimal Industries Ltd.*, 2019 SCC OnLine SC 2006

<sup>8</sup> *CIT v. GNT v. State of Gujarat Ltd.*, 2020 SCC OnLine SC 1185

<sup>9</sup> *Ultra Tech Noida v. State of U.P.*, 2021 SCC OnLine All 172

<sup>10</sup> *Monnet Ispat & Energy Ltd. Resolution Proceedings, In re*, 2018 SCC OnLine NCLT 91789

<sup>11</sup> 2020 8 SCC 561 (2021) 3 SCC 331 113

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27. The appellant is a corporate debtor in respect of which the proceedings under Section 7 were initiated by SBI. Vide order dated 21-7-2017<sup>12</sup> of NCLT, the application filed by SBI was admitted and Mr Dhairaj Anjania was appointed as interim resolution professional (IRP). In its meeting dated 21-8-2017, CoC approved the appointment of IRP as RP. In response to the invitation for submission of resolution plans, four applicants had submitted their resolution plans. CoC had approved the resolution plan of Vedanta Ltd. by 100% voting share.

28. NCLT vide order dated 17-4-2018<sup>13</sup> approved the resolution plan of Vedanta Ltd. The appeal being Company Appeal (AT) (Insolvency) No. 175 of 2018 filed by one Renaissance Steel India (P) Ltd. challenging the order of NCLT came to be dismissed by NCLT vide order dated 10-8-2018<sup>14</sup>. Challenging the notices issued by the respondent State authorities and the order of SBI asking it to pay an amount of Rs 47,41,41,602 on account of tax penalty due under the Jharkhand VAT Act for the period 2011-12 and 2012-13, the appellant approached the High Court of Jharkhand. The appellant had also challenged the Letter dated 22-11-2019 issued by State Tax Officer, Bokaro to deposit the amount of Rs 75,57,000.

29. As in the other matters, it is contended by the appellant, that in view of Section 31 of the I&B Code, since the claim made by the respondent was not a part of the resolution plan, it would get extinguished on the resolution plan being approved by NCLT. The said writ petition came to be rejected<sup>15</sup> by the High Court on the ground that the petitioner had no locus and that the resolution plan was not binding on the State Government since it had not participated in the CIRP proceedings.

*Submissions in Civil Appeal No. 8129 of 2019 [Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.]*

30. Dr A.M. Singhvi, learned Senior Counsel appearing for GMSPL submitted that as held by this Court in a catena of decisions, the commercial wisdom of CoC in accepting or rejecting the resolution plan is paramount. He submitted that the interference would be warranted within the limited parameters of judicial review that are available under the statute.

31. The learned Senior Counsel further submitted that once the adjudicating authority approves the resolution plan, it shall be binding on everyone including corporate debtor and its employees, members, creditors including the Central Government, any State Government or any local authority, to whom a debt is owed in respect of the payment of dues arising under any law for the time being

<sup>12</sup> *SBI v. Electrosteel Steels Ltd.*, 2017 SCC OnLine NCLT 3085

<sup>13</sup> *SBI v. Electrosteel Steels Ltd.*, 2018 SCC OnLine NCLT 4651

<sup>14</sup> *Renaissance Steel India (P) Ltd. v. Electrosteel Steels (Group) Ltd.*, 2018 SCC OnLine No. 190

<sup>15</sup> *Electrosteel Steels Ltd. v. State of Jharkhand*, 2020 SCC OnLine Jm-151



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event the order<sup>2</sup> passed by NCLT is to be maintained. He therefore submitted that no interference is warranted in the appeal.

37. In reply to the submissions of the appellant that EARC has not preferred an appeal against the order<sup>3</sup> of NCLAT though its appeal was disposed of is concerned, the learned counsel relying on the judgment of this Court in *Banco v. Real Pkcs*<sup>20</sup> submitted that since the findings recorded by NCLAT are in its favour, there was no occasion for it to prefer an appeal. He submitted that in any event, it can raise the grounds insofar as the findings in the impugned order<sup>3</sup>, which are adverse to EARC in addition to supporting the final judgment in its favour.

38. Shri Neeraj Kishan Kaul, learned Senior Counsel appearing on behalf of the appellant submitted that assuming without admitting that EARC could be considered as the financial creditor, it could have had voting right only to the extent of 9% and even in that eventuality, resolution plan of CIMSPIL would have been approved by CoC with the majority of more than 80%.

*Submissions in civil appeal arising out of Special Leave Petition (Civil) No. 11232 of 2020 (UltraTech Nathdwara Cement Ltd. v. State of U.P.)*

39. Dr Singhvi, learned Senior Counsel appearing on behalf of the appellant, UltraTech Nathdwara Cement Ltd. submitted that a conjoint reading of sub-section (10) of Section 3 and sub-sections (20) and (21) of Section 5 would show that even if there was no amendment to Section 31 of the I&B Code by the 2019 Amendment, still the Central Government and any State Government or the local authorities were bound by the same and any statutory dues owed to them by the corporate debtor, which were not included in the resolution plan, shall stand extinguished.

40. Dr Singhvi submitted that the 2019 Amendment, which amends Section 31 is clarificatory in nature and only declares and clarifies the position of law, which has already been in existence i.e. the Central Government, any State Government and local authorities are bound by the CIRP. He submitted that this Court in *SBI v. V. Ramakrishnan*<sup>21</sup> and *B.K. Educational Services (P) Ltd. v. Pring Capital & Associates*<sup>22</sup> has held the amendment to certain provisions of the I&B Code to be clarificatory in nature.

41. The learned Senior Counsel submitted that upon perusal of the provisions of the I&B Code, it is clear, that once NCLT grants approval to the resolution plan, all proceedings pending insofar as the corporate debtor is concerned, which are not included in the resolution plan shall stand automatically stayed. He submitted that perusal of the chart pertaining to the dues of the respondents clearly reveal that all of the said dues are prior to the

<sup>2</sup> *SBI v. V. Ramakrishnan & Associates Ltd.*, 2018 SCU Online NCLT 20685

<sup>3</sup> *Edelweiss Asset Reconstruction Co. Ltd. v. Ghanshyam Mishra & Sons Ltd.*, 2019 SCC Online No. 3174

<sup>20</sup> (2013) 9 SCC 676

<sup>21</sup> (2018) 17 SCL 104 (2019) 2 SCC (C) 459

<sup>22</sup> (2019) 1 SCL 53 (2018) 5 SCC (C) 228

admission of the company petition filed under Section 7 of the I&B Code and therefore, the respondents are not entitled to continue the proceedings in respect thereof since the same do not form part of the approved resolution plan. a

42. He submitted that the orders passed by NCLAT were challenged before this Court by the Revenue Authorities of the Rajasthan State as well as the Commissioner of Central Excise (GST), Jodhpur and this Court had refused to interfere with the order<sup>1</sup> passed by NCLAT. It is submitted that in this background, the authorities are totally unjustified in continuing the proceedings, which are undisputedly with respect to the dues prior to admission of the application under Section 7 of the I&B Code, only on the ground that there is no specific stay order passed by NCLT. b

43. He submitted that the High Court has erred in refusing to entertain the writ petition of the appellant solely on the ground that an alternative remedy by way of a second appeal was available to the appellant. He submitted that in a catena of judgments, this Court has held that non exercise of jurisdiction under Article 226, despite availability of alternative remedy is a rule of self-restraint and in the appropriate areas carved out by this Court, entertaining a petition under Article 226, despite availability of alternative remedy, would be permissible. He submitted that applying the said principle, the proceedings before the authority since stand prohibited in view of the provisions of the I&B Code, the High Court erred in refusing to entertain the petition. c

44. The learned Senior Counsel further submitted that despite the pendency of the present appeal, the Joint Commissioner, Commercial Taxes, Ghaziabad has passed an assessment order dated 2-2-2021 for the period prior to admission of Section 7 petition, as such the appellant has filed IA No. 26255 of 2021 challenging the said assessment order. d

45. Dr Singhal further submitted that though the respondent authorities were aware of the resolution proceedings, they had failed to submit any claim in response to the public notices issued by RTI. e

46. Shri V. Shekhar, learned Senior Counsel appearing on behalf of the State authorities justified the impugned order and prayed for dismissal of the appeal. He submitted that the order passed by NCLT would not come in the way of adjudicatory proceedings which were continued by the authorities under the provisions of the relevant statutes. He submitted that the assessment orders which were passed in accordance with law were duly approved in appeal by the higher authority and therefore, the High Court was justified in observing that the petition was not maintainable in view of the availability of alternative remedy of filing a second appeal. f

47. The learned Senior Counsel submitted that the adjudicatory authorities acting under the relevant statutes being not a part of CrC are not bound by the decision of CrC, which is approved by NCLT. He further submitted that merely continuation of the adjudicatory proceedings cannot be a part of coercive action. g

<sup>1</sup> *Indiabulls Asset Reconstruction Co. Ltd. v. Union Bank of India & Anothers* (2019) 5 SCC Online NCLT 191 h



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48. Shri V. Shekhar submitted that the 2019 Amendment cannot be said to be clarificatory in nature and as such, the proceedings, which were pending prior to the date of the amendment to Section 31, would not be affected by the 2019 Amendment to Section 31. He therefore prayed for dismissal of the appeal.

*Submissions in Writ Petition (Civil) No. 1177 of 2020 (Moumet Ipat & Energy Ltd. v. State of Odisha)*

49. Shri Kaul, learned Senior Counsel appearing on behalf of the writ petitioner submitted that in spite of clear legal position as enunciated in various judgments of this Court, various authorities in different parts of the country are continuing with the proceedings in respect of statutory dues existing prior to the date of approval of resolution plan by NCLT. He submitted that various High Courts have held, relying on the judgments of this Court, that statutory dues prior to the date of admission of Section 7 application and which are not part of the resolution plan shall stand extinguished and the proceedings in respect thereof would no more survive. However, in some States, the authorities of the State are flouting the law and as such, the petitioner has approached this Court in its extraordinary jurisdiction under Article 32 of the Constitution so that there is an authoritative pronouncement by this Court. He submitted that the respondent authorities in the present case had failed to file the claims in response to the statutory public notice issued by RP. The first demand by the authorities raised is only after the plan was approved by CoC on 9-4-2018. He also relied on the speech delivered by the Hon'ble Finance Minister in Rajya Sabha on 29-7-2019, to buttress his submissions that the 2019 Amendment of Section 31 of the I&B Code is clarificatory in nature.

*Submissions in appeals arising out of Special Leave Petitions (Civil) Nos. 7147-50 of 2020 (Electrosteel Steels Ltd. v. State of Jharkhand)*

50. Dr Singhvi submitted that in the present matter though NCLT had approved the resolution plan on 17-4-2018<sup>13</sup> and NCLAT had dismissed the appeal on 10-8-2018<sup>14</sup>, only thereafter on 17-8-2018, the reassessment order came to be passed for the period 2012-13. He submitted that immediately after the appellant discovered about the said order, the same was challenged in a writ petition. However, the High Court has dismissed<sup>15</sup> the petition on erroneous grounds. It is submitted that one of the grounds on which the petition is dismissed is that it is *Veclanta Ltd.*, which was an aggrieved party since it was a resolution applicant and as such the petition at the behest of the present appellant, which was a corporate debtor was not tenable. He submitted that the second ground on which the writ petition is dismissed is that the State authorities had not participated in CIRP and the order passed by NCLT was binding only on the parties which have participated in the resolution process.

<sup>13</sup> *SBI v. Electrosteel Steels Ltd.*, 2018 SCC OnLine NCLT 4651

<sup>14</sup> *Moumet Ipat (India) (P) Ltd. v. Electrosteel Steels (India) Ltd.*, 2018 SCC OnLine No. 1500

<sup>15</sup> *Electrosteel Steels Ltd. v. State of Jharkhand*, 2020 SCC OnLine Jm-151

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He submitted that both the grounds are erroneous inasmuch as Vedanta Ltd. is a successful resolution applicant. The resolution process is in respect of the present appellant-writ petitioner, which is the corporate debtor and as such, the petition at the behest of the present appellant was very much tenable in law. Insofar as the second ground of the High Court is concerned, he submitted that if such a view is accepted, it will frustrate the entire object of the I&B Code and the revival of the debtor companies would be impossible if the successful resolution applicants are sprung with the surprise debts which are not part of the resolution plan.

51. Shri Guru Krishna Kumar, learned Senior Counsel appearing on behalf of the respondent submitted that the entire process conducted by RP and CoC is fraudulent. He submitted that in accordance with Section 29 and specifically, clause H of Regulation 36, RP was required to furnish the details of the material litigation and an ongoing investigation or proceedings initiated by the Government and statutory authorities in the information memorandum. However, the resolution applicant had fraudulently used the I&B Code by suppressing the vital information with regard to the same and thereby denying the legitimate dues of the public exchequer.

52. Dr Singhal in rejoinder submitted that it is the respondent's own admission that they have not participated in the proceedings conducted by RP, CoC, NCLT, NCLAT and even this Court. He submitted that when the other departments/ministries had participated in the proceedings and raised their claims, it does not lie in the mouth of the respondents to say that they were not aware about CIRP proceedings.

53. In the said appeal, an intervention application has also been filed on behalf of Tata Steel BSL Ltd. It is contended in the intervention application that though the resolution process in respect of intervenor applicant was complete, still the Revenue Authorities were continuing with the proceedings with respect to the dues owed prior to the date of approval of resolution plan by NCLT. It is the submission of the intervenor-applicant that as such legal position needs to be settled by this Court and therefore the intervenor applicant has filed the present intervention application.

54. Shri Jandeep Gupta, learned Senior Counsel appearing on behalf of the said intervenor-applicant has made submissions on similar lines as are advanced by Dr Singhal and Shri Kaul, learned Senior Counsel appearing in the other matters.

#### *Consideration*

55. We have extensively heard the learned counsel appearing for the parties in all the matters, perused the written submissions and materials on record.

56. The provisions of the I&B Code have undergone scrutiny in various judgments of this Court. We would not like to burden the present judgment with the provisions of the statute, which have been duly reproduced and considered in the earlier judgments of this Court.

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57. In *Innovative Industries Ltd. v. ICICI Bank*<sup>24</sup> after reproducing the "Statement of Objects and Reasons" of the I&B Code in para 12, this Court observed thus: (SCC p. 422, para 13)

"12. One of the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the object of speeding up of the insolvency process. As per the data available with the World Bank in 2016, insolvency resolution in India took 4.3 years on an average, which was much higher when compared with the United Kingdom (1 year), USA (1.5 years) and South Africa (2 years). The World Bank's Ease of Doing Business Index, 2015, ranked India as country number 135 out of 190 countries on the ease of resolving insolvency based on various judicial."

58. This Court thereafter in para 16 of *Innovative Industries Ltd. case*<sup>25</sup> reproduced the relevant paragraphs contained in the Report of the Bankruptcy Law Reforms Committee Report of 2015. Thereafter, this Court reproduced all the relevant provisions of the I&B Code in paras 18 to 26.

59. This Court in *Innovative Industries Ltd.*<sup>26</sup> thereafter elaborately discussed the scheme of the various provisions of the I&B Code in paras 27 to 32, which read thus: (SCC pp. 437-39)

"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. "Default" is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability or obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A "financial creditor" has been defined under Section 5(7) as a person to whom a financial debt is owed and a "financial debt" is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an "operational creditor" means a person to whom an operational debt is owed and an "operational debt" under Section 5(21) means a claim in respect of provision of goods or services.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a

default is in respect of a financial debt owed to *any* financial creditor of the corporate debtor—it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form I accompanied by documents and records required therein. Form I is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. *The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority.* Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing—i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has

\* **Ed:** The word between two asterisks has been emphasized in original.

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er occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.

b 31. The rest of the insolvency resolution process is also very important. The entire process is to be completed within a period of 180 days from the date of admission of the application under Section 12 and can only be extended beyond 180 days for a further period of not exceeding 90 days if the committee of creditors by a voting of 75% of voting shares so decides. It can be seen that time is of essence in seeing whether the corporate body can be put back on its feet, so as to stave off liquidation.

c 32. As soon as the application is admitted, a moratorium in terms of Section 14 of the Code is to be declared by the adjudicating authority and a public announcement is made stating, inter alia, the last date for submission of claims and the details of the interim resolution professional who shall be vested with the management of the corporate debtor and be responsible for receiving claims. Under Section 17, the erstwhile management of the corporate debtor is vested in an interim resolution professional who is a trained person registered under Chapter IV of the Code. This interim resolution professional is now to manage the operations of the corporate debtor as a going concern under the directions of a committee of creditors appointed under Section 21 of the Act. Decisions by this committee are to be taken by a vote of not less than 75% of the voting share of the financial creditors. Under Section 28, a resolution professional, who is none other than an interim resolution professional who is appointed to carry out the resolution process, is then given wide powers to raise finances, create security interests, etc. subject to prior approval of the committee of creditors." (emphasis supplied)

f 60. After discussing the relevant provisions of the I&B Code, this Court observed thus: (*Innovative Industries Ltd case*<sup>22</sup>, SCC pp. 439-40, para 33)

g "33. Under Section 30, any person who is interested in putting the corporate body back on its feet may submit a resolution plan to the resolution professional, which is prepared on the basis of an information memorandum. This plan must provide for payment of insolvency resolution process costs, management of the affairs of the corporate debtor after approval of the plan, and implementation and supervision of the plan. It is only when such plan is approved by a vote of not less than 75% of the voting share of the financial creditors and the adjudicating authority is satisfied that the plan, as approved, meets the statutory requirements mentioned in Section 30, that it ultimately approves such plan, which is then binding on the corporate debtor as well as its employees, members.

h

<sup>22</sup> *Innovative Industries Ltd v. ICICI Bank*, (2015) 1 SCC 437; (2015) 1 SCC (Civil) 259

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creditors, guarantors and other stakeholders. Importantly, and this is a major departure from previous legislation on the subject, the moment the adjudicating authority approves the resolution plan, the moratorium order passed by the authority under Section 14 shall cease to have effect. The scheme of the Code, therefore, is to make an attempt, by divesting the erstwhile management of its powers and vesting it in a professional agency, to continue the business of the corporate body as a going concern until a resolution plan is drawn up, in which event the management is handed over under the plan so that the corporate body is able to pay back its debts and get back on its feet. All this is to be done within a period of 6 months with a maximum extension of another 90 days or else the chopper comes down and the liquidation process begins.” (emphasis supplied)

61. It could thus be seen that one of the dominant objects of the I&B Code is to see to it that an attempt has to be made to revive the corporate debtor and make it a running concern. For that, a resolution applicant has to prepare a resolution plan on the basis of the information memorandum. The information memorandum, which is required to be prepared in accordance with Section 29 of the I&B Code along with Regulation 36 of the Regulations, is required to contain various details, which have been gathered by RP after receipt of various claims in response to the statutory mandated public notice. The resolution plan is required to provide for the payment of insolvency resolution process costs, management of the affairs of the corporate debtor after approval of the resolution plan; the implementation and supervision of the resolution plan. It is only after the adjudicating authority satisfies itself that the plan as approved by CoC with the requisite voting share of financial creditors meets the requirement as referred to in sub-section (2) of Section 30, grants its approval to it. It is only thereafter that the said plan is binding on the corporate debtor as well as its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. The moratorium order passed by the adjudicating authority under Section 14 shall cease to operate once the adjudicating authority approves the resolution plan. The scheme of the I&B Code therefore is, to make an attempt, by divesting the erstwhile management of its powers and vesting it in a professional agency to continue the business of the corporate debtor as a going concern until a resolution plan is drawn up. Once the resolution plan is approved, the management is handed over under the plan to the successful applicant so that the corporate debtor is able to pay back its debts and get back on its feet.

62. This Court recently in *Katraj Dharamshi v. Kotak Investment Advisors Ltd.*<sup>18</sup> has, in detail, considered the provisions of Sections 30 and 31 of the I&B Code, the Bankruptcy Law Reforms Committee (BLRC) Report of 2015 and the judgments of this Court in *K. Sashidhar*<sup>19</sup>, *Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta*<sup>20</sup> and *Moharajbhai Securities Ltd.*

19. (2021) 17 SCC 177; (2021) SCC Online SC 20.

16. *K. Sashidhar v. Satish Kumar Gupta*, (2019) 17 SCC 150; (2019) 4 SCS 1076; 120

17. (2020) 8 SCC 561; (2021) 2 SCC 33; 113.

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*v. Padmanabha Venkatesh*<sup>17</sup> and observed thus: (*Kalyanj Dhanrajani case*<sup>18</sup>, SCC paras 153-171)

153. It is thus clear, that the Committee was of the view, that for deciding key economic question in the bankruptcy process, the only one correct forum for evaluating such possibilities, and making a decision was, a creditors committee, wherein all financial creditors have votes in proportion to the magnitude of debt that they hold. The BIRRC has observed, that laws in India in the past have brought arms of the Government (legislature, executive or judiciary) into the question of bankruptcy process. This has been strictly avoided by the Committee and it has been provided, that the decision with regard to appropriate disposition of a defaulting firm, which is a business decision, should only be made by the creditors. It has been observed, that the evaluation of proposals to keep the entity as a going concern, including decisions about the sale of business or units, restructuring of debt, etc. are required to be taken by the Committee of the financial creditors. It has been provided, that the choice of the solution to keep the entity as a going concern will be voted upon by CoC and there are no constraints on the proposals that the resolution professional can present to CoC.

154. The requirements, that the resolution professional needs to submit to the adjudicator, are:

154.1. That the solution must explicitly require the repayment of any interim finance and costs of the insolvency resolution process will be paid in priority to other payments

154.2. That the plan must explicitly include payment to all creditors not on the creditors committee, within a reasonable period after the solution is implemented; and lastly

154.3. The plan should comply with existing laws governing the actions of the entity while implementing the solutions.

155. The Committee also expressed the opinion, that there should be freedom permitted to the overall market, to propose solutions on keeping the entity as a going concern. The Committee opined, that the details as to how the insolvency is to be resolved or as to how the entity is to be revived, or the debt is to be restructured will not be provided in the I&B Code but such a decision will come from the deliberations of CoC in response to the solutions proposed by the market.

156. This Court in *K. Sashidhar*<sup>19</sup> observed thus: (SCC pp. 173-74, para 32)

132. Having heard the learned counsel for the parties, the most question is about the sequel of the approval of the resolution plan by

<sup>17</sup> (2020) 1 SCC 467 (202) 1 SCC (C) 733

<sup>18</sup> *Kalyanj Dhanrajani v. Katak Investment Advisors Pvt. Ltd.*, (2021) 7 SCC 101 : 2021 SCC Online SC 914

<sup>19</sup> *K. Sashidhar v. Andhra Government Bank*, (2019) 12 SCC 120 : (2019) 7 SCC (Civ) 122

CoC of the respective corporate debtor, namely, KS&PIPL and III, by a vote of less than seventy five per cent of voting share of the financial creditors; and about the correctness of the view<sup>21</sup> taken by NCLT that the percentage of voting share of the financial creditors specified in Section 30(4) of the I&B Code is mandatory. *Further, is it open to the adjudicating authority/apellate authority to reckon any other factor (other than specified in sections 30(2) or 61(1) of the I&B Code as the case may be) which, according to the resolution applicant and the stakeholders supporting the resolution plan, may be relevant?*

157. After considering the judgment of this Court in *Azechi Mittal (India) (P) Ltd. v. Satish Kumar Gupta*<sup>22</sup> and the relevant provisions of the I&B Code, this Court further observed in *K. Sashidhar*<sup>23</sup> thus: (K. Sashidhar case<sup>23</sup>, SCC p. 183, para 52)

157. As aforesaid, upon receipt of a "rejected" resolution plan the adjudicating authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under Section 33(1) of the I&B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of CoC; much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors. From the legislative history and the background in which the I&B Code has been enacted, it is noticed that a completely new approach has been adopted for speeding up the recovery of the debt due from the defaulting companies. In the new approach, there is a calm period followed by a swift resolution process to be completed within 270 days (outer limit) failing which, initiation of liquidation process has been made inevitable and mandatory. In the earlier regime, the corporate debtor could indefinitely continue to enjoy the protection given under Section 22 of the Sick Industrial Companies Act, 1985 or under other such enactments which has now been forsaken. *Besides, the commercial wisdom of CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject matter expressed by them after due deliberations in CoC meetings through voting, as per voting shares, is a collective business decision. The legislature, consequently, has not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority. That is made non-justiciable.*

21 *Kamdhara Steel & Power (India) (P) Ltd. v. Indian Bank*, 2018 SCC Online SC 1465; 25 (3) 2018 SCC 1.

22 *K. Sashidhar v. Indian Overseas Bank*, (2019) 12 SCC 150; (2019) 4 SCC 605; 232



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158. This Court has held, that it is not open to the adjudicating authority or appellate authority to reckon any other factor other than specified in Sections 30(2) or 61(3) of the I&B Code. It has further been held, that the commercial wisdom of CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. This Court thus, in unequivocal terms, held, that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. It has been held, that the opinion expressed by CoC after due deliberations in the meetings through voting, as per voting shares, is a collective business decision. It has been held, that the legislature has consciously not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority and that the decision of CoC's "commercial wisdom" is made non justiciable.

159. This Court in *Essar Steel (India) Ltd. (CoC)*<sup>1</sup> after referring to the judgment of this Court in *K. Sashidhar*<sup>2</sup> observed thus: (*Essar Steel case*<sup>1</sup>, SCC p. 584, para 64)

“64. Thus, what is left to the majority decision of the Committee of Creditors is the “feasibility and viability” of a resolution plan, which obviously takes into account all aspects of the plan, including the manner of distribution of funds among the various classes of creditors. As an example, take the case of a resolution plan which does not provide for payment of electricity dues. It is certainly open to the Committee of Creditors to suggest a modification to the prospective resolution applicant to the effect that such dues ought to be paid in full, so that the carrying on of the business of the corporate debtor does not become impossible for want of a most basic and essential element for the carrying on of such business, namely, electricity. This may, in turn, be accepted by the resolution applicant with a consequent modification as to distribution of funds, payment being provided to a certain type of operational creditor, namely, the electricity distribution company, out of upfront payment offered by the proposed resolution applicant which may also result in a consequent reduction of amounts payable to other financial and operational creditors. What is important is that it is the commercial wisdom of this majority of creditors which is in determining, through negotiation with the prospective resolution applicant, as to how and in what manner the corporate resolution process is to take place.”

<sup>1</sup> *Essar Steel (India) Ltd. (CoC) v. Satish Kumar* (Case 13030) 5 SCC 531 (2013) 13 SCC (Cr) 443  
<sup>2</sup> *K. Sashidhar v. Andhra Co-operative Bank*, 12019; 12 SCC 120 (2019) 1 SCC (Cr) 122

160. This Court held that what is left to the majority decision of CoC is the “feasibility and viability” of a resolution plan, which is required to take into account all aspects of the plan, including the manner of distribution of funds among the various classes of creditors. It has further been held, that CoC is entitled to suggest a modification to the prospective resolution applicant, so that carrying on the business of the corporate debtor does not become impossible, which suggestion may, in turn, be accepted by the resolution applicant with a consequent modification as to distribution of funds, etc. It has been held, that what is important is, the commercial wisdom of the majority of creditors, which is to determine, through negotiation with the prospective resolution applicant, as to how and in what manner the corporate resolution process is to take place.

161. The view taken in *K. Sashidhar*<sup>16</sup> and *Eastar Steel (India) Ltd. (CoC)*<sup>17</sup> has been reiterated by another three-judge Bench of this Court in *Maharashtra Seabags Ltd.*<sup>18</sup>

162. In all the aforesaid three judgments<sup>16, 17, 18</sup> of this Court, the scope of jurisdiction of the adjudicating authority (NCLT) and the appellate authority (NCLAT) has also been elaborately considered. It will be relevant to refer to para 55 of the judgment in *K. Sashidhar*<sup>16</sup>, which reads thus (SCC pp. 185-86)

“55. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan “as approved” by the requisite per cent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides, (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of

16 *Eastar Steel (India) Ltd. (CoC) v. Nandan Kumar Gupta*, (2016) 8 SCC 551; (2016) 3 SCC (Civ) 441

17 *K. Sashidhar v. Indian Overseas Bank*, (2019) 12 SCC 156; (2019) 1 SCC (Civ) 222

18 *Maharashtra Seabags Ltd. v. Maharashtra Seabags (Pvt.) Ltd.*, (2020) 11 SCC 467; (2021) 1 SCC (Civ) 195

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a the financial creditors at the time of voting is bound to be a mixed  
b baggage of variety of factors. To wit, the feasibility and viability of  
c the proposed resolution plan and including their perceptions about the  
d general capability of the resolution applicant to translate the projected  
e plan into a reality. The resolution applicant may have given projections  
f backed by normative data but still in the opinion of the dissenting  
g financial creditors, it would not be free from being speculative. These  
h aspects are completely within the domain of the financial creditors who  
are called upon to vote on the resolution plan under Section 30(4) of  
the I&B Code.

163. It has been held, that in an enquiry under Section 31, the limited  
enquiry that the adjudicating authority is permitted is, as to whether the  
resolution plan provides:

a 163.1. The payment of insolvency resolution process costs in a  
specified manner in priority to the repayment of other debts of the corporate  
debtor.

b 163.2. The repayment of the debts of operational creditors in prescribed  
manner.

c 163.3. The management of the affairs of the corporate debtor.

d 163.4. The implementation and supervision of the resolution plan.

e 163.5. The plan does not contravene any of the provisions of the law  
for the time being in force.

f 163.6. Conforms to such other requirements as may be specified by  
the Board.

g 164. It will be further relevant to refer to the following observations of  
this Court in *K. Sankidhar*<sup>16</sup>: (SCC pp. 186-87, para 57)

a 57. ... Ineluctably, the remedy of appeal including the width  
of jurisdiction of the appellate authority and the grounds of appeal,  
is a creature of statute. *The provisions investing jurisdiction and*  
b *authority in NCLT or NCLAT as noticed earlier, have not made the*  
c *commercial decision exercised by CoC of not approving the resolution*  
d *plan or rejecting the same, reviewable. This position is reinforced*  
e *from the limited grounds specified for instituting an appeal that too*  
f *against an order "approving a resolution plan" under Section 31.*  
g *First, that the approved resolution plan is in contravention of the*  
h *provisions of any law for the time being in force. Second, there has*  
i *been material irregularity in exercise of powers "by the resolution*  
j *professional" during the corporate insolvency resolution period. Third,*  
k *the debts owed to operational creditors have not been provided for in*  
l *the resolution plan in the prescribed manner. Fourth, the insolvency*  
m *resolution plan costs have not been provided for repayment in priority*  
n *to all other debts. Fifth, the resolution plan does not comply with*

16. *K. Sankidhar v. Indus Overseas Bank*, 12019-13 SCC 120 (2019) 1 SCC (Civil) 122

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any other criteria specified by the Board. Significantly, the matters or grounds—be it under Section 30(2) or under Section 61(3) of the I&B Code—are regarding testing the validity of the “approved” resolution plan by CoC; and not for approving the resolution plan which has been disapproved or deemed to have been rejected by CoC in exercise of its business decision.”

165. It will therefore be clear, that this Court, in unequivocal terms, held, that the appeal is a creature of statute and that the statute has not invested jurisdiction and authority either with NCLT or NCLAT, to review the commercial decision exercised by CoC of approving the resolution plan or rejecting the same.

166. The position is clarified by the following observations in para 59 of the judgment in *K. Sashidhar*<sup>16</sup>, which reads thus: (SCC p. 187)

“59. In our view, neither the adjudicating authority (NCLT) nor the appellate authority (NCLAT) has been endowed with the jurisdiction to reverse the commercial wisdom of the dissenting financial creditors and that too on the specious ground that it is only an opinion of the minority financial creditors.”

167. This Court in *Essar Steel (India) Ltd. (CoC)*<sup>17</sup> after reproducing certain paragraphs in *K. Sashidhar*<sup>16</sup> observed thus: (*Essar Steel case*<sup>17</sup>, SCC p. 589, para 67)

“67. ... Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of Section 30(2) of the Code, insofar as the adjudicating authority is concerned, and Section 32 read with Section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in *K. Sashidhar*<sup>16</sup>.”

168. It can thus be seen, that this Court has clarified, that the limited judicial review, which is available, can in no circumstance trespass upon a business decision arrived at by the majority of CoC.

169. In *Maharashtra Seamless Ltd.*<sup>18</sup>, NCLT had approved<sup>19</sup> the plan of appellant therein with regard to CIRP of United Seamless Tubular (P) Ltd. In appeal, NCLAT directed<sup>20</sup>, that the appellant therein should increase upfront payment to Rs 597.54 crores to the “financial creditors”, “operational creditors” and other creditors by paying an additional amount of Rs 120.54 crores. NCLAT further directed, that in the event the “resolution

16 *K. Sashidhar v. Indian Overseas Bank*, (2019) 12 SCC 150; (2019) 4 SCC (Cr.) 222

17 *Essar Steel (India) Ltd. (CoC) v. Sanjay Kumar Gupta*, (2020) 8 SCC 581; (2021) 2 SCC (Cr.) 112

18 *Maharashtra Seamless Ltd. v. Prithvishankar Venkatesh*, (2020) 11 SCC 467; (2021) 1 SCC (Cr.) 703

20 *United Seamless Tubular (P) Ltd. Resolution Professional v. Indian Bank*, 2019 SCC Online NCLT 713

21 *Prithvishankar Venkatesh v. Y. Venkateshankar*, 2019 SCC Online NCLT 232

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applicant" failed to undertake the payment of additional amount of  
Rs 170.54 crores in addition to Rs 477 crores and deposit the said amount  
in escrow account within 30 days, the order of approval of the "resolution  
plan" was to be treated to be set aside. While allowing the appeal and setting  
aside the directions of NCLAT, this Court observed thus: (*Moharajwari v.  
Seemless Trade*), SCC p. 487, para 30)

"30. The appellate authority has, in our opinion, proceeded on  
equitable perception rather than commercial wisdom. On the face of it,  
release of assets at a value 20% below its liquidation value arrived at  
by the valuers seems inequitable. Here, we feel the Court ought to cede  
ground to the commercial wisdom of the creditors rather than assess  
the resolution plan on the basis of quantitative analysis. Such is the  
scheme of the Code. Section 31(1) of the Code lays down in clear terms  
that for final approval of a resolution plan, the adjudicating authority  
has to be satisfied that the requirement of sub-section (2) of Section 30  
of the Code has been complied with. The proviso to Section 31(1) of  
the Code stipulates the other point on which an adjudicating authority  
has to be satisfied. That factor is that the resolution plan has provisions  
for its implementation. The scope of interference by the adjudicating  
authority in limited judicial review has been laid down in *Esar Steel-1*,  
the relevant passage (para 54) of which we have reproduced in earlier  
part of this judgment. The case of MSI, in their appeal is that they want  
to run the company and infuse more funds. In such circumstances, we  
do not think the appellate authority ought to have interfered with the  
order of the adjudicating authority in directing the successful resolution  
applicant to enhance their fund inflow upfront."

"170. This Court observed, that the Court ought to cede ground to  
the commercial wisdom of the creditors rather than assess the resolution  
plan on the basis of quantitative analysis. This Court clearly held, that  
the appellate authority ought not to have interfered with the order of the  
adjudicating authority by directing the successful resolution applicant to  
enhance their fund inflow upfront."

"171. It would thus be clear, that the legislative scheme, as interpreted by  
various decisions of this Court, is unambiguous. The commercial wisdom  
of CoC is not to be interfered with, excepting the limited scope as provided  
under Sections 30 and 31 of the I&B Code." (emphasis in original)

"63. Another three Judge Bench of this Court in *Karad Urban Coop. Bank  
Ltd. v. Newapadi Bhingardasay*<sup>18</sup>, taking a similar view, has observed thus:  
(SCC pp 735-36, para 14)

"14. The principles laid down in the aforesaid decisions, make one  
thing very clear. If all the factors that need to be taken into account for

<sup>18</sup> *Moharajwari v. Seemless Trade* (Civil Appeal No. 1000 of 2021) 1 SCC 487 (2021) 1 SCC (Civil) 709

<sup>19</sup> *Esar Steel (India) Ltd. (Civil Appeal No. 1000 of 2021)* 5 SCC 531 (2021) 5 SCC (Civil) 443  
<sup>20</sup> (2020) 5 SCC 739 (2021) 2 SCC (Civil) 197

determining whether or not the corporate debtor can be kept running as a going concern have been placed before the Committee of Creditors and CoC has taken a conscious decision to approve the resolution plan, then the adjudicating authority will have to switch over to the hands off mode. It is not the case of the corporate debtor or its promoter/Director or anyone else that some of the factors which are crucial for taking a decision regarding the viability and feasibility, were not placed before CoC or the resolution professional."

64. It could thus be seen that the legislature has given paramount importance to the commercial wisdom of CoC and the scope of judicial review by adjudicating authority is limited to the extent provided under Section 31 of the I&B Code and of the appellate authority is limited to the extent provided under sub-section (3) of Section 61 of the I&B Code, is no more res integra.

65. Bare reading of Section 31 of the I&B Code would also make it abundantly clear that once the resolution plan is approved by the adjudicating authority, after it is satisfied that the resolution plan as approved by CoC meets the requirements as referred to in sub-section (2) of Section 30, it shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders. Such a provision is necessitated since one of the dominant purposes of the I&B Code is revival of the corporate debtor and to make it a running concern.

66. The resolution plan submitted by the successful resolution applicant is required to contain various provisions viz. provision for payment of insolvency resolution process costs, provision for payment of debts of operational creditors, which shall not be less than the amount to be paid to such creditors in the event of liquidation of the corporate debtor under Section 53; or the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of Section 53, whichever is higher. The resolution plan is also required to provide for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, which also shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of Section 53 in the event of a liquidation of the corporate debtor. Explanation 1 to clause (b) of sub-section (2) of Section 30 of the I&B Code clarifies for the removal of doubts that a distribution in accordance with the provisions of the said clause shall be fair and equitable to such creditors. The resolution plan is also required to provide for the management of the affairs of the corporate debtor after approval of the resolution plan and also the implementation and supervision of the resolution plan. Clause (c) of sub-section (2) of Section 30 of the I&B Code also casts a duty on RP to examine that the resolution plan does not contravene any of the provisions of the law for the time being in force.

67. Perusal of Section 29 of the I&B Code read with Regulation 36 of the Regulations would reveal that it requires RP to prepare an information memorandum containing various details of the corporate debtor so that the resolution applicant submitting a plan is aware of the assets and liabilities of

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the corporate debtor, including the details about the creditors and the amounts claimed by them. It is also required to contain the details of guarantees that have been given in relation to the debts of the corporate debtor by other persons. The details with regard to all material litigation and an ongoing investigation or proceeding initiated by the Government and statutory authorities are also required to be contained in the information memorandum. So also the details regarding the number of workers and employees and liabilities of the corporate debtor towards them are required to be contained in the information memorandum.

68. All these details are required to be contained in the information memorandum so that the resolution applicant is aware as to what are the liabilities that he may have to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure, that the corporate debtor is revived and made a running establishment. The legislative intent of making the resolution plan binding on all the stakeholders after it gets the seal of approval from the adjudicating authority upon its satisfaction, that the resolution plan approved by CoC means the requirement as referred to in sub-section (2) of Section 30 is that after the approval of the resolution plan, no surprise claims should be flying on the successful resolution applicant. The dominant purpose is that he should start with fresh slate on the basis of the resolution plan approved.

69. This aspect has been aptly explained by this Court in *Essar Steel (India) Ltd. (CoC)*<sup>11</sup>: (SCC p. 616, para 107)

“107 For the same reason, the impugned NCLAT judgment in *Standard Chartered Bank v. Satish Kumar Gupta*<sup>28</sup> in holding that claims that may exist apart from those decided on merits by the resolution professional and by the adjudicating authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with “undecided” claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment<sup>28</sup> must also be set aside on this count.”

<sup>11</sup> *Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta*, (2020) 5 SCC 531. (2021) 3 SCC 1019-423  
<sup>28</sup> 2019 SCC Online NCLAT 588

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70. In view of this legal position, we could have very well stopped here and held that the observation made by NCLT in the appeal filed by EARC to the effect that EARC was entitled to take recourse to such remedies as are available to it in law, is impermissible in law. a

71. As held by this Court in *CIT v. Manganese Ore & Energy Ltd.*<sup>70</sup>, in view of the provisions of Section 238 of the I&B Code, the provisions thereof will have an overriding effect, if there is any inconsistency with any of the provisions of the law for the time being in force or any instrument having effect by virtue of any such law. As such, the observations made by NCLT to the aforesaid effect, if permitted to remain, would frustrate the very purpose for which the I&B Code is enacted. b

72. However, in civil appeal arising out of Special Leave Petition (Civil) No. 11232 of 2020, Writ Petition (Civil) No. 1177 of 2020 and civil appeals arising out of Special Leave Petitions (Civil) Nos. 7147-50 of 2020, the issue with regard to the statutory claims of the State Government and the Central Government in respect of the period prior to the approval of resolution plan by NCLT, will have to be considered. c

73. Vide Section 7 of Act 26 of 2019 [vide S.O. 295311], dated 16-8-2019 with effect from 16-8-2019, the following words have been inserted in Section 31 of the I&B Code: d

"including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,"

74. As such, with respect to the proceedings, which arise after 16-8-2019, there will be no difficulty. After the amendment, any debt in respect of the payment of dues arising under any law for the time being in force including the ones owed to the Central Government, any State Government or any local authority, which does not form a part of the approved resolution plan, shall stand extinguished. e

75. The only question which remains is what happens to such dues if they pertain to a period wherein Section 7 petitions have been admitted prior to 16-8-2019. f

76. To answer the said question, we will have to consider, as to whether the said amendment is clarificatory/declaratory in nature or a substantive one. If it is held that it is declaratory or clarificatory in nature, it will have to be held that such an amendment is retrospective in nature and exists on the statute book since inception. However, if the answer is otherwise, the amendment will have to be held to be prospective in nature, having force from the date on which the amendment is effected in the statute. g

77. It will be relevant to refer to the "Statement of Objects and Reasons" (hereafter referred to as "SOR") of the Insolvency and Bankruptcy Code (Amendment) Bill, 2019, which read thus: h



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*"Statement of Objects and Reasons.*—The Insolvency and Bankruptcy Code, 2016 (the Code) was enacted with a view to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order or priority of payment of government dues and to establish an Insolvency and Bankruptcy Board of India.

2. The Preamble to the Code lays down the objects of the Code to include "the insolvency resolution" in a time-bound manner for maximisation of value of assets in order to balance the interests of all the stakeholders. Concerns have been raised that in some cases extensive litigation is causing undue delays, which may hamper the value maximisation. There is a need to ensure that all creditors are treated fairly, without unduly burdening the adjudicating authority whose role is to ensure that the resolution plan complies with the provisions of the Code. Various stakeholders have suggested that if the creditors were treated on an equal footing, when they have different pre-insolvency entitlements, it would adversely impact the cost and availability of credit. Further, views have also been obtained so as to bring clarity on the voting pattern of financial creditors represented by the authorised representative.

3. In view of the aforesaid difficulties and in order to fill the critical gaps in the corporate insolvency framework, it has become necessary to amend certain provisions of the Insolvency and Bankruptcy Code. The Insolvency and Bankruptcy Code (Amendment) Bill, 2019, inter alia, provides for the following, namely:

(a)-(e) \* \* \*

(f) *to amend sub-section (1) of Section 31 of the Code to clarify that the resolution plan approved by the adjudicating authority shall also be binding on the Central Government, any State Government or any local authority to whom a debt in respect of payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, including tax authorities;"* (emphasis supplied)

78. Perusal of the SOR would reveal that one of the prime objects of the I&B Code was to provide for implementation of the insolvency resolution process in a time-bound manner for maximisation of value of assets in order to balance the interests of all stakeholders. However, it was noticed that in some cases there was extensive litigation causing undue delays resultantly hampering the value maximisation. It was also found necessary to ensure that all creditors are treated fairly. It was therefore in view of the various difficulties faced and in order to fill the critical gaps in the corporate insolvency framework, it was necessary to amend certain provisions of the I&B Code. Clause (f) of Para 3 of the SOR of the Insolvency and Bankruptcy Code (Amendment) Bill, 2019 would amply make it clear that the legislative intent in amending sub-section (1) of Section 31 of the I&B Code was to clarify that the resolution plan approved by the adjudicating authority shall also be binding on the Central Government,

any State Government or any local authority to whom a debt is owed in respect of payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, including tax authorities.

79. In the Rajya Sabha debates, on 29-7-2019, when the Bill for amending the I&B Code came up for discussion, there were certain issues raised by certain members. While replying to the issues raised by certain Members, the Hon'ble Finance Minister stated thus:

"IBC has actually an overriding effect. For instance, you asked whether IBC will override SEBI. Section 238 provides that IBC will prevail in case of inconsistency between two laws. Actually, Indian courts will have to decide, in specific cases, depending upon the material before them, but largely, yes, it is IBC."

There is also this question about indemnity for successful resolution applicant. The amendment now is clearly making it binding on the Government. It is one of the ways in which we are providing that. The Government will not raise any further claim. The Government will not make any further claim after resolution plan is approved. So, that is going to be a major, major sense of assurance for the people who are using the resolution plan. Criminal matters alone would be proceeded against individuals and not company. There will be no criminal proceedings against successful resolution applicant. There will be no criminal proceedings against successful resolution applicant for fraud by previous promoters. So, I hope that is absolutely clear. I would want all the Hon'ble Members to recognise this message and communicate further that this Code, therefore, gives that comfort to all new bidders. So now, they need not be scared that the taxman will come after them for the faults of the earlier promoters. No. Once the resolution plan is accepted, the earlier promoters will be dealt with as individuals for their criminality but not the new bidder who is trying to restore the company. So, that is very clear." (emphasis supplied)

80. It could thus be seen that in the speech the Hon'ble Finance Minister has categorically stated that Section 238 provides that the I&B Code will prevail in case of inconsistency between two laws. She also stated that there was question about indemnity for successful resolution applicant and that the amendment was clearly making it binding on the Government. She stated that the Government will not make any further claim after the resolution plan is approved. So, that is going to be a major sense of assurance for the people who are using the resolution plan. She has categorically stated that she would want all the Hon'ble Members to recognise this message and communicate further that the I&B Code gives that comfort to all new bidders. They need not be scared that the taxman will come after them for the faults of the earlier promoters. She further states that once the resolution plan is accepted, the earlier promoters will be dealt with as individuals for their criminality but not the new bidder who is trying to restore the company.

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81. This Court in *K.P. Vinayak v. CIT*<sup>30</sup> had an occasion to consider the question as to whether the speech made by the Hon'ble Finance Minister explaining the reason for the introduction of the Bill could be referred for the purpose of ascertaining the mischief sought to be remedied by the legislation. This Court observed thus: (SCC p. 184, para 81)

"8. ... Now it is true that the speeches made by the Members of the Legislature on the floor of the House when a Bill for enacting a statutory provision is being debated are inadmissible for the purpose of interpreting the statutory provision but the speech made by the Mover of the Bill explaining the reason for the introduction of the Bill can certainly be referred to for the purpose of ascertaining the mischief sought to be remedied by the legislation and the object and purpose for which the legislation is enacted. This is in accord with the recent trend in juristic thought not only in western countries but also in India that interpretation of a statute being an exercise in the ascertainment of meaning, everything which is logically relevant should be admissible. In fact there are at least three decisions of this Court, one in *Lok Shiksha Trust v. CIT*<sup>31</sup>, the other in *Indian Chamber of Commerce v. CIT*<sup>32</sup> and the third in *CIT v. Surat An Silk Cloth Manufacturers' Assn.*<sup>33</sup> where the speech made by the Finance Minister while introducing the exclusivatory clause in Section 2, clause (15) of the Act was relied upon by the Court for the purpose of ascertaining what was the reason for introducing that clause. The speech made by the Finance Minister while moving the amendment introducing sub-section (2) clearly states what were the circumstances in which sub-section (2) came to be passed, what was the mischief for which Section 52 as it then stood did not provide and which was sought to be remedied by the enactment of sub-section (2) and why the enactment of sub-section (2) was found necessary."

82. This Court in *Union of India v. Maria Lentery Agencies Ltd.*<sup>34</sup>, in para 38 has relied on the aforesaid observations made in the judgment of *K.P. Vinayak*<sup>35</sup>.

83. It could thus be seen that the speech made by Hon'ble Finance Minister while explaining the amendment could be referred to for ascertaining what was the reason for moving the Bill. The speech can be used for finding out:

(1) What were the circumstances in which the amendment was carried out;

(2) What was the mischief for which the unamended section did not provide, and

(3) What was sought to be remedied by amended enactment.

30: (1981) 4 SCC 73; 1981 SCC (Tax) 293

31: (1976) 1 SCC 254; 1975 SCC (Tax) 14

32: (1976) 1 SCC 321; 1975 SCC (Tax) 1

33: (1980) 2 SCC 31; 1980 SCC (Tax) 176

34: (2009) 12 SCC 269

84. It is clear that the mischief which was noticed prior to amendment of Section 31 of the I&B Code was that though the legislative intent was to extinguish all such debts owed to the Central Government, any State Government or any local authority, including the tax authorities once an approval was granted to the resolution plan by NCLT, on account of there being some ambiguity, the State/Central Government authorities continued with the proceedings in respect of the debts owed to them. In order to remedy the said mischief, the legislature thought it appropriate to clarify the position that once such a resolution plan was approved by the adjudicating authority, all such claims/dues owed to the State/Central Government or any local authority including tax authorities, which were not part of the resolution plan shall stand extinguished.

85. In Justice G.P. Singh's treatise on *The Principles of Statutory Interpretation*, 14th Edn., revised by Justice A.K. Patnaik, former Judge of this Court, it is observed thus:

“(i) *Declaratory statutes*

The presumption against retrospective operation is not applicable to declaratory statutes. As stated in *Craies* and approved by the Supreme Court<sup>35</sup>:

“For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a Preamble, and also the word ‘declared’ as well as the word ‘enacted’.”<sup>35</sup>

But the use of the words ‘It is declared’ is not conclusive that the Act is declaratory for these words may, at times, be used to introduce new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective<sup>36</sup>. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form<sup>36</sup>. If a new Act is ‘to explain’ an earlier Act, it would be without object unless construed retrospective<sup>37</sup>. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as

<sup>35</sup> *Id.*; *The Advertisers to Central Bank of India v. Workmen*, AIR 1960 SC 12, para 28.

<sup>35</sup> *Craies on Statute Law*, 7th Edn., p. 58, approved in *Central Bank of India v. Workmen*, AIR 1960 SC 12, 27 (1960) 1 SCR 199. See *Jones v. Bennett*, (1890) 13 LT 705, 708 (Lord Coleridge, C.J.); *Madras Marine & Co. v. State of Madras*, (1985) 3 SCC 557, 558 (1986 SCC (Pat) 586); *Sabhai Chetani (Iyengar) v. State of Haryana*, (2003) 1 SCC 561, 582, AIR 2003 SC 66, 84.

<sup>36</sup> *Honing v. Government Name Commissions*, 1899 AC 760 at pp. 775, 776 (PC).

<sup>37</sup> *R. v. Gordon*, (1832) 3 B & Ad. 65; 119 ER 168, 169.

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to the meaning of the previous Act<sup>38</sup>. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended<sup>39</sup>. The language "shall be deemed always to have meant"<sup>40</sup> or "shall be deemed never to have included"<sup>41</sup> is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous<sup>42</sup>. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law when the Constitution came into force, the amending Act also will be part of the existing law<sup>43</sup>.

The above statement of the law relating to the nature and effect of a declaratory statute has been quoted with approval by the Supreme Court from earlier editions of this book in a number of cases<sup>44</sup>.

"In *Mithilesh Kumari v. Prem Behari Khare*<sup>45</sup>, Section 4 of the Benami Transactions (Prohibition) Act, 1988 was, it is submitted, wrongly held to be an Act declaratory in nature for it was not passed to clear any doubt existing as to the common law or the meaning or

<sup>38</sup> *Keyloomal Jethalal Shah (2) v. Mohandas Bhagwanlal*, AIR 1958 SC 1335, 1339 : (1968) 3 SCR 623. The question whether an "Explanation" added by an amending Act is really explanatory or not would depend on its construction. In *S.K. Gendialex & Sons v. CIT*, (2001) 2 SCC 460, 469 : AIR 2001 SC 254, 260 : (2001) 247 JTR 182. Explanation 2 inserted in Section 139(8) of the Income Tax Act, 1961 was held to be clarificatory. But in *Borka Cement Works v. CBDT*, (2001) 9 SCC 35, it was held that mere addition of an "Explanation" by an amending Act in a taxing Act cannot, without more, be held to be clarificatory and retrospective. In *CIT v. Shelly Products*, (2005) 8 SCC 451 at pp. 477-78 paras 30(a) and 30(b) read in Section 2(1) of the Income Tax Act, 1961 by amending Act which came into force on 1-4-1989 were held to be clarificatory and retrospective.

<sup>39</sup> *Chaman Singh v. Jankson*, (1991) 2 SCC 128, 135 : AIR 1991 SC 319, 321

<sup>40</sup> *CIT v. Shree Products Ltd.*, AIR 1966 SC 1117 : (1966) 2 SCR 851

<sup>41</sup> *Union of India v. S. Gauram Swami*, (1992) 7 SCC 545, 546-47

<sup>42</sup> *Sakari v. Jangal*, (1985) 3 SCC 590, at 591

<sup>43</sup> *Punjab Textiles v. State of Punjab*, (1991) 1 SCC 88, 92 : AIR 1991 SC 2302, 2304

<sup>44</sup> *R. Rajagopal Reddy v. Padmalini Chandrasekharam*, (1995) 2 SCC 630, 646 : AIR 1995 SC 238, 246; *Allied Motors (P) Ltd. v. CIT*, (1997) 3 SCC 472, 479-80 : AIR 1997 SC 1351 at pp. 1366, 1367; *CIT v. Pashan Cement (P) Ltd.*, (1997) 3 SCC 482, 506-67 : AIR 1997 SC 2523, pp. 2537-38; *Niyas Sander v. Ram Kumar*, (2001) 3 SCC 74, 49-50 : AIR 2001 SC 947, 948; *Zile Singh v. State of Haryana*, (1974) 3 SCC 1, 7-8 : AIR 2004 SC 5100 at pp. 5103-104; *CIT v. Gold Coin Health Food (P) Ltd.*, (2008) 9 SCC 679, paras 9, 10. See further *S.B. Bhattacharjee v. S.D. Majumdar*, (2007) 13 SCC 513, paras 32-36 : (2008) 1 SCC (L&S) 21 : AIR 2007 SC 2102, paras 20-26.

<sup>45</sup> (1989) 2 SCC 95, 108 : AIR 1989 SC 1217, 1255

effect of any statute. The conclusion, however, that Section 4 applied also to past benami transactions may be supportable on the language used in the section.”

These observations and criticism of *Mithlesh Kumar case*<sup>45</sup> also received the approval in *R. Rajagopal Reddy v. Padmini Chandrasekharan*<sup>46</sup>, where the Supreme Court after quoting them (from G.P. Singh: *Principles of Statutory Interpretation*, 5th Edn., pp. 315-16) said:

“No exception can be taken to the above observations.”<sup>47</sup>

A proviso added from 1-4-1988 to Section 43-B inserted in the Income Tax Act, 1961 from 1-4-1984 came up for consideration in *Allied Movers (P) Ltd. v. CIT*<sup>48</sup> and it was given retrospective effect from the inception of the section on the reasoning that the proviso was added to remedy unintended consequences and supply an obvious omission so that the section may be given a reasonable interpretation and that in fact the amendment to insert the proviso would not serve its object unless it is construed as retrospective. In *CIT v. Pudar Cement (P) Ltd.*<sup>49</sup> the Supreme Court held that amendments introduced by the Finance Act, 1987 insofar they related to Sections 27(iii), (iii-a) and (iii-b) which redefined the expression ‘owner of house property’, in respect of which there was a sharp divergence of opinion amongst the High Courts, was clarificatory and declaratory in nature and consequently retrospective. Similarly, in *Brij Mohan Das Laxman Das v. CIT*<sup>50</sup> Explanation 2 added to Section 40 of the Income Tax Act, 1961 from 1-4-1985 on a question on which there was a divergence of opinion was held to be declaratory in nature and, therefore, retrospective. And in *Zile Singh v. State of Haryana*<sup>51</sup> substitution of the word ‘up to’ for the word ‘after’ in the proviso to Section 13-A (added in 1994) in the Haryana Municipal Act, 1973 by the Haryana Municipal (Second Amendment) Act, 1994 was held to be correction of an obvious

45 *Mithlesh Kumar v. Prom. Behari Kumar*, (1989) 2 SCC 95, 108 : AIR 1989 SC 247, 1255

46 (1995) 2 SCC 630

47 *R. Rajagopal Reddy v. Padmini Chandrasekharan*, (1995) 2 SCC 630, 617

48 (1997) 3 SCC 112, 128-30 : AIR 1997 SC 1361 at pp. 306-07. Similarly in *CIT v. Suresh N. Gupta*, (2008) 4 SCC 362, paras 38-39, proviso inserted in Section 113 of the Income Tax Act with effect from 1-10-2002 was held to be clarificatory and retrospective. Again in *CIT v. Alamy Extrusions Ltd.*, (2019) 1 SCC 489 deletion of a second proviso and consequent amendment in second proviso to Section 43-B of the Income Tax Act, 1961 by the Finance Act, 1993 was held to be clarificatory and retrospective.

49 (1997) 3 SCC 483, 509 : AIR 1997 SC 2233, p. 2233

50 (1997) 1 SCC 352, 356 : AIR 1997 SC 1657, 1654, affirmed in *Sarvjit Anandhaji Jena v. CIT*, (1997) 4 SCC 89 and *CIT v. Kaji Shreeji & Co.*, (2007) 2 SCC 253. See further cases in G.P. Singh: *The Principles of Statutory Interpretation*, 14th Edn., para 12.

51 (2001) 8 SCC 1

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er drafting error to bring about the text in conformity with the legislative intent and, therefore, retrospective. Even without the amendment of the proviso, the court in all probability would have read and interpreted the section as corrected by the amendment<sup>50</sup>.”

b 86. In *Zile Singh v. State of Haryana*<sup>51</sup>, this Court had an occasion to consider the provisions of Section 13-A of the Haryana Municipal Act, 1973 which, prior to amendment, read thus:

“13-A. Disqualification for membership. (1) A person shall be disqualified for being chosen as and for being a member of a municipality

(c) if he has more than two living children:

e Provided that a person having more than two children on or after the expiry of one year of the commencement of this Act, shall not be deemed to be disqualified.” (emphasis supplied)

d 87. The faulty drafting in the provision was capable of being interpreted that the legislative embargo imposed on a person from procreating and giving birth to a third child in the context of holding the office of a member of a municipality remained in operation for a period of one year only and thereafter it was lifted. It could be interpreted that on the date on which Section 13-A was brought on the statute book i.e. dated 5-4-1994, even if a person became disqualified, the disqualification ceased to operate and he became qualified once again to contest the election and hold the office of member of a municipality on the expiry of one year from 5-4-1994. After realising the error, Section 13-A came to be amended as under:

“2. In the proviso to clause (c) of sub-section (1) of Section 13-A of the Haryana Municipal Act, 1973 (hereinafter called the principal Act), for the word ‘after’, the word ‘up to’ shall be substituted.” (emphasis supplied)

f 88. This Court while observing, that the amendment was clarificatory in nature, held thus: (*Zile Singh case*<sup>52</sup> : SCC pp. 4-12, paras 14-22)

g “14. The presumption against retrospective operation is not applicable to declaratory statutes.... In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is “to explain” an earlier Act, it would be without object unless construed retrospectively. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended.... An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect (ibid., pp. 468-69).

h <sup>50</sup> *Id.*, para 71 (SCC).

<sup>51</sup> (2001) 8 SCC .

15. Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to Craies (*Statute Law*, 7th Edn.), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the courts will give it such an operation. *In the absence of a retrospective operation having been expressly given, the courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the statute retrospectivity. Four factors are suggested as relevant: (i) general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated.* (p. 388) The rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right. (p. 392)

16. *When a statute is passed for the purpose of supplying an obvious omission in a former statute or to "explain" a former statute, the subsequent statute has relation back to the time when the prior Act was passed. The rule against retrospectivity is inapplicable to such legislations as are explanatory and declaratory in nature.* A classic illustration is the case of *Attorney General v. Penger*<sup>53</sup> (Price at p. 392). By a Customs Act of 1873 (53 Geo. 3, c. 33) a duty was imposed upon hides of 9s 4d, but the Act omitted to state that it was to be 9s 4d per cwt., and to remedy this omission another Customs Act (53 Geo. 3, c. 105) was passed later in the same year. Between the passing of these two Acts some hides were exported, and it was contended that they were not liable to pay the duty of 9s 4d per cwt., but *Harrison, C.B.*, in giving judgment for the Attorney General, said: (ER p. 134)

'The duty in this instance was, in fact, imposed by the first Act; but the gross mistake of the omission of the weight, for which the sum expressed was to have been payable, occasioned the amendment made by the subsequent Act; but that had reference to the former statute as soon as it passed, and they must be taken together as if they were one and the same Act.' (Price at p. 392)

17. Maxwell states in his work on *Interpretation of Statutes* (12th Edn.) that the rule against retrospective operation is a presumption only, and as such it 'may be overcome, not only by express words in the Act but also by circumstances sufficiently strong to displace it' (p. 225). If the dominant intention of the legislature can be clearly and doubtlessly spelt out, the inhibition contained in the rule against perpetuity becomes of doubtful applicability as the "inhibition of the rule" is a matter of degree which would "vary *secundum materiam*" (p. 226). Sometimes, where the sense of the statute demands it or where there has been an obvious mistake in



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drafting, a court will be prepared to substitute another word or phrase for that which actually appears in the text of the Act (p. 231).

18. In a recent decision of this Court in *National Agricultural Coop. Mktg. Federation of India Ltd. v. Union of India*<sup>54</sup> it has been held

that there is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment. Every legislation whether prospective or retrospective has to be subjected to the question of legislative competence. The retrospectivity is liable to be decided on a few touchstones such as: (i) the words used must expressly provide or clearly imply retrospective operation; (ii) the retrospectivity must be reasonable and not excessive or harsh, otherwise it runs the risk of being struck down as unconstitutional; (iii) where the legislation is introduced to overcome a judicial decision, the power cannot be used to subvert the decision without removing the statutory basis of the decision. There is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment. A validating clause coupled with a substantive statutory change is only one of the methods to leave actions unsustainable under the unamended statute undisturbed. Consequently, the absence of a validating clause would not by itself affect the retrospective operation of the statutory provision, if such retrospectivity is otherwise apparent.

19. The Constitution Bench in *Slye vs. Sunder v. Ram Kumar*<sup>55</sup> has held: (SCC p. 49, para 39)

“39. ... Ordinarily when an enactment declares the previous law, it requires to be given retroactive effect. The function of a declaratory statute is to supply an omission or to explain a previous statute and when such an Act is passed, it comes into effect when the previous enactment was passed. The legislative power to enact law includes the power to declare what was the previous law and when such a declaratory Act is passed, invariably it has been held to be retrospective. Mere absence of use of the word “declaration” in an Act explaining what was the law before may not appear to be a declaratory Act but if the court finds an Act as declaratory or explanatory, it has to be construed as retrospective.” (p. 2487).

20. In *Bengal Immunity Co. Ltd. v. State of Bihar*<sup>56</sup>, *Heydon case*<sup>57</sup> was cited with approval. Their Lordships have said: (*Bengal Immunity case*<sup>56</sup>, AIR p. 674, para 22)

“22. It is a sound rule of construction of a statute firmly established in England as far back as 1584 when *Heydon case*<sup>57</sup> was decided that—

<sup>54</sup> (2007) 5 SCC 23

<sup>55</sup> (2007) 8 SCC 24

<sup>56</sup> (1955) 2 SCR 603; AIR 1955 SC 661

<sup>57</sup> (1584) 2 Co Rep 11; 10 ER 62.

"... for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered"

*1st.* What was the common law before the making of the Act.

*2nd.* What was the mischief and defect for which the common law did not provide.

*3rd.* What remedy Parliament hath resolved and appointed to cure the disease of the Commonwealth, and

*4th.* The true reason of the remedy; and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*."

21. In *Allied Motors (P) Ltd. v. CIT*<sup>56</sup> certain unintended consequences flowed from a provision enacted by Parliament. There was an obvious omission. In order to cure the defect, a proviso was sought to be introduced through an amendment. The Court held that literal construction was liable to be avoided if it defeated the manifest object and purpose of the Act. The rule of reasonable interpretation should apply.

'A proviso which is inserted to remedy unintended consequences and to make the provision workable, a proviso which supplies an obvious omission in the section and is required to be read into the section to give the section a reasonable interpretation, requires to be treated as retrospective in operation so that a reasonable interpretation can be given to the section as a whole.' [*Allied Motors (P) Ltd. case*<sup>56</sup>, SCC pp. 479-80, para 13]

22. The State Legislature of Haryana intended to impose a disqualification with effect from 5-4-1995 and that was done. *Any person having more than two living children was disqualified on and from that day for being a member of a municipality.* However, while enacting a proviso by way of an exception carving out a fact situation from the operation of the newly introduced disqualification, the draftsman's folly caused the creation of trouble. A simplistic reading of the text of the proviso spelled out a consequence which the legislature had never intended and could not have intended. It is true that the *Sev. and Amendment* does not expressly give the *amendment a retrospective operation.* The absence of a provision expressly giving a retrospective operation in the legislation is non-determinative of its prospectivity or retrospectivity. *Intinsic evidence may be available to show that the amendment was necessarily intended to have retrospective effect*

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and if the Court can unequivocally conclude in favour of retrospectivity, the Court would not hesitate in giving the Act that operation unless prevented from doing so by any mandate contained in law or an established principle of interpretation of statutes.” (emphasis supplied)

89. It could thus be seen that what is material is to ascertain the legislative intent. If legislature by an amendment supplies an obvious omission in a former statute or explains a former statute, the subsequent statute has a relation back to the time when the prior Act was passed.

90. The law laid down in *Zila Singh*<sup>51</sup> has been subsequently followed in various judgments of this Court, including in *CIT v. Gold Coin Health Food (P) Ltd.*<sup>52</sup> (three-Judge Bench).

91. This Court recently in *SBI v. K. Ramakrishna*<sup>53</sup> had an occasion to consider the question as to whether the amendment to sub section (3) of Section 14 of the I&B Code by Amendment Act 26 of 2018 was clarificatory in nature or not. By the said amendment, sub section (3) of Section 14 of the I&B Code was substituted to provide that the provisions of sub-section (1) of Section 14 shall not apply to a surety in a contract of guarantee for corporate debtor. Considering the said issue, this Court observed thus: (SCC pp. 417-19, paras 30-33)

“36. We now come to the argument that the amendment of 2018, which makes it clear that Section 14(3), is now substituted to read that the provisions of sub-section (1) of Section 14 shall not apply to a surety in a contract of guarantee for corporate debtor. The amended section reads as follows:

**14. Moratorium.** (1)-(2) \* \* \*

(3) The provisions of sub-section (1) shall not apply to—

(a) such transactions as may be notified by the Central Government in consultation with any financial sector regulator;

(b) a surety in a contract of guarantee to a corporate debtor.”

37. The Insolvency Law Committee, appointed by the Ministry of Corporate Affairs, by its Report dated 26-3-2018, made certain key recommendations, one of which was:

“(i) to clear the confusion regarding treatment of assets of guarantors of the corporate debtor vis-à-vis the moratorium on the assets of the corporate debtor, it has been recommended to clarify by way of an explanation that all assets of such guarantors to the corporate debtor shall be outside scope of moratorium imposed under the Code.”

<sup>51</sup> *Zila Singh v. State of Haryana*, (2001) 8 SCC 1

<sup>52</sup> (2008) 3 SCC 62

<sup>53</sup> (2018) 17 SCC 29; (2019) 3 SCC (OL) 458

32. The Committee insofar as the moratorium under Section 14 is concerned, went on to find:

5.5. Section 14 provides for a moratorium or a stay on institution or continuation of proceeding, suits, etc. against the corporate debtor and its assets. There have been contradicting views on the scope of moratorium regarding its application to third parties affected by the debt of the corporate debtor, like guarantors or sureties. While some courts have taken the view that Section 14 may be interpreted literally to mean that it only restricts actions against the assets of the corporate debtor, a few others have taken an interpretation that the stay applies on enforcement of guarantee as well, if a CIRP is going on against the corporate debtor.

5.7. The Allahabad High Court subsequently took a differing view in *Sanjeev Shrivastava v. SBI*<sup>60</sup>, by applying moratorium to enforcement of guarantee against personal guarantor to the debt. The rationale being that if a CIRP is going on against the corporate debtor, then the debt owed by the corporate debtor is not final till the resolution plan is approved, and thus the liability of the surety would also be unclear. The Court took the view that until debt of the corporate debtor is crystallised, the guarantor's liability may not be triggered. The Committee deliberated and noted that this would mean that surety's liabilities are put on hold if a CIRP is going on against the corporate debtor, and such an interpretation may lead to the contracts of guarantee being infructuous, and not serving the purpose for which they have been entered into.

5.8. In *SBI v. K. Ramakrishnan*<sup>61</sup>, NCLAT took a broad interpretation of Section 14 and held that it would bar proceedings or actions against sureties. While doing so, it did not refer to any of the above judgments but instead held that proceedings against guarantors would affect the CIRP and may thus be barred by moratorium. The Committee felt that such a broad interpretation of the moratorium may curtail significant rights of the creditor which are intrinsic to a contract of guarantee.

5.9. A contract of guarantee is between the creditor, the principal debtor and the surety, whereunder the creditor has a remedy in relation to his debt against both the principal debtor and the surety (*National Project Construction Corpn. Ltd. v. Sidha and Co.*<sup>62</sup>). The surety here may be a corporate or a natural person and the liability of such person goes as far as the liability of the principal debtor. As per Section 128 of the Contract Act, 1872, the liability of the surety is co-extensive with that of the principal debtor and the creditor

<sup>60</sup> 2017 SCC Online All 2717; (2018) 2 All LJ 765; (2017) 5 ADI 529

<sup>61</sup> 2018 SCC Online Mca 384

<sup>62</sup> 1988 SCC Online P&H 1009; AIR 1989 P&H 300

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 in no particular sequence (*Chokalinga Chettiar v. Dandayudhapani*  
*(Kantam)*). Though this may be limited by the terms of the contract  
 of guarantee, the general principle of such contracts is that the liability  
 of the principal debtor and the surety is co-extensive and is joint and  
 several (*Bank of Bihar Ltd. v. Dattodar Prasad*<sup>63</sup>). The Committee  
 noted that this characteristic of such contracts i.e. of having remedy  
 against both the surety and the corporate debtor without the obligation  
 to exhaust the remedy against one of the parties before proceeding  
 against the other is of utmost importance for the creditor and is the  
 hallmark of a guarantee contract, and the availability of such remedy  
 is in most cases the basis on which the loan may have been extended.

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 5.10. The Committee further noted that a literal interpretation  
 of Section 14 is prudent, and a broader interpretation may not be  
 necessary in the above context. The assets of the surety are separate  
 from those of the corporate debtor, and proceedings against the  
 corporate debtor may not be seriously impacted by the actions against  
 assets of third parties like sureties. Additionally, enforcement of  
 guarantee may not have a significant impact on the debt of the corporate  
 debtor as the right of the creditor against the principal debtor is merely  
 shifted to the surety, to the extent of payment by the surety. Thus,  
 contractual principles of guarantee require being respected even during  
 a moratorium and an alternate interpretation may not have been the  
 intention of the Code, as is clear from a plain reading of Section 14.

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 5.11. Further, since many guarantees for loans of corporates are  
 given by its promoters in the form of personal guarantees, if there is a  
 stay on actions against their assets during a CIRP, such promoters (who  
 are also corporate applicants) may file frivolous applications to merely  
 take advantage of the stay and guard their assets. In the judgments  
 analysed in this relation, many have been filed by the corporate  
 applicant under Section 19 of the Code and this may corroborate  
 the above apprehension of abuse of the moratorium provision. The  
 Committee concluded that Section 14 does not intend to bar actions  
 against assets of guarantors to the debts of the corporate debtor and  
 recommended that an explanation to clarify this may be inserted in  
 Section 14 of the Code. The scope of the moratorium may be restricted  
 to the assets of the corporate debtor only.

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 37. The Report of the said Committee makes it clear that the object of  
 the amendment was to clarify and set at rest what the Committee thought  
 was an overbroad interpretation of Section 14. That such clarificatory  
 amendment is retrospective in nature, would be clear from the following  
 judgments:” (emphasis in original)

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 63 1928 SCR 1151 (Mad 196) AIR 1935 Mad 1362  
 64 AIR 1908 SC 287

92. In *B.K. Educational Services (P) Ltd. v. Parag Gupta and Associates*<sup>22</sup> this Court considered the question as to whether the 2018 Amendment which inserted Section 238-A to the I&B Code was clarificatory in nature or not. After considering various earlier judgments of this Court, this Court observed thus: (SCC p. 654, paras 26-27)

"26. In the present case also, it is clear that the amendment of Section 238 A would not serve its object unless it is construed as being retrospective, as otherwise, applications seeking to resurrect time-barred claims would have to be allowed, not being governed by the law of limitation.

27. We may also refer to a recent decision of this Court in *SBI v. K. Ramakrishnan*<sup>21</sup>, where this Court, after referring to the selfsame Insolvency Law Committee Report, held that the amendment made to Section 14 of the Code, in which the moratorium prescribed by Section 14 was held not to apply to guarantors, was held to be clarificatory, and therefore, retrospective in nature, the object being that an overbroad interpretation of Section 14 ought to be set at rest by clarifying that this was never the intention of Section 14 from the very inception."

93. As discussed hereinabove, one of the principal objects of the I&B Code is providing for revival of the corporate debtor and to make it a going concern. The I&B Code is a complete Code in itself. Upon admission of petition under Section 7 there are various important duties and functions entrusted to RP and CoC. RP is required to issue a publication inviting claims from all the stakeholders. He is required to collate the said information and submit necessary details in the information memorandum. The resolution applicants submit their plans on the basis of the details provided in the information memorandum. The resolution plans undergo deep scrutiny by RP as well as CoC. In the negotiations that may be held between CoC and the resolution applicant, various modifications may be made so as to ensure that while paying part of the dues of financial creditors as well as operational creditors and other stakeholders, the corporate debtor is revived and is made an on-going concern. After CoC approves the plan, the adjudicating authority is required to arrive at a subjective satisfaction that the plan conforms to the requirements as are provided in sub-section (2) of Section 30 of the I&B Code. Only thereafter, the adjudicating authority can grant its approval to the plan. It is at this stage that the plan becomes binding on the corporate debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. The legislative intent behind this is to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans would go haywire and the plan would be unworkable.

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94. We have no hesitation to say that the words "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities. The legislature noticing that on account of obvious omission certain tax authorities were not abiding by the mandate of the I&B Code and continuing with the proceedings, has brought out the 2019 Amendment so as to cure the said mischief. We therefore hold that the 2019 Amendment is declaratory and clarificatory in nature and therefore retrospective in operation.

95. There is another reason which persuades us to take the said view. Clause (10) of Section 3 of the I&B Code defines "creditor" thus:

"3. (10) "creditor" means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder."

96. Clauses (20) and (21) of Section 5 of the I&B Code define "operational creditor" and "operational debt" respectively as such:

"5. (20) "operational creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred:

(21) "operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority."

97. "Creditor" therefore has been defined to mean "any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder". "Operational creditor" has been defined to mean a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred. "Operational debt" has been defined to mean a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority.

98. It is a cardinal principle of law that a statute has to be read as a whole. Harmonious construction of clause (10) of Section 3 of the I&B Code read with clauses (20) and (21) of Section 5 thereof would reveal that even a claim in respect of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority would come within the ambit of "operational debt". The Central Government, any State Government or any local authority to whom an operational debt is owed would come within the ambit of "operational creditor" as defined under clause (20) of Section 5 of the I&B Code. Consequently, a person to whom a debt is owed would be covered by the definition of "creditor" as defined under clause (10) of Section 3 of the I&B Code. As such, even without the 2019 Amendment, the Central Government, any State Government or any local authority to whom a debt is owed, including the statutory dues, would be covered by the term

"creditor" and in any case, by the term "other stakeholders" as provided in sub-section (1) of Section 31 of the I&B Code.

**99.** The Division Bench of the Rajasthan High Court in *Ultra Tech Nambhara Cement Ltd. v. Union of India*<sup>55</sup>, by judgment and order dated 7-4-2020 has taken a view that the demand notices issued by the Central Goods and Service Tax Department, for a period prior to the date on which NCLT has granted its approval to the resolution plan, are not permissible in law. While doing so, the Rajasthan High Court has relied on the judgment of this Court in *Essar Steel (India) Ltd. (CoC)*<sup>51</sup>.

**100.** The Calcutta High Court in *Akshay Jangibhaiwala v. Union of India*<sup>56</sup> has also taken a view that the claim of operational creditor will also include a claim of a statutory authority on account of money receivable pursuant to an imposition by a statute. We are in agreement with the views taken by these courts.

**101.** Therefore, in our considered view, the aforesaid provisions leave no manner of doubt to hold that the 2019 Amendment is declaratory and clarificatory in nature. We also hold that even if the 2019 Amendment was not affected, still in light of the view taken by us, the Central Government, any State Government or any local authority would be bound by the resolution plan, once it is approved by the adjudicating authority (i.e. NCLT).

### Conclusion

**102.** In the result, we answer the questions framed by us as under:

**102.1.** That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.

**102.2.** The 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the I&B Code has come into effect.

**102.3.** Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.

**103.** In the light of what has been held by us hereinabove, we now proceed to decide individual matters.

<sup>55</sup> 2021 SCC Online RJ 1097

<sup>56</sup> *Jangibhaiwala (supra) to (supra) v. Union of India*, (2021) 8 SCC 531; (2021) 3 SCC (OT) 441

<sup>58</sup> 2018 SCC Online CJ 112



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104. In the said appeal, admittedly, the company petition filed by SBI under Section 7 of the I&B Code in respect of OMMI corporate debtor came to be admitted on 3-8-2017. Correspondingly, the order of moratorium and appointment of RP also came to be passed on the said date. By a public notice, RP invited claims from the creditors. The last date for submission of such claims was 18-8-2017. RP also invited EoI as well as resolution plans. In response to the said invitation, both GMSPL and EARC had submitted their resolution plans. In the 8th meeting of CoC held on 14-3-2018, the resolution plan submitted by EARC was found to be most competitive and as such, it was declared as H1 bidder. However, during negotiation, the resolution plan of EARC was not found to be satisfactory by CoC and as such, in the 9th meeting of CoC held on 31-3-2018, resolution plan of EARC came to be rejected.

105. Thereafter, since GMSPL was H2 bidder, negotiations were held with it. However, the resolution plan submitted by GMSPL was also not found to be satisfactory and therefore in the 10th meeting of CoC held on 3-4-2018, it was decided to annul the existing proceedings and initiate a fresh process for invitation for submission of resolution plan. This was restricted only to such entities, which had submitted their EoI for submission of resolution plan. In response to the fresh invitation for submission of resolution plan, three bidders, namely, GMSPL, EARC and SIFL submitted their resolution plans.

106. In the 11th meeting of CoC held on 13-4-2018, the resolution plan submitted by GMSPL was found to be most competitive and as such, CoC declared it as H1 bidder. After holding several rounds of negotiations, in the 12th meeting of CoC held on 21-4-2018, CoC unanimously decided to convene a meeting of the CoC on 25-4-2018 for voting on the resolution plan proposed by GMSPL. In the meeting of the CoC held on 25-4-2018, CoC being satisfied that the resolution plan submitted by GMSPL meets all the requirements under sub section (2) of Section 30 of the I&B Code, placed the same for voting. The said resolution plan of GMSPL was approved by more than 80.23% of voting share of financial creditors of the corporate debtor. Accordingly, an application being CA (IB) No. 402/KB/2018 came to be filed by RP for grant of approval to the resolution plan submitted by GMSPL before the NCLT. EARC filed an application being CA (IB) No. 398/KB/2018, challenging the approval granted by CoC to the resolution plan submitted by GMSPL. It also filed CA (IB) No. 470/KB/2018, challenging the decision of RP in not admitting its claim. One application being CA (IB) No. 509/KB/2018 came to be filed by the District Mining Officer, Department of Mining and Geology, Jharkhand challenging the non admission of its claim to the tune of Rs 93,51,91,724 and Rs 760.51 crores.

107. By common order dated 22-6-2018<sup>2</sup>, the application being CA (IB) No. 402/KB/2018 filed by RP came to be allowed thereby, granting approval under the provisions of Section 31(1) of the I&B Code and declaring that

<sup>2</sup> SBI v. Ghanshyam Mishra & Sons Pvt. Ltd., 2018 SCC Online NCLT 2688

the same will be binding on the corporate debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. Application being CA (IB) No. 398/KB/2018 filed by EARC challenging the approval granted by CoC to the resolution plan submitted by GMSPL was dismissed. Vide same order dated 22-6-2018<sup>2</sup>, application being CA (IB) No. 470/KB/2018 filed by EARC challenging the decision of the RP in not admitting its claim and application being CA (IB) No. 509/KB/2018 filed by the District Mining Officer, Department of Mining and Geology, Jharkhand challenging the non-admission of its claim were also dismissed with costs of Rs 1,00,000 each.

**108.** While allowing the application filed by RP granting approval to the resolution plan of GMSPL (i.e. CA No. 402/KB/2018) and rejecting the application of EARC challenging the grant of approval to the resolution plan of GMSPL by CoC (i.e. CA No. 398/KB/2018), NCLT found that RP had followed the entire procedure as required under the I&B Code and the Regulations. It also found that CoC after applying its mind found that the resolution plan submitted by GMSPL was in conformity with the requirements under Section 30(2) of the I&B Code.

**109.** Insofar as the application filed by EARC with regard to non-admission of its claim submitted to RP is concerned, NCLT found that the corporate debtor had executed guarantee securing loan received by APNRL which had been given by India Infrastructure Finance Company Ltd. ("IIJCL" for short). The corporate guarantee executed by the corporate debtor was in favour of IIJCL. The corporate debtor also owned share in APNRL, which was pledged with IIJCL to secure the loan given by IIJCL to APNRL. IIJCL assigned its rights to EARC. EARC being the assignee of the aforesaid submitted its claims to the RP.

**110.** NCLT found that by email dated 6-1-2018 EARC had submitted its claim in Form 'C' for an amount of Rs 648,89,67,395. In response to the said email, RP sought a clarification as to whether the corporate guarantee had been invoked by the applicant. RP had not received any response till 21-2-2018 from EARC. Despite repeated requests made by RP, EARC did not respond to the query made by RP. From the record placed before NCLT, it was clear that EARC had not invoked the corporate guarantee. NCLT therefore posed a question to itself, as to whether an uninvoked corporate guarantee could be considered as marked claim of the applicant. NCLT found that once the moratorium was applied under Section 14 of the I&B Code, EARC was prevented from invoking the corporate guarantee. NCLT further found that the OMMI's guarantee had not been invoked by EARC till the date of completion of CIRP process and once the moratorium was imposed, it could not invoke the corporate guarantee. NCLT therefore found that there is no illegality or irregularity in not admitting the claim of EARC.

**111.** NCLT found that the entire information was uploaded in the virtual data room to which EARC had access since it was also one of the resolution applicants. NCLT found that the information with regard to claim of all

<sup>2</sup> 381 v. Orissa Ironore & Minerals Ltd., 2018 SCC Online NCLT 21838

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financial creditors inclusive of EARC's claim was available in the virtual data room. The record also revealed that the claim of EARC was not admitted for the reason that the corporate guarantee in question was uninvoked as on date.

112. Insofar as the second objection of EARC with regard to the shares owned by the corporate debtor in APNRL, which were pledged with IFCI to secure the loan given by IFCI to APNRL and which were assigned to EARC being invoked on 30-4-2018 is concerned, NCLT found the same claim also to be without merit. NCLT found that on 30-4-2018, the moratorium was in force and therefore invocation of pledge by EARC on 30-4-2018 was not permissible in law. It was further found that RP had rightly not admitted the said claim.

113. It was sought to be argued on behalf of EARC that CIRP process was complete on 29-4-2018 and therefore, invocation of pledge by EARC on 30-4-2018 was legal and valid. However, NCLT found that unless the application filed by RP under Section 31(1) for approval of the plan was decided and an order either approving or rejecting the resolution plan was passed, the moratorium declared under Section 14 would continue to have force. As such, invocation of pledge on 30-4-2018 was held to be not permissible in law.

114. It would be relevant to refer to the observations made by NCLT with regard to conduct of EARC. (*Quiso Mangrove & Minerals case*<sup>2</sup>, SCC OnLine NCLT para 57)

"57. It appears to us that it is a deliberate attempt to stage manage an objection against the approval of a resolution plan other than the plan submitted by the resolution applicant. We also found that CA No. 398 of 2018 filed for rejection of the resolution plan is liable to be dismissed since the very same applicant not at all succeeds in proving its contention and that the applicant approaches the Bench without any clean hand. Instances of challenging resolution plan by unsuccessful resolution applicant is at the increase. Filing like petition is also one among the reason for the delay in approving the resolution plan passed by the CoC in compliance with the provisions of the Code. This is a unique case in which the applicant herein filed the application without any valid grounds. Dismissing like petition without cost may encourage the applicant like the applicant to file like petition. It would also amount to allowing the applicant to abuse the process of the Tribunal as well as deliberately delaying the completion of CIRP process. Accordingly, we hold that this application is liable to be dismissed with costs of Rs 1,00,000. Awarding costs of Rs 1,00,000 in the peculiar nature and circumstances of the case in hand is found reasonable."

115. Insofar as application being CA No. 509/KB/2018 filed by the District Mining Officer is concerned, NCLT found that RP had sought clarification from the said applicant with regard to its claim made in Form 'B' since the information supplied therein was found to be inadequate. It was found that in spite of the said request, the District Mining Officer had failed to place on

<sup>2</sup> 581 v. *Quiso Mangrove & Minerals Ltd.*, 2018 SCC OnLine NCLT 2688

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record any supportive document or affidavit as required under the Regulations. NCLT found no merit in the contentions raised on behalf of the District Mining Officer with regard to the claim on the basis of Section 25 of the Mines and Minerals (Development and Regulation) Amendment Act, 1972. It was found that in view of the provisions of Section 238 of the I&B Code, the provisions of the I&B Code have an overriding effect over any other law.

116. It was therefore found that no error was committed by RP in not admitting the claim of the District Mining Officer since it was not supported by any document or affidavit. NCLT therefore rejected the said application with costs of Rs 1,00,000.

117. The order dated 22.6.2018<sup>2</sup> passed by NCLT was challenged by way of four appeals before NCLAT, two appeals being Company Appeals (AT) (Insolvency) Nos. 437 and 444 of 2018 filed by EARC; one appeal being Company Appeal (AT) (Insolvency) No. 438 of 2018 filed by one Deepak Singh and one appeal being Company Appeal (AT) (Insolvency) No. 500 of 2018 filed by Sundaryarh Mines & Transport Workers' Union.

118. Vide the impugned judgment and order dated 23.4.2019<sup>3</sup>, NCLAT found that as no ground was made out in terms of Section 61(3) of the I&B Code, no relief could be granted in the appeals. However, while doing so, NCLAT observed thus: (*Orissa Manganese and Minerals case*<sup>2</sup>, SCC Online NCLAT paras 28, 42-43 & 51-52)

"38. However, we make it clear that the rejection of the claim for the purpose of collating the claim and making it part of the "resolution plan" will not affect the right of the appellant "Edelweiss Asset Reconstruction Ltd." to invoke the bank guarantee against the "corporate debtor" in case the "principal borrower" failed to pay the debt amount, the "Moratorium" period having come to an end.

42. From the aforesaid provisions, it is clear that after period of Moratorium it is open to the person to move before a civil court or to move an application before the court of competent jurisdiction against the "corporate debtor".

43. In the present case, since it is not possible either for the adjudicating authority or for this Appellate Tribunal to give any specific finding, we are of the view that the appellant may move before the civil court or court of competent jurisdiction and may file an application before the Labour Court for appropriate relief in favour of the workmen concerned or against the "corporate debtor" if they have actually worked and have not been taken care in the "resolution plan" due to lack of knowledge and non-filing of the claim within time.

<sup>2</sup> *331 v. Orissa Manganese & Minerals Ltd.*, 2018 SCC Online NCLT 20588

<sup>3</sup> *Orissa Manganese & Minerals Ltd. v. Edelweiss Asset Reconstruction Co. Ltd. v. Orissa Manganese & Minerals Ltd.*, 2019 SCC Online NCLAT 191

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57. In the present case, as no ground has been made out in terms of sub-section (3) of Section 61 of the "I&B Code" and the decision of the "resolution professional" was not challenged by the appellants, no relief can be granted. However, this order will not come in the way of the appellant to move before appropriate forum for appropriate relief if the claim is not barred by limitation.

58. Insofar as dues of the State of Jharkhand are concerned, we hold that the statutory dues shall be payable to the State of Jharkhand in terms of existing law which comes within the meaning of "operational debt" as defined in Section 5(20) read with Section 5(21) and held in *CIT v. Sparteek Cement Co. (India) Ltd.*<sup>67</sup> Except the aforesaid observations, in absence of any appeal filed by the State of Jharkhand, no order is passed.<sup>68</sup>

119. We find that the aforesaid observations are beyond the scope of the powers available with NCLAT under sub-section (3) of Section 61 of the I&B Code. We also find that the said observations run totally contrary to the consistent view taken by this Court in the line of judgments starting from *K. Sashidhar*<sup>69</sup> to *Kalpesh Dhanrajshi*<sup>70</sup>.

120. NCLAT has categorically found that no ground as is available under sub-section (3) of Section 61 of the I&B Code has been made out and has also categorically found that the resolution plan submitted by GMSPL was a better offer than the other two resolution applicants, including EARC and that the adjudicating authority has rightly approved the resolution plan of GMSPL. After coming to such finding, the only option available with NCLAT was to dismiss the appeals. In our view, the observations made in the aforesaid paragraphs, if permitted to remain, would totally frustrate the object of the I&B Code of revival of a corporate debtor and to resurrect it as a going concern. As held by this Court, the successful resolution applicant cannot be flung with surprise claims which are not part of the resolution plan.

121. It will also be relevant to refer to the conduct of EARC. Clause 2.1.3 of the resolution plan submitted by EARC reads as under:

**2.1.3. Financial creditors other than identified financial creditors**

**(i) Liabilities**

We have been informed by the RP that other than the identified financial creditors, there are no other financial creditors of the Company, whether secured or unsecured.

Other than the assigned debt, any and all dues to, liabilities or obligations payable to, claims, counterclaims, demands, actions or penalties made or imposed by (including but not limited to all interests, damages, losses, expenses and third-party claims), and any right, title,

<sup>67</sup> 2018 SCC Online No. 3799

<sup>68</sup> *K. Sashidhar v. Indian Overseas Bank*, (2019) 17 SCC 150; (2019) 1 SCC (Civil) 222

<sup>69</sup> *Kalpesh Dhanrajshi v. Kotak Investment Advisors Ltd.*, (2021) 3 SCC 401; 2022 SCC Online SC 291

interest enjoyed by, any actual or potential financial creditor or in connection with any financial debt, whether or not claimed, whether or not filed, whether or not crystallised, whether or not accepted, whether or not admitted, whether or not notional, whether or not known, whether due or contingent, whether or not disputed, present or future, whether or not being adjudicated in any proceeding, whether or not decreed, whether or not reflected in the financial statements of the Company, or whether or not reflected in any record, document, statement, statutory or otherwise, arising prior to or after the effective date, but pertaining to a period prior to the effective date, or arising in connection with the assignment or acquisition of shares of the Company by the investors or conversion of the conversion debt into equity or restructuring of the assigned debt or in any other manner as a result of or in connection with this plan, shall be deemed to have been irrevocably waived and permanently extinguished and written off in full with effect from the effective date.

To give effect to such waiver and extinguishment, any contract, agreement, deed or document, whether oral or written, express or implied, statutory or otherwise, pursuant to which any such dues, liabilities, obligations, claims, counterclaims, demands, actions, penalties, right, title or interest is claimed (other than as specifically mentioned herein) shall stand modified with effect from the effective date without any further act or deed, and approval of this plan by NCLT shall be deemed to be sufficient notice which may be required to be given to any person for such matter and no further notice shall be required to be given."

**122.** It will also be relevant to refer to similar provisions made in the resolution plan submitted by GMSPL, which read as under:

"7. Withdrawal of litigations initiated by the financial creditors against OMML, issue no-dues certificates in favour of OMML and release their respective charges on the securities in full and complete satisfaction of all debts owed to the financial creditors by OMML/the respective SPVs as the case may be, including all guarantees which may have been provided to the financial creditors, for credit facilities availed by OMML.

8. Extinguishment and waiver of all dues to the incumbent promoter group by OMML.

9. Directions to ensure that the proposed merger application shall stand withdrawn. Relinquishment of corporate guarantee issued by OMML in favour of or on behalf of any of its subsidiaries, associates, group companies or any third party. Directions to the effect that the guarantees provided by any and all members of incumbent promoter group or their respective promoters or any person associated with the incumbent promoter group, may continue with the financial creditors. However, the same shall not result in any liability towards OMML or the resolution applicants."

**123.** It is thus clear that according to the resolution plan submitted by LARC itself, had it been a successful applicant, then in that event, the claims

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made by it would have been irrevocably waived and permanently extinguished and written off in full with effect from the effective date. Had the resolution plan of EARC been approved, then all such debts would have stood extinguished without any further act or deed and approval of the said plan by NCLT would have been a sufficient notice required to be given to any person for such matter. Undisputedly, the resolution plan submitted by EARC was on the basis of the information memorandum submitted by RP wherein, it was specifically clarified that the claims of EARC were not admitted by RP. It is thus clear that EARC is trying to blow hot and cold at the same time. According to it, had its resolution plan been approved by CoC and NCLT, then the claims, which are now insisted by EARC would have stood extinguished. However, on its failure to become a successful resolution applicant and approval of other applicant as a successful resolution applicant, its claim would survive. A party cannot be permitted to apply two different yardsticks.

124. Shri Bhushan, learned counsel appearing on behalf of EARC, strongly relying on the judgment of NCLAT dated 14-8-2018 passed in *Export Import Bank of India v. JEKPL (P) Ltd. Resolution Professional*<sup>68</sup>, submits that NCLAT itself in the said case had held that invocation of corporate guarantee has no nexus with filing of the claim pursuant to public announcement made under Section 13(1)(b) read with Section 15(1)(c) of the I&B Code and also for collating the claim under Section 18(1)(b) or for updating claim under Section 25(2)(c). He submits that civil appeal challenging the said judgment and order has been dismissed by this Court vide order dated 23-1-2019<sup>69</sup>.

125. He submits that NCLAT itself in the said *Export Import Bank of India case*<sup>68</sup> had directed EXIM Bank and Axis Bank to be treated as "financial creditors" and had further directed them to be given representation on CoC. He submits that, however, in the present case, NCLAT has taken a contrary view. He therefore submits that in the alternative this Court should direct RP/CoC to treat EARC as a "financial creditor" and give it representation on CoC and take a decision in accordance with law.

126. We find that the said case, on facts, would not be applicable to the case at hand. No doubt that the appeal filed against the judgment and order of NCLAT dated 14-8-2018<sup>68</sup> has been dismissed by this Court on 23-1-2019<sup>69</sup>. However, it is a settled law that dismissal of a special leave petition/appeal does not amount to affirmation of the view taken in the judgment impugned in the special leave petition/appeal. It will also be relevant to refer to the order passed by this Court dated 23-1-2019<sup>69</sup> while dismissing the appeal, which reads thus: (*Aryant Capital India Fund I case*<sup>69</sup>, SCC Online SC paras 3-5)

"Civil Appeal No. 10134 of 2018

3. We have heard the learned counsel for the parties and perused the relevant material on record.

1. The civil appeal is dismissed.

<sup>68</sup> 2018 SCC Online No. 34115

<sup>69</sup> *Aryant Capital India Fund I v. JEKPL (P) Ltd. Resolution Professional*, 2019 SCC Online SC 205

5. It will be open for the appellant to urge all points as may be available to it in law before the appropriate forum, if so advised.”

It will thus be clearly seen that this Court in *Aryant Capital India Fund I case*<sup>50</sup> while dismissing the appeal has reserved the liberty to the appellant to urge all points as may be available to it in law before the appropriate forum.

127. It is to be noted that in the appeal before NCLAT, EXIM Bank as well as Axis Bank had taken steps immediately after the claim of the said Banks on the basis of corporate guarantee came to be rejected by RP/CoC. After rejection of the claim, the said Banks had filed an application under Section 60(5) before NCLT. On NCLT rejecting the said claim, these Banks had approached NCLAT in appeals which were allowed and the order, as stated hereinabove, was passed.

128. In the present case the claim of EARC was rejected on 22.1.2018. Instead of challenging the said rejection, EARC participated in the proceedings and was one of the resolution applicants. Not only that, in the first round, it was a successful bidder being ranked III bidder. However, since in the negotiations it failed to satisfy CoC, fresh bids were invited from the resolution applicants, which had submitted their EoI. In the 12th meeting of CoC held on 25.4.2018, the resolution plan of GMSPL was approved by 89.23% of the voting shares. Only thereafter EARC filed two applications: one challenging the approval of resolution plan of GMSPL by CoC and another challenging rejection of its claims by RP/CoC.

129. It could thus be clearly seen that EARC was taking chances. After rejection of its claim, it did not choose to challenge the same by an application under Section 60(5) but waited till the decision of CoC. During this period, it was actually pursuing its resolution plan. Only after its resolution plan was not approved and the resolution plan of GMSPL was approved, it filed the aforesaid two applications. Apart from that, as already observed hereinabove, in the resolution plan of EARC itself, it has provided for extinguishment of all claims not forming part of resolution plan.

130. Even otherwise, if for the sake of argument, it is held that EARC was entitled to be treated as a “financial creditor” and entitled for a participation in CoC, still its share was about 9% and as such, the resolution plan of GMSPL would have been passed by a majority of 80%, which is much above the statutory requirement.

131. We are therefore of the considered view that the observation made by NCLAT giving liberty to EARC to take recourse to such proceedings as available in law for raising its claims is totally unsustainable.

132. Insofar as the observation made with regard to claim of the Jharkhand Government is concerned, it is to be noted that the State of Jharkhand has not even appealed against the order passed by NCLT. Insofar as the claims of labour and workmen are concerned, RP has specifically stated before NCLAT, that whatever claims were received from the workmen were duly considered in the resolution plan. Despite that, observing that a liberty is available to the

<sup>50</sup> *Aryant Capital (India) Fund I v. Axis Bank Pl. (P) Ltd. Resolution Professional*, 2019 SCC Online SC 2002.



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workmen to raise their claims before a civil court or Labour Court, in our view, is totally in conflict with the provisions of the I&B Code. The same would equally apply to the observation made in the appeal of Mr Deepak Singh claiming to be "operational creditor".

133. We are therefore of the considered view that the appeal deserves to be allowed by expunging SCC OnLine NCLAT paras 28, 42, 43, 51 and 52 from the judgment of NCLAT dated 23-1-2018<sup>1</sup>. It is ordered accordingly. The judgment and order passed by NCLT dated 22-6-2018<sup>2</sup> is upheld. No costs.

*Civil appeal arising out of Special Leave Petition (Civil) No. 11232 of 2020*

134. The present appeal arises out of the judgment and order passed by the Division Bench of the Allahabad High Court dated 6-7-2020<sup>3</sup> thereby dismissing the petition filed by the appellant on the ground of availability of alternate remedy. The petition being Civil Miscellaneous Writ Petition (Tax) No. 351 of 2020 came to be filed seeking the following reliefs:

(i) Issue a writ, order or direction in the nature of certiorari quashing the order dated 30-1-2020 passed by the Additional Commissioner Grade 2 (Appeal) rejecting the appeal preferred by the petitioner in respect of Assessment Year 2015-16 (U.P. VAT) and affirming a demand of Rs. 232.60 lakhs raised on the petitioner;

(ii) Issue a writ, order or direction in the nature of certiorari quashing the communications/orders of the Joint Commissioner (Corporate), Ghaziabad holding that the proceedings in the State of U.P. would remain unaffected irrespective of the resolution plan of the petitioner being approved by the NCLT under the Insolvency and Bankruptcy Code as the NCLT order does not specifically prohibit these proceedings;

(iii) Issue a writ, order or direction in the nature of mandamus directing refund of the amount which the petitioner is entitled to as a result of orders passed by the respondents;

(iv) Issue a declaration that all proceedings pending before different authorities (assessing authority, first appellate authority or Commercial Tax Tribunal, Ghaziabad Bench) in respect of transactions entered into by the petitioner prior to the transfer date involving a consolidated amount of Rs. 760.74 lakhs stand abated in terms of the resolution plan approved by the NCLT under the Insolvency and Bankruptcy Code, 2016;

(v) Issue a writ, order or direction in the nature of mandamus directing the respondents to refund Rs. 248.92 lakhs deposited by the petitioner under protest in these proceedings and also to return the bank guarantee submitted for Rs. 16.31 lakhs.

<sup>1</sup> *Edelweiss Asset Reconstruction Co. Ltd. v. Ghanshyam & Sons (P) Ltd.*, 2019 SCC OnLine NCLAT 761

<sup>2</sup> *NCLT v. Ghanshyam & Sons (P) Ltd.*, 2018 SCC OnLine NCLT 1698

<sup>3</sup> *Edelweiss Asset Reconstruction Co. Ltd. v. Ghanshyam & Sons (P) Ltd.*, 2020 SCC OnLine ALJ 121

(c) Issue a writ, order or direction in the nature of mandamus restraining the respondents from passing any orders including penalty orders, raising any further demands, imposing any liability or taking any coercive steps including continuing with pending assessments/proceedings/litigation/appeals/revisions in respect of period prior to transfer date.”

**135.** The High Court found that the appellant has an alternative efficacious remedy of filing the second appeal and as such, deemed it fit to not to entertain the said petition. The basic grievance of the appellant in the writ petition was that after the resolution application was approved by the adjudicating authority and the management of the corporate debtor was transferred to the resolution applicant, all the claims stood extinguished and the proceedings in respect thereof could not continue.

**136.** The main ground raised on behalf of the respondent is with regard to availability of alternate remedy. The second ground raised is, since the transfer date is prior to the 2019 Amendment to Section 31 of the I&B Code, the said amendment would not be applicable to the debts owed to the State Government or the Central Government.

**137.** As held by this Court in a catena of cases including in *Baburao Prakash Chandra Maheshwari v. Amarion Zila Parishad, Muzaffargarh*<sup>70</sup>, *Whirlpool Corpn. v. Registrar of Trade Marks*<sup>71</sup>, *Nivedita Sharma v. COAF*<sup>72</sup>, *Embassy Property Developments (P) Ltd. v. State of Karnataka*<sup>73</sup> and recently in *Kalpraj Dharamshi*<sup>74</sup>, that non exercise of jurisdiction under Article 226 is a rule of self-restraint. It has been consistently held that the alternate remedy would not operate as a bar in at least three contingencies, namely,

(1) where the writ petition has been filed for the enforcement of any of the fundamental rights;

(2) where there has been a violation of the principle of natural justice, and

(3) where the order or proceedings are wholly without jurisdiction or the vices of an Act is challenged.

**138.** In the foregoing paragraphs, we have held that the 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will have a retrospective operation. As such, when the resolution plan is approved by NCLT, the claims, which are not part of the resolution plan, shall stand extinguished and the proceedings related thereto shall stand terminated. Since the subject-matter of the petition are the proceedings, which relate to the claims of the respondents prior to the approval of the plan, in the light of the

70 (1968) 1 SCR 218 : AIR 1968 SC 529

71 (1993) 8 SCC 1

72 (2011) 4 SCC 317 : (2011) 4 SCR 1018-047

73 (2021) 17 SCC 378

74 *Kalpraj Dharamshi v. Kanchan Prakash Adhvani & Co.*, (2021) 10 SCC 461 : (2021) 10 SCC Online SC 201

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view taken by us, the same cannot be continued. Equally the claims, which are not part of the resolution plan, shall stand extinguished.

139. In this view of the matter, we find that relegating the appellant to the alternative remedy would serve no purpose. A party cannot be made to run from one forum to another forum in respect of the proceedings and the claims which are not permissible in law.

140. The appeal therefore is allowed. The impugned judgment and order dated 6-7-2020<sup>28</sup> passed by the Allahabad High Court is quashed and set aside. We hold and declare that the respondents are not entitled to recover any claims or claim any debts owed to them from the corporate debtor accruing prior to the transfer date. Needless to state that the consequences thereof shall follow.

*Writ Petition (Civil) No. 1177 of 2020*

141. For the reasons stated, IA for change of name of Petitioner 1 is allowed. Cause-title be amended accordingly.

142. The present writ petition has been filed by the petitioners under Article 32 of the Constitution. In this case also, the resolution plan in respect of the corporate debtor (petitioner Company) has been approved by the adjudicating authority on 24-7-2018. Pursuant thereto, the management of the corporate debtor (petitioner Company) was transferred to the successful resolution applicant i.e. Aion-JSW.

143. After the completion of CIRP on 5-1-2019, Respondent 2 issued a reminder to the petitioner to pay an amount of Rs 4,49,34,917.00 towards the service tax deposited by it towards royalty, DMF and NMI:1 for the period between 1-4-2016 and 30-6-2017. The petitioner replied to the said notice pointing out to the authorities the provisions of the I&B Code and stating therein that the demands made by the respondent were not permissible in view of the I&B Code. The petitioners had also requested for refund of an amount of Rs 5,25,15,880 deposited as advance against supply of iron ore.

144. In this background, the petitioners have approached this Court challenging the demand notice dated 20-7-2018 and 28-4-2020.

145. The present case would also be covered by the view taken by us hereinabove.

146. It is further to be noted that the Income Tax Authorities had approached this Court with respect to income tax dues concerning the present petitioner by way of Special Leave Petition (Civil) No. 6483 of 2018. This Court passed the following order in the said special leave petition on 10-8-2018<sup>28</sup>: (*Manmet Iron & Energy Ltd. case*<sup>28</sup>, SCC pp. 786-87, paras 1-3)

“1. Heard. Delay, if any, is condoned.

2. Given Section 248 of the Insolvency and Bankruptcy Code, 2016, it is obvious that the Code will override anything inconsistent contained in any other enactment, including the Income Tax Act. We may also refer

<sup>28</sup> *Inter Tech Solutions (India) Pvt. v. State of U.P.*, 2020 SCC OnLine A 11724

<sup>28</sup> *IT v. Manmet Iron & Energy Ltd.*, (2018) 13 SCC 786; (2018) 5 SCC 103; 2018

in this connection in *Deva Bank v. Bikkabhai Prabhudas Parekh & Co.*<sup>71</sup> and its progeny, making it clear that income tax dues, being in the nature of Crown debts, do not take precedence even over secured creditors, who are private persons. a

J. We are of the view that the High Court<sup>75</sup> of Delhi, is, therefore, correct in law. Accordingly, the special leave petitions are dismissed. Pending applications, if any, stand disposed of.”

147. In ordinary course, we would not have entertained such a petition directly under Article 32 of the Constitution. However, a question of law, which arises for consideration in the present petition has been considered by us in this batch of matters. In that view of the matter, we find that it would not be in the interest of justice to non-suit the present petitioner when we have specifically decided question of law which would govern the present case also. As such, the present petition is allowed. b

148. We hold and declare that the respondents are not entitled to recover any claims or claim any debts owed to them from the corporate debtor accruing prior to the transfer date. Needless to state that the consequences thereof shall follow. c

*Civil appeals arising out of Special Leave Petitions (Civil) Nos. 7147-50 of 2020*

149. For the reasons stated, interlocutory application for intervention on behalf of the applicant, TATA Steel BSL Ltd, is allowed. d

150. In the present case, the appellant challenges the judgment and order passed by the Division Bench of the Jharkhand High Court dated 15/5/2020<sup>12</sup> vide which the petitions filed by the appellant challenging the action of the respondent authorities thereby seeking to recover the Jharkhand Value Added Tax (JVAT) for the period between 2011-2012 and 2012-2013 have been rejected. Both the learned Judges have written separate judgments. e

151. In the judgment authored by H C. Mishra, J, the petitions filed by the appellant were rejected on two grounds viz, one, that since the management of the appellant was taken over by M/s Vedanta Ltd. on 4/6/2018, it was only M/s Vedanta Ltd, which had locus to file writ petitions. Secondly, it was debatable whether the amount of JVAT shall be covered by the expressions “debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government” so as to bring it within the definition of “operational debt”. f

152. Insofar as the judgment authored by Deepak Roshan, J, is concerned, the learned Judge has observed that since the resolution plan was approved by NCLT on 17-4-2018<sup>13</sup>, the 2019 Amendment to Section 31(1) of the I&B Code would not apply to the said plan. We find that the finding of the High Court that the dues owed to the State Government and the Central Government would not come within the definition of “operational debt”, is incorrect in law in the light g

74 (2002) 5 SCC 694

75 *CF v. Mineral Inpat & Energy Ltd.*, 2017 SCC Online IN 12759

15 *Advanced Steel Ltd. v. State of Jharkhand*, 2020 SCC Online Jha 1454

16 *SSI v. Electrosteel Steels Ltd.*, 2018 SCC Online NCLT 11351

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of the view that is taken by us. So also the finding that since the order of NCLT is prior to the date on which Section 31(1) of the I&B Code was amended, the provisions of Section 31 would not be applicable, also cannot stand in view of the foregoing observations made by us hereinabove.

153. We also find that the High Court has erred in holding that the appellant Company does not have locus to file the writ petitions inasmuch as the management has been taken over by M/s Vedanta Ltd. The resolution plan is in respect of the corporate debtor and the successful resolution applicant only takes over the management of the corporate debtor in accordance with the resolution plan. The resolution applicant steps into the shoes of the corporate debtor. As such, the finding in this respect would also not be sustainable in law.

154. Shri Guru Krishna Kumar, learned Senior Counsel, strenuously argued that RP/COC had acted in a fraudulent manner. It is submitted that though a notice inviting claim was required to be published in local newspapers where the registered office of the corporate debtor was situated, the notice was published in the newspaper of Kolkata edition. As per Regulation 6(2)(b) of the 2016 Regulations, the said notice is required to be published in one English and one regional language newspaper with wide circulation at the location of the registered office and corporate office of the corporate debtor. Perusal of the record would reveal that the notice was published in *Business Standard* and *Ananda Bazar Patrika* newspapers of Kolkata edition which have wide circulation in Ranchi. The corporate office of the corporate debtor is at Kolkata whereas its registered office is at Ranchi. In any case, it is to be noticed that the Forest Department of the State Government had filed intervention application before NCLT as well as NCLAT. When one of the wings of the State Government has approached NCLT and NCLAT, it is difficult to believe that other organ of the State was not aware about the said proceedings.

155. The contention of Shri Guru Krishna Kumar, learned Senior Counsel, that finding with regard to non-compliance of Section 13 is not challenged by Electrosteel Steels Ltd. is also incorrect inasmuch as Electrosteel Steels Ltd. has raised the specific ground in Grounds 'U' to 'AA' to that effect in the appeal memo.

156. In the result, the appeals deserve to be allowed. It is ordered accordingly. The impugned judgment and order of the Jharkhand High Court dated 1-5-2020<sup>12</sup> is quashed and set aside.

157. We hold and declare that the respondents are not entitled to recover any claims or claim any debts owed to them from the corporate debtor accruing prior to the transfer date. Needless to state that the consequences thereof shall follow.

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(BEFORE ROHINTON FALI NARIMAN AND NAVIN SINHA, JJ.)

a SWISS RIBBONS PRIVATE LIMITED AND ANOTHER . . . Petitioners;  
*Versus*

UNION OF INDIA AND OTHERS . . . Respondents.

Writ Petitions (C) No. 99 of 2018<sup>†</sup> with Nos. 100, 115,  
459, 598, 775, 832, 849, 1221 of 2018, 37 of 2019 and

b ST P (C) No. 28623 of 2018, decided on January 25, 2019

c **A. Insolvency and Bankruptcy Laws — Insolvency and Bankruptcy Code, 2016 — Ss. 7, 8 and 9 r/w Ss. 5(7), 5(8) and 5(20) — Classification of creditors i.e. as financial and operational creditors, held, valid — Operational creditors are not discriminated against and Art. 14 of the Constitution has not been infringed either on the ground of equals being treated unequally or on the ground of manifest arbitrariness**

d Held, since equality is only among equals, no discrimination results if the Court can be shown that there is an intelligible differentia which separates two kinds of creditors so long as there is some rational relation between the creditors so differentiated, with the object sought to be achieved by the legislation

e — Held, financial creditors generally lend finance on a term loan (or for working capital) while operational creditors are related to supply of goods — Further, financial creditors are, from the very beginning, involved with assessing viability of corporate debtor and engage in restructuring of loan as well as reorganisation of corporate debtor's business when there is financial stress, which operational creditors do not and cannot do — Further, they differ qua repayment schedule, security requirement for dues, contractual terms for giving credit, remedy in case of defaults and forum before which dispute resolution takes place — Further, financial debts made to banks and financial institutions are well documented and defaults made are easily verifiable

f Also, generally the quantum of dues of operational creditors and the number of such creditors are comparatively less — Held, preserving the corporate debtor as a going concern, while ensuring maximum recovery for all creditors being the objective of the Code, financial creditors are different from operational creditors and therefore, there is an intelligible differentia between the two which has a direct relation to the objects sought to be achieved by the Code — Constitution of India — Art. 14 — Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Regns. 16-A and 16-B ( paras 37 to 51)

g **B. Insolvency and Bankruptcy Laws — Insolvency and Bankruptcy Code, 2016 — Ss. 7, 8 and 9 r/w Ss. 5(7), 5(8) and 5(20) — Different insolvency resolution procedure vis-à-vis operational and financial creditors — Validity of, upheld — Right to dispute claim — Existence of, in a financial debtor**

h

<sup>†</sup> Under Article 12 of the Constitution of India

— Rejecting the contention that in the case of a financial debtor, there being no requirement of giving (demand) notice, financial debtor is not entitled to dispute claim of financial creditor, held, at the stage of adjudicating authority's satisfaction under S. 7(5) of the Code, corporate debtor is served with a copy of application filed with adjudicating authority and has opportunity to file a reply before the said authority and be heard before an order is made admitting the said application — Further, a financial creditor has to prove "default" in payment as opposed to an operational creditor who merely "claims" a right to payment of a liability or obligation in respect of a debt which may be due — Thus, differentiation in triggering of insolvency resolution process by financial creditors under S. 7 and by operational creditors under Ss. 8 and 9 of the Code, not invalid — Constitution of India — Art. 14 — National Company Law Tribunal Rules, 2016 — Rr. 11, 34 and 37 — Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 — R. 4(3) and Form I — Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Regn. 8 and Form C — (Paras 52 to 65)

**C. Insolvency and Bankruptcy Laws — Insolvency and Bankruptcy Code, 2016 — Ss. 21 and 24 r/w Ss. 5(7), 5(8), 5(20), 30(2)(b) and 31 — Denial of right to vote in Committee of Creditors (CoC) to operational creditors — Not discriminatory, considering its objective/purpose — Moreover, the interests of operational creditors are otherwise protected, so as to ensure that they are given roughly the same treatment as financial creditors**

Held, under the Code, Committee of Creditors is entrusted with primary responsibility of financial restructuring — Further, since financial creditors are in business of moneylending, banks and financial institutions are best equipped to assess viability and feasibility of the business of the corporate debtor while operational creditors are involved only in recovering amounts that are paid for goods and services, and are typically unable to assess viability and feasibility of business — Also, NCLAT, while looking into viability and feasibility of resolution plans approved by Committee of Creditors, has always gone into whether operational creditors are given roughly the same treatment as financial creditors — Thus, operational creditors not discriminated against

Constitution of India — Art. 14 — Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Regn. 38 — (Paras 71 to 78)

**D. Insolvency and Bankruptcy Laws — Insolvency and Bankruptcy Code, 2016 — S. 12-A r/w Ss. 7, 8, 9, 10 and 60 — Withdrawal of admitted application with requirement of approval of at least ninety per cent of voting share of Committee of Creditors — Not discriminatory/arbitrary**

Held, figure of ninety per cent, in absence of anything further to show that it is arbitrary, must pertain to domain of legislative policy — Also, if Committee of Creditors arbitrarily rejects a just settlement and/or withdrawal claim, NCLT, and thereafter, NCLAT can always set aside such decision — Further, clarified that at any stage where Committee of Creditors is not yet constituted, a party can approach NCLT directly, which Tribunal may, in

a exercise of its inherent powers under R. 11 of NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement — National Company Law Tribunal Rules, 2016 — R. 11 — Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Regns. 30-A and 36-A (Paras 79 to 83)

b **B. Insolvency and Bankruptcy Laws — Insolvency and Bankruptcy Code, 2016 — S. 29-A — Eligibility restrictions on who can be resolution applicant i.e. on promoter to be considered as such in resolution process — Validity of, reaffirmed**

c — Held, resolution applicants have no vested right to be considered as such in resolution process — Thus, no vested right is taken away by application of S. 29-A — Further, there is no vested right in an erstwhile promoter of a corporate debtor to bid for immovable and movable property of corporate debtor in liquidation (Paras 92 to 98)

d **1. Insolvency and Bankruptcy Laws — Insolvency and Bankruptcy Code, 2016 — S. 29-A(c) — Prescribed period in S. 29-A(c) of grace period of one year to service NPAs (non-performing assets) — Validity of**

e Held, the legislative policy, that a person who is unable to service its own debt beyond the grace period (i.e. period of one year post declaration of NPA) is unfit to be eligible to become a resolution applicant cannot be found fault with and neither can the period of one year be found fault with, as this is a policy matter decided by RBI — Further, the ineligibility attaches only after this one year period is over as the NPA then gets classified as a doubtful asset — Debt, Financial and Monetary Laws — Reserve Bank — RBI Master Circular on Prudential Norms on Income Recognition, Asset Classification and Provisioning Pertaining to Advances dt. 1-7-2015, Cl. 4 (Paras 103 to 105)

f **G. Insolvency and Bankruptcy Laws — Insolvency and Bankruptcy Code, 2016 — S. 29-A(j) r/w S. 5(24) — Related or connected party/person or relative — Who are, for purposes of S. 29-A**

g Held, the expression "related party", and "relative" contained in the definition sections must be read noscitur a sociis with the categories of persons mentioned in Explan. 1, cl. (ii) to S. 29-A(j), and so read, would include only persons who are connected with business activity of resolution applicant — Further, the expression "connected person" in Explan. 1 is a person who is in the saddle of the business of corporate debtor either at an anterior point of time or even during implementation of the resolution plan — Words and Phrases (Paras 107 to 110)

h **H. Insolvency and Bankruptcy Laws — Insolvency and Bankruptcy Code, 2016 — Ss. 29-A and 240-A — Exemption of micro, small and medium enterprises — Validity of, upheld**

— Upholding the provision, held, rationale for excluding such industries from eligibility criteria laid down in Ss. 29-A(c) and 29-A(h) is because qua such industries, other resolution applicants may not be forthcoming, which then



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will inevitably lead not to resolution, but to liquidation — Industry, Trade, Development and Business Laws — Micro, Small and Medium Enterprises Development Act, 2006, S. 7 (Paras 111 to 115) a

**J. Insolvency and Bankruptcy Laws — Insolvency and Bankruptcy Code, 2016 — S. 53 — Priority of distribution of assets under — Non-violative of Art. 14 of the Constitution**

— Considering various factors such as the objective of Code, intelligible differentia between financial debts and operational debts, kinds of unsecured debts, priority given to workmen's dues, etc. held, Art. 14 of the Constitution does not get infringed — Constitution of India, Art. 14 (Paras 116 to 119) b

**J. Insolvency and Bankruptcy Laws — Insolvency and Bankruptcy Code, 2016 — Ss. 18 and 28 — Powers of a resolution professional — Held, do not extend to adjudication — Held, the resolution professional is given administrative as opposed to quasi-judicial powers** c

— Further, a resolution professional is a facilitator of the resolution process, whose administrative functions are overseen by the Committee of Creditors and by the adjudicating authority — Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Regns. 10, 12, 13, 14 and 35-A (Paras 88 to 91) d

**K. Insolvency and Bankruptcy Laws — Insolvency and Bankruptcy Code, 2016 — Ss. 214 and 319) — Private information utilities — Held, governed by proper norms and safeguards — Evidence by way of loan default contained in records of such utility, held, only prima facie evidence of default, rebuttable by corporate debtor**

— There are stringent requirements as to registration of such utility, the moment information of default is received, such information has to be communicated to all parties and surties to the debt — The utility is to expeditiously undertake the process of authentication and verification of information, which will include authentication and verification from the debtor who has defaulted — Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, Regns. 20 and 21 (Paras 85 to 87, 53 and 54) e

**L. Corporate Laws — Companies Act, 2013 — S. 412 (w.e.f. 9-2-2018) — Appointment of members of Tribunal and Appellate Tribunal — Validity of, upheld**

— Rejecting the contention that appointment of members of NCLT and NCLAT were contrary to judgments in *Madras Bar Assn. (I)*, (2010) 11 SCC 1 and *Madras Bar Assn. (II)*, (2015) 8 SCC 583, held, in compliance of the directions of the Supreme Court, advertisements dt. 10-8-2015 were issued inviting applications for Judicial and Technical Members as a result of which, all the present Members of NCLT and NCLAT had been appointed — Insolvency and Bankruptcy Laws — NCLT/NCLAT (Paras 30 and 31) f

**M. Insolvency and Bankruptcy Laws — NCLT/NCLAT — Circuit Benches — Directions qua constitution of Circuit Benches of NCLAT**

a Considering the submission of Attorney General that the ruling in *Madras Bar Assn.* (2), (2014) 11 SCC 1, will be followed and Circuit Benches will be established as soon as it is practicable, Union of India directed to set up Circuit Benches of NCLAT within a period of 6 months. (Paras 52 and 53)

*Madras Bar Assn. v. Union of India*, (2014) 11 SCC 1, followed

b *S.P. Sampath Kumar v. Union of India*, (1987) 1 SCC 121, *L. Chandra Kumar v. Union of India*, (1997) 3 SCC 221, 1997 SCC (L&S) 272, cited

**N. Insolvency and Bankruptcy Laws — NCLT/NCLAT — Directions qua functioning of the Tribunals under the wrong Ministry i.e. under the Ministry of Corporate Affairs as opposed to the Ministry of Law and Justice**

c Following the ruling in *Madras Bar Assn.*, (2010) 11 SCC 1 wherein it was inter alia held, that the administrative support for all Tribunals should be from the Ministry of Law and Justice and neither the Tribunals nor their members shall seek or be provided with facilities from the respective sponsoring or parent Ministries or Department concerned, Union of India directed to follow, both in letter and spirit. *Madras Bar Assn.*, (2010) 11 SCC 1 (Paras 34 to 36)

d *Union of India v. Madras Bar Assn.*, (2010) 11 SCC 1, followed

*Delhi International Airport Ltd. v. International Lease Finance Corp.*, (2015) 8 SCC 445, referred to

The petitions assailed the constitutional validity of various provisions of the Insolvency and Bankruptcy Code, 2016 ("the Insolvency Code" or "the Code")

e It was inter alia contended that the members of the National Company Law Tribunal (NCLT) and certain members of the National Company Law Appellate Tribunal (NCLAT), apart from the President, have been appointed contrary to the judgment in *Madras Bar Assn.*, (2015) 8 SCC 563. It was also contended that the administrative support for all tribunals should be from the Ministry of Law and Justice. However, NCLT and NCLAT were functioning under the Ministry of Corporate Affairs. It was also contended that since NCLAT, as an appellate court, has a seat only at New Delhi, this would render the remedy ineffectual.

f It was contended that there was no real difference between financial creditors and operational creditors. There was no intelligible differentia between the two types of creditors, regard being had to the object sought to be achieved by the Code, namely, insolvency resolution, and if that is not possible, then ultimately, liquidation. It was inter alia contended that such classification will not only be discriminatory, but also manifestly arbitrary, as under Sections 8 and 9 of the Code, an operational debtor is not only given notice of default, but is entitled to dispute the genuineness of the claim. In the case of a financial debtor, on the other hand, no notice is given and the financial debtor is not entitled to dispute the claim of the financial creditor. It was further contended that Sections 21 and 24 of the Code are discriminatory and manifestly arbitrary in that operational creditors do not have even a single vote in the Committee of Creditors which has very important functions to perform in the resolution process of corporate debtors.

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It was further contended that the certificate of an information utility is in the nature of a preliminary decree issued without any hearing and without any process of adjudication. It was contended that Section 12-A derailed the settlement process by requiring the approval of at least ninety per cent of the voting share of the Committee of Creditors. Unbridled and uncanalised power is given to the Committee of Creditors to reject legitimate settlements entered into between creditors and the corporate debtors.

It was contended that the resolution professional, having been given powers of adjudication under the Code and Regulations, grant of adjudicatory power to a non-judicial authority was violative of basic aspects of dispensation of justice and access to justice.

A four fold attack was raised against Section 29-A, in particular, clause (c) thereof. It was contended that the vested rights of erstwhile promoters to participate in the recovery process of a corporate debtor have been impaired by retrospective application of Section 29-A.

It was contended that Section 29-A, in any case, was contrary to the object sought to be achieved by the Code, in particular, speedy disposal of the resolution process as it will inevitably lead to challenges before the adjudicating authority and appellate authority, which will slow down and delay the insolvency resolution process.

It was contended that insofar as Section 29-A(c) was concerned, a blanket ban on participation of all promoters of corporate debtors, without any mechanism to weed out those who are unscrupulous and have brought the company to the ground, as against persons who are efficient managers, but who have not been able to pay their debts due to various other reasons, would not only be manifestly arbitrary, but also be treating unequals as equals. It was contended that maximisation of value of assets is an important goal to be achieved in the resolution process. Section 29-A is contrary to such goal as an erstwhile promoter, who may outbid all other applicants and may have the best resolution plan, would be kept out at the threshold, thereby impairing the object of maximisation of value of assets.

It was contended that under Section 29-A(c), a person's account may be classified as a non performing asset (NPA) in accordance with the guidelines of Reserve Bank of India (RBI), despite him not being a willful defaulter. Also, the period of one year referred to in clause (c) was wholly arbitrary and without any basis either in rationality or in law.

Qua Section 29-A(f), it was contended that persons who may be related parties in the sense that they may be relatives of the erstwhile promoters are also debarred, despite the fact that they may have no business connection with the erstwhile promoters who have been rendered ineligible by Section 29-A.

*Held :*

***Prologue: the pre-existing state of the law***

The erstwhile regime which led to the enactment of the Insolvency Code was discussed by the Bankruptcy Law Reforms Committee (BLRC) in its Report dated 4-11-2015 as follows: The current state of the bankruptcy process for firms is a highly fragmented framework. Powers of the creditor and the debtor under insolvency are provided for under different Acts. Given the conflicts between creditors and debtors in the resolution of insolvency as described in Section 3.2.2.

a the chances for consistency and efficiency in resolution are low when rights are separately defined. It is problematic that these different laws are implemented in different judicial fora (Para 14)

One of the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the object of speeding up of the insolvency process. (Para 16.2)

*Madras Petroleum Ltd. v. BIFR*, (2016) 4 SCC 1 : (2016) 3 SCC (Cr.) 478; *Innovative Industries Ltd. v. ICICI Bank*, (2018) 1 SCC 407 : (2018) 1 SCC (Cr.) 386, *relied on*

b Praymns legislation, namely, the Sick Industrial Companies (Special Provisions) Act, 1985, and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, which made provision for rehabilitation of sick companies and repayment of loans availed by them, were found to have completely failed. These two enactments were followed by the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002. ... amounts recovered under the said Act recorded improvement over the previous two enactments, but this was yet found to be inadequate. (Para 16.3)

*AndhraMithai (India) (P) Ltd. v. Swiss Koffee House*, (2017) 2 SCC 1, *relied on*

*Madras Petroleum Ltd. v. BIFR*, (2016) 4 SCC 1 : (2016) 3 SCC (Cr.) 478, *cited*

***Judicial hands-off qua economic legislation***

c To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the Nation. It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country. The Supreme Court has the power to prevent an experiment. The statute which embodies it may be struck down on the ground that the measure is arbitrary, capricious or unreasonable. The Court has power to do this, because the due process clause has been held by the Court applicable to matters of substantive law as well as to matters of procedure. But in the exercise of this high power, the Court must be ever on its guard, lest we erect our prejudices into legal principles. If we would guide by the light of reason, we must let our minds be held. (Para 19)

*New State Ice Co. v. Liebmann*, 1932 SCC Online US SC 63 : 28 L Ed 717 : 285 US 262 (1932), *relied on*

*Lochner v. New York*, 1905 SCC Online US SC 103 : 19 L Ed 937 : 198 US 45 (1905), *referred to*

*Hampton v. Massachusetts*, 1905 SCC Online US SC 5 : 15 L Ed. 643 : 191 US 11 (1905); *Northern Securities Co. v. United States*, 1904 SCC Online US SC 62 : 48 L Ed. 579 : 233 US 197 (1904); *Oss v. Porter*, 1902 SCC Online US SC 22 : 17 L Ed. 323 : 187 US 626 (1902); *Holmes v. Hardy*, 1898 SCC Online US SC 45 : 21 L Ed. 780 : 159 US 365 (1898), *cited*

d Courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws. Legislative bodies have broad scope to experiment with economic problems, and the Supreme Court does not sit to "subject the State to an intolerable supervision hostile to the basic principles of our Government and wholly beyond the protection which the general clause of the Fourteenth Amendment was intended to secure". (Para 20)

*Ferguson v. Skrupa*, 1963 SCC Online US SC 71 : 10 L Ed 2c 39 : 372 US 726 (1963), *relied on*

*Commonwealth v. Stone*, 131 Pa. Super. 117 : 155 A.2d 153 (1959); *Adams v. Tinsley*, 1917 SCC Online US SC 168 : 51 L. Ed. 1325 : 244 U.S. 590 (1917); *Carpenter v. Kentucky*, 1915 SCC Online US SC 91 : 50 L. Ed. 441 : 238 US 119 5; *Adair v. Children's Hospital*, 523 SCC Online US SC 15 : 67 L. Ed. 285 : 26 U.S. 25 (1925); *Key Bank Baking Co. v. Brown*, 1924 SCC Online US SC 89 : 68 L. Ed. 31 : 264 US 504 (1924); *Cham v. Nebraska*, 1941 SCC Online US SC 93 : 35 L. Ed. 265 : 213 US 236 (1941); *Spiegel v. Bishop*, 1952 SCC Online US SC 112 : 76 L. Ed. 1167 : 286 U.S. 274 (1952); *General Industrial Labor Union v. Northwestern Iron and Metal Co.*, 1949 SCC Online US SC 2 : 33 L. Ed. 212 : 335 US 225 (1949); *West Coast Hotel Co. v. Parish*, 1937 SCC Online US SC 58 : 81 L. Ed. 205 : 30 US 273 (1937); *Dun-Brice Lumber Co. v. Missouri*, 1950 SCC Online US SC 29 : 96 L. Ed. 465 : 312 US 421 (1952); *Pittman v. Lee*, *Optical of Oklahoma*, 1955 SCC Online US SC 25 : 59 L. Ed. 563 : 348 US 487 (1955); cited.

The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Every legislation, particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be cruelties and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. (Para 21)

*R.K. Garg v. Union of India*, (1981) 4 SCC 675 (1982 SCC (Tax) 9), relied on.

*Mony v. Dowd*, 157 SCC Online US SC 105 : 11 L. Ed. 2d 1485 : 354 US 457 (1957); *Song of Agri-Union v. Central Rail Refining Co.*, 1950 SCC Online US SC 4 : 94 L. Ed. 281 : 338 US 604 (1950); *Mason v. Hanson*, 876 SCC Online US SC 7 : 24 L. Ed. 77 : 91 US 113 (1877); *Murray's Theatrical Co. v. City of Chicago*, 1913 SCC Online US SC 123 : 57 L. Ed. 730 : 228 US 51 (1913); cited.

The system of checks and balances has to be utilised in a balanced manner with the primary objective of accelerating economic growth rather than suspending its growth by doubting its constitutional efficacy at the threshold itself. (Para 22)

*Blaschke D. Hirsch v. Union of India*, (2000) 5 SCC 471, relied on.

Laws, including executive action relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. that the legislature should be allowed some play in the joints because it has to deal with complex problems which do not admit of solution through any doctrine or straitjacket formula and this is particularly true in case of legislation dealing with economic matters, where having regard to the nature of the problems greater latitude require to be allowed to the legislature. (Para 23)

*Directorate General of Foreign Trade v. Kamal Exporters*, (2016) 2 SCC 226, relied on.

*BALCO Employees' Union v. Union of India*, (2007) 2 SCC 179, cited.

#### **The raison d'être for the Insolvency and Bankruptcy Code**

The Preamble gives an insight into what is sought to be achieved by the Code. The Code is first and foremost, a Code for reorganisation and insolvency resolution of corporate debtors. Unless such reorganisation is effected in a time-bound manner, the value of the assets of such persons will deplete. Therefore, maximisation of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. (Para 24)

*Indo-Bank Ltd (P) Ltd v. Nandini Kumar Gupta*, (2019) 3 SCC 1, relied on.

The primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management

a and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters/those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management team, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends. (Para 26)

*Appointment of members of NCLT and NCLAT not contrary to the Supreme Court's judgments*

c On 3-1-2018, the Companies Amendment Act, 2017 was brought into force by which Section 412 of the Companies Act, 2013 was amended. (Para 30)

d A Selection Committee was constituted to make appointments of Members of NCLT in the year 2015 itself. Thus, by an order dated 27-7-2015, (i) Justice Gopoi (as he then was), (ii) Justice Ramana, (iii) Secretary, Department of Legal Affairs, Ministry of Law and Justice, and (iv) Secretary, Corporate Affairs, were constituted as the Selection Committee. This Selection Committee was reconstituted on 22-2-2017 to make further appointments. In compliance of the directions of the Supreme Court, advertisements dated 10-8-2015 were issued inviting applications for Judicial and Technical Members as a result of which, all the present Members of NCLT and NCLAT have been appointed. (Para 31)

e *Union of India v. Madras Bar Assn.*, (2015) 11 SCC 1; *Madras Bar Assn. v. Union of India*, (2015) 3 SCC 532, referred to

*Classification between financial creditor and operational creditor neither discriminatory, nor arbitrary, nor violative of Article 14 of the Constitution of India*

f Where there is challenge to the constitutional validity of a law enacted by the legislature, the Court must keep in view that there is always a presumption of constitutionality of an enactment, and a clear transgression of constitutional principles must be shown. The fundamental nature and importance of the legislative process needs to be recognised by the Court and due regard and deference must be accorded to the legislative process. The two dimensions of Article 14 in its application to legislation and rendering legislation invalid are now well recognised and these are: (i) discrimination, based on an impermissible or invalid classification, and (ii) excessive delegation of powers; conferment of uncanalised and unguided powers on the executive, whether in the form of delegated legislation or by way of conferment of authority to pass administrative orders—if such conferment is without any guidance, control or checks, it is violative of Article 14 of the Constitution. The Court also needs to be mindful that a legislation does not become unconstitutional merely because there is another view or because another method may be considered to be as good or even more effective, like any issue of social, or even economic policy. It is well settled that the courts do not substitute

their views on what the policy is. Another development of the law is that legislation can be struck down as being manifestly arbitrary. (Paras 38 and 39)

*Siyaram Bano v. Union of India*, (2017) 4 SCC 1; (2017) 4 SCC (Cri) 211; *applied*

*Geopul Dha v. Supreme Court of India*, (2019) 1 SCC 161-70; 3 SCC (Cri) line SC 3197; *Judicial Young Lawyers Assoc. v. State of Kerala*, 2018 SCC On Line SC 590; *Joseph Sina v. Union of India*, (2015) 2 SCC 39; *K.S. Puttaswamy (Privacy) v. Union of India*, (2017) 1 SCC 1; *Naresh Singh Johari v. Union of India*, (2018) 10 SCC 1; (2019) 1 SCC (Cri) 1; *LeK Pathari v. State of U.P.*, 120 SC 8; 6 SCC 1; 120 SC 3; 3 SCC (Cri) 389; (2018) 3 SCC (Cri) 71; (2018) 7 SCC (L&S) 167; *NILINK International Pvt. v. Union of India*, (2018) 11 SCC 1; (2018) 2 SCC (Cri) 352; *referred to*

*National Resources Allocation in the Special Reference No. 1 of 2017*, (2017) 3 SCC 1; *State of A.P. v. McDowell & Co.*, (1980) 3 SCC 709; *Agay Hattia v. Khalid Mujib Sabkhaty*, (1981) 1 SCC 722; 1981 SCC (L&S) 258; *Subramanian Swamy v. CBI*, (2014) 8 SCC 682; (2014) 6 SCC (Cri) 12; (2014) 3 SCC (L&S) 36; *Subramanian Swamy v. CBI*, (2005) 2 SCC 31; (2005) SCC (L&S) 211; *Madala Gopalulu Ltd. v. Union of India*, (2004) 4 SCC 311; *Gulzar Khan, Anand Acharya v. State of Madhya Pradesh*, (1998) 2 SCC 1; *P.R. Revathi v. State of T.N.*, (1971) 1 SCC 3; 57 SCC (L&S) 65; *CGO v. TRAI*, 120 SC 1; 1 SCC 456; *Judicial Officers Associations (Barabar) (P) Ltd. v. Union of India*, (1985) 1 SCC 547; 1985 SCC (Tax) 121; *Khadon Distilleries Ltd. v. State of Karnataka*, (1996) 10 SCC 307; *Shrihari Transport v. State of A.P.*, (2002) 2 SCC 188; *cited*

A perusal of the definition of "financial creditor" and "financial debt" makes it clear that a financial debt is a debt together with interest, if any, which is disbursed against the consideration for time value of money. It may further be money that is borrowed or raised in any of the manners prescribed in Section 5(8) or otherwise, as Section 5(8) is an inclusive definition. On the other hand, an "operational debt" would include a claim in respect of the provision of goods or services, including employment, or a debt in respect of payment of dues arising under any law and payable to the Government or any local authority. (Para 42)

As a general rule, it is correct to say that financial creditors, which involve banks and financial institutions, would certainly be smaller in number than operational creditors of a corporate debtor. (Para 49)

BI RC Report, Insolvency and Reorganisation Bill in the Name of Clause 3, Insolvency Law Committee (ILC)'s Report of March 2018, Sections 215(A) and 216(B); *referred to*

Most financial creditors, particularly banks and financial institutions, are secured creditors whereas most operational creditors are unsecured, payments for goods and services as well as payments to workers not being secured by mortgaged documents and the like. The distinction between secured and unsecured creditors is a distinction which has obtained since the earliest of the Companies Acts both in the United Kingdom and in this country. Apart from the above, the nature of loan agreements with financial creditors is different from contracts with operational creditors for supplying goods and services. Financial creditors generally lend finance on a term loan or for working capital that enables the corporate debtor to either set up and/or operate its business. On the other hand, contracts with operational creditors are relatable to supply of goods and services in the operation of business. Financial contracts generally involve large sums of money. By way of contrast, operational contracts have dues whose quantum is generally less. In the running of a business, operational creditors can be many as opposed to financial creditors, who lend finance for the set up or working of business. Also, financial creditors have specified repayment schedules, and defaults entitle financial creditors to recall a loan in totality. Contracts with operational creditors

a do not have any such stipulations. Also, the forum in which dispute resolution takes place is completely different. Contracts with operational creditors can and do have arbitration clauses where dispute resolution is done privately. Operational debts also tend to be recurring in nature and the possibility of genuine disputes in case of operational debts is much higher when compared to financial debts. A simple example will suffice. Goods that are supplied may be substandard. Services that are provided may be substandard. Goods may not have been supplied at all. All these qua operational debts are matters to be proved in arbitration or in the courts of law. On the other hand, financial debts made to banks and financial institutions are well documented and defaults made are easily verifiable. (Para 50)

*Notice, hearing, and set-off or counterclaim qua financial debts*

c The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the return of the pendency of a suit or arbitration proceedings, which is pre-existing i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code. (Para 53)

d *Insolvent Industries Ltd. v. ICICI Bank*, (2018) 1 SCC 407; (2018) 1 SCC (CI) 355, *affidavit*

e Information in respect of debts incurred by financial debtors is easily available through information utilities which, under the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 (Information Utilities Regulations), are to satisfy themselves that information provided as to the debt is accurate. This is done by giving notice to the corporate debtor who then has an opportunity to correct such information. (Para 54)

f At the stage of the adjudicating authority's satisfaction under Section 7(5) of the Code, the corporate debtor is served with a copy of the application filed with the adjudicating authority and has the opportunity to file a reply before the said authority and be heard by the said authority before an order is made admitting the said application. (Para 58)

g What is also of relevance is that in order to protect the corporate debtor from being dragged into the corporate insolvency resolution process mala fide, the Code prescribes penalties (Section 60 of the Code). (Para 59)

h Also, punishment is prescribed under Section 75 for furnishing false information in an application made by a financial creditor which further deters a financial creditor from wrongly invoking the provisions of Section 7. (Para 60)

i Insolvent as set off and counterclaim is concurral, a set off of amounts due from financial creditors is a rarity. Usually, financial debts point only in one way amounts lent have to be repaid. However, it is not as if a legitimate set-off is not to be considered at all. Such set-off may be considered at the stage of filing of proof of claims during the resolution process by the resolution professional, his decision being subject to challenge before the adjudicating authority under Section 60. (Para 61)

j Equally, counterclaims, by their very definition, are independent rights which are not taken away by the Code but are preserved for the stage of admission



of claims during the resolution plan. Also, there is nothing in the Code which inroads the corporate debtor from pursuing such counterclaims in other judicial fora. (Para 63)

The trigger for a financial creditor's application is non-payment of dues when they arise under loan agreements. It is for this reason that Section 133(e) of the Companies Act, 1956 has been repealed by the Code and a change in approach has been brought about. Legislative policy now is to move away from the concept of "inability to pay debts" to "determination of default". The said shift enables the financial creditor to prove, based upon solid documentary evidence, that there was an obligation to pay the debt and that the debtor has failed in such obligation. (Para 64)

Whereas a "claim" gives rise to a "debt" only when it becomes "due", a "default" occurs only when a "debt" becomes "due and payable" and is not paid by the debtor. It is for this reason that a financial creditor has to prove "default" as opposed to an operational creditor who merely "claims" a right to payment of a liability or obligation in respect of a debt which may be due. When this aspect is borne in mind, the differentiation in the triggering of insolvency resolution process by financial creditors under Section 7 and by operational creditors under Sections 8 and 9 of the Code becomes clear. (Para 65)

*Sections 21 and 24 and Article 14 of the Constitution: operational creditors have no vote in the Committee of Creditors*

The original Insolvency and Bankruptcy Bill did not allow operational creditors to attend the Committee of Creditors at all. This Bill was amended. (Para 71)

Expert Committees have been set up by the Government to oversee the working of the Code. Thus, the report of the Insolvency Law Committee of March 2018, after examining the working of the Code, thought it fit not to amend the Code so as to give operational creditors the right to vote. (Para 72)

Under the Code, the Committee of Creditors is entrusted with the primary responsibility of financial restructuring. They are required to assess the viability of a corporate debtor by taking into account all available information as well as to evaluate all alternative investment opportunities that are available. The Committee of Creditors is required to evaluate the resolution plan on the basis of feasibility and viability. (Para 73)

Once the resolution plan is approved by the Committee of Creditors and thereafter by the adjudicating authority, the aforesaid plan is binding on all stakeholders. (Para 74)

Since the financial creditors are in the business of money lending, banks and financial institutions are best equipped to assess viability and feasibility of the business of the corporate debtor. Even at the time of granting loans, these banks and financial institutions undertake a detailed market study which includes a techno-economic valuation report, evaluation of business, financial projection, etc. Since this detailed study has already been undertaken before sanctioning a loan, and since financial creditors have trained employees to assess viability and feasibility, they are in a good position to evaluate the contents of a resolution plan. On the other hand, operational creditors, who provide goods and services, are involved only in recovering amounts that are paid for such goods and services, and are typically

- unable to assess viability and feasibility of business. The BLRC Report makes this abundantly clear. (Para 75)
- a The United Nations Commission on International Trade Law, in its Legislative Guide on Insolvency Law (the UNCITRAL Guidelines) recognises the importance of ensuring equitable treatment to similarly placed creditors and states as follows:
- “Ensuring equitable treatment of similarly situated creditors*
- b 7. The objective of equitable treatment is based on the notion that, in collective proceedings, creditors with similar legal rights should be treated fairly, receiving a distribution on their claim in accordance with their relative ranking and interests. This key objective recognises that all creditors do not need to be treated identically, but in a manner that reflects the different bargains they have struck with the debtor. (Para 76)
- c NCLAT has, while looking into viability and feasibility of resolution plans that are approved by the Committee of Creditors, always gone into whether operational creditors are given roughly the same treatment as financial creditors, and if they are not, such plans are either rejected or modified so that the operational creditors' rights are safeguarded. It may be seen that a resolution plan cannot pass muster under Section 30(2)(b) read with Section 31 unless a minimum payment is made to operational creditors, being not less than liquidation value. Further, in § 10 (2)(B), Regulation 38 of the CIRP Regulations, 2016 has been amended. Regulation 38
- d further strengthens the rights of operational creditors by statutorily incorporating the principle of fair and equitable dealing of operational creditors' rights, together with priority in payment over financial creditors. (Para 77)
- e For all the aforesaid reasons, operational creditors are not discriminated against, and Article 14 of the Constitution has not been infringed either on the ground of equals being treated unequally or on the ground of manifest arbitrariness. (Para 78)
- Section 12-A is not violative of Article 14 of the Constitution*
- f Section 12-A was inserted by the Insolvency and Bankruptcy (Second Amendment) Act, 2018 with retrospective effect from 6-6-2018. Before this section was inserted, the Court, under Article 142 of the Constitution, was passing orders allowing withdrawal of applications after creditors' applications had been admitted by NCLT or NCLAT. (Paras 79 and 80)
- Lokhandwala Karan Construction (P) Ltd. v. Nissar Finance and Investment Managers LLP*, (2018) 4 SCC 385; *Waskare Foods Dairy India (P) Ltd. v. Boreal Advertising and Marketing (P) Ltd.*, (2017) SCC OnLine SC 1785; *Lotus Foods and Foods (P) Ltd. v. Lotus Pharmachem*, (2018) 5 SCC 587, cited.
- HC Report of March 2018, referred to.
- g Regulation 30 A(1) of the CIRP Regulations, 2016 is not mandatory but is directory for the simple reason that on the facts of a given case, an application for withdrawal may be allowed in exceptional cases even after issue of invitation for expression of interest under Regulation 36-A. (Para 81)
- Belland Alloys (P) Ltd. v. S. Rajagopal*, 2018 SCC Online SC 3154, referred to.
- h It is clear that once the Code gets triggered by admission of a creditor's petition under Sections 7 to 9, the proceeding that is before the adjudicating authority, being a collective proceeding, is a proceeding in rem. Being a proceeding in rem, it is necessary that the body which is to oversee the resolution process must be consulted before any individual corporate debtor is allowed to settle its claim. At any stage

where the Committee of Creditors is not yet constituted, a party can approach NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of the NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement. This will be decided after hearing all the parties concerned and considering all relevant factors on the facts of each case. (Para 83)

The main thrust against the provision of Section 12 A is the fact that ninety per cent of the Committee of Creditors has to allow withdrawal. This high threshold has been explained in the I.C. Report as all financial creditors have to put their heads together to allow such withdrawal as, ordinarily, an omnibus settlement involving all creditors might, ideally, be entered into. This explains why ninety per cent, which is substantially all the financial creditors, have to grant their approval to an individual withdrawal or settlement. In any case, the figure of ninety per cent, in the absence of anything further to show that it is arbitrary, must pertain to the domain of legislative policy, which has been explained by the Report (supra). Also, it is clear, that under Section 60 of the Code, the Committee of Creditors do not have the last word on the subject. (Para 83)

***Evidence provided by private information utilities: only prima facie evidence of default***

The setting up of information utilities was preceded by a regime of information companies which were referred to as credit information companies (CICs), as recommended by the Siddiqui Working Group in 1999. (Para 85)

The Information Utilities Regulations, in particular Regulations 20 and 21, make it clear that on receipt of information of default, an information utility shall expeditiously undertake the process of authentication and verification of information. (Para 86)

The aforesaid Regulations also make it clear that apart from the stringent requirements as to registration of such utility, the moment information of default is received, such information has to be communicated to all parties and societies to the debt. Apart from this, the utility is to expeditiously undertake the process of authentication and verification of information, which will include authentication and verification from the debtor who has defaulted. This being the case, coupled with the fact that such evidence, is only prima facie evidence of default, which is rebuttable by the corporate debtor, makes it clear that the challenge based on this ground must also fail. (Para 87)

***Resolution professional has no adjudicatory powers***

It is clear from a reading of the Code as well as the Regulations that the resolution professional has no adjudicatory powers. (Para 88)

Under the CIRP Regulations, the resolution professional has to vet and verify claims made, and ultimately, determine the amount of each claim. It is clear from a reading of these Regulations (Regulations 10, 12, 13 and 14) that the resolution professional is given administrative as opposed to quasi-judicial powers. In fact, even when the resolution professional is to make a "determination" under Regulation 35-A, he is only to apply to the adjudicating authority for appropriate relief based on the determination. (Para 89)

As opposed to this, the liquidator, in liquidation proceedings under the Code, has to consolidate and verify the claims, and either admit or reject such claims under Sections 38 to 40 of the Code. It is clear from Sections 41 and 42 that when the liquidator "determines" the value of claims admitted under Section 40,

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a such determination is a "decision", which is quasi-judicial in nature, and which can be appealed against to the adjudicating authority under Section 42 of the Code. (Para 90)

b Unlike the liquidator, the resolution professional cannot act in a number of matters without the approval of the Committee of Creditors under Section 28 of the Code, which can, by a two-thirds majority, replace one resolution professional with another, in case they are unhappy with his performance. Thus, the resolution professional is really a facilitator of the resolution process, whose administrative functions are overseen by the Committee of Creditors and by the adjudicating authority. (Para 91)

***Constitutional validity of Section 29-A***

c Parliament has introduced Section 29-A into IBC with a specific purpose. The provisions of Section 29-A are intended to ensure that among others, persons responsible for insolvency of the corporate debtor do not participate in the resolution process. The Court must bear in mind that Section 29-A has been enacted in the larger public interest and to facilitate effective corporate governance. Parliament rectified a loophole in the Act which allowed a backdoor entry to erstwhile managements in the CIRP. Section 30 of IBC, as amended, also clarifies that a resolution plan of a person who is ineligible under Section 29-A will not be considered by CoC. (Para 96)

d *Accel/Mitel (India) Pvt. Ltd. v. Satish Kumar Gupta*, (2019) 2 SCC 1, *Chitra Sharma v. Union of India*, (2018) 18 SCC 575, *J.B. Joshi v. Salomon v. A. Salomon and Co. Ltd.*, 1907 AC 22 (HL), cited

***Retrospective application***

e It is settled law that a statute is not retrospective merely because it affects existing rights; nor is it retrospective merely because a part of the requisites for its action is drawn from a time antecedent to its passing. A resolution applicant has no vested right for consideration or approval of its resolution plan. (Para 97)

f *State Bank's Staff Union (Madhya Pradesh) v. Union of India*, (2005) 7 SCC 584; 2005 SCC (L&S) 991; *Accel/Mitel (India) Pvt. Ltd. v. Satish Kumar Gupta*, (2019) 2 SCC 1, *United Bank Agrawal v. SBI*, (1978) 8 SCC 205; *K. J. Paragaraman v. State of Kerala*, (1994) 5 SCC 593; *Darshan Singh v. Ran Pal Singh*, 1992 Supp (1) SCC 191; *Pawan Lal Sharma v. Jammu & Kashmir Industries Ltd.*, (1989) 2 SCC 143; 1989 SCC (L&S) 187; *P.D. Aggarwal v. State of U.P.*, (1987) 3 SCC 522; 1987 SCC (L&S) 370; *Chand Das v. CO*, (1976) 1 SCC 92; 1976 SCC (L&S) 31, distinguished

***Section 29-A(c) not restricted to malfeasance***

g There is no vested right in an erstwhile promoter of a corporate debtor to bid for the immovable and movable property of the corporate debtor in liquidation. Further, given the categories of persons who are ineligible under Section 29-A, which includes persons who are malfeasant, or persons who have fallen foul of the law in some way, and persons who are unable to pay their debts in the grace period allowed, are further, by this proviso, interdicted from purchasing assets of the corporate debtor whose debts they have either willfully not paid or have been unable to pay. The legislative purpose which permeates Section 29-A continues to permeate the section when it applies not merely to resolution applicants, but to liquidation also. (Para 102)

***The one-year period in Section 29-A(c) and NPAs***

h It is clear that Section 29-A goes to eligibility to submit a resolution plan. A wilful defaulter, in accordance with the guidelines of RBI, would be a person

who though able to pay, does not pay. An NPA, on the other hand, refers to the account belonging to a person that is declared as such under guidelines issued by RBI. (Para 103)

What is clear from RBI's Master Circular on Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances dated 1-7-2015 is that accounts are declared NPA only if defaults made by a corporate debtor are not resolved (for example, interest on and/or instalment of the principal remaining overdue for a period of more than 90 days in respect of a term loan). Post declaration of such NPA, what is clear is that a substandard asset would then be NPA which has remained as such for a period of twelve months. In short, a person is a defaulter when an instalment and/or interest on the principal remains overdue for more than three months, after which, its account is declared NPA. During the period of one year thereafter, since it is now classified as a substandard asset, this grace period is given to such person to pay off the debt. During this grace period, it is clear that such person can bid along with other resolution applicants to manage the corporate debtor. What is important to bear in mind is also the fact that, prior to this one-year-three-month period, banks and financial institutions do not declare the accounts of corporate debtors to be NPAs. As a matter of practice, they first try and resolve disputes with the corporate debtor, after which, the corporate debtor's account is declared NPA. As a matter of legislative policy, therefore, quite apart from malfeasance, if a person is unable to repay a loan taken, in whole or in part, within this period of one year and three months (which, in any case, is after an earlier period where the corporate debtor and its financial creditors sit together to resolve defaults that continue), it is stated to be ineligible to become a resolution applicant. The reason is not far to see. A person who cannot service a debt for the aforesaid period is obviously a person who is ailing itself. (Para 105)

**Related party**

Persons who act jointly or in concert with others are connected with the business activity of the resolution applicant. Similarly, all the categories of persons mentioned in Section 5(24-A) show that such persons must be "connected" with the resolution applicant within the meaning of Section 29-A(j). This being the case, the said categories of persons who are collectively mentioned under the caption "relative" obviously need to have a connection with the business activity of the resolution applicant. In the absence of showing that such person is "connected" with the business of the activity of the resolution applicant, such person cannot possibly be disqualified under Section 29-A(j). All the categories in Section 29-A(j) deal with persons, natural as well as artificial, who are connected with the business activity of the resolution applicant. The expression "related party", therefore, and "relative" contained in the definition sections must be read noscitur a sociis with the categories of persons mentioned in Explanation I, and so read, would include only persons who are connected with the business activity of the resolution applicant. (Para 109)

*Attorney General for India v. Anantaji Pragnanada*, (1994) 3 SCC 54; 1994 SCC (Cri) 1325, referred to

Explanation 1 clause (ii) to Section 29-A(j) seeks to make it clear that if a person is otherwise covered as a "connected person", this provision would also cover a person who is in management or control of the business of the corporate debtor during the implementation of a resolution plan. Therefore, any such person is not indeterminate at all, but is a person who is in the saddle of the business of the

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corporate debtor either at an anterior point of time or even during implementation of the resolution plan. (Para 119)

a *Section 53 of the Code does not violate Article 14 of the Constitution*

The reason for differentiating between financial debts, which are secured, and operational debts, which are unsecured, is in the relative importance of the two types of debts when it comes to the object sought to be achieved by the Insolvency Code. Repayment of financial debts infuses capital into the economy inasmuch as banks and financial institutions are able, with the money that has been paid back, to further lend such money to other entrepreneurs for their businesses. This rationale creates an intelligible differentia between financial debts and operational debts, which are unsecured, which is directly related to the object sought to be achieved by the Code. In any case, workmen's dues, which are also unsecured debts, have traditionally been placed above most other debts. Thus, it can be seen that unsecured debts are of various kinds, and so long as there is some legitimate interest sought to be protected, having relation to the object sought to be achieved by the statute in question, Article 14 does not get infringed. For these reasons, the challenge to Section 53 of the Code must also fail. (Para 119)

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59	924 SCC OnLine US SC 105 : 57 L Ed 785 : 251 US 245 ( 525), <i>Adkins v. Children's Hospital</i>	17g, 18c, 18e, 18f, 18g
60	917 SCC OnLine US SC 168 : 51 L Ed 736 : 244 U.S. 590 (1917), <i>Adkins v. Turner</i>	47d e, 48f, g
61	915 SCC OnLine US SC 70 : 50 L Ed 441 : 238 U.S. 1 (1915), <i>Cappage v. Kansas</i>	47f, g, 48c
62	112 SCC OnLine US SC 122 : 57 L Ed 730 : 228 US 61 (1913), <i>Metropolitan Theater Co. v. City of Chicago</i>	5, 27f b
63	105 SCC OnLine US SC 100 : 49 L Ed 937 : 133 US 45 (1905), <i>Lochner v. New York</i>	17b e, 18d e, 18f, g, 18c
64	905 SCC OnLine US SC 51 : 45 L Ed 613 : 197 U.S. 1 (1905), <i>Jacobson v. Massachusetts</i>	46a
65	904 SCC OnLine US SC 53 : 48 L Ed 679 : 192 U.S. 137 (1904), <i>Williams-Sonnet Co. v. United States</i>	46a b
66	903 SCC OnLine US SC 72 : 47 L Ed 977 : 187 U.S. 696 (1902), <i>Quin v. Reiser</i>	46c c
67	1398 SCC OnLine US SC 45 : 12 L Ed 790 : 163 U.S. 366 (1896), <i>Holden v. Hardy</i>	46d
68	897 AC 22 (UK), <i>Salomon v. A. Salomon and Co. Ltd.</i>	50f
69	876 SCC OnLine US SC 4 : 21 L Ed 37 : 94 U.S. 15 (1834), <i>Stanton</i> <i>v. Blinn</i>	46e e, 47d e

The Judgment of the Court was delivered by

**ROHINTON PAUL NARIMAN, J.**— The present petitions assail the constitutional validity of various provisions of the Insolvency and Bankruptcy Code, 2016 ("the Insolvency Code" or "the Code"). Since we are deciding only questions relating to the constitutional validity of the Code, we are not going into the individual facts of any case.

2. Shri Mukul Rohatgi, learned Senior Advocate, appearing in Writ Petition (Civil) No. 99 of 2018, has first and foremost argued that the members of the National Company Law Tribunal (NCLT) and certain members of the National Company Law Appellate Tribunal (NCLAT), apart from the President, have been appointed contrary to this Court's judgment in *Mahesh Bar Association v. Union of India*<sup>1</sup> [*Mahesh Bar Assn. (I)*], and that therefore, this being so, all orders that are passed by such members, being passed contrary to the judgment of this Court in the aforesaid case, ought to be set aside. In any case, even assuming that the de facto doctrine would apply to save such orders, it is clear that such members ought to be restrained from passing any orders in future. In any case, until a properly constituted committee, in accordance with the aforesaid judgment, reappoints them, they ought not to be allowed to function. He also argued that the administrative support for all tribunals should be from the Ministry of Law and Justice. However, even today, NCLT and NCLAT are functioning under the Ministry of Corporate Affairs. This again needs to be corrected immediately. A further technical violation also exists in that if the powers of the High Court are taken away, NCLAT, as an appellate forum, should have the same convenience and expediency as existed prior to appeals going to NCLAT. Since NCLAT, as an appellate court, has a seat only at New Delhi,

1. (2015) 8 SCC 583

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a this would render the remedy inefficacious inasmuch as persons would have to travel from Tamil Nadu, Calcutta and Bombay to New Delhi, whereas earlier, they could have approached the respective High Courts in their States. This again is directly contrary to *Madras Bar Assn. v. Union of India*<sup>3</sup> [*Madras Bar Assn. (1)*], and to para 123 in particular.

b 3. Apart from the aforesaid technical objection, Shri Rohatgi assailed the legislative scheme that is contained in Section 7 of the Code, stating that there is no real difference between financial creditors and operational creditors. According to him, both types of creditors would give either money in terms of loans or money's worth in terms of goods and services. Thus, there is no intelligible difference between the two types of creditors, regard being had to the object sought to be achieved by the Code, namely, insolvency resolution, and if that is not possible, then ultimately, liquidation. Relying upon *Shayara Bank v. Union of India*<sup>3</sup> (*Shayara Bank*), he argued that such classification will not only be discriminatory, but also manifestly arbitrary, as under Sections 8 and 9 of the Code, an operational debtor is not only given notice of default, but is entitled to dispute the genuineness of the claim. In the case of a financial debtor, on the other hand, no notice is given and the financial debtor is not entitled to dispute the claim of the financial creditor. It is enough that a default as defined occurs, after which, even if the claim is disputed and even if there be a set-off and counterclaim, yet, the Code gets triggered at the behest of a financial creditor, without the corporate debtor being able to justify the fact that a genuine dispute is raised, which ought to be left for adjudication before ordinary courts and/or tribunals. Shri Rohatgi then argued that assuming that a valid distinction exists between financial and operational creditors, there is hostile discrimination against operational creditors. First and foremost, unless they amount to 10% of the aggregate of the amount of debt owed, they have no voice in the Committee of Creditors. In any case, Sections 21 and 24 of the Code are discriminatory and manifestly arbitrary in that operational creditors do not have even a single vote in the Committee of Creditors which has very important functions to perform in the resolution process of corporate debtors.

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f 4. Shri Rohatgi then went on to assail the establishment of information utilities that are set up under the Code. According to him, under Section 210 of the Code, there can be private information utilities whose sole object would be to make a profit. Further, the said information utility is not only to collect financial data, but also to check whether a default has or has not occurred. Certification of such agency cannot substitute for adjudication. Thus, the certificate of an information utility is in the nature of a preliminary decree issued without any hearing and without any process of adjudication. Shri Rohatgi next argued that Section 12 A of the Code is contrary to the directions of this Court in its order in *Utara Foods and Feeds (P) Ltd. v. Mona Pharmachem*<sup>4</sup>, and that instead of following the said order, Section 12 A now details the settlement process by requiring the approval of at least ninety per cent of the voting share of the Committee of Creditors. Unbridled and

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3 (2011) 9 SCC 1  
3 (2017) 9 SCC 1; (2017) 4 SCC 37 vi 277  
4 (2018) 15 SCC 487

unfettered power is given to the Committee of Creditors to reject legitimate settlements entered into between creditors and the corporate debtors.

5. Shri Rohatgi then argued that the resolution professional, having been given powers of adjudication under the Code and Regulations, grant of adjudicatory power to a non-judicial authority is violative of basic aspects of dispensation of justice and access to justice. Lastly, a four fold attack was raised against Section 29-A, in particular, clause (b) thereof. First and foremost, Shri Rohatgi stated that the vested rights of erstwhile promoters to participate in the recovery process of a corporate debtor have been impaired by retrospective application of Section 29 A. Section 29 A, in any case, is contrary to the object sought to be achieved by the Code, in particular, speedy disposal of the resolution process as it will inevitably lead to challenges before the adjudicating authority and appellate authority, which will slow down and delay the insolvency resolution process. In particular, so far as Section 29 A(i) is concerned, a blanket ban on participation of all promoters of corporate debtors, without any mechanism to weed out those who are unscrupulous and have brought the company to the ground, as against persons who are efficient managers, but who have not been able to pay their debts due to various other reasons, would not only be manifestly arbitrary, but also be treating unequals as equals. Also, according to Shri Rohatgi, maximisation of value of assets is an important goal to be achieved in the resolution process. Section 29 A is contrary to such goal as an erstwhile promoter, who may outbid all other applicants and may have the best resolution plan, would be kept out at the threshold, thereby impairing the object of maximisation of value of assets.

6. Another argument that was made was that under Section 29-A(e), a person's account may be classified as a non-performing asset (NPA) in accordance with the guidelines of Reserve Bank of India (RBI), despite him not being a wilful defaulter. Also, the period of one year referred to in clause (e) is again wholly arbitrary and without any basis either in rationality or in law. Shri Rohatgi then trained his gun on Section 29-A(j), and stated that persons who may be related parties in the sense that they may be relatives of the erstwhile promoters are also debarred, despite the fact that they may have no business connection with the erstwhile promoters who have been rendered ineligible by Section 29-A.

7. Shri K.V. Viswanathan, learned Senior Advocate, appearing in Writ Petition No. 877 of 2018, strongly supported Shri Rohatgi and argued the same points with great clarity and with various nuances of his own, which will be reflected in our judgment. Followed by Shri Viswanathan, Shri A.K. Gupta, Shri Pulkit Deora, Shri Devanshu Sajjan and Shri Deepak Joshi also made submissions with particular regard to discrimination against operational creditors.

8. As against these submissions, Shri K.K. Venugopal, the learned Attorney General for India, and Shri Tushar Mehta, learned Solicitor General of India, appearing for the Union of India, and Shri Rakesh Dwivedi, learned Senior Advocate, appearing for Reserve Bank of India, countered all the aforesaid submissions. They argued with reference to our judgments and committee reports that till the Insolvency Code was enacted, the regime of previous legislation had failed to maximise the value of stressed assets and had focused

a on reviving the corporate debtor with the same erstwhile management. All these  
legislations had failed, as a result of which, the Code was enacted to reorganise  
insolvency resolution of corporate debtors in a time-bound manner to maximise  
the value of assets of such person. They further argued that there is a paradigm  
shift from the erstwhile management of a corporate debtor being in possession  
of stressed assets to creditors who now assume control from the erstwhile  
management and are able to approve resolution plans of other better and more  
efficient managers, which would not only be in the interest of the corporate  
debtor itself but in the interest of all stakeholders, namely, all creditors, workers  
and shareholders other than shareholdings of the erstwhile management. They  
referred to the Statement of Objects and Reasons, the Preamble, and various  
provisions of the Code, and to the Rules and Regulations made thereunder,  
to buttress their submissions. In particular, they referred to judgments which  
mandated a judicial hands off when it came to laws relating to economic  
regulation.

c 9. The learned counsel argued that the legislature must get the maximum  
free play in the joints to experiment and come up with solutions to problems that  
have seemed intractable earlier. In particular, in combating the individual points  
made by the learned counsel appearing on behalf of the petitioners, they argued  
that none of the members of NCLT or NCLAT had been appointed contrary to the  
judgments of this Court in *Union of India v. Madras Bar Assn.*<sup>5</sup> [*Madras Bar  
d Assn. (1)*] and *Madras Bar Assn. (3)*. They referred to affidavits filed before  
this Court to show that all such members had been appointed by a committee  
consisting of two Supreme Court Judges and two bureaucrats, in conformity  
with the aforesaid judgments.

e 10. When it came to classification between financial and operational  
creditors, the learned counsel argued that the differentiation between the two  
types of creditors occurs from the nature of the contracts entered into with  
them. Financial contracts involve large sums of money given by fewer persons,  
whereas operational creditors are much larger in number and the quantum  
of dues is generally small. Financial creditors have specified repayment  
schedules and agreements which entitle such creditors to recall the loan in  
totality on defaults being made, which the operational creditors do not have.  
Further, financial creditors are, from the start, involved with the assessment  
of viability of corporate debtors and are, therefore, better equipped to engage  
in restructuring of loans as well as reorganisation of the corporate debtor's  
business in the event of financial stress. All these differentiae are not only  
intelligible, but directly relate to the objects sought to be achieved by the Code.  
Insofar as Section 7, relating to financial creditors, and Sections 8 and 9,  
which relate to operational creditors, are concerned, it is a fallacy to say that  
no notice is issued to the financial debtor on defaults made, as financial debtors  
are fully aware of the loan structure and the defaults that have been made.  
Further, this Court's judgment in *Innovative Industries Ltd. v. ICICI Bank*<sup>6</sup>  
(*Innovative Industries*) has made it clear that under Section 7(5) of the Code,

h 5 (2011) SCC 1

1. *Madras Bar Assn. v. Union of India*, (2011) 8 SCC 583

6 (2015) 1 SCC 467 (2018) 1 SCC (Civil) 55

the adjudicating authority, in being "satisfied" that there is a default, has to issue notice to the corporate debtor, hear the corporate debtor, and then adjudicate upon the same. The reason why disputes raised by financial debtors are not gone into at the stage of triggering the Code is because the evidence of financial debts are contained in the documents of information utilities, banks and financial institutions. Disputes which may be raised can be raised at the stage of filing of claims once the resolution process is underway. Also, by the very nature of financial debts, set off and counterclaims by financial debtors are very rare and, in any case, wholly independent of the loan that has been granted to them. Insofar as operational creditors having no vote in the Committee of Creditors is concerned, this is because operational creditors are typically interested only in getting payment for supply of goods or services made by them, whereas financial creditors are typically involved in seeing that the entirety of their loan gets repaid, for which they are better equipped to go into the viability of corporate enterprises, both at the stage of grant of the loan and at the stage of default. Also, the interests of operational creditors, when a resolution plan is to be approved, are well looked after as the minimum that the operational creditors are to be paid is the liquidation value of assets. Apart from this, their interests are to be placed on a par with the interests of financial creditors, and if this is not done, then the adjudicating authority intervenes to reject or modify resolution plans until the same is done. In the 80 cases that have been resolved since the Code has come into force, figures were also shown to this Court to indicate that not only are the operational creditors paid before the financial creditors under the resolution plan, but that the initial recovery of what is owed to them is slightly higher than what is owed to financial creditors. Insofar as Section 17-A is concerned, they argued that once an application by a creditor is admitted by the adjudicating authority, the proceeding becomes a proceeding in rem and is no longer an individual proceeding but a collective proceeding. This being the case, it is important that when a resolution process is to begin and a Committee of Creditors is formed, it is that committee that is best equipped to deal with applications for withdrawal or settlement after admission of an insolvency petition. Ninety per cent of such creditors have been given this task as once the proceeding is in rem, to halt such proceeding, which is for the benefit of all creditors generally, can only be if all or most of them agree to the same.

11. The learned counsel argued that the resolution professional has no adjudicatory powers under the Code or the Regulations, but is only to collate information. Even when he exercises his discretion to exercise his best judgment in certain situations, he does so administratively, and is subject to an adjudicatory body overseeing the same. When it comes to Section 29-A of the Code, they argued that Section 29-A does not disturb any vested or existing rights, as a resolution applicant does not have any vested or existing rights that can be disturbed, as has been held in *AcceleraMittal (India) (P) Ltd. v. Sushil Kumar Gupta*<sup>7</sup> (*AcceleraMittal*). Further, merely because this section relies on antecedent facts for its application, does not mean that it is retrospective. Also, Section 29-A subserves a very important object of the Code, which is to see

a that undesirable persons who are mentioned in all its clauses are rendered ineligible to submit resolution plans so that such persons may not come into the management of stressed corporate debtors. They also argued that Section 29-A is not aimed at only persons who have committed acts of malfeasance, but also persons who are otherwise unfit to be put in the saddle of the management of the corporate debtor, such as undischarged insolvents and persons who have been removed as Directors under Section 164 of the Companies Act, 2013 (for not filing financial statements or annual returns for any continuous period of 3 financial years, for example).

b 12. The learned counsel further argued that a period of one year is sufficient period within which a person, whose account has been declared NPA, should clear its dues. They referred to the RBI Regulations dealing with NPAs and stated that even before a person's account is declared NPA, a long rope is given for such person to clear off its debts. It is only when it does not do so, that its account is declared NPA in the first instance. Also, once the said guidelines are perused, it is clear that an account, which has been NPA for one year, is declared as substandard asset and it is for this reason that the one year period is given in Section 29 A(c), which is based on reason, and is not arbitrary.

c 13. Shri C. U. Singh, appearing on behalf of Asset Reconstruction Company of India Ltd., referred to the pre-existing state of legislation before the Code was enacted, and referred in detail to how all such legislations had failed to produce the necessary results. He also relied upon extracts from the Insolvency Act, 1986 of the United Kingdom to buttress his point that worldwide, the Insolvency Acts have moved away from mere liquidation so as to first concentrate on reconstruction of corporate debtors. Also, according to him, Section 29-A is not a section aimed at malfeasance; it is aimed at rendering ineligible persons who are undesirable in the widest sense of the term i.e. persons who are unfit to take over the management of a corporate debtor.

d *Prologue: the pre-existing state of the law*

e 14. Having heard the rival contentions, it is important to first clear the air on what was the background which led to the enactment of the Insolvency Code. The erstwhile regime which led to the enactment of the Insolvency Code was discussed by the Bankruptcy Law Reforms Committee (BLRC) in its Report dated 4-11-2015 as follows:

f "The current state of the bankruptcy process for firms is a highly fragmented framework. Powers of the creditor and the debtor under insolvency are provided for under different Acts. Given the conflicts between creditors and debtors in the resolution of insolvency as described in Section 3.2.2, the chances for consistency and efficiency in resolution are low when rights are separately defined. It is problematic that these different laws are implemented in different judicial fora. Cases that are decided at the tribunal/NIFR often come for review to the High Courts. This gives rise to two types of problems in implementation of the resolution framework. The first is the lack of clarity of jurisdiction. In a situation where one forum decides on matters relating to the rights of the creditor, while another forum decides on those relating to the rights of the debtor, the decisions are readily appealed against and either stayed or overturned in a higher court.

Ideally, if economic value is indeed to be preserved, there must be a single forum that hears both sides of the case and makes a judgment based on both. A second problem exacerbates the problems of multiple judicial fora. The fora entrusted with adjudicating on matters relating to insolvency and bankruptcy may not have the business or financial expertise, information or bandwidth to decide on such matters. This leads to delays and extensions in arriving at an outcome, and increases the vulnerability to appeals of the outcome.

The uncertainty that these problems give rise to shows up in case law on matters of insolvency and bankruptcy in India. Judicial precedent is set by “case law” which helps flesh out the statutory laws. These may also, in some cases, pronounce new substantive law where the statute and precedent are silent (Ray), 2015) reviews judgments of the High Courts on BIFR cases, DRIs and DRATs, as well as a review of important judgments of the Supreme Court that have had a significant impact on the interpretation of existing insolvency legislation. The judgments reviewed are those after June 2002 when the SAREESI Act came into effect. It is illustrative of both debtor and creditor led process of corporate insolvency, and reveals a matrix of fragmented and contrary outcomes, rather than coherent and consistent, being set as precedents

In such an environment of legislative and judicial uncertainty, the outcomes on insolvency and bankruptcy are poor. World Bank (2014) reports that the average time to resolve insolvency is four years in India, compared to 0.8 years in Singapore and 1 year in London. Sengupta and Sharma, 2015 compare the number of new cases that file for corporate insolvency in the UK, which has a robust insolvency law, to the status of cases registered at the BIFR under SICA, 1985, as well as those filed for liquidation under the Companies Act, 1956. They compare this with the number of cases files in the UK, and find a significantly higher turnover in the cases that are filed and cleared through the insolvency process in the UK. If we are to bring financing patterns back on track with the global norm, we must create a legal framework to make debt contracts credible channels of financing.

This calls for a deeper redesign of the entire resolution process, rather than working on strengthening any single piece of it. India is not unusual in requiring this. In all countries, bankruptcy laws undergo significant changes over the period of two decades or more. For example, the insolvency resolution framework in the UK is the Insolvency Act, 1986, which was substantially modified with the Insolvency Act, 2000, and the Enterprise Act, 2002. The first Act for bankruptcy resolution in the US that lasted for a significant time was the Bankruptcy Act, 1889. This was followed by the 1938 Act, the Reform Act, 1978, the 1984 Act, the Act, 1994, a related Consumer Protection Act, 2005. Singapore proposed a bankruptcy reform in 2013, while there are significant changes that are being proposed in the US and the Italian bankruptcy framework this year in 2015. Several of these are structural reforms with fundamental implications on resolving insolvency.”

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15. BLRC went on to state:

a “[...] India is one of the youngest republics in the world, with a high concentration of the most dynamic entrepreneurs. Yet these game changers and growth drivers are crippled by an environment that takes some of the longest times and highest costs by world standards to resolve any problems that arise while repaying dues on debt. This problem leads to grave consequences. India has some of the lowest credit compared to the size of the economy. This is a troublesome state to be in, particularly for a young emerging economy with the entrepreneurial dynamism of India.”

b Speed is of essence for the working of the bankruptcy code, for two reasons. First, while the ‘calm period’ can help keep an organisation afloat, without the full clarity of ownership and control, significant decisions cannot be made. Without effective leadership, the firm will tend to atrophy and fail. The longer the delay, the more likely it is that liquidation will be the only answer. Second, the liquidation value tends to go down with time as many assets suffer from a high economic rate of depreciation.

c From the viewpoint of creditors, a good realisation can generally be obtained if the firm is sold as a going concern. Hence, when delays induce liquidation, there is value destruction. Further, even in liquidation, the realisation is lower when there are delays. Hence, delays cause value destruction. Thus, achieving a high recovery rate is primarily about identifying and combating the sources of delay.

d This same idea is found in FSLRC’s (Financial Sector Legislative Reforms Commission) treatment of the failure of financial firms. The most important objective in designing a legal framework for dealing with firm failure is the need for speed.”

e 16. The pre-existing scenario has been noticed in some of our judgments:

f 16.1. In *Madhav Petrochem Ltd. v. BIFR*<sup>6</sup>, this Court found: (SCC pp. 37-38, paras 40 & 41)

g “46. ... The Bradi Committee Report relating to insolvency and winding up of companies dated 31-7-2000, observed that out of 3068 cases referred to BIFR from 1987 to 2000, all but 1062 cases have been disposed of. Out of the cases disposed of, 261 cases were revived, 375 cases were under negotiation for revival process, 741 cases were recommended for winding up, and 626 cases were dismissed as not maintainable. *These facts and figures speak for themselves and place a big question mark on the utility of the Sick Industrial Companies (Special Provisions) Act, 1985. The Committee further pointed out that effectiveness of the Sick Industrial Companies (Special Provisions) Act, 1985, as has been pointed out earlier, has been severely undermined by reason of the enormous delays involved in the disposal of cases by BIFR. (See Paras 3.8, 3.9 and 3.15 of the Report.) Consequently, the Committee recommended that the Sick Industrial Companies (Special Provisions) Act, 1985 be repealed and the*

h 6 (2016) 4 SCC 1 (2016) 2 SCC (C) 478



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*provisions thereunder for revival and rehabilitation should be telegraphed into the structure of the Companies Act, 1956 itself."*

42. ... In fact, another interesting document is the Report on 'Trend and Progress of Banking in India 2011-2012 for the year ended 30-6-2012 submitted by Reserve Bank of India to the Central Government in terms of Section 36(2) of the Banking Regulation Act, 1949. In Table IV.14 the Report provides statistics regarding trends in non-performing assets bank-wise, group-wise. As per the said Table, the opening balance of non-performing assets in public sector banks for the year 2011-2012 was Rs 746 billion but the closing balance for 2011-2012 was Rs 172 billion only. The total amount recovered through the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 during 2011-2012 registered a decline compared to the previous year, but, even then, the amounts recovered under the said Act constituted 70% of the total amount recovered. The amounts recovered under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 constituted only 28%. All this would go to show that the amounts that public sector banks and financial institutions have to recover are in staggering figures and at long last at least one statutory measure has proved to be of some efficacy. This Court would be loath to give such an interpretation as would thwart the recovery process under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 which Act alone seems to have worked to some extent at least." (emphasis supplied)

16.2. Similarly, in *Innovative Industries*<sup>6</sup>, this Court found: (SCC p. 422, para 13)

"12. One of the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the object of speeding up of the insolvency process. As per the data available with the World Bank in 2016, insolvency resolution in India took 4.3 years on an average, which was much higher when compared with the United Kingdom (1 year), USA (1.5 years) and South Africa (2 years). The World Bank's Ease of Doing Business Index, 2015, ranked India as country number 135 out of 190 countries on the ease of resolving insolvency based on various indicia."

16.3. Further, this Court in *Arcoform Mills*<sup>7</sup> observed: (SCC pp. 69 & 71, paras 65-66)

"65. Previous legislation, namely, the Sick Industrial Companies (Special Provisions) Act, 1985, and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, which made provision for rehabilitation of sick companies and repayment of loans availed by them,

<sup>6</sup> *Innovative Industries Ltd. v. IFCI Bank*, (2018) 1 SCC 407; (2018) 4 SCC (OT) 356.  
<sup>7</sup> *Arcoform Mills (P) Ltd. v. State Bank of India*, (2011) 10 SCC 1.

were found to have completely failed. This was taken note of by our judgment in *Madras Prisons Rem. Ltd. v. BIR*<sup>8</sup>....

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96. These two enactments were followed by the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002. As has been noted hereinabove, amounts recovered under the said Act recorded improvement over the previous two enactments, but this was yet found to be inadequate.<sup>9</sup>

b

**Judicial hands-off qua economic legislation**

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17. In the United States, at one point of time, Justice Stephen Field's dissents<sup>10</sup> of the 19th century were translated into majority opinions in the early 20th century. This was referred to as the *Lochner era*<sup>11</sup>, in which the U.S. Supreme Court, over a period of 40 years, consistently struck down legislation which was economic in nature as such legislation did not, according to the Court, square with property rights. As a result, a large number of minimum wage laws, maximum hours of work in factories laws, child labour laws, etc. were struck down. The result, as is well known, is that President Roosevelt initiated a court packing plan in which he sought to get authorisation from Congress to appoint additional Judges to the Supreme Court, who would have then overruled the *Lochner* line of precedents. As it turned out, that became unnecessary as Justice Roberts switched his vote so that a 5:4 majority from 1937 onwards upheld<sup>12</sup> economic legislation. It is important to note that the dissents of Justice Holmes and Justice Brandeis now became the law.

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18. Holmes, J. had, in his dissent in *Lochner v. New York*<sup>13</sup>, stated: (SCC OnLine US SC paras 48-49 ; US pp. 75-76)

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“48. This case is decided upon an economic theory which a large part of the country does not entertain. If it were a question whether I agreed with that theory, I should desire to study it further and long before making up my mind. But I do not conceive that to be my duty, because I strongly believe that my agreement or disagreement has nothing to do with the right of a majority to embody their opinions in law. It is settled by various decisions of this Court that State constitutions and State laws may regulate life in many ways which we, as legislators, might think as injudicious, or, if you like, as tyrannical, as this, and which, equally with this, interfere with the liberty to contract. Sunday laws and usury laws are ancient examples. A more modern one is the prohibition of lotteries. The liberty of the citizen to do as he likes so long as he does not interfere with the liberty of others to do the same, which has been a shibboleth for some

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<sup>8</sup> (2016) 4 SCC 1 ; (2016) 2 SCC (37) 478

<sup>10</sup> Ed: It appears that the reference is to the cases of *Adair v. Boyd*, 13:6 SCC OnLine US SC 1 : 2 : L Ed 77 : 61 US 113 (1877) and *Mugler v. Kansas*, 1887 SCC OnLine US SC 282 : 7 : L Ed 925 : 133 US 616 (1891)

<sup>11</sup> Ed: It appears that the reference is to *Lochner v. New York*, 1905 SCC OnLine US SC 100 : 49 : L Ed 937 : 198 US 45 (1905)

<sup>12</sup> Ed: It appears that the reference is to *West Coast Hotel Co. v. Parrish*, 1938 SCC OnLine US SC 58 : 811 : 62 707 : 300 US 370 (1937)

<sup>13</sup> 1905 SCC OnLine US SC 100 : 49 : L Ed 937 : 198 US 45 (1905)

well-known writers, is interfered with by school laws, by the post office, by every State or municipal institution which takes his money for purposes thought desirable, whether he likes it or not. The Fourteenth Amendment does not enact Mr Herbert Spencer's Social Statics. The other day, we sustained the Massachusetts vaccination law. *Jacobson v. Massachusetts*<sup>9</sup>. United States and State statutes and decisions cutting down the liberty to contract by way of combination are familiar to this Court. *Northern Securities Co. v. United States*<sup>11</sup>. Two years ago, we upheld the prohibition of sales of stock on margins or for future delivery, in the Constitution of California. *Ows v. Parker*<sup>12</sup>. The decision sustaining an eight hour law for miners is still recent. *Holden v. Hardy*<sup>13</sup>. Some of these laws embody convictions or prejudices which Judges are likely to share. Some may not. But a Constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the State or of laissez faire. It is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar or novel and even shocking ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States.

“19. General propositions do not decide concrete cases. The decision will depend on a judgment or intuition more subtle than any articulate major premise. But I think that the proposition just stated, if it is accepted, will carry us far toward the end. Every opinion tends to become a law. I think that the word liberty in the Fourteenth Amendment is perverted when it is held to prevent the natural outcome of a dominant opinion, unless it can be said that a rational and fair man necessarily would admit that the statute proposed would infringe fundamental principles as they have been understood by the traditions of our people and our law. It does not need research to show that no such sweeping condemnation can be passed upon the statute before us. A reasonable man might think it a proper measure on the score of health. Men whom I certainly could not pronounce unreasonable would uphold it as a first instalment of a general regulation of the hours of work. Whether in the latter aspect it would be open to the charge of inequality I think it unnecessary to discuss.”

19. Similarly, in *New State Ice Co. v. Liebmann*<sup>14</sup>, Brandeis, J. echoed Holmes, J. as follows: (SCC OnLine US SC paras 48-49 : US pp. 310-11)

“48. ... The discoveries in physical science, the triumphs in invention, attest the value of the process of trial and error. In large measure, these advances have been due to experimentation. In those fields experimentation has, for two centuries, been not only free but encouraged. Some people assert that our present plight is due, in part, to the limitations set by courts upon experimentation in the fields of social and economic science;

9 1905 SCC OnLine US SC 51 : 91, 131-133 : 197 US 11 (1905)  
10 1904 SCC OnLine US SC 53 : 48-1, 131-679 : 133 US 137 (1904)  
11 1905 SCC OnLine US SC 22 : 1 : 131-133 : 187 US 696 (1905)  
12 1898 SCC OnLine US SC 45 : 42-1, 131-789 : 159 US 356 (1898)  
13 1939 SCC OnLine US SC 53 : 76-1, 131-747 : 285 US 497 (1939)

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and to the discouragement to which proposals for betterment there have been subjected otherwise. There must be power in the States and the Nation to rebuild, through experimentation, our economic practices and institutions to meet changing social and economic needs. I cannot believe that the framers of the Fourteenth Amendment, or the States which ratified it, intended to deprive us of the power to correct the evils of technological unemployment and excess productive capacity which have attended progress in the useful arts.

49. To stave experimentation in things, social and economic, is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the nation. It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country. This Court has the power to prevent an experiment. We may strike down the statute which embodies it on the ground that, in our opinion, the measure is arbitrary, capricious or unreasonable. We have power to do this, because the due process clause has been held by the Court applicable to matters of substantive law as well as to matters of procedure. But in the exercise of this high power, we must be ever on our guard, lest we erect our prejudices into legal principles. If we would guide by the light of reason, we must let our minds be bold.<sup>15</sup>

20. The Lochner doctrine was finally buried in *Ferguson v. Skrupa*<sup>16</sup>, where the Supreme Court held: (SCC OnLine US SC paras 5-8; US pp. 728-33)

“5. Both the District Court in the present case and the Pennsylvania court in *Sims*<sup>16</sup> adopted the philosophy of *Adams v. Farmer*<sup>17</sup>, and cases like it, that it is the province of courts to draw on their own views as to the morality, legitimacy, and usefulness of a particular business in order to decide whether a statute bears too heavily upon that business and, by so doing, violates due process. Under the system of Government created by our Constitution, it is up to legislatures, not courts, to decide on the wisdom and utility of legislation. There was a time when the Due Process Clause was used by this Court to strike down laws which were thought unreasonable, that is, unwise or incompatible with some particular economic or social philosophy. In this manner, the Due Process Clause was used, for example, to nullify laws prescribing maximum hours for work in bakeries, *Lochner v. New York*<sup>18</sup>, outlawing “yellow dog” contracts, *Coppage v. Kansas*<sup>19</sup>, setting minimum wages for women, *Adkins v. Children’s Hospital*<sup>20</sup>, and fixing the weight of loaves of bread, *Jay Burns Baking Co. v. Bryan*<sup>21</sup>. This intrusion by the judiciary into the realm of legislative value judgments was strongly objected to at the time,

<sup>15</sup> 1963 SCC OnLine US SC 77: 161, 151, 21, 90; 372 US 726 (1963).

<sup>16</sup> *Cassowary v. Sims*, 31 Pa Super 117, 155 A 2d 451 (1959).

<sup>17</sup> 1917 SCC OnLine US SC 108: 67 L Ed 1336; 241 US 590 (1917).

<sup>18</sup> 1905 SCC OnLine US SC 190: 49 L Ed 537; 198 US 45 (1905).

<sup>19</sup> 1915 SCC OnLine US SC 20: 59 L Ed 111; 226 US 1 (1915).

<sup>20</sup> 1923 SCC OnLine US SC 103: 67 L Ed 785; 261 US 525 (1923).

<sup>21</sup> 1934 SCC OnLine US SC 89: 88 L Ed 813; 364 US 504 (1934).

particularly by Mr Justice Holmes and Mr Justice Brandeis. Dissenting from the Court's invalidating a State statute which regulated the resale price of theatre and other tickets, Mr Justice Holmes said.

"I think the proper course is to recognize that a State Legislature can do whatever it sees fit to do unless it is restrained by some express prohibition in the Constitution of the United States or of the State, and that courts should be careful not to extend such prohibitions beyond their obvious meaning by reading into them conceptions of public policy that the particular court may happen to entertain.

And, in an earlier case, he had emphasized that, "The criterion of constitutionality is not whether we believe the law to be for the public good" [*Adkins v. Children's Hospital*<sup>19</sup>, US at pp. 567 and 570 (dissenting opinion)].

6. The doctrine that prevailed in *Lochner*<sup>20</sup>, *Cappage*<sup>18</sup>, *Adkins*<sup>19</sup>, *Barks*<sup>21</sup>, and like cases—that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded. We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws. As this Court stated in a unanimous opinion in 1941, "We are not concerned ... with the wisdom, need, or appropriateness of the legislation. [*Olsen v. Nebraska*<sup>21</sup>, US at p. 246]" Legislative bodies have broad scope to experiment with economic problems, and this Court does not sit to "subject the State to an intolerable supervision hostile to the basic principles of our Government and wholly beyond the protection which the general clause of the Fourteenth Amendment was intended to secure" [*Sprengle v. Balford*<sup>22</sup>]. It is now settled that States "have power to legislate against what are found to be injurious practices in their internal commercial and business affairs, so long as their laws do not run afoul of some specific federal constitutional prohibition, or of some valid federal law" [*Lincoln Federal Labor Union v. Northwestern Iron and Metal Co.*<sup>23</sup>, US at p. 536].

7. In the face of our abandonment of the use of the "vague contours" [*Adkins v. Children's Hospital*<sup>19</sup>, US at p. 535] of the Due Process Clause to nullify laws which a majority of the Court believed to be economically unwise, reliance on *Adams v. Turner*<sup>7</sup> is as mistaken as would be adherence to *Adkins v. Children's Hospital*<sup>19</sup>, overruled by *West Coast Hotel Co. v. Parrish*<sup>2</sup>. Not only has the philosophy of Adams been abandoned, but also this Court, almost 15 years ago, expressly pointed

<sup>7</sup> 1923 SCC OnLine US SC 105 : 67 L. Ed. 785 : 261 US 525 (1923)

<sup>8</sup> *Lochner v. New York*, 1905 SCC OnLine US SC 130 : 19 L. Ed. 957 : 198 US 45 (1905)

<sup>18</sup> *Crypage v. Kansas*, 1915 SCC OnLine US SC 30 : 59 L. Ed. 1-1 : 236 US 1 (1915)

<sup>19</sup> *Adkins v. Children's Hospital*, 1917 SCC OnLine US SC 89 : 68 L. Ed. 9-1 : 262 US 516 (1924)

<sup>21</sup> 1941 SCC OnLine US SC 59 : 85 L. Ed. 705 : 317 US 236 (1941)

<sup>22</sup> 1932 SCC OnLine US SC 1-2 : 76 L. Ed. 1187 : 286 US 374 (1932)

<sup>23</sup> 1949 SCC OnLine US SC 2-3 : 93 L. Ed. 2-3 : 335 US 225 (1951)

<sup>7</sup> 1917 SCC OnLine US SC 168 : 67 L. Ed. 1376 : 244 US 520 (1917)

<sup>24</sup> 1937 SCC OnLine US SC 58 : 81 L. Ed. 703 : 320 US 359 (1937)

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to another opinion of this Court as having “clearly undermined” Adams. [*Lincoln Federal Labor Union v. Northwestern Iron and Metal Co.*<sup>23</sup>]. We conclude that the Kansas Legislature was free to decide for itself that legislation was needed to deal with the business of debt adjusting. Unquestionably, there are arguments showing that the business of debt adjusting has social utility, but such arguments are properly addressed to the legislature, not to us. We refuse to sit as a “superlegislature to weigh the wisdom of legislation.” [*Day-Brite Lighting Inc. v. Missouri*<sup>24</sup>, 352 U.S. at p. 423] and we emphatically refuse to go back to the time when courts used the Due Process Clause “to strike down State laws, regulatory of business and industrial conditions, because they may be unwise, impudent, or out of harmony with a particular school of thought” [*Williamson v. Lee Optical of Oklahoma*<sup>25</sup>, 350 U.S. at p. 498]. Not are we able or willing to draw lines by calling a law “prohibitory” or “regulatory”. Whether the legislature takes for its textbook Adam Smith, Herbert Spencer, Lord Keynes, or some other is no concern of ours. The Kansas debt adjusting statute may be wise or unwise. But relief, if any be needed, lies not with us, but with the body constituted to pass laws for the State of Kansas.

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8. Nor is the statute’s exception of lawyers a denial of equal protection of the laws to non-lawyers. Statutes create many classifications which do not deny equal protection; it is only “invidious discrimination” which offends the Constitution. The business of debt adjusting gives rise to a relationship of trust in which the debt adjuster will, in a situation of insolvency, be marshalling assets in the manner of a proceeding in bankruptcy. The debt adjuster’s client may need advice as to the legality of the various claims against him, remedies existing under State laws governing debtor-creditor relationships, or provisions of the Bankruptcy Act—advice which a non-lawyer cannot lawfully give him. If the State of Kansas wants to limit debt adjusting to lawyers, the Equal Protection Clause does not forbid it. We also find no merit in the contention that the Fourteenth Amendment is violated by the failure of the Kansas statute’s title to be as specific as appellee thinks it ought to be under the Kansas Constitution.<sup>26</sup> (emphasis supplied)

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21. In this country, this Court in *R.K. Garg v. Union of India*<sup>27</sup> has held: (SCC pp. 690-91 & 705-06, paras 8 & 19)

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“8. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. It has been said by no less a person than Holmes, J., that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or straitjacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt

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23 1940 SCC Online US SC 2 : 931, 142 L. Ed. 2 : 335 US 525 (1946)  
24 1952 SCJ Online US SC 29 : 96 L. Ed. 189 : 312 US 121 (1952)  
25 1955 SCC Online US SC 20 : 99 L. Ed. 553 : 348 US 483 (1955)  
26 (1998) 14 SCC 675 (1993) SCC (Tax) 30

with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in *Mayer v. Dowd*<sup>28</sup> where Frankfurter, J. said in his inimitable style:

‘In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the Judges have been overruled by events — self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.’

The Court must always remember that ‘legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry’; ‘that exact wisdom and nice adaption of remedy are not always possible’ and that ‘judgment is largely a prophecy based on mature and uninterpreted experience’. *Every legislation, particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that an court alone it cannot be struck down as invalid.* The courts cannot, as pointed out by the United States Supreme Court in *Secy. of Agriculture v. Central Rtg. Refining Co.*<sup>29</sup> be converted into tribunals for relief from such crudities and inequities. There may even be possibilities of abuse, but that too cannot of itself be a ground for invalidating the legislation, because it is not possible for any legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation which may be made by those subject to its provisions and to provide against such distortions and abuses. Indeed, howsoever great may be the care bestowed on its framing, it is difficult to conceive of a legislation which is not capable of being abused by perverted human ingenuity. *The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions.* If any crudities, inequities or possibilities of abuse come to light, the legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues.

<sup>28</sup> 1957 SCC (2d) 111; 155 US 503; 111 LEd 2d 485; 354 US 457 (1957)

<sup>29</sup> 1950 SCC (2d) 16; 175 SC 14; 94L Ed 391; 138 LS 624 (1950)

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a It is true that certain immunities and exemptions are granted to persons investing their unaccounted money in purchase of Special Bearer Bonds but that is an inducement which has to be offered for unearthing black money. Those who have successfully evaded taxation and concealed their income or wealth despite the stringent tax laws and the efforts of the Tax Department, are not likely to disclose their unaccounted money without some inducement by way of immunities and exemptions and it must necessarily be left to the legislature to decide what immunities and exemptions would be sufficient for the purpose. It would be outside the province of the Court to consider if any particular immunity or exemption is necessary or not for the purpose of inducing disclosure of black money. That would depend upon diverse fiscal and economic considerations based on practical necessity and administrative expediency and would also involve a certain amount of experimentation on which the Court would be least fitted to pronounce. The Court would not have the necessary competence and expertise to adjudicate upon such an economic issue. The Court cannot possibly assess or evaluate what would be the impact of a particular immunity or exemption and whether it would serve the purpose in view or not. There are so many imponderables that would enter into the determination that it would be wise for the Court not to hazard an opinion where even economists may differ. The Court must while examining the constitutional validity of a legislation of this kind, "be resilient, not rigid, forward looking, not static, liberal, not verbal" and the Court must always bear in mind the constitutional proposition enunciated by the Supreme Court of the United States in *Morse v. Illinois*<sup>30</sup>, namely, 'that courts do not substitute their social and economic beliefs for the judgment of legislative bodies'. *The Court must defer to legislative judgment in matters relating to social and economic policies and must not interfere, unless the exercise of legislative judgment appears to be palpably arbitrary.* The Court should constantly remind itself of what the Supreme Court of the United States said in *Metropolis Theater Co. v. City of Chicago*<sup>31</sup>. (SCC Online US SC para 12)

f 12. ... The problems of government are practical ones and may justify, if they do not require, rough accommodations. Illogical it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not always discernible, the wisdom of any choice may be disputed or condemned. Mere error of Government are not subject to our judicial review.

g It is true that one or the other of the immunities or exemptions granted under the provisions of the Act may be taken advantage of by resourceful persons by adopting ingenious methods and devices with a view to avoiding or saving tax. But that cannot be helped because human ingenuity is so great when it comes to tax avoidance that it would be almost impossible to

h <sup>30</sup> 1876 SCC Online US SC 4 : 2-1, 1877 : 94 US : 13 (1877)  
<sup>31</sup> 1913 SCC Online US SC 103 : 57 L.Ed. 791 : 299 F.S. 1191 (3)



fraud tax legislation which cannot be abused. Moreover, as already pointed out above, the trial and error method is inherent in every legislative effort to deal with an obstinate social or economic issue and if it is found that any immunity or exemption granted under the Act is being utilised for tax evasion or avoidance not intended by the legislature, the Act can always be amended and the abuse terminated. We are accordingly of the view that none of the provisions of the Act is violative of Article 14 and its constitutional validity must be upheld." (emphasis supplied)

22. Likewise, in *Bhavesh D. Parish v. Union of India*<sup>22</sup>, this Court held: (SCC pp. 486 & 487, paras 26 & 30)

"26. The services rendered by certain informal sectors of the Indian economy could not be belittled. However, in the path of economic progress, if the informal system was sought to be replaced by a more organised system, capable of better regulation and discipline, then this was an economic philosophy reflected by the legislation in question. Such a philosophy might have its merits and demerits. But these were matters of economic policy. They are best left to the wisdom of the legislature and in policy matters the accepted principle is that the courts should not interfere. Moreover in the context of the changed economic scenario the expertise of people dealing with the subject should not be lightly interferred with. The consequences of such interdiction can have large-scale ramifications and can put the clock back for a number of years. The process of rationalisation of the infirmities in the economy can be put in serious jeopardy and, therefore, it is necessary that while dealing with economic legislations, this Court, while not jettisoning its jurisdiction to curb arbitrary action or unconstitutional legislation, should interfere only in those few cases where the view reflected in the legislation is not possible to be taken at all.

36. Before we conclude there is another matter which we must advert to. It has been brought to our notice that Section 45-S of the Act has been challenged in various High Courts and a few of them have granted the stay of provisions of Section 45-S. When considering an application for staying the operation of a piece of legislation, and that too pertaining to economic reform or change, then the courts must bear in mind that unless the provision is manifestly unjust or glaringly unconstitutional, the courts must show judicial restraint in staying the applicability of the same. Merely because a statute comes up for examination and some arguable point is raised, which persuades the courts to consider the controversy, the legislative will should not normally be put under suspension pending such consideration. It is now well settled that there is always a presumption in favour of the constitutional validity of any legislation, unless the same is set aside after final hearing and, therefore, the tendency to grant stay of legislation relating to economic reform, at the interim stage, cannot be understood. *The system of checks and balances has to be utilised in a balanced manner with the primary objective of accelerating economic*

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growth rather than suspending its growth by doubting its constitutional  
efficiency at the threshold itself." (emphasis supplied)

a 23. In *Directorate General of Foreign Trade v. Karnik Exports*<sup>52</sup>, this Court  
has held: (SCC p. 203, para 109)

b "109. Therefore, it cannot be denied that the Government has a right to  
amend, modify or even rescind a particular scheme. It is well settled that  
in complex economic matters every decision is necessarily empiric and it  
is based on experimentation or what one may call trial and error method  
and therefore, its validity cannot be tested on any rigid prior considerations  
or on the application of any straitjacket formula. In *BALCO Employees'  
Union v. Union of India*<sup>53</sup>, the Supreme Court held that laws, including  
executive action relating to economic activities should be viewed with  
greater latitude than laws touching civil rights such as freedom of speech,  
religion, etc. that the legislature should be allowed some play in the joints  
because it has to deal with complex problems which do not admit of  
solution through any doctrine or straitjacket formula and this is particularly  
true in case of legislation dealing with economic matters, where having  
regard to the nature of the problems greater latitude require to be allowed  
to the legislature."

d 24. It is with this background, factual and legal, that the constitutional  
validity of the Insolvency and Bankruptcy Code, 2016 has to be viewed.

*The raison d'être for the Insolvency and Bankruptcy Code*

25. The Statement of Objects and Reasons for the Code have been referred  
to in *Innovative Industries*<sup>54</sup> which states: (SCC pp. 421-22, para 12)

e "12. ... The Statement of Objects and Reasons of the Code reads as  
under:

f "Statement of Objects and Reasons.—There is no single law in  
India that deals with insolvency and bankruptcy. Provisions relating to  
insolvency and bankruptcy for companies can be found in the Sick  
Industrial Companies (Special Provisions) Act, 1985, the Recovery  
of Debts Due to Banks and Financial Institutions Act, 1993, the  
Securitisation and Reconstruction of Financial Assets and Enforcement of  
Security Interest Act, 2002 and the Companies Act, 2013. These statutes  
provide for creation of multiple fora such as Board of Industrial and  
Financial Reconstruction (BIFR), Debts Recovery Tribunal (DRT) and  
National Company Law Tribunal (NCLT) and their respective Appellate  
Tribunals. Liquidation of companies is handled by the High Courts.  
g Individual bankruptcy and insolvency is dealt with under the Presidency  
Towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1930  
and is dealt with by the courts. *The existing framework for insolvency  
and bankruptcy is inadequate, ineffective and results in undue delays in  
resolution, therefore, the proposed legislation.*

h 52 (2016) 1 SCC 236

53 (2002) 2 SCC 333

54 *Innovative Industries (2d v. Union Bank)*, (2018) 1 SCC 407; (2018) 4 SCC (OT) 356

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2. The objective of the Insolvency and Bankruptcy Code, 2016 is to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the priority of payment of government dues and to establish an Insolvency and Bankruptcy Fund, and matters connected therewith or incidental thereto. An effective legal framework for timely resolution of insolvency and bankruptcy would support development of credit markets and encourage entrepreneurship. It would also improve Ease of Doing Business, and facilitate more investments leading to higher economic growth and development.

3. The Code seeks to provide for designating NCLT and DRT as the adjudicating authorities for corporate persons and firms and individuals, respectively, for resolution of insolvency, liquidation and bankruptcy. The Code separates commercial aspects of insolvency and bankruptcy proceedings from judicial aspects. The Code also seeks to provide for establishment of the Insolvency and Bankruptcy Board of India (Board) for regulation of insolvency professionals, insolvency professional agencies and information utilities. Till the Board is established, the Central Government shall exercise all powers of the Board or designate any financial sector regulator to exercise the powers and functions of the Board. Insolvency professionals will assist in completion of insolvency resolution, liquidation and bankruptcy proceedings envisaged in the Code. Information Utilities would collect, collate, authenticate and disseminate financial information to facilitate such proceedings. The Code also proposes to establish a fund to be called the Insolvency and Bankruptcy Fund of India for the purposes specified in the Code.

4. The Code seeks to provide for amendments in the Indian Partnership Act, 1932, the Central Excise Act, 1944, Customs Act, 1962, the Income Tax Act, 1961, the Recovery of Dues Due to Banks and Financial Institutions Act, 1993, the Finance Act, 1994, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Sick Industrial Companies (Special Provisions) Repeal Act, 2003, the Payment and Settlement Systems Act, 2007, the Limited Liability Partnership Act, 2008, and the Companies Act, 2013.

5. The Code seeks to achieve the above objectives.” (emphasis in original)

26. The Preamble of the Code states as follows:

“An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto.”

27. As is discernible, the Preamble gives an insight into what is sought to be achieved by the Code. The Code is first and foremost, a Code for reorganisation and insolvency resolution of corporate debtors. Unless such reorganisation is effected in a time-bound manner, the value of the assets of such persons will deplete. Therefore, maximisation of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. This, in turn, will promote entrepreneurship as the persons in management of the corporate debtor are removed and replaced by entrepreneurs. When, therefore, a resolution plan takes off and the corporate debtor is brought back into the economic mainstream, it is able to repay its debts, which, in turn, enhances the viability of credit in the hands of banks and financial institutions. Above all, ultimately, the interests of all stakeholders are looked after as the corporate debtor itself becomes a beneficiary of the resolution scheme—workers are paid, the creditors in the long run will be repaid in full, and shareholders/investors are able to maximise their investment. Timely resolution of a corporate debtor who is in the red, by an effective legal framework, would go a long way to support the development of credit markets. Since more investment can be made with funds that have come back into the economy, business then eases up, which leads, overall, to higher economic growth and development of the Indian economy. What is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark. Even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern. (See *AccelordMetal*<sup>1</sup> at para 83, fn 31.)

28. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters/those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends.

g *Appointment of members of NCLT and NCLAT not contrary to this Court's judgments*

29. Shri Rohargi has argued that contrary to the judgments in *Madras Bar Assn. (I)*<sup>2</sup> and *Madras Bar Assn. (3)*<sup>3</sup>, Section 41(2) of the Companies

h <sup>1</sup> *AccelordMetal (India) (P) Ltd. v. British Metals Group*, (2018) 2 SCC 1

<sup>2</sup> *Union of India v. Madras Bar Assn.*, (2010) 1 SCC

<sup>3</sup> *Madras Bar Assn. v. Union of India*, (2015) 8 SCC 581

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Act, 2013 continued on the statute book, as a result of which, the two judicial members of the Selection Committee get outweighed by three bureaucrats.

30. On 3-1-2018, the Companies Amendment Act, 2017 was brought into force by which Section 412 of the Companies Act, 2013 was amended as follows:

**“412. Selection of Members of Tribunal and Appellate Tribunal**  
(1)

(2) The Members of the Tribunal and the Technical Members of the Appellate Tribunal shall be appointed on the recommendation of a Selection Committee consisting of

- (a) Chief Justice of India or his nominee— Chairperson;
- (b) a Senior Judge of the Supreme Court or Chief Justice of High Court— Member;
- (c) Secretary in the Ministry of Corporate Affairs— Member; and
- (d) Secretary in the Ministry of Law and Justice—Member.

(2-A) Where in a meeting of the Selection Committee, there is equality of votes on any matter, the Chairperson shall have a casting vote.”

31. This was brought into force by a Notification dated 9-2-2018. However, an additional affidavit has been filed during the course of these proceedings by the Union of India. This affidavit is filed by one Dr Raj Singh, Regional Director (Northern Region) of the Ministry of Corporate Affairs. This affidavit makes it clear that, acting in compliance with the directions of the Supreme Court in the aforesaid judgments, a Selection Committee was constituted to make appointments of Members of NCLT in the year 2015 itself. Thus, by an order dated 27-7-2015, (a) Justice Gogoi (as he then was), (b) Justice Ramana, (c) Secretary, Department of Legal Affairs, Ministry of Law and Justice, and (d) Secretary, Corporate Affairs, were constituted as the Selection Committee. This Selection Committee was reconstituted on 22-2-2017 to make further appointments. In compliance of the directions of this Court, advertisements dated 10-8-2015 were issued inviting applications for Judicial and Technical Members as a result of which, all the present Members of NCLT and NCLAT have been appointed. This being the case, we need not detain ourselves any further with regard to the first submission of Shri Rohatgi.

***NCLAT Bench only at Delhi***

32. It has been argued by Shri Rohatgi that as per our judgment in *Madras Bar Assn. (2)*<sup>2</sup>, para 123 states as follows: (SCC p. 212)

“123. We shall first examine the validity of Section 5 of the NTT Act. The basis of challenge to the above provision has already been narrated by us while dealing with the submissions advanced on behalf of the petitioners with reference to the fourth contention. According to the learned counsel for the petitioners, Section 5(2) of the NTT Act mandates that NTT would ordinarily have its sittings in the National Capital Territory of Delhi. According to the petitioners, the aforesaid mandate would deprive

<sup>2</sup> *Madras Bar Assn. v. Union of India*, (2014) 10 SCC

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a the litigating assessee the convenience of approaching the jurisdictional High Court in the State to which he belongs. An assessee may belong to a distant/remote State, in which eventuality, he would not merely have to suffer the hardship of travelling a long distance, but such travel would also entail uncalled for financial expense. Likewise, a litigant assessee from a far-flung State may find it extremely difficult and inconvenient to identify an advocate who would represent him before NIT, since the same is mandated to be ordinarily located in the National Capital Territory of Delhi.

b Even though we have expressed the view that it is open to Parliament to substitute the appellate jurisdiction vested in the jurisdictional High Courts and constitute courts/tribunals to exercise the said jurisdiction, we are of the view that while vesting jurisdiction in an alternative court/tribunal, it is imperative for the legislature to ensure that redress should be available with the same convenience and expediency as it was prior to the introduction of the newly created court/tribunal. *This viewed, the mandate incorporated in Section 5(2) of the NTT Act to the effect that the sittings of NTT would ordinarily be conducted in the National Capital Territory of Delhi, would render the remedy inefficient, and thus unacceptable in law. The instant aspect of the matter was considered by this Court with reference to the Administrative Tribunals Act, 1985 in S.P. Sanghvi Kumar case<sup>35</sup> and L. Chandra Kumar case<sup>36</sup>, wherein it was held that permanent Benches needed to be established at the seat of every jurisdictional High Court. And if that was not possible, at least a Circuit Bench required to be established at every place where an aggrieved party could avail of his remedy. The position on the above issue is no different in the present controversy. For the above reason, Section 5(?) of the NTT Act is in clear breach of the law declared by this Court.* (emphasis supplied)

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e 33. The learned Attorney General has assured us that this judgment will be followed and Circuit Benches will be established as soon as it is practicable. In this view of the matter, we record this submission and direct the Union of India to set up Circuit Benches of NCIAT within a period of 6 months from today.

*The Tribunals are functioning under the wrong Ministry*

f 34. Shri Mukul Rohargi argued that in *Machys Bar Assn. (I)*<sup>37</sup>, para 130(i) specifically reads as follows: (SCC pp. 65-66)

“120. We may tabulate the corrections required to set right the defects in Parts I B and I C of the Act:

\* \* \*

g (vi) The administrative support for all Tribunals should be from the Ministry of Law and Justice. Neither the Tribunals nor their members shall seek or be provided with facilities from the respective sponsoring or parent Ministries or Department concerned.”

h 35. *S.P. Sanghvi Kumar v. Union of India*, (1993) 1 SCC 124  
36. *L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261; (1997) SCC (1) 261; 377  
37. *Union of India v. Machys Bar Assn.*, (2001) 1 SCC

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Even though eight years have passed since the date of this judgment, the administrative support for these tribunals continues to be from the Ministry of Corporate Affairs. This needs to be rectified at the earliest.

35. However, the learned Attorney General pointed out Article 77(3) of the Constitution of India and *Delhi International Airport Ltd. v. International Lease Finance Corp.*<sup>37</sup>, which state that once rules of business are allocated among various Ministries, such allocation is mandatory in nature. According to him, therefore, the rules of business, having allocated matters which arise under the Insolvency Code to the Ministry of Corporate Affairs, are mandatory in nature and have to be followed.

36. It is obvious that the rules of business, being mandatory in nature, and having to be followed, are to be so followed by the executive branch of the Government. As far as we are concerned, we are bound by the Constitution Bench judgment in *Madras Bar Assn. (I)*<sup>38</sup>. This statement of the law has been made eight years ago. It is high time that the Union of India follow, both in letter and spirit, the judgment of this Court.

*Classification between financial creditor and operational creditor neither discriminatory, nor arbitrary, nor violative of Article 14 of the Constitution of India*

37. The tests for violation of Article 14 of the Constitution of India, when legislation is challenged as being violative of the principle of equality, have been settled by this Court time and again. Since equality is only among equals, no discrimination results if the Court can be shown that there is an intelligible differentia which separates two kinds of creditors so long as there is some rational relation between the creditors so differentiated, with the object sought to be achieved by the legislation. This aspect of Article 14 has been laid down in judgments too numerous to cite, from the very inception.

38. Another development of the law is that legislation can be struck down as being manifestly arbitrary. This has been laid down by the recent Constitution Bench decision in *S.S. Rayan Bisco*<sup>39</sup> as follows: (SCC pp. 95-99, paras 45-97 & 100-01)

"35. On a reading of this judgment in *Natural Resources Allocation case*<sup>38</sup>, it is clear that this Court did not read *McDowell*<sup>39</sup> as being an authority for the proposition that legislation can never be struck down as being arbitrary. Indeed the Court, after referring to all the earlier judgments, and *Ajay Hazare*<sup>40</sup> in particular, which stated that legislation can be struck down on the ground that it is "arbitrary" under Article 14, went on to conclude that "arbitrariness" when applied to legislation cannot be used loosely. Instead, it broad based the test, stating that if a constitutional infirmity is found, Article 14 will interdict such infirmity.

37 (1915) 8 SCC 446

38 *Union of India v. Madras Bar Assn.*, (27) 01 1 SCC 1

39 *Singara Bisco v. Union of India*, (2017) 9 SCC 1; (2017) 4 SCC 106; 277

38 *Natural Resources Allocation, In re*, Special Reference No. 1 of 2012, 125-21 13 SCC 1

39 *State of A.P. v. McDowell & Co.*, (1996) 3 SCC 709

40 *Ajay Hazare v. Khabra Group School/Inst.*, (1981) 11 SCC 733; (1981) 5 SCC 118; 158

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a And a constitutional infirmity is found in Article 14 itself whenever legislation is “manifestly arbitrary” i.e. when it is not fair, not reasonable, discriminatory, not transparent, capricious, biased, with favouritism or nepotism and not in pursuit of promotion of healthy competition and equitable treatment. Positively speaking, it should conform to norms which are rational, informed with reason and guided by public interest, etc.

b 96. Another Constitution Bench decision in *Subramanian Swamy v. CBI*<sup>11</sup> dealt with a challenge to Section 6-A of the Delhi Special Police Establishment Act, 1946. This section was ultimately struck down as being discriminatory and hence violative of Article 14. A specific reference had been made to the Constitution Bench by the reference order in *Subramanian Swamy v. CBI*<sup>12</sup> and after referring to several judgments including *Ajay Hasia*<sup>13</sup>, *Mardia Chemicals*<sup>14</sup>, *Majee Vahanvanti Acharya*<sup>15</sup> and *McDowell*<sup>16</sup>, the reference, inter alia, was as to whether arbitrariness and unreasonableness, being facets of Article 14, are or are not available as grounds to invalidate a legislation.

c 97. After referring to the submissions of the counsel, and several judgments on the discrimination aspect of Article 14, this Court held: (*Subramanian Swamy case*<sup>17</sup>, SCC pp 721-22, paras 48-49)

d “48. In *E.P. Royappa*<sup>18</sup>, it has been held by this Court that the basic principle which informs both Articles 14 and 16 are equality and inhibition against discrimination. This Court observed in para 85 as under: (SCC p. 38)

e “85. ... From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.”

f *Court's approach is*

g “49. Where there is challenge to the constitutional validity of a law enacted by the legislature, the Court must keep in view that there is always a presumption of constitutionality of an enactment, and a clear transgression of constitutional principles must be shown. The fundamental nature and importance of the legislative process needs

11 (2011) 8 SCC 682; (2011) 6 SCC (Cr.) - 2; (2011) 3 SCC (L&S) 30

12 (2025) 2 SCC 317; (2025) SCC (L&S) 241

13 *Ajay Hasia v. Kishori Mohan Subramani*, (1987) 1 SCC 722; 1981 SCC (L&S) 258

14 *Mardia Chemicals Ltd. v. Union of India*, (2004) 4 SCC 311

15 *Majee Vahanvanti Acharya v. State of Maharashtra*, (1998) 2 SCC 1

16 *State of A.P. v. McDowell & Co.*, (1996) 3 SCC 709

17 *E.P. Royappa v. State of Madhya Pradesh*, (1974) 4 SCC 1; 1974 SCIT (L&S) 55



to be recognised by the Court and due regard and deference must be accorded to the legislative process. Where the legislation is sought to be challenged as being unconstitutional and violative of Article 14 of the Constitution, the Court must remind itself to the principles relating to the applicability of Article 14 in relation to invalidation of legislation. The two dimensions of Article 14 in its application to legislation and rendering legislation invalid are now well recognised and these are: (i) discrimination, based on an impermissible or invalid classification, and (ii) excessive delegation of powers: conferment of uncanalised and unguided powers on the executive, whether in the form of delegated legislation or by way of conferment of authority to pass administrative orders – if such conferment is without any guidance, control or checks, it is violative of Article 14 of the Constitution. The Court also needs to be mindful that a legislation does not become unconstitutional merely because there is another view or because another method may be considered to be as good or even more effective, like any issue of social, or even economic policy. It is well settled that the courts do not substitute their views on what the policy is.

160. To complete the picture, it is important to note that subordinate legislation can be struck down on the ground that it is arbitrary and, therefore, violative of Article 14 of the Constitution. In *COAI v. TRAI*<sup>46</sup>, this Court referred to earlier precedents, and held: (SCC pp. 736-37, paras 42-44)

*Violation of fundamental rights*

42. We have already seen that one of the tests for challenging the constitutionality of subordinate legislation is that subordinate legislation should not be manifestly arbitrary. Also, it is settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. [See *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*<sup>47</sup>, SCC at p. 689, para 75.]

43. The test of “manifest arbitrariness” is well explained in two judgments of this Court. In *Khaday Distilleries Ltd. v. State of Karnataka*<sup>48</sup>, this Court held: (SCC p. 314, para 13)

“13. It is next submitted before us that the amended Rules are arbitrary, unreasonable and cause undue hardship and, therefore, violate Article 14 of the Constitution. Although the protection of Article 19(1)(g) may not be available to the appellants, the Rules must, undoubtedly, satisfy the test of Article 14, which is a guarantee against arbitrary action. However, one must bear in mind that what is being challenged here under Article 14 is not executive action but delegated legislation. *The tests of arbitrary*

16 (2016) 1 SCC 75

47 (1985) 1 SCC 64 : 1985 SCC (Tax) 121

48 (1986) 10 SCC 304

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tion which it apply to executive actions do not necessarily apply to delegated legislation. In order that delegated legislation can be struck down, such legislation must be manifestly arbitrary: a law which could not be reasonably expected to emanate from an authority delegated with the law-making power. In *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*<sup>47</sup>, this Court said that a piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. A subordinate legislation may be questioned under Article 14 on the ground that it is unreasonable; 'unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary'. Drawing a comparison between the law in England and in India, the Court further observed that in England the Judges would say, 'Parliament never intended the authority to make such rules: they are unreasonable and ultra vires'. In India, arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. But subordinate legislation must be so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution.<sup>48</sup>

<sup>44</sup> Also, in *Sharma Transport v. State of A.P.*<sup>49</sup>, this Court held: (SCC pp. 203-04, para 25)

<sup>45</sup> ... The tests of arbitrary action applicable to executive action do not necessarily apply to delegated legislation. In order to strike down a delegated legislation as arbitrary it has to be established that there is manifest arbitrariness. In order to be described as arbitrary, it must be shown that it was not reasonable and manifestly arbitrary. The expression "arbitrarily" means in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non rational, not done or acting according to reason or judgment, depending on the will alone." (emphasis in original)

<sup>46</sup> It will be noticed that a Constitution Bench of this Court in *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*<sup>47</sup> stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We

<sup>47</sup> (1985) 1 SCC 64 : 1985 SCC (Tax) 121  
<sup>48</sup> (1987) 2 SCC 188

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are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14.”

This judgment has since been followed in *Gopal Jha v. Supreme Court of India*<sup>50</sup> (at para 27); *Indian Young Lawyers Assn. v. State of Kerala*<sup>51</sup>; *Joseph Shine v. Union of India*<sup>52</sup> (at paras 103, 164, 166); *K.S. Puttaswamy (Abdhar-5 J.) v. Union of India*<sup>53</sup> (at paras 104, 105, 474, 911, 1418-20); *Naveen Singh Johar v. Union of India*<sup>54</sup> (at paras 353, 353, 411, 637-9); *Lok Prabhu v. State of H.P.*<sup>55</sup> (at para 35); and *Nikesh Taru Ram Shah v. Union of India*<sup>56</sup> (at para 24).

39. Sections 5(7) and 5(8) of the Code define “financial creditor” and “financial debt” as follows:

“5. *Definitions*—In this Part, unless the context otherwise requires

(7) “**financial creditor**” means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;

(8) “**financial debt**” means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes

(a) money borrowed against the payment of interest;

(b) any amount raised by acceptance under any acceptance credit facility or its dematerialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on non-recourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

*Explanation.*—For the purposes of this sub-clause—

50 (2019) 13 SCC 161; (2018) SCC Online SC 2197

51 (2018) SCC Online SC 561

52 (2019) 2 SCC 38

53 (2019) 1 SCC 1

54 (2018) 10 SCC 1; (2019) 1 SCC (35) 1

55 (2018) 5 SCC 1; (2018) 3 SCC (Civil) 389; (2018) 3 SCC (Civil) 73; (2018) 2 SCC (Civil) 52

56 (2018) 1 SCC 1; (2018) 3 SCC (Civil) 90

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a (i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (e) of Section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

b (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

c (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;"

40. Section 5(20) defines "operational creditor" as follows:

d "5. *Definitions.*—In this Part, unless the context otherwise requires—

(20) "operational creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;"

e 41. Section 7 of the Code states:

f "7. *Initiation of corporate insolvency resolution process by financial creditor.* (1) A financial creditor either by itself or jointly with other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government, may file an application for initiating corporate insolvency resolution process against a corporate debtor before the adjudicating authority when a default has occurred.

*Explanation.* For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

g (3) The financial creditor shall, along with the application furnish

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

h (c) any other information as may be specified by the Board.

(4) The adjudicating authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from

the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

(5) Where the adjudicating authority is satisfied that

(a) a default has occurred and the application under sub-section (3) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application: or

(b) default has not occurred or the application under sub-section (3) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the adjudicating authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the adjudicating authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The adjudicating authority shall communicate

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;

(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be."

42. A perusal of the definition of "financial creditor" and "financial debt" makes it clear that a financial debt is a debt together with interest, if any, which is disbursed against the consideration for time value of money. It may further be money that is borrowed or raised in any of the manners prescribed in Section 5(8) or otherwise, as Section 5(8) is an inclusive definition. On the other hand, an "operational debt" would include a claim in respect of the provision of goods or services, including employment, or a debt in respect of payment of dues arising under any law and payable to the Government or any local authority.

43. A financial creditor may trigger the Code either by itself or jointly with other financial creditors or such persons as may be notified by the Central Government when a "default" occurs. The Explanation to Section 7(1) also makes it clear that the Code may be triggered by such persons in respect of a default made to any other financial creditor of the corporate debtor, making it clear that once triggered, the resolution process under the Code is a collective proceeding in rem which seeks, in the first instance, to rehabilitate the corporate debtor. Under Section 7(4), the adjudicating authority shall, within the prescribed period, ascertain the existence of a default on the basis of evidence furnished by the financial creditor; and under Section 7(5), the adjudicating authority has to be satisfied that a default has occurred, when it may, by order, admit the application, or dismiss the application if such default has not occurred. On the other hand, under Sections 8 and 9, an operational creditor may, on the occurrence of a default, deliver a demand notice which must then be replied to within the specified period. What is important is that

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a at this stage. If an application is filed before the adjudicating authority for initiating the corporate insolvency resolution process, the corporate debtor can prove that the debt is disputed. When the debt is so disputed, such application would be rejected.

b 44. The argument of the learned counsel on behalf of the petitioners is that in point of fact, there is no intelligible differentia having relation to the objects sought to be achieved by the Code between financial and operational creditors and indeed, nowhere in the world has this distinction been made. The BLRC Report presents what according to it is the rationale for the reason to differentiate between financial and operational creditors. The Report states as follows:

c "While both types of creditors can trigger the IRP under the Code, the evidence presented to trigger varies. Since financial creditors have electronic records of the liabilities filed in the Information Utilities of Section 13, incontrovertible event of default on any financial credit contract can be readily verifiable by accessing this system. The evidence submitted of default by the debtor to the operational creditor may be in either electronic or physical form, since all operational creditors may or may not have electronic filings of the debtors' liability. Till such time that the Information Utilities are ubiquitous, financial creditors may establish default in a manner similar to operational creditors."

d 45. Similarly, the Insolvency and Bankruptcy Bill in the Notes on Clause 8 states:

e "Clause 8 lays down the procedure for the initiation of the corporate insolvency resolution process by an operational creditor. This procedure differs from the procedure applicable to financial creditors as operational debts (such as trade debts, salary or wage claims) tend to be small amounts (in comparison to financial debts) or are recurring in nature and may not be accurately reflected on the records of information utilities at all times. The possibility of disputed debts in relation to operational creditors is also higher in comparison to financial creditors such as banks and financial institutions. Accordingly, the process for initiation of the insolvency resolution process differs for an operational creditor... This ensures that operational creditors, whose debt claims are usually smaller, are not able to put the corporate debtor into the insolvency resolution process prematurely or initiate the process for extraneous considerations. It may also facilitate informal negotiations between such creditors and the corporate debtor, which may result in a restructuring of the debt outside the formal proceedings."

f 46. However, the Insolvency Law Committee (ILC), in its Report of March 2018 dealt with debenture-holders and fixed deposit-holders, who are also financial creditors, and are numerous. The Report then went on to state:

g "10.6. For certain securities, a trustee or an agent may already be appointed as per the terms of the security instrument. For example, a debenture trustee would be appointed if debentures exceeding 500 have been issued [Section 115, Companies Act, 2013] or if secured debentures

are issued [Rule 18(1)(c), Companies (Share Capital and Debenture) Rules, 2014]. Such creditors may be represented through such pre-appointed trustees or agents. For other classes of creditors which exceed a certain threshold in number, like loan buyers or security-holders for whom no trustee or agent has already been appointed under a debt instrument or otherwise, an insolvency professional (other than IRP) shall be appointed by NCLT on the request of IRP. It is to be noted that as the agent or trustee or insolvency professional i.e. the authorised representative for the creditors discussed above and executors, guarantors, etc. as discussed in Para 9 of this Report, shall be a part of the CoC, they cannot be related parties to the corporate debtor in line with the spirit of proviso to Section 21(2)

10.8. In light of the deliberation above, the Committee felt that a mechanism requires to be provided in the Code to mandate representation in meetings of security-holders, deposit-holders, and all other classes of financial creditors which exceed a certain number, through an authorised representative. This can be done by adding a new provision to Section 21 of the Code. Such a representative may either be a trustee or an agent appointed under the terms of the debt agreement of such creditors, otherwise an insolvency professional may be appointed by NCLT for each such class of financial creditors. Additionally, the representative shall act and attend the meetings on behalf of the respective class of financial creditors and shall vote on behalf of each of the financial creditors to the extent of the voting share of each such creditor, and as per their instructions. To ensure adequate representation by the authorised representative of the financial creditors, a specific provision laying down the rights and duties of such authorised representatives may be inserted. Further, the requisite threshold for the number of creditors and manner of voting may be specified by IBBI through regulations to enable efficient voting by the representative. Also, Regulation 25 may also be amended to enable voting through electronic means such as e-mail, to address any technical issues which may arise due to a large number of creditors voting at the same time."

47. Given this Report, the Code was amended and Sections 21(6 A) and 21(6 B) were added, which are set out hereinbelow:-

"21. *Committee of Creditors.* (1)-(6) + " \*  
(6-A) Where a financial debt

(a) is in the form of securities or deposits and the terms of the financial debt provide for appointment of a trustee or agent to act as authorised representative for all the financial creditors, such trustee or agent shall act on behalf of such financial creditors;

(b) is owed to a class of creditors exceeding the number as may be specified, other than the creditors covered under clause (a) or sub-section (6), the interim resolution professional shall make an application to the adjudicating authority along with the list of all financial creditors, containing the name of an insolvency professional, other than the interim resolution professional, to act as their authorised representative who shall

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be appointed by the adjudicating authority prior to the first meeting of the Committee of Creditors;

a (c) is represented by a guardian, executor or administrator, such person shall act as authorised representative on behalf of such financial creditors,

and such authorised representative under clause (a) or clause (b) or clause (c) shall attend the meetings of the Committee of Creditors, and vote on behalf of such financial creditor to the extent of his voting share.

b (6-B) The remuneration payable to the authorised representative—

(i) under clauses (a) and (c) of sub-section (6-A), if any, shall be as per the terms of the financial debt or the relevant documentation; and

(ii) under clause (b) of sub-section (6-A) shall be as specified which shall form part of the insolvency resolution process costs.”

c 48. Also, Regulations 16-A and 16-B of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (the CIRP Regulations) were added, with effect from 4.7.2018, as follows:

d “16-A. *Authorised representative.*—(1) The interim resolution professional shall select the insolvency professional, who is the choice of the highest number of financial creditors in the class in Form CA received under sub-regulation (1) of Regulation 12, to act as the authorised representative of the creditors of the respective class:

Provided that the choice for an insolvency professional to act as authorised representative in Form CA received under sub-regulation (2) of Regulation 12 shall not be considered.

e (2) The interim resolution professional shall apply to the adjudicating authority for appointment of the authorised representatives selected under sub-regulation (1) within two days of the verification of claims received under sub-regulation (1) of Regulation 12.

(3) Any delay in appointment of the authorised representative for any class of creditors shall not affect the validity of any decision taken by the committee.

f (4) The interim resolution professional shall provide the list of creditors in each class to the respective authorised representative appointed by the adjudicating authority.

(5) The interim resolution professional or the resolution professional, as the case may be, shall provide an updated list of creditors in each class to the respective authorised representative as and when the list is updated.

g *Clarification:* The authorised representative shall have no role in receipt or verification of claims of creditors of the class he represents.

(6) The interim resolution professional or the resolution professional, as the case may be, shall provide electronic means of communication between the authorised representative and the creditors in the class.

h (7) The voting share of a creditor in a class shall be in proportion to the financial debt which includes an interest at the rate of eight per cent per annum unless a different rate has been agreed to between the parties.



(8) The authorised representative of creditors in a class shall be entitled to receive fee for every meeting of the committee attended by him in the following manner, namely:

Number of creditors in the class	Fee per meeting of the committee (Rs.)
10-100	15,000
101-1000	20,000
More than 1000	25,000

(9) The authorised representative shall circulate the agenda to creditors in a class and announce the voting window at least twenty four hours before the window opens for voting instructions and keep the voting window open for at least twelve hours.

**16-B. Committee with only creditors in a class.**—Where the corporate debtor has only creditors in a class and no other financial creditor eligible to join the committee, the committee shall consist of only the authorised representative(s).

49. It is obvious that debenture holders and persons with home loans may be numerous and, therefore, have been statutorily dealt with by the aforesaid change made in the Code as well as the Regulations. However, as a general rule, it is correct to say that financial creditors, which involve banks and financial institutions, would certainly be smaller in number than operational creditors of a corporate debtor.

50. According to us, it is clear that most financial creditors, particularly banks and financial institutions, are secured creditors whereas most operational creditors are unsecured, payments for goods and services as well as payments to workers not being secured by mortgaged documents and the like. The distinction between secured and unsecured creditors is a distinction which has obtained since the earliest of the Companies Acts both in the United Kingdom and in this country. Apart from the above, the nature of loan agreements with financial creditors is different from contracts with operational creditors for supplying goods and services. Financial creditors generally lend finance on a term loan or for working capital that enables the corporate debtor to either set up and/or operate its business. On the other hand, contracts with operational creditors are relatable to supply of goods and services in the operation of business. Financial contracts generally involve large sums of money. By way of contrast, operational contracts have dues whose quantum is generally less. In the running of a business, operational creditors can be many as opposed to financial creditors, who lend finance for the set-up or working of business. Also, financial creditors have specified repayment schedules, and defaults entitle financial creditors to recall a loan in totality. Contracts with operational creditors do not have any such stipulations. Also, the forum in which dispute resolution takes place is completely different. Contracts with operational creditors can and do have arbitration clauses where dispute resolution is done privately. Operational debts also tend to be recurring in nature and the possibility of genuine disputes in case of operational debts is much higher when compared to financial debts. A simple example will suffice. Goods that are supplied may be substandard. Services that are provided may be

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substandard. Goods may not have been supplied at all. All these qua operational debts are matters to be proved in arbitration or in the courts of law. On the other hand, financial debts made to banks and financial institutions are well documented and defaults made are easily verifiable.

b  
51. Most importantly, financial creditors are, from the very beginning, involved with assessing the viability of the corporate debtor. They can, and therefore do, engage in restructuring of the loan as well as reorganisation of the corporate debtor's business when there is financial stress, which are things operational creditors do not and cannot do. Thus, preserving the corporate debtor as a going concern, while ensuring maximum recovery for all creditors being the objective of the Code, financial creditors are clearly different from operational creditors and therefore, there is obviously an intelligible differentia between the two which has a direct relation to the objects sought to be achieved by the Code.

c  
*Notice, hearing and set-off or counterclaim qua financial debts*

52. This Court, in *Innovative Industries*<sup>6</sup> stated as follows: (SCC pp. 437-39, paras 27-30)

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27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non payment of a debt once it becomes due and payable, which includes non payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability or obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5(21) means a claim in respect of provision of goods or services.

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28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in

6. *Innovative Industries (Pvt.) Ltd. v. Tinton of India*, (2018) 1 SCC 407 (SC 5) – SCC (DB) 156

Form I accompanied by documents and records required therein. Form I is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."

53. Section 4(9)(e) read with Section 21-1(a) of the Code are important and are set out as under:

"3. *Definitions.*—In this Code, unless the context otherwise requires—

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(9) "core services" means services rendered by an information utility for

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(c) authenticating and verifying the financial information submitted by a person; and

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214. *Obligations of information utility.* For the purposes of providing core services to any person, every information utility shall

(c) get the information received from various persons authenticated by all concerned parties before storing such information."

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54. It is clear from these sections that information in respect of debts incurred by financial debtors is easily available through information utilities which, under the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 (Information Utilities Regulations), are to satisfy themselves that information provided as to the debt is accurate. This is done by giving notice to the corporate debtor who then has an opportunity to correct such information.

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55. Apart from the record maintained by such utility, Form I appended to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, makes it clear that the following are other sources which evidence a financial debt-

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(a) Particulars of security held, if any, the date of its creation, its estimated value as per the creditor;

(b) Certificate of registration of charge issued by the Registrar of Companies (if the corporate debtor is a company);

(c) Order of a court, tribunal or arbitral panel adjudicating on the default;

(d) Record of default with the information utility;

(e) Details of succession certificate, or probate of a will, or letter of administration, or court decree (as may be applicable), under the Indian Succession Act, 1925;

f

(f) The latest and complete copy of the financial contract reflecting all amendments and waivers to date;

(g) A record of default as available with any credit information company;

(h) Copies of entries in a bankers book in accordance with the Bankers Books Evidence Act, 1891.

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56. Rule 4(3) of the aforesaid Rules states as follows:

"4. *Application by financial creditor.* (1)-(2) \* \* \*

(3) The applicant shall dispatch forthwith, a copy of the application filed with the adjudicating authority, by registered post or speed post to the registered office of the corporate debtor."

h

57. Section 420 of the Companies Act, 2013 states as follows:

**“420. Orders of Tribunal.** (1) The Tribunal may, after giving the parties to any proceeding before it, a reasonable opportunity of being heard, pass such orders thereon as it thinks fit.

(2) The Tribunal may, at any time within two years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties:

Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act.

(3) The Tribunal shall send a copy of every order passed under this section to all the parties concerned.”

58. Rules 11, 34 and 37 of the National Company Law Tribunal Rules, 2016 (NCLT Rules) state as follows:

**“11. Inherent powers.**—Nothing in these Rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.

**34. General procedure.**—(1) In a situation not provided for in these Rules, the Tribunal may, for reasons to be recorded in writing, determine the procedure in a particular case in accordance with the principles of natural justice.

(2) The general heading in all proceedings before the Tribunal, in all advertisements and notices shall be in Form No. NCLT 4.

(3) Every petition or application or reference shall be filed in form as provided in Form No. NCLT 1 with attachments thereto accompanied by Form No. NCLT 2, and in case of an interlocutory application, the same shall be filed in Form No. NCLT 1 accompanied by such attachments thereto along with Form No. NCLT 3.

(4) Every petition or application including interlocutory application shall be verified by an affidavit in Form No. NCLT 6. Notice to be issued by the Tribunal to the opposite party shall be in Form NCLT 5.

**37. Notice to Opposite Party.**—(1) The Tribunal shall issue notice to the respondent to show cause against the application or petition on a date of hearing to be specified in the notice. Such notice in Form No. NCLT 5 shall be accompanied by a copy of the application with supporting documents

(2) If the respondent does not appear on the date specified in the notice in Form No. NCLT 5, the Tribunal, after according reasonable opportunity to the respondent, shall forthwith proceed ex parte to dispose of the application.

(3) If the respondent contests to the notice received under sub-rule (1), it may, either in person or through an authorised representative, file a reply accompanied with an affidavit and along with copies of such documents on which it relies, with an advance service to the petitioner or applicant, to the

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Registry before the date of hearing and such reply and copies of documents shall form part of the record.”

a A conjoint reading of all these Rules makes it clear that at the stage of the adjudicating authority’s satisfaction under Section 7(3) of the Code, the corporate debtor is served with a copy of the application filed with the adjudicating authority and has the opportunity to file a reply before the said authority and be heard by the said authority before an order is made admitting the said application.

b 59. What is also of relevance is that in order to protect the corporate debtor from being dragged into the corporate insolvency resolution process mala fide, the Code prescribes penalties. Thus, Section 65 of the Code reads as follows:

c “65. *Fraudulent or malicious initiation of proceedings.*—(1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the adjudicating authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.

d (2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the adjudicating authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.”

e 60. Also, punishment is prescribed under Section 75 for furnishing false information in an application made by a financial creditor which further deters a financial creditor from wrongly invoking the provisions of Section 7. Section 75 reads as under:

f “75. *Punishment for false information furnished in application.*— Where any person furnishes information in the application made under Section 7, which is false in material particulars, knowing it to be false or omits any material fact, knowing it to be material, such person shall be punishable with fine which shall not be less than one lakh rupees, but may extend to one crore rupees.”

g 61. Insofar as set-off and counterclaim is concerned, a set-off of amounts due from financial creditors is a rarity. Usually, financial debts point only in one way—amounts lent have to be repaid. However, it is not as if a legitimate set-off is not to be considered at all. Such set-off may be considered at the stage of filing of proof of claims during the resolution process by the resolution professional, his decision being subject to challenge before the adjudicating authority under Section 61.

h 62. Section 60(5)(c) reads as follows:

“60. *Adjudicating authority for corporate persons.*—(1)-(1) ~ \* \*

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.”

63. Equally, counterclaims, by their very definition, are independent rights which are not taken away by the Code but are preserved for the stage of admission of claims during the resolution plan. Also, there is nothing in the Code which interdicts the corporate debtor from pursuing such counterclaims in other judicial fora. Form C dealing with submission of claims by financial creditors in the CIRP Regulations states thus:

“FORM C”

SUBMISSION OF CLAIM BY FINANCIAL CREDITORS

[Under Regulation 8 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]

[Date]

From

[Name and address of the financial creditor, including address of its registered office and principal office]

To

The Interim Resolution Professional/Resolution Professional,

[Name of the Insolvency Resolution Professional/Resolution Professional]

[Address as set out in public announcement]

Subject: Submission of claim and proof of claim.

Madam/Sir,

[Name of the financial creditor], hereby submits this claim in respect of the corporate insolvency resolution process of [name of corporate debtor]. The details for the same are set out below:

Relevant Particulars	
[Name of the financial creditor]	
Identification number of the financial creditor (If an incorporated body, provide identification number and place of incorporation. If a partnership or individual, provide identification number of all the partners or the individual.)	
Address and email address of the financial creditor for correspondence	
Date of creation of debt (including any interest as at the insolvency commencement date)	
Details of documents by reference to which the debt can be substantiated	
Details of how and when debt incurred	
Details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set-off against the claim	
Details of any security held, the value of the security, and the date it was given	

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a	Details of the bank account to which the amount of the claim or any part thereof is to be transferred pursuant to a resolution plan
b	List of documents attached to this claim in order to prove the existence and amount of claim due to the financial creditor Signature of financial creditor or person authorised to act on his behalf [Please enclose the authority if this is being submitted on behalf of the financial creditor]
c	Name in R.O.C.F. Form Position with or in relation to creditor Address of person signing

\*PAN number, passport, AADHAAR Card or the identity card issued by the Election Commission of India.

**DECLARATION**

1. [Name of claimant], currently residing at [insert address], do hereby declare and state as follows:

1. [Name of corporate debtor], the corporate debtor was, at the insolvency commencement date, being the ... day of ..., 20..., actually indebted to me for a sum of Rs [insert amount of claim].

2. In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below:

[Please list the documents relied on as evidence of claim].

3. The said documents are true, valid and genuine to the best of my knowledge, the information and belief and no material facts have been concealed therefrom.

4. In respect of the said sum or any part thereof, neither I, nor any person, by my order, to my knowledge or belief, for my use, had or received any manner of satisfaction or security whatsoever, save and except the following:

[Please state details of any mutual credit, mutual debts, or other mutual dealings between the corporate debtor and the creditor which may be set off against the claim].

5. I am/ am not a related party of the corporate debtor, as defined under Section 5(24) of the Code.

6. I am eligible to join Committee of Creditors by virtue of proviso to Section 21(2) of the Code even though I am a related party of the corporate debtor.

Date:  
Place:

(Signature of the claimant)

**VERIFICATION**

1. [Name] the claimant hereinabove, do hereby verify that the contents of this proof of claim are true and correct to my knowledge and belief and no material fact has been concealed therefrom



Verified at ... on this ... day of ... 20 ..

(Signature of claimant)

[Note: In the case of company or limited liability partnership, the declaration and verification shall be made by the Director/manager/secretary/designated partner and in the case of other entities, an officer authorised for the purpose by the entity.]”

64. The trigger for a financial creditor’s application is non-payment of dues when they arise under loan agreements. It is for this reason that Section 433(e) of the Companies Act, 1956 has been repealed by the Code and a change in approach has been brought about. Legislative policy now is to move away from the concept of “inability to pay debts” to “determination of default”. The said shift enables the financial creditor to prove, based upon solid documentary evidence, that there was an obligation to pay the debt and that the debtor has failed in such obligation. Four policy reasons have been stated by the learned Solicitor General for this shift in legislative policy:

64.1. *First* is predictability and certainty.

64.2. *Secondly*, the paramount interest to be safeguarded is that of the corporate debtor and admission into the insolvency resolution process does not prejudice such interest but, in fact, protects it.

64.3. *Thirdly*, in a situation of financial stress, the cause of default is not relevant; protecting the economic interest of the corporate debtor is more relevant.

64.4. *Fourthly*, the trigger that would lead to liquidation can only be upon failure of the resolution process.

65. In this context, it is important to differentiate between “claim”, “debt” and “default”. Each of these terms is separately defined as follows:

“3. *Definitions.*—In this Code, unless the context otherwise requires—

(6) “claim” means

(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;

(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, natural, unnatural, disputed, undisputed, secured or unsecured;

(11) “debt” means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;

(12) “default” means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be;”

Whereas a “claim” gives rise to a “debt” only when it becomes “due”, a “default” occurs only when a “debt” becomes “due and payable” and is not

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a paid by the debtor. It is for this reason that a financial creditor has to prove "default" as opposed to an operational creditor who merely "claims" a right to payment of a liability or obligation in respect of a debt which may be due. When this aspect is borne in mind, the differentiation in the triggering of insolvency resolution process by financial creditors under Section 7 and by operational creditors under Sections 8 and 9 of the Code becomes clear.

b *Sections 21 and 24 and Article 14: operational creditors have no vote in the Committee of Creditors*

c 66. Section 21 of the Code reads as follows:-

d "21. *Committee of Creditors.* (1) The interim resolution professional shall after collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, constitute a Committee of Creditors.

e (2) The Committee of Creditors shall comprise all financial creditors of the corporate debtor.

f Provided that a financial creditor or the authorised representative of the financial creditor referred to in sub-section (1) or sub-section (2i-A) or sub-section (5) of Section 24, if it is a related party of the corporate debtor, shall not have any right of representation, participation or voting in a meeting of the Committee of Creditors.

g Provided further that the first proviso shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.

h (3) Subject to sub-sections (6) and (6-A), where the corporate debtor owes financial debts to two or more financial creditors as part of a consortium or agreement, each such financial creditor shall be part of the Committee of Creditors and their voting share shall be determined on the basis of the financial debts owed to them.

i (4) Where any person is a financial creditor as well as an operational creditor—

j (a) such person shall be a financial creditor to the extent of the financial debt owed by the corporate debtor, and shall be included in the Committee of Creditors, with voting share proportionate to the extent of financial debts owed to such creditor;

k (b) such person shall be considered to be an operational creditor to the extent of the operational debt owed by the corporate debtor to such creditor.

l (5) Where an operational creditor has assigned or legally transferred any operational debt to a financial creditor, the assignee or transferee shall be considered as an operational creditor to the extent of such assignment or legal transfer.

m

(6) Where the terms of the financial debt extended as part of a consortium arrangement in syndicated facility provide for a single trustee or agent to act for all financial creditors, each financial creditor may—

(a) authorise the trustee or agent to act on his behalf in the Committee of Creditors to the extent of his voting share;

(b) represent himself in the Committee of Creditors to the extent of his voting share;

(c) appoint an insolvency professional (other than the resolution professional) at his own cost to represent himself in the Committee of Creditors to the extent of his voting share; or

(d) exercise his right to vote to the extent of his voting share with one or more financial creditors jointly or severally

(6-A) Where a financial debt

(a) is in the form of securities or deposits and the terms of the financial debt provide for appointment of a trustee or agent to act as authorised representative for all the financial creditors, such trustee or agent shall act on behalf of such financial creditors;

(b) is owed to a class of creditors exceeding the number as may be specified, other than the creditors covered under clause (a) or sub-section (6), the interim resolution professional shall make an application to the adjudicating authority along with the list of all financial creditors, containing the name of an insolvency professional, other than the interim resolution professional, to act as their authorised representative who shall be appointed by the adjudicating authority prior to the first meeting of the Committee of Creditors;

(c) is represented by a guardian, executor or administrator, such person shall act as authorised representative on behalf of such financial creditors.

and such authorised representative under clause (a) or clause (b) or clause (c) shall attend the meetings of the Committee of Creditors, and vote on behalf of each financial creditor to the extent of his voting share.

(6-B) The remuneration payable to the authorised representative—

(i) under clauses (a) and (c) of sub-section (6-A), if any, shall be as per the terms of the financial debt or the relevant documentation; and

(ii) under clause (b) of sub-section (6-A) shall be as specified which shall form part of the insolvency resolution process costs.

(7) The Board may specify the manner of voting and the determining of the voting share in respect of financial debts covered under sub-sections (a) and (6-A).

(8) Save as otherwise provided in this Code, all decisions of the Committee of Creditors shall be taken by a vote of not less than fifty per cent of voting share of the financial creditors:

Provided that where a corporate debtor does not have any financial creditors, the Committee of Creditors shall be constituted and shall comprise of such persons to exercise such functions in such manner as may be specified.

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a (9) The Committee of Creditors shall have the right to require the resolution professional to furnish any financial information in relation to the corporate debtor at any time during the corporate insolvency resolution process.

(10) The resolution professional shall make available any financial information so required by the Committee of Creditors under sub-section (9) within a period of seven days of such requisition."

b 67. Sections 24(3), 24(4) and 28, which are also material, read as follows:

"24. *Meeting of Committee of Creditors.* (1)-(2) \* \* \*

(3) The resolution professional shall give notice of such meeting of the Committee of Creditors to

c (a) members of Committee of Creditors, including the authorised representatives referred to in sub-sections (6) and (6-A) of Section 21 and sub-section (5);

(b) members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;

(c) operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent of the debt.

d (4) The Directors, partners and one representative of operational creditors, as referred to in sub-section (3), may attend the meetings of Committee of Creditors, but shall not have any right to vote in such meetings;

Provided that the absence of any such Director, partner or representative of operational creditors, as the case may be, shall not invalidate proceedings of such meeting.

e 28. *Approval of Committee of Creditors for certain actions.*—(1) Notwithstanding anything contained in any other law for the time being in force, the resolution professional, during the corporate insolvency resolution process, shall not take any of the following actions without the prior approval of the Committee of Creditors, namely—

f (a) raise any interim finance in excess of the amount as may be decided by the Committee of Creditors in their meeting;

(b) create any security interest over the assets of the corporate debtor;

(c) change the capital structure of the corporate debtor, including by way of issuance of additional securities, creating a new class of securities or buying back or redemption of issued securities in case the corporate debtor is a company;

g (d) record any change in the ownership interest of the corporate debtor;

(e) give instructions to financial institutions maintaining accounts of the corporate debtor for a debit transaction from any such accounts in excess of the amount as may be decided by the Committee of Creditors in their meeting;

h (f) undertake any related party transaction;

- (g) amend any constitutional documents of the corporate debtor;
- (h) delegate its authority to any other person;
- (i) dispose of or permit the disposal of shares of any shareholder of the corporate debtor or their nominees to third parties;
- (j) make any change in the management of the corporate debtor or its subsidiary;
- (k) transfer rights or financial debts or operational debts under material contracts otherwise than in the ordinary course of business;
- (l) make changes in the appointment or terms of contract of such personnel as specified by the Committee of Creditors; or
- (m) make changes in the appointment or terms of contract of statutory auditors or internal auditors of the corporate debtor.

(2) The resolution professional shall convene a meeting of the Committee of Creditors and seek the vote of the creditors prior to taking any of the actions under sub-section (1).

(3) No action under sub-section (1) shall be approved by the Committee of Creditors unless approved by a vote of sixty-six per cent of the voting shares.

(4) Where any action under sub-section (1) is taken by the resolution professional without seeking the approval of the Committee of Creditors in the manner as required in this section, such action shall be void.

(5) The Committee of Creditors may report the actions of the resolution professional under sub-section (4) to the Board for taking necessary actions against him under this Code. Approval of Committee of Creditors for certain actions.”

**68.** In this regard, the BLRC Report states:

“The Creditors Committee will have the power to decide the final solution by majority vote in the negotiations. The majority vote requires more than or equal to 75 per cent of the Creditors Committee by weight of the total financial liabilities. ... The Committee deliberated on who should be on the Creditors Committee, given the power of the Creditors Committee to ultimately keep the entity as a going concern or liquidate it. The Committee reasoned that members of the Creditors Committee have to be creditors both with the capability to assess viability, as well as to be willing to modify terms of existing liabilities in negotiations. Typically, operational creditors are neither able to decide on matters regarding the insolvency of the entity, nor willing to take the risk of postponing payments for better future prospects for the entity. The Committee concluded that, for the process to be rapid and efficient, the Code will provide that the Creditors Committee should be restricted to only the financial creditors

The second is that any proposed solution must explicitly account for the IRP costs and the liabilities of the operational creditors within a reasonable period from the approval of the solution if it is approved. The Committee argues that there must be a counterbalance to operational creditors not having a vote on the Creditors Committee. Thus, they concluded that the dues of the operational creditors must have priority in being paid as an explicit part of the

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a proposed solution. This must be ensured by the RP in evaluating a proposal before bringing it to the Creditors Committee. If there is ambiguity about the coverage of the liability in the information memorandum that the RP presents to garner solutions, then the RP must ensure that this is clearly stated and accounted for in the proposed solution.”

b 69. The Joint Parliamentary Committee Report of April 2016 (the Joint Parliamentary Committee Report) on the Insolvency and Bankruptcy Code also agreed with these observations but modified Section 24 so as to permit operational creditors to be present at the meetings of the Committee of Creditors, albeit without voting rights, if operational creditors aggregate to 10% or more of the total debts owed by the corporate debtor.

70. The Joint Parliamentary Committee Report also opined as follows:

*“21. Role of Operational Creditors — Clause 24*

c Some of the stakeholders in the memorandum/views furnished before the Committee were of the opinion that whereas operational creditor has right to make application for initiation of corporate insolvency resolution process, operational creditors like workmen, employees, suppliers have not been given any representation in the Committee of Creditors which is pivotal in whole resolution process. In this regard, one of the stakeholders has suggested that Committee of Creditors may contain operational creditors as well, with some thresholds.

d In this context, while appreciating that the operational creditors are important stakeholders in a company, the Committee took note of the rationale of not including operational creditors in the Committee of Creditors as indicated in notes on Clause 24 appended with the Bill which states as under:

e “The committee has to be composed of members who have the capability to assess the commercial viability of the corporate debtor and who are willing to modify the terms of the debt contracts in negotiations between the creditors and the corporate debtor. Operational creditors are typically not able to decide on matters relating to commercial viability of the corporate debtor, nor are they typically willing to take the risk of restructuring their debts in order to make the corporate debtor a going concern. Similarly, financial creditors who are also operational creditors will be given representation on the Committee of Creditors only to the extent of their financial debts. Nevertheless, in order to ensure that the financial creditors do not treat the operational creditors unfairly, any resolution plan must ensure that the operational creditors receive an amount not less than the liquidation value of their debt (assuming the corporate debtor were to be liquidated).

f g All decisions of the Committee shall be taken by a vote of not less than seventy-five per cent of the voting share. In the event there are no financial creditors for a corporate debtor, the composition and decision-making processes of the corporate debtor shall be specified by the Insolvency and Bankruptcy Board. The Committee shall also have the power to call for information from the resolution professional.”

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*The Committee after due deliberations are of the view that, if not voting rights, operational creditors at least should have presence in the Committee of Creditors to present their views on important issues considered at the meeting so that their views/concerns are taken into account by the Committee of Creditors while finalising the resolution plan." (emphasis supplied)*

71. The original Insolvency and Bankruptcy Bill did not allow operational creditors to attend the Committee of Creditors at all. This Bill was amended whilst in the form of a Bill, the Joint Parliamentary Committee deciding as follows:

"... The Committee, therefore, decided to modify Clauses 24(3) and (4) as given under:

*Modified Clause 24(3)*

"The resolution professional shall give notice of each meeting of the Committee of Creditors to—

- (a) members of Committee of Creditors;
- (b) members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;
- (c) operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent of the debt."

*Modified Clause 24(4)*

"The Directors, partners and one representative of operational creditors as referred to in sub-section (3), may attend the meetings of Committee of Creditors, but shall not have any right to vote in such meetings;

Provided that the absence of any such Director, partner or representative of operational creditors, as the case may be, shall not invalidate proceedings of such meeting."

72. What is also of importance is the fact that Expert Committees have been set up by the Government to oversee the working of the Code. Thus, the report of the Insolvency Law Committee of March 2018, after examining the working of the Code, thought it fit not to amend the Code so as to give operational creditors the right to vote. This was stated as follows:

"This rationale still holds true, and thus it was deemed fit not to amend the constitution of the CoC. Further, operational creditors whose aggregate dues are not less than ten per cent of the debt have a right to attend the meetings of the CoC. Also, under the resolution plan, they are guaranteed at least the liquidation value.

"... The Committee agreed that presently, most of the resolution plans are in the process of submission and there is no empirical evidence to further the argument that operational creditors do not receive a fair share in the resolution process under the current scheme of the Code. Hence, the Committee decided to continue with the present arrangement without making any amendments to the Code."

73. Under the Code, the Committee of Creditors is entrusted with the primary responsibility of financial restructuring. They are required to assess the

a viability of a corporate debtor by taking into account all available information as well as to evaluate all alternative investment opportunities that are available. The Committee of Creditors is required to evaluate the resolution plan on the basis of feasibility and viability. Thus, Section 30(4) states:

"30. *Submission of resolution plan.*—(1)-(4) \* \* \*

b (4) The Committee of Creditors may approve a resolution plan by a vote of not less than sixty-six per cent of voting share of the financial creditors, after considering its feasibility and viability, and such other requirements as may be specified by the Board:

Provided that the Committee of Creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017, where the resolution applicant is ineligible under Section 29-A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

c Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of Section 29-A, the resolution applicant shall be allowed by the Committee of Creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of Section 29-A:

d Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of Section 12, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section:

e Provided also that the eligibility criteria in Section 29-A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 (Ordinance 6 of 2018) shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018."

74. It is important to bear in mind that once the resolution plan is approved by the Committee of Creditors and thereafter by the adjudicating authority, the aforesaid plan is binding on all stakeholders as follows:

f "31. *Approval of resolution plan.*—(1) If the adjudicating authority is satisfied that the resolution plan as approved by the Committee of Creditors under sub-section (4) of Section 30 meets the requirements as referred to in sub-section (3) of Section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan:

g Provided that the adjudicating authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation."

h 75. Since the financial creditors are in the business of moneylending, banks and financial institutions are best equipped to assess viability and feasibility of the business of the corporate debtor. Even at the time of granting loans, these banks and financial institutions undertake a detailed market study which includes a techno-economic valuation report, evaluation of business, financial projection, etc. Since this detailed study has already been undertaken before



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sanctioning a plan, and since financial creditors have trained employees to assess viability and feasibility, they are in a good position to evaluate the contents of a resolution plan. On the other hand, operational creditors, who provide goods and services, are involved only in recovering amounts that are paid for such goods and services, and are typically unable to assess viability and feasibility of business. The BIRC Report, already quoted above, makes this abundantly clear.

76. Quite apart from this, the United Nations Commission on International Trade Law, in its *Legislative Guide on Insolvency Law* (the UNCITRAL Guidelines) recognises the importance of ensuring equitable treatment to similarly placed creditors and states as follows:

*"Ensuring equitable treatment of similarly situated creditors"*

7. The objective of equitable treatment is based on the notion that, in collective proceedings, creditors with similar legal rights should be treated fairly, receiving a distribution on their claim in accordance with their relative ranking and interests. This key objective recognises that all creditors do not need to be treated identically, but in a manner that reflects the different bargains they have struck with the debtor. This is less relevant as a defining factor where there is no specific debt contract with the debtor, such as in the case of damage claimants (e.g. for environmental damage) and tax authorities. Even though the principle of equitable treatment may be modified by social policy on priorities and give way to the prerogatives pertaining to holders of claims or interests that arise, for example, by operation of law, it retains its significance by *UNCITRAL Legislative Guide on Insolvency Law*: ensuring that the priority accorded to the claims of a similar class affects all members of the class in the same manner. The policy of equitable treatment permeates many aspects of an insolvency law, including the application of the stay or suspension provisions to set aside acts and transactions and recapture value for the insolvency estate, classification of claims, voting procedures in reorganisation and distribution mechanisms. An insolvency law should address problems of fraud and favouritism that may arise in cases of financial distress by providing, for example, that acts and transactions detrimental to equitable treatment of creditors can be avoided."

77. NCLAT has, while looking into viability and feasibility of resolution plans that are approved by the Committee of Creditors, always gone into whether operational creditors are given roughly the same treatment as financial creditors, and if they are not, such plans are either rejected or modified so that the operational creditors' rights are safeguarded. It may be seen that a resolution plan cannot pass muster under Section 30(2)(b) read with Section 31 unless a minimum payment is made to operational creditors, being not less than liquidation value. Further, on 5-10-2018, Regulation 38 has been amended. Prior to the amendment, Regulation 38 read as follows:

*"38. Mandatory contents of the resolution plan.* (1) A resolution plan shall identify specific sources of funds that will be used to pay the

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- a (a) insolvency resolution process costs and provide that the insolvency resolution process costs, to the extent unpaid, will be paid in priority to any other creditor;
- b (b) liquidation value due to operational creditors and provide for such payment in priority to any financial creditor which shall in any event be made before the expiry of thirty days after the approval of a resolution plan by the adjudicating authority; and
- c (c) liquidation value due to dissenting financial creditors and provide that such payment is made before any recoveries are made by the financial creditors who voted in favour of the resolution plan.”

Post amendment, Regulation 38 reads as follows:

- d “38. *Mandatory contents of the resolution plan.* (1) The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.
- e (1-A) A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.”

The aforesaid Regulation further strengthens the rights of operational creditors by statutorily incorporating the principle of fair and equitable dealing of operational creditors’ rights, together with priority in payment over financial creditors.

78. For all the aforesaid reasons, we do not find that operational creditors are discriminated against or that Article 14 has been infringed either on the ground of equals being treated unequally or on the ground of manifest arbitrariness.

e *Section 12-A is not violative of Article 14*

79. Section 12 A was inserted by the Insolvency and Bankruptcy (Second Amendment) Act, 2018 with retrospective effect from 6.6.2018. It reads as follows:

- f “12-A. *Withdrawal of application admitted under Sections 7, 9 or 10.*— The adjudicating authority may allow the withdrawal of application admitted under Section 7 or Section 9 or Section 10, on an application made by the applicant with the approval of ninety per cent voting share of the Committee of Creditors, in such manner as may be specified.”

80. The H.C. Report of March 2018, which led to the insertion of Section 12-A, stated as follows:

- g “29.1. Under Rule 8 of the CIRP Rules, NCLT may permit withdrawal of the application on a request by the applicant before its admission. However, there is no provision in the Code or the CIRP Rules in relation to permissibility of withdrawal post admission of a CIRP application. It was observed by the Committee that there have been instances where on account of settlement between the applicant creditor and the corporate debtor, judicial permission for withdrawal of CIRP was granted [*Lokhandwala Kataria Construction (P) Ltd.*
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*v. Nissai Finance and Investment Managers LLP<sup>37</sup>; Mother's Pride Dairy India (P) Ltd. v. Portrait Advertising and Marketing (P) Ltd.<sup>38</sup>; Ujjara Foods and Feeds (P) Ltd. v. Adora Pharmachem<sup>4</sup>]. This practice was deliberated in light of the objective of the Code as encapsulated in the B.I.R.C. Report, that the design of the Code is based on ensuring that "all key stakeholders will participate to collectively assess viability. The law must ensure that all creditors who have the capability and the willingness to restructure their liabilities must be part of the negotiation process. The liabilities of all creditors who are not part of the negotiation process must also be met in any negotiated solution." Thus, it was agreed that once CIRP is initiated, it is no longer a proceeding only between the applicant creditor and the corporate debtor but is envisaged to be a proceeding involving all creditors of the debtor. The intent of the Code is to discourage individual actions for enforcement and settlement to the exclusion of the general benefit of all creditors.*

29.2 On a review of the multiple NCLT and NCLAT judgments in this regard, the consistent pattern that emerged was that a settlement may be reached amongst all creditors and the debtor, for the purpose of a withdrawal to be granted, and not only the applicant creditor and the debtor. On this basis read with the intent of the Code, the Committee unanimously agreed that the relevant rules may be amended to provide for withdrawal post admission if the CoC approves of such action by a voting share of ninety per cent. It was specifically discussed that Rule 11 of the National Company Law Tribunal Rules, 2016 may not be adopted for this aspect of CIRP at this stage [as observed by the Hon'ble Supreme Court in *Ujjara Foods and Feeds (P) Ltd. v. Adora Pharmachem*<sup>4</sup>] and even otherwise, as the issue can be specifically addressed by amending Rule 8 of the CIRP Rules.<sup>39</sup> (emphasis in original)

Before this section was inserted, this Court, under Article 142, was passing orders allowing withdrawal of applications after creditors' applications had been admitted by NCLT or NCLAT.

**81.** Regulation 30-A of the CIRP Regulations states as under:

**30-A. Withdrawal of application.** (1) An application for withdrawal under Section 12-A shall be submitted to the interim resolution professional or the resolution professional, as the case may be, in Form 16A of the Schedule before issue of invitation for expression of interest under Regulation 36-A.

(2) The application in sub regulation (1) shall be accompanied by a bank guarantee towards estimated cost incurred for purposes of clauses (c) and (d) of Regulation 31 till the date of application.

(3) The committee shall consider the application made under sub-regulation (1) within seven days of its constitution or seven days of receipt of the application, whichever is later.

(4) Where the application is approved by the committee with ninety per cent voting share, the resolution professional shall submit the application under

37 (2018) 15 SCC 588

38 (2017) SCC Online SC 789

4 (2018) 15 SCC 587

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sub-regulation (1) to the adjudicating authority on behalf of the applicant, within three days of such approval.

a (5) The adjudicating authority may, by order, approve the application submitted under sub-regulation (4)."

b This Court, by its order dated 14.12.2018 in *Brilliant Alloys (P) Ltd. v. S. Rajagopal*<sup>52</sup>, has stated that Regulation 30-A(1) is not mandatory but is directory for the simple reason that on the facts of a given case, an application for withdrawal may be allowed in exceptional cases even after issue of invitation for expression of interest under Regulation 36 A.

c 82. It is clear that once the Code gets triggered by admission of a creditor's petition under Sections 7 to 9, the proceeding that is before the adjudicating authority, being a collective proceeding, is a proceeding in rem. Being a proceeding in rem, it is necessary that the body which is to oversee the resolution process must be consulted before any individual corporate debtor is allowed to settle its claim. A question arises as to what is to happen before a Committee of Creditors is constituted (as per the timelines that are specified, a Committee of Creditors can be appointed at any time within 30 days from the date of appointment of the Interim resolution professional). We make it clear that at any stage where the Committee of Creditors is not yet constituted, a party d can approach NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement. This will be decided after hearing all the parties concerned and considering all relevant factors on the facts of each case.

e 83. The main thrust against the provision of Section 12-A is the fact that ninety per cent of the Committee of Creditors has to allow withdrawal. This high threshold has been explained in the I.C. Report as all financial creditors have to put their heads together to allow such withdrawal as, ordinarily, an omnibus settlement involving *all* creditors ought, ideally, to be entered into. This explains why ninety per cent, which is substantially all the financial creditors, have to grant their approval to an individual withdrawal or settlement. In any case, the figure of ninety per cent, in the absence of anything further f to show that it is arbitrary, must pertain to the domain of legislative policy, which has been explained by the Report (supra). Also, it is clear that under Section 61 of the Code, the Committee of Creditors do not have the last word on the subject. If the Committee of Creditors arbitrarily rejects a just settlement and/or withdrawal claim, NCLT, and thereafter, NCLAT can always set aside such decision under Section 69 of the Code. For all these reasons, we are of the view that Section 12-A also passes constitutional muster. g

*Evidence provided by private information utilities: only prima facie evidence of default*

h 84. A frontal attack was made by Sri Mukul Rohatgi on the ground that private information utilities that have been set up are not governed by proper norms. Also, the evidence by way of loan default contained in the records of

52. 2018 SCC Onl SC 3154.

such utility cannot be conclusive evidence of what is stated therein. The BLRC Report had stated:

"Under the present arrangements, considerable time can be lost before all parties obtain this information. Disputes about these facts can take up years to resolve in court.... Hence, the Committee envisions a competitive industry of "information utilities" who hold an array of information about all firms at all times. When the LRP commences, within less than a day, undisputed and complete information would become available to all persons involved in the LRP and thus address this source of delay."

85. The setting up of information utilities was preceded by a regime of information companies which were referred to as credit information companies (CICs), as recommended by the Siddiqui Working Group in 1969. The Attorney General pointed out, in his written submission, that:

"In 2013, RBI constituted another committee under the chairmanship of Aditya Puri, MD, HDFC Bank to examine reporting formats used by CICs and other related issues. The Committee's report led to the standardisation of data formats for reporting corporate, consumer and MFI data by all credit institutions and streamlining the process of data submission by credit institutions to CICs. In 2015, all credit institutions were directed by RBI to become members of all CICs and submit current and historical data about specified borrower to them and to update it regularly."

The purpose of setting up the above regime of information utilities was to reduce information asymmetry for improved credit risk assessment and to improve recovery processes.

The setting up of IUs marks a shift in the above position as not only is the information with IUs used to reduce information asymmetry, but it is also to be treated as prima facie evidence of the transaction for the purpose of IBC proceedings. This assists in improving the timelines for the resolution process."

86. The Information Utilities Regulations, in particular Regulations 20 and 21, make it clear that on receipt of information of default, an information utility shall expeditiously undertake the process of authentication and verification of information. Regulations 20 and 21 read as follows:

**20. Acceptance and receipt of information.** (1) An information utility shall accept information submitted by a user in Form C of the Schedule.

(2) On receipt of the information submitted under sub-regulation (1), the information utility shall

- (a) assign a unique identifier to the information, including records of debt;
- (b) acknowledge its receipt, and notify the user of
  - (i) the unique identifier of the information;
  - (ii) the terms and conditions of authentication and verification of information; and

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(iii) the manner in which the information may be accessed by other parties.

a **21. Information of default** (1) On receipt of information of default, an information utility shall expeditiously undertake the processes of authentication and verification of the information.

(2) On completion of the processes of authentication and verification under sub-regulation (1), the information utility shall communicate the information of default, and the status of authentication to registered users who are

b (a) creditors of the debtor who has defaulted;  
(b) parties and sureties, if any, to the debt in respect of which the information of default has been received.”

c **87.** The aforesaid Regulations also make it clear that apart from the stringent requirements as to registration of such utility, the moment information of default is received, such information has to be communicated to all parties and sureties to the debt. Apart from this, the utility is to expeditiously undertake the process of authentication and verification of information, which will include authentication and verification from the debtor who has defaulted. This being the case, coupled with the fact that such evidence, as has been conceded by the learned Attorney General, is only prima facie evidence of default, which is rebuttable by the corporate debtor, makes it clear that the challenge based on  
d this ground must also fail.

*Resolution professional has no adjudicatory powers*

**88.** It is clear from a reading of the Code as well as the Regulations that the resolution professional has no adjudicatory powers. Section 18 of the Code lays down the duties of an interim resolution professional as follows:

e **“18. Duties of interim resolution professional.—**(1) The interim resolution professional shall perform the following duties, namely—

(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to

f (i) business operations for the previous two years;  
(ii) financial and operational payments for the previous two years;  
(iii) list of assets and liabilities as on the initiation date; and  
(iv) such other matters as may be specified;

(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under Sections 13 and 15;

g (c) constitute a Committee of Creditors;

(d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the Committee of Creditors;

(e) file information collected with the information utility, if necessary;

h and

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including—

(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

(ii) assets that may or may not be in possession of the corporate debtor;

(iii) tangible assets, whether movable or immovable;

(iv) intangible assets including intellectual property;

(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;

(vi) assets subject to the determination of ownership by a court or authority;

(g) to perform such other duties as may be specified by the Board.

*Explanation.* For the purposes of this section, the term “assets” shall not include the following, namely—

(a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;

(b) assets of any Indian or foreign subsidiary of the corporate debtor; and

(c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.”

89. Under the CIRP Regulations, the resolution professional has to vet and verify claims made, and ultimately, determine the amount of each claim as follows:

“10. *Substantiation of claims.* The interim resolution professional or the resolution professional, as the case may be, may call for such other evidence or clarification as he deems fit from a creditor for substantiating the whole or part of its claim

12. *Submission of proof of claims* (1) Subject to sub-regulation (2), a creditor shall submit claim with proof on or before the last date mentioned in the public announcement.

(2) A creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit the claim with proof to the interim resolution professional or the resolution professional, as the case may be, on or before the ninetieth day of the insolvency commencement date.

(3) Where the creditor in sub-regulation (2) is a financial creditor under Regulation 8, it shall be included in the committee from the date of admission of such claim.

Provided that such inclusion shall not affect the validity of any decision taken by the committee prior to such inclusion.

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a **13. Verification of claims.**—(1) The interim resolution professional or the resolution professional, as the case may be, shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.

(2) The list of creditors shall be

- b (a) available for inspection by the persons who submitted proofs of claim;
- (b) available for inspection by members, partners, Directors and guarantors of the corporate debtor;
- (c) displayed on the website, if any, of the corporate debtor;
- (d) filed with the adjudicating authority; and
- c (e) presented at the first meeting of the committee.

**14. Determination of amount of claim.**—(1) Where the amount claimed by a creditor is not precise due to any contingency or other reason, the interim resolution professional or the resolution professional, as the case may be, shall make the best estimate of the amount of the claim based on the information available with him.

d (2) The interim resolution professional or the resolution professional, as the case may be, shall revise the amounts of claims admitted, including the estimates of claims made under sub-regulation (1), as soon as may be practicable, when he comes across additional information warranting such revision.”

e It is clear from a reading of these Regulations that the resolution professional is given administrative as opposed to quasi-judicial powers. In fact, even when the resolution professional is to make a “determination” under Regulation 35-A, he is only to apply to the adjudicating authority for appropriate relief based on the determination made as follows:

f “35-A. *Preferential and other transactions.* (1) On or before the seventy-fifth day of the insolvency commencement date, the resolution professional shall form an opinion whether the corporate debtor has been subjected to any transaction covered under Sections 43, 45, 50 or 66.

g (2) Where the resolution professional is of the opinion that the corporate debtor has been subjected to any transactions covered under Sections 43, 45, 50 or 66, he shall make a determination on or before the one hundred and fiftieth day of the insolvency commencement date, under intimation to the Board.

(3) Where the resolution professional makes a determination under sub-regulation (2), he shall apply to the adjudicating authority for appropriate relief on or before the one hundred and thirty-fifth day of the insolvency commencement date.”

h **90.** As opposed to this, the liquidator, in liquidation proceedings under the Code, has to consolidate and verify the claims, and either admit or reject such claims under Sections 48 to 50 of the Code, Sections 41 and 42, by way



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of contrast between the powers of the liquidator and that of the resolution professional, are set out hereinbelow:

**41. Determination of valuation of claims.**—The liquidator shall determine the value of claims admitted under Section 40 in such manner as may be specified by the Board.

**42. Appeal against the decision of liquidator.** A creditor may appeal to the adjudicating authority against the decision of the liquidator accepting or rejecting the claims within fourteen days of the receipt of such decision.

It is clear from these sections that when the liquidator “determines” the value of claims admitted under Section 40, such determination is a “decision”, which is quasi-judicial in nature, and which can be appealed against to the adjudicating authority under Section 42 of the Code.

**91.** Unlike the liquidator, the resolution professional cannot act in a number of matters without the approval of the Committee of Creditors under Section 28 of the Code, which can, by a two-thirds majority, replace one resolution professional with another, in case they are unhappy with his performance. Thus, the resolution professional is really a facilitator of the resolution process, whose administrative functions are overseen by the Committee of Creditors and by the adjudicating authority.

**Constitutional validity of Section 29-A**

**92.** Section 29-A reads as follows:

**29-A. Persons not eligible to be resolution applicant.** A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—

(a) is an undischarged insolvent;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

h (h) has executed a guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code and such

guarantee has been invoked by the creditor and remains unpaid in full or part;

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

(g) has a connected person not eligible under clauses (a) to (f).

*Explanation I.*—For the purposes of this clause, the expression “connected person” means

(i) any person who is the promoter or in the management or control of the resolution applicant; or

(ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or

(iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii);

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

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

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

(a) a scheduled bank;

(b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding;

(c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in Regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999 (42 of 1999),

(d) an asset reconstruction company registered with the Reserve Bank of India under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(e) an Alternate Investment Fund registered with the Securities and Exchange Board of India;

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(f) such categories of persons as may be notified by the Central Government.”

a **93.** This section was first introduced by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017, which amended the Insolvency and Bankruptcy Code on 23.11.2017. The Finance Minister while moving the Amendment Bill stated as follows:

b “The core and the soul of this new Ordinance is really Clause 5, which is Section 29 A of the original Bill. I may just explain that once a company goes into the resolution process, then applications would be invited with regard to the potential resolution proposals as far as the company is concerned or the enterprise is concerned. Now a number of ineligibility clauses were not there in the original Act, and, therefore, Clause 29 A introduces those who are not eligible to apply. For instance, there is a clause with regard to an undischarged insolvent who is not eligible to apply; a person who has been disqualified under the Companies Act to act as a Director cannot apply; and a person who is prohibited under the SEBI Act cannot apply. So these are statutory disqualifications. And, there is also a disqualification in clause (c) with regard to those who are corporate debtors and who, as on the date of the application making a bid, do not operationalise the account by paying the interest itself i.e. you cannot say that I have an NPA, I am not making the account operational. The accounts will continue to be NPAs and yet I am going to apply for this. Effectively, this clause will mean that those who are in management and on account of whom this insolvent or the non-performing asset has arisen, will not try and say, I do not discharge any of the outstanding debts in terms of making the accounts operational, and yet I would like to apply and get the same enterprise back at a discounted value, for this is not the object of this particular Act itself. So Clause 5 has been brought in with that purpose in mind.” (emphasis supplied)

c **94.** The Statement of Objects and Reasons for the aforesaid amendment states.

d “2. The provisions for insolvency resolution and liquidation of a corporate person in the Code did not restrict or bar any person from submitting a resolution plan or participating in the acquisition process of the assets of a company at the time of liquidation. Concerns have been raised that persons who, with their misconduct contributed to defaults of companies or are otherwise undesirable, may misuse this situation due to lack of prohibition or restrictions to participate in the resolution or liquidation process, and gain or regain control of the corporate debtor. This may undermine the processes laid down in the Code as the unscrupulous person would be seen to be rewarded at the expense of creditors. In addition, in order to check that the undesirable persons who may have submitted their resolution plans in the absence of such a provision, responsibility is also being entrusted on the Committee of Creditors to give a reasonable period to repay overdue amounts and become eligible.” (emphasis supplied)

95. This Court has held in *Arcafin Mills*<sup>61</sup>: (SCC p. 47, paras 30-32)

“30. A purposive interpretation of Section 29-A, depending both on the text and the context in which the provision was enacted, must, therefore, inform our interpretation of the same. We are concerned in the present matter with sub-clauses (c), (f), (h) and (j) thereof. a

31. It will be noticed that the opening lines of Section 29-A contained in the 2017 Ordinance are different from the opening lines of Section 29-A as contained in the 2017 Amendment Act. What is important to note is that the phrase “persons acting in concert” is conspicuous by its absence in the 2017 Ordinance. The concepts of “promoter”, “management” and “control” which were contained in the opening lines of Section 29-A under the Ordinance have now been transferred to sub-clause (c) in the 2017 Amendment Act. It is, therefore, important to note that the 2017 Amendment Act opens with language which is of wider import than that contained in the 2017 Ordinance, evincing an intention to rope in all persons who may be acting in concert with the person submitting a resolution plan. b

32. The opening lines of Section 29-A of the Amendment Act refer to a de facto as opposed to a de jure position of the persons mentioned therein. This is a typical instance of a “see-through provision”, so that one is able to arrive at persons who are actually in “control”, whether jointly, or in concert, with other persons. A wooden, literal interpretation would obviously not permit a tearing of the corporate veil when it comes to the “person” whose eligibility is to be gone into. However, a purposeful and contextual interpretation, such as is the felt necessity of interpretation of such a provision as Section 29 A, alone governs. For example, it is well settled that a shareholder is a separate legal entity from the company in which he holds shares. This may be true generally speaking, but when it comes to a corporate vehicle that is set up for the purpose of submission of a resolution plan, it is not only permissible but imperative for the competent authority to find out as to who are the constituent elements that make up such a company. In such cases, the principle laid down in *Salomon v. A. Salomon and Co. Ltd.*<sup>62</sup> will not apply. For it is important to discover in such cases as to who are the real individuals or entities who are acting jointly or in concert, and who have set up such a corporate vehicle for the purpose of submission of a resolution plan.” (emphasis supplied) c

96. Similarly in *Chitra Sharma v. Union of India*<sup>63</sup>, this Court observed as follows: (SCC pp. 619-20, paras 93-94)

“93. Parliament has introduced Section 29-A into IBC with a specific purpose. The provisions of Section 29-A are intended to ensure that among others, persons responsible for insolvency of the corporate debtor do not participate in the resolution process . . .” d

<sup>61</sup> *Arcafin Mills (India) (P) Ltd. v. British Airways Group*, (2015) 2 SCC 1

<sup>62</sup> (1897) AC 22 (HL)

<sup>63</sup> (2018) 18 SCC 575

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a "94. ... The Court must bear in mind that Section 29-A has been enacted in the larger public interest and to facilitate effective corporate governance. Parliament rectified a loophole in the Act which allowed a backdoor entry to erstwhile managements in the CIRP. Section 30 of the IBC, as amended, also clarifies that a resolution plan of a person who is ineligible under Section 29-A will not be considered by the CoC...."

**Retrospective application**

b "97. It is settled law that a statute is not retrospective merely because it affects existing rights; nor is it retrospective merely because a part of the requisites for its action is drawn from a time antecedent to its passing [see *State Bank's Staff Union (Madras Circle) v. Union of India*<sup>62</sup> (at para 21)] In *Archeological*<sup>63</sup>, this Court has observed that a resolution applicant has no vested right for consideration or approval of its resolution plan as follows: (SCC p 87, para 82)

c "82. Take the next stage under Section 30. A Resolution Professional has presented a resolution plan to the Committee of Creditors for its approval, but the Committee of Creditors does not approve such plan after considering its feasibility and viability, as the requisite vote of not less than 66% of the voting share of the financial creditors is not obtained. As has been mentioned hereinabove, the first proviso to Section 30(4) furnishes the answer, which is that all that can happen at this stage is to require the Resolution Professional to invite a fresh resolution plan within the time limits specified where no other resolution plan is available with him. It is clear that at this stage again no application before the adjudicating authority could be entertained as there is no vested right or fundamental right in the resolution applicant to have its resolution plan approved, and as no adjudication has yet taken place."

d "98. This being the case, it is clear that no vested right is taken away by application of Section 29 A. However, Shri Viswanathan pointed out the judgments in *Ritesh Agarwal v. SEDF*<sup>64</sup> (at para 25), *K.S. Praparanan v. State of Kerala*<sup>65</sup> (at paras 60-66), *Darshan Singh v. Ravi Pal Singh*<sup>66</sup> (at para 35), *Pyare Lal Sharma v. Jammu & Kashmir Industries Ltd.*<sup>67</sup> (at para 21), *P.D. Aggarwal v. State of U.P.*<sup>68</sup> (at para 18), and *Gownd Das v. CIT*<sup>69</sup> (at paras 6 and 11), to argue that if a section operates on an antecedent set of facts, but affects a vested right, it can be held to be retrospective, and unless the legislature clearly intends such retrospectivity, the section should not be construed as such. Each of these judgments deals with different situations in which penal and other enactments interfere with vested rights, as a result of which, they were held to

62 (2005) 1 SCC 581 (2005 SCC (L&S) 591)

63 *Archeological (India) (P) Ltd. v. Satish Kumar Gupta*, (2015) 2 SCC 1

64 (2022) 8 SCC 725

65 (1991) 5 SCC 553

66 1992 Supp (1) SCC 191

67 (1989) 2 SCC 715 (1989 SCC (L&S) 151)

68 (1987) 3 SCC 622 (1987 SCC (L&S) 132)

69 (1976) 1 SCC 226 (1976 SCC (Tax) 13)

be prospective in nature. However, in our judgment in *ArcaamMina*<sup>7</sup>, we have already held that resolution applicants have no vested right to be considered as such in the resolution process. Shri Mukul Rohatgi, however, argued that this judgment is distinguishable as no question of constitutional validity arose in this case, and no issue as to the vested right of a promoter fell for consideration. We are of the view that the observations made in *ArcaamMina*<sup>7</sup> directly arose on the facts of the case in order to oust the Rulas as promoters from the pale of consideration of their resolution plan, in which context, this Court held that they had no vested right to be considered as resolution applicants. Accordingly, we follow the aforesaid judgment. Since a resolution applicant who applies under Section 29 A(c) has no vested right to apply for being considered as a resolution applicant, this point is of no avail.

**Section 29-A(c) not restricted to malfeasance**

99. According to the learned counsel for the petitioners, Section 29 A(c) treats unequals as equals. A good erstwhile manager cannot be lumped with a bad erstwhile manager. Where an erstwhile manager is not guilty of malfeasance or of acting contrary to the interests of the corporate debtor, there is no reason why he should not be permitted to take part in the resolution process. After all, say the counsel for the petitioners, maximisation of value of the assets of the corporate debtor is an important objective to be achieved by the Code. Keeping out good erstwhile managers from the resolution process would go contrary to this objective.

100. This objection by the petitioners was countered by the learned Attorney General and Solicitor General, stating that the various clauses of Section 29-A would show that a person need not be a criminal in order to be kept out of the resolution process. For example, under Section 29-A(a), it is clear that a person may be an undischarged insolvent for no fault of his. Equally, under Section 29-A(e), a person may be disqualified to act as a Director under the Companies Act, 2013, say, where he has not furnished the necessary financial statements on time [see Section 164(2)(a)<sup>8</sup> of the Companies Act, 2013].

101. The learned counsel for some of the petitioners have also argued that the proviso to Section 351(f) that was added by the Insolvency and Bankruptcy Code (Amendment) Act, 2017 [dated 19-11-2017] with retrospective effect from 23-11-2017 is manifestly arbitrary and violative of

<sup>7</sup> *ArcaamMina (P) Ltd. v. Satish Kumar Singh* (2019) 2 SCC 11

<sup>8</sup> "164. Disqualifications for appointment of Director. (1) —

(a) No person who is or has been a Director of a company which—

(i) has not filed financial statements or annual returns for any continuous period of three financial years; or

(ii) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures or the due calls or pay interest thereon or to pay any dividend declared and such failure to pay or redeem continues for one year or more;

shall be eligible to be re-appointed as a Director of that company or appointed in other company for a period of five years from the date on which the said company fully disobeys

Provided that, where a person is appointed as a Director of a company which is in default of clause (i) or clause (ii), he shall not incur the disqualification for a period of six months from the date of his appointment."

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Article 14 of the Constitution of India. The proviso to Section 35(1)(g) reads as follows:

a "35. Powers and duties of liquidator.—(1) Subject to the directions of the adjudicating authority, the liquidator shall have the following powers and duties, namely

b (g) subject to Section 52, to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified;

Provided that the liquidator shall not sell the immovable and movable property or actionable claims of the corporate debtor in liquidation to any person who is not eligible to be a resolution applicant."

c 102. According to the learned counsel for the petitioners, when immovable and movable property is sold in liquidation, it ought to be sold to any person, including persons who are not eligible to be resolution applicants as, often, it is the erstwhile promoter who alone may purchase such properties piecemeal by public auction or by private contract. The same rationale that has been provided earlier in this judgment will apply to this proviso as well — there is no vested right in an erstwhile promoter of a corporate debtor to bid for the immovable and movable property of the corporate debtor in liquidation. Further, given the categories of persons who are ineligible under Section 29-A, which includes persons who are insolvent, or persons who have fallen foul of the law in some way, and persons who are unable to pay their debts in the grace period allowed, are further, by this proviso, interdicted from purchasing assets of the corporate debtor whose debts they have either willfully not paid or have been unable to pay. The legislative purpose which permeates Section 29-A continues to permeate the section when it applies not merely to resolution applicants, but to liquidation also. Consequently, this plea is also rejected.

*The one-year period in Section 29-A(c) and NPAs*

f 103. It is clear that Section 29 A goes to eligibility to submit a resolution plan. A wilful defaulter, in accordance with the guidelines of RBI, would be a person who though able to pay, does not pay. An NPA, on the other hand, refers to the account belonging to a person that is declared as such under guidelines issued by RBI. It is important at this juncture to advert to the aforesaid guidelines. The RBI's Master Circular on Prudential Norms on Income Recognition, Asset Classification and Provisioning Pertaining to Advances dated 17.7.2015 (the RBI Master Circular) consolidates instructions issued up to 30.6.2015 on NPAs. Clause 2.1 defines NPAs as under:

*"2. Definitions*

*2.1. Non-performing assets*

h 2.1.1. An asset, including a leased asset, becomes non-performing when it ceases to generate income for the bank.

2.1.2. A non-performing asset (NPA) is a loan or an advance where:



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(i) interest and/or instalment of principal remain overdue for a period of more than 90 days in respect of a term loan,

(ii) the account remains 'out of order' as indicated at Para 2.2 below, in respect of an overdraft/cash credit (OD/CC),

(iii) the bill remains overdue for a period of more than 90 days in the case of bills purchased and discounted,

(iv) the instalment of principal or interest thereon remains overdue for two crop seasons for short duration crops,

(v) the instalment of principal or interest thereon remains overdue for one crop season for long duration crops,

(vi) the amount of liquidity facility remains outstanding for more than 90 days, in respect of a securitisation transaction undertaken in terms of guidelines on securitisation dated 1-2-2006,

(vii) in respect of derivative transactions, the overdue receivables representing positive mark-to-market value of a derivative contract, if these remain unpaid for a period of 90 days from the specified due date for payment.

2.1.3. In case of interest payments, banks should, classify an account as NPA only if the interest due and charged during any quarter is not serviced fully within 90 days from the end of the quarter.

2.1.4. In addition, an account may also be classified as NPA in terms of Para 4.2.4 of this master circular."

104. Clause 4 of the RBI Master Circular deals with asset classification as follows:

**"4. Asset Classification**

4.1. *Categories of NPAs:* Banks are required to classify non-performing assets further into the following three categories based on the period for which the asset has remained non-performing and the realisability of the dues:

(i) Substandard assets

(ii) Doubtful assets

(iii) Loss assets

4.1.1. *Substandard assets:* With effect from 31-3-2005, a substandard asset would be one, which has remained NPA for a period less than or equal to 12 months. Such an asset will have well defined credit weaknesses that jeopardize the liquidation of the debt and are characterized by the distinct possibility that the banks will sustain some loss, if deficiencies are not corrected.

4.1.2. *Doubtful assets:* With effect from 31-3-2005, an asset would be classified as doubtful if it has remained in the substandard category for a period of 12 months. A loan classified as doubtful has all the weaknesses inherent in assets that were classified as substandard, with the added characteristic that the weaknesses make collection or liquidation in full

— on the basis of currently known facts, conditions and values — highly questionable and improbable.

a 4.1.3. *Loss assets:* A loss asset is one where loss has been identified by the bank or internal or external auditors or the RBI inspection but the amount has not been written off wholly. In other words, such an asset is considered uncollectible and of such little value that its continuance as a bankable asset is not warranted although there may be some salvage or recovery value.” (emphasis supplied)

b 105. What is clear from the aforesaid circular is that accounts are declared NPA only if defaults made by a corporate debtor are not resolved (for example, interest on and/or instalment of the principal remaining overdue for a period of more than 90 days in respect of a term loan). Post declaration of such NPA, what is clear is that a substandard asset would then be NPA which has remained as such for a period of twelve months. In short, a person is a defaulter when an

c instalment and/or interest on the principal remains overdue for more than three months, after which, its account is declared NPA. During the period of one year thereafter, since it is now classified as a substandard asset, this grace period is given to such person to pay off the debt. During this grace period, it is clear that such person can bid along with other resolution applicants to manage the corporate debtor. What is important to bear in mind is also the fact that, prior

d to this one-year-three-month period, banks and financial institutions do not declare the accounts of corporate debtors to be NPAs. As a matter of practice, they first try and resolve disputes with the corporate debtor, after which, the corporate debtor's account is declared NPA. As a matter of legislative policy, therefore, quite apart from malfeasance, if a person is unable to repay a loan taken, in whole or in part, within this period of one year and three months (which, in any case, is after an earlier period where the corporate debtor and its

e financial creditors sit together to resolve defaults that continue), it is stated to be ineligible to become a resolution applicant. The reason is not far to see. A person who cannot service a debt for the aforesaid period is obviously a person who isailing itself. The saying of Jesus comes to mind — “if the blind lead the blind, both shall fall into the ditch.” The legislative policy, therefore, is that a person who is unable to service its own debt beyond the grace period referred

f to above, is unfit to be eligible to become a resolution applicant. This policy cannot be found fault with. Neither can the period of one year be found fault with, as this is a policy matter decided by RBI and which emerges from its Master Circular, as during this period, an NPA is classified as a substandard asset. The ineligibility attaches only after this one year period is over as the NPA now gets classified as a doubtful asset.

g 106. The Committee set up by the Government to oversee the working of the Code has, in its Report of March 2018, also considered this aspect of the matter and has opined as follows:

h “14.8 In regard to the disqualification under clause (c) for having an NPA account, it was also stated to the Committee that the time period for existence of the NPA account must be increased from one year to three years. The reason provided was that a downturn in a typical business cycle was most likely to extend over a year. However, in the absence of

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any concrete data, the Committee felt that there is no conclusive way to determine what the ideal time period for existence of an NPA should be for the disqualification to apply. *The Committee felt that the Code was a relatively new legislation and therefore, it would be prudent to wait and allow industry experience to emerge for a few years before any amendment is made to the NPA holding period under Section 29-A(f). In relation to applicability of Section 29-A(f), the Committee also discussed that it must be clarified that the disqualification pursuant to Section 29-A(f) shall be applicable if such NPA accounts are held by the resolution applicant or its connected persons at the time of submission of the resolution plan to the RP.* (emphasis in original)

**Related party**

107. A constitutional challenge has been raised against Section 29 A(f) read with the definition of "related party". "Related party" is defined in the Code as follows:

**"5. Definitions.—**In this Part, unless the context otherwise requires—

(14) "related party", in relation to a corporate debtor, means

(a) a Director or partner of the corporate debtor or a relative of a Director or partner of the corporate debtor;

(b) a key managerial personnel of the corporate debtor or a relative of a key managerial personnel of the corporate debtor;

(c) a limited liability partnership or a partnership firm in which a Director, partner, or manager of the corporate debtor or his relative is a partner;

(d) a private company in which a Director, partner or manager of the corporate debtor is a Director and holds along with his relatives, more than two per cent of its share capital;

(e) a public company in which a Director, partner or manager of the corporate debtor is a Director and holds along with relatives, more than two per cent of its paid-up share capital;

(f) any body corporate whose Board of Directors, Managing Director or Manager, in the ordinary course of business, acts on the advice, directions or instructions of a Director, partner or Manager of the corporate debtor;

(g) any limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, acts on the advice, directions or instructions of a Director, partner or Manager of the corporate debtor;

(h) any person on whose advice, directions or instructions, a Director, partner or Manager of the corporate debtor is accustomed to act;

(i) a body corporate which is a holding, subsidiary or an associate company of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary;

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- a (j) any person who controls more than twenty per cent of voting rights in the corporate debtor on account of ownership or a voting agreement;
- (k) any person in whom the corporate debtor controls more than twenty per cent of voting rights on account of ownership or a voting agreement;
- (l) any person who can control the composition of the Board of Directors or corresponding governing body of the corporate debtor;
- b (m) any person who is associated with the corporate debtor on account of—
- (i) participation in policy-making processes of the corporate debtor; or
- (ii) having more than two Directors in common between the corporate debtor and such person; or
- c (iii) interchange of Managerial personnel between the corporate debtor and such person; or
- (iv) provision of essential technical information to, or from, the corporate debtor;
- (14-A) "related party", in relation to an individual, means
- d (a) a person who is a relative of the individual or a relative of the spouse of the individual;
- (b) a partner of a limited liability partnership, or a limited liability partnership or a partnership firm, in which the individual is a partner;
- (c) a person who is a trustee of a trust in which the beneficiary of the trust includes the individual, or the terms of the trust confers a power on the trustee which may be exercised for the benefit of the individual;
- e (d) a private company in which the individual is a Director and holds along with his relatives, more than two per cent of its share capital;
- (e) a public company in which the individual is a Director and holds along with relatives, more than two per cent of its paid-up share capital;
- f (f) a body corporate whose Board of Directors, Managing Director or Manager, in the ordinary course of business, acts on the advice, directions or instructions of the individual;
- (g) a limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, act on the advice, directions or instructions of the individual;
- g (h) a person on whose advice, directions or instructions, the individual is accustomed to act;
- (i) a company, where the individual or the individual along with its related party, own more than fifty per cent of the share capital of the company or controls the appointment of the Board of Directors of the company.
- h

*Explanation.*—For the purposes of this clause—

(a) "relative", with reference to any person, means anyone who is related to another, in the following manner, namely—

(i) members of a Hindu Undivided Family,

(ii) husband,

(iii) wife,

(iv) father,

(v) mother,

(vi) son,

(vii) daughter,

(viii) son's daughter and son,

(ix) daughter's daughter and son,

(x) grandson's daughter and son,

(xi) granddaughter's daughter and son,

(xii) brother,

(xiii) sister,

(xiv) brother's son and daughter,

(xv) sister's son and daughter,

(xvi) father's father and mother,

(xvii) mother's father and mother,

(xviii) father's brother and sister,

(xix) mother's brother and sister, and

(b) wherever the relation is that of a son, daughter, sister or brother, their spouses shall also be included;"

108. What is argued by the petitioners is that the mere fact that somebody happens to be a relative of an ineligible person cannot be good enough to oust such person from becoming a resolution applicant, if he is otherwise qualified. We were urged, by Shri Viswanathan in particular, to apply the doctrine of nexus that is well known and that has been applied by this Court in several judgments in other legal contexts, more particularly, in *Attorney General for India v. Anantlal Prajapati*<sup>108</sup>. Para 44 reads as under: (SCC pp. 90-93)

"44. It is contended by the counsel for the petitioners that extending the provisions of SATEMA to the relatives, associates and other "holders" is again a case of overreaching or of over breadth, as it may be called — a case of excessive regulation. It is submitted that the relatives or associates of a person falling under clause (a) or clause (b) of Section 2(2) of SATEMA may have acquired properties of their own, may be by illegal means but there is no reason why those properties be forfeited under SATEMA just because they are related to or are associates of the detentor or convict, as the case may be. It is pointed out that the definition of 'relative' in Explanation (2) and of 'associates' in Explanation (3) are so wide as to bring in a person even distantly related or associated with the convict/detentor, within the net of SATEMA, and once he comes within the net, all his illegally acquired properties can be forfeited under the Act. In our opinion, the said contention

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a is based upon a misconception. SATEMA is directed towards forfeiture of  
 "illegally acquired properties" of a person falling under clause (a) or clause  
 (b) of Section 2(2). The relatives and associates are brought in only for the  
 purpose of ensuring that the illegally acquired properties of the convict or  
 detenu, acquired or kept in their names, do not escape the net of the Act.  
 It is a well-known fact that persons indulging in illegal activities screen  
 the properties acquired from such illegal activity in the names of their  
 relatives and associates. Sometimes they transfer such properties to them,  
 b may be, with an intent to transfer the ownership and title. In fact, it is  
 immaterial how such relative or associate holds the properties of convict/  
 detenu — whether as a benami or as a mere name lender or as a bona  
 fide transferee for value or in any other manner. He cannot claim those  
 properties and must surrender them to the State under the Act. Since he is  
 a relative or associate, as defined by the Act, he cannot put forward any  
 defence once it is proved that that property was acquired by the detenu  
 c whether in his own name or in the name of his relatives and associates. It  
 is to counteract the several devices that are or may be adopted by persons  
 mentioned in clauses (a) and (b) of Section 2(2) that their relatives and  
 associates mentioned in clauses (c) and (d) of the said sub-section are  
 also brought within the purview of the Act. The fact of their holding or  
 possessing the properties of convict/detenu furnishes the link between the  
 d convict/detenu and his relatives and associates. Only the properties of the  
 convict/detenu are sought to be forfeited, wherever they are. The idea is to  
 reach his properties in whosoever's name they are kept or by whosoever  
 they are held. The independent properties of relatives and friends, which  
 are not traceable to the convict/detenu, are not sought to be forfeited nor  
 are they within the purview of SATEMA. [That this was the object of the  
 e Act is evident from para 4 of the preamble which states: "And whereas  
 such persons have in many cases been holding the properties acquired  
 by them through such gains in the names of their relatives, associates  
 and confidants." We are not saying that the Preamble can be utilised for  
 restricting the scope of the Act, we are only referring to it to ascertain  
 the object of the enactment and to reassure ourselves that the construction  
 f placed by us accords with the said object.] We may proceed to explain what  
 we say. Clause (c) speaks of a relative of a person referred to in clause (a)  
 or clause (b) (which speak of a convict or a detenu). Similarly, clause (d)  
 speaks of associates of such convict or detenu. If we look to Explanation  
 (1) which specifies who the associates referred to in clause (d) are, the  
 matter becomes clearer. "Associates" means — (i) any individual who had  
 g been or is residing in the residential premises (including outhouses) of such  
 person [such person" refers to the convict or detenu, as the case may be,  
 referred to in clause (a) or clause (b)]; (ii) any individual who had been or  
 is managing the affairs or keeping the accounts of such convict/detenu; (iii)  
 any association of persons, body of individuals, partnership firm or private  
 h company of which such convict/detenu had been or is a member, partner  
 or Director; (iv) any individual who had been or is a member, partner  
 or Director of an association of persons, body of individuals, partnership  
 firm or private company referred to in clause (iii) at any time when such

person had been or is a member, partner or Director of such association of persons, body of individuals, partnership firm or private company; (v) any person who had been or is managing the affairs or keeping the accounts of any association of persons, body of individuals, partnership firm or private company referred to in clause (iii); (vi) the trustee of any trust where (a) the trust has been created by such convict/detenu; or (b) the value of the assets contributed by such convict/detenu to the trust amounts, on the date of contribution not less than 20% of the value of the assets of the trust on that date; and (vii) where the competent authority, for reasons to be recorded in writing, considers that any properties of such convict/detenu are held on his behalf by any other person, such other person. *It would thus be clear that the connecting link or the nexus, as it may be called, is the holding of property or assets of the convict/detenu or traceable to such detenu/convict.* Section 4 is equally relevant in this context. It declares that "as from the commencement of this Act, it shall not be lawful for any person to whom this Act applies to hold any illegally acquired property either by himself or through any other person on his behalf". All such property is liable to be forfeited. The language of this section is indicative of the ambit of the Act. Clauses (c) and (d) in Section 2(2) and Explanations (2) and (3) occurring therein shall have to be construed and understood in the light of the overall scheme and purpose of the enactment. The idea is to forfeit the illegally acquired properties of the convict/detenu irrespective of the fact that such properties are held by or kept in the name of or screened in the name of any relative or associate as defined in the said two Explanations. The idea is not to forfeit the independent properties of such relatives or associates which they may have acquired illegally but only to reach the properties of the convict/detenu or properties traceable to him, wherever they are, ignoring all the transactions with respect to those properties. By way of illustration, take a case where a convict/detenu purchases a property in the name of his relative or associate — it does not matter whether he intends such a person to be a mere name-lender or whether he really intends that such person shall be the real owner and/or possessor thereof — or gifts away or otherwise transfers his properties in favour of any of his relatives or associates, or purports to sell them to any of his relatives or associates — in all such cases, all the said transactions will be ignored and the properties forfeited unless the convict/detenu or his relative/associate, as the case may be, establishes that such property or properties are not "illegally acquired properties" within the meaning of Section 4(a). In this view of the matter, there is no basis for the apprehension that the independently acquired properties of such relatives and associates will also be forfeited even if they are in no way connected with the convict/detenu. So far as the holders (not being relatives and associates) mentioned in Section 2(2)(e) are concerned, they are dealt with on a separate footing. If such person proves that he is a transferee in good faith for consideration, his property—even though purchased from a convict/detenu—is not liable to be forfeited. It is equally necessary to reiterate that the burden of establishing that the properties mentioned in the show-cause notice issued under Section 6, and which are held on that date by a relative or an associate of the convict/detenu, are

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a not the illegally acquired properties of the convict/detenu. lies upon such relative/associate. He must establish that the said property has not been  
 b acquired with the moneys or assets provided by the detenu/convict or that they in fact did not or do not belong to such detenu/convict. We do not think that Parliament ever intended to say that the properties of all the relatives and associates, may be illegally acquired, will be forfeited just because they happen to be the relatives or associates of the convict/detenu. *There ought to be the connecting link between these properties and the convict/detenu, the burden of disproving which, as mentioned above, is upon the relative/associate.* In this view of the matter, the apprehension and contention of the petitioners in this behalf must be held to be based upon a mistaken premise. The bringing in of the relatives and associates or of the persons mentioned in clause (e) of Section 29 is thus neither discriminatory nor incompetent apart from the protection of Article 31 B.” (emphasis supplied)

c 109. We are of the view that persons who act jointly or in concert with others are connected with the business activity of the resolution applicant. Similarly, all the categories of persons mentioned in Section 5(24-A) show that such persons must be “connected” with the resolution applicant within the meaning of Section 29-A(j). This being the case, the said categories of persons who are collectively mentioned under the caption “relative” obviously need to  
 d have a connection with the business activity of the resolution applicant. In the absence of showing that such person is “connected” with the business of the activity of the resolution applicant, such person cannot possibly be disqualified under Section 29-A(j). All the categories in Section 29-A(j) deal with persons, natural as well as artificial, who are connected with the business activity of the resolution applicant. The expression “related party”, therefore, and “relative”  
 e contained in the definition sections must be read noscitur a sociis with the categories of persons mentioned in Explanation I, and so read, would include only persons who are connected with the business activity of the resolution applicant.

f 110. An argument was also made that the expression “connected person” in Explanation I, clause (f) to Section 29-A(j) cannot possibly refer to a person who may be in management or control of the business of the corporate debtor in future. This would be arbitrary as the explanation would then apply to an indeterminate person. This contention also needs to be repelled as Explanation I seeks to make it clear that if a person is otherwise covered as a “connected person”, this provision would also cover a person who is in management or  
 g control of the business of the corporate debtor *during the implementation of a resolution plan.* Therefore, any such person is not indeterminate at all, but is a person who is in the saddle of the business of the corporate debtor either at an anterior point of time or even during implementation of the resolution plan. This disposes of all the contentions raising questions as to the constitutional validity of Section 29-A(j).

h



*Exemption of micro small, and medium enterprises from Section 29-A*

111. The ILC Report of March 2018 found that micro, small and medium enterprises form the foundation of the economy and are key drivers of employment, production, economic growth, entrepreneurship and financial inclusion. a

112. Section 7 of the Micro, Small and Medium Enterprises Development Act, 2006 classifies enterprises depending upon whether they manufacture or produce goods, or are engaged in providing and rendering services as micro, small or medium, depending upon certain investments made, as follows: b

"7. Classification of enterprises. (1) Notwithstanding anything contained in Section 11-B of the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Central Government may, for the purposes of this Act, by notification and having regard to the provisions of sub-sections (4) and (5), classify any class or classes of enterprises, whether proprietorship, Hindu undivided family, associations of persons, cooperative society, partnership firm, company or undertaking, by whatever name called c

(a) in the case of the enterprises engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951), as

(i) a micro enterprise, where the investment in plant and machinery does not exceed twenty five lakh rupees; d

(ii) a small enterprise, where the investment in plant and machinery is more than twenty-five lakh rupees but does not exceed five crore rupees; or

(iii) a medium enterprise, where the investment in plant and machinery is more than five crore rupees but does not exceed ten crore rupees; e

(b) in the case of the enterprises engaged in providing or rendering of services, as—

(i) a micro enterprise, where the investment in equipment does not exceed ten lakh rupees; f

(ii) a small enterprise, where the investment in equipment is more than ten lakh rupees but does not exceed two crore rupees; or

(iii) a medium enterprise, where the investment in equipment is more than two crore rupees but does not exceed five crore rupees." g

113. The ILC Report of 2018 exempted these industries from Sections 29-A(a) and 29-A(b) of the Code, their rationale for doing so being contained in Para 27.1 of the Report, which reads as follows: h

"27.1. Regarding the first issue, the Code is clear that default of INR one lakh or above triggers the right of a financial creditor or an operational creditor to file for insolvency. Thus, the financial creditor or operational creditors of MSMEs may take it to insolvency under the Code. However, given that MSMEs are the bedrock of the Indian economy, and the intent is not to push them into liquidation and affect the livelihood of b

a employees and workers of MSMEs, the Committee sought it fit to explicitly grant exemptions to corporate debtors which are MSMEs by permitting a promoter who is not a willful defaulter, to bid for MSME in insolvency. *The rationale for this relaxation is that a business of an MSME attracts interest primarily from a promoter of an MSME and may not be of interest to other resolution applicants.* (emphasis supplied)

b 114. Thus, the rationale for excluding such industries from the eligibility criteria laid down in Sections 29-A(c) and 29-A(h) is because qua such industries, other resolution applicants may not be forthcoming, which then will inevitably lead not to resolution, but to liquidation. Following upon the Insolvency Law Committee's Report, Section 240-A has been inserted in the Code with retrospective effect from 6-6-2018 as follows:

c "240-A. *Application of this Code to micro, small and medium enterprises.*—(1) Notwithstanding anything to the contrary contained in this Code, the provisions of clauses (c) and (h) of Section 29-A shall not apply to the resolution applicant in respect of corporate insolvency resolution process of any micro, small and medium enterprises.

(2) Subject to sub-section (1), the Central Government may, in the public interest, by notification, direct that any of the provisions of this Code shall—

d (a) not apply to micro, small and medium enterprises; or  
(b) apply to micro, small and medium enterprises, with such modifications as may be specified in the notification.

(3) A draft of every notification proposed to be issued under sub-section (2), shall be laid before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions.

e (4) If both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or shall be issued only in such modified form as may be agreed upon by both the Houses, as the case may be.

f (5) The period of thirty days referred to in sub-section (4) shall not include any period during which the House referred to in sub-section (4) is prorogued or adjourned for more than four consecutive days.

(6) Every notification issued under this section shall be laid, as soon as may be after it is issued, before each House of Parliament.

g *Explanation.*—For the purposes of this section, the expression "micro, small and medium enterprises" means any class or classes of enterprises classified as such under sub-section (1) of Section 7 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006)."

h 115. It can thus be seen that when the Code has worked hardship to a class of enterprises, the Committee constituted by the Government, in overseeing the working of the Code, has been alive to such problems, and the Government in turn has followed the recommendations of the Committee in enacting Section 240-A. This is an important instance of how the executive continues to monitor the application of the Code, and exempts a class of enterprises from

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the application of some of its provisions in deserving cases. This and other amendments that are repeatedly being made to the Code, and to subordinate legislation made thereunder, based upon Committee Reports which are looking into the working of the Code, would also show that the legislature is alive to serious anomalies that arise in the working of the Code and steps in to rectify them.

**Section 53 of the Code does not violate Article 14**

116. An argument has been made by the counsel appearing on behalf of the petitioners that in the event of liquidation, operational creditors will never get anything as they rank below all other creditors, including other unsecured creditors who happen to be financial creditors. This, according to them, would render Section 53 and in particular, Section 53(1)(f) discriminatory and manifestly arbitrary and thus, violative of Article 14 of the Constitution of India.

117. Section 53(1) reads as follows:

**“53. Distribution of assets.** (1) Notwithstanding anything to the contrary contained in any law enacted by Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely

(a) the insolvency resolution process costs and the liquidation costs paid in full;

(b) the following debts which shall rank equally between and among the following—

(i) workmen’s dues for the period of twenty-four months preceding the liquidation commencement date; and

(ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in Section 52;

(c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;

(d) financial debts owed to unsecured creditors;

(e) the following debts shall rank equally between and among the following—

(i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;

(ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;

(f) any remaining debts and dues;

(g) preference shareholders, if any; and

(h) equity shareholders or partners, as the case may be.”

118. The BLRC Report, which led to the enactment of the Insolvency Code, in dealing with this aspect of the matter, has stated:

a           “The Committee has recommended to keep the right of the Central and State Government in the distribution waterfall in liquidation at a priority below the unsecured financial creditors in addition to all kinds of secured creditors for promoting the availability of credit and developing a market for unsecured financing (including the development of bond markets). In the long run, this would increase the availability of finance, reduce the cost of capital, promote entrepreneurship and lead to faster economic growth. The Government also will be the beneficiary of this process as economic growth will increase revenues. Further, efficiency enhancement and consequent greater value capture through the proposed insolvency regime will bring in additional gains to both the economy and the exchequer.

b           For the remaining creditors who participate in the collective action of liquidation, the Committee debated on the waterfall of liabilities that should hold in liquidation in the new Code. Across different jurisdictions, the observation is that secured creditors have first priority on the realisations, and that these are typically paid out net of the costs of insolvency resolution and liquidation. In order to bring the practices in India in line with the global practice, and to ensure that the objectives of this proposed Code is met, the Committee recommends that the waterfall in liquidation should be as follows:

- c           1. Costs of IRP and liquidation.
- d           2. Secured creditors and workmen dues capped up to three months from the start of IRP.
- e           3. Employees capped up to three months.
- f           4. Dues to unsecured financial creditors, debts payable to workmen in respect of the period beginning twelve months before the liquidation commencement date and ending three months before the liquidation commencement date.
- g           5. Any amount due to the State Government and the Central Government in respect of the whole or any part of the period of two years before the liquidation commencement date; any debts of the secured creditor for any amount unpaid following the enforcement of security interest.
- h           6. Remaining debt.
7. Surplus to shareholders.”

119. It will be seen that the reason for differentiating between financial debts, which are secured, and operational debts, which are unsecured, is in the relative importance of the two types of debts when it comes to the object sought to be achieved by the Insolvency Code. We have already seen that repayment of financial debts infuses capital into the economy inasmuch as banks and financial institutions are able, with the money that has been paid back, to further lend such money to other entrepreneurs for their businesses. This rationale creates an intelligible differential between financial debts and operational debts, which are unsecured, which is directly related to the object sought to be achieved by the Code. In any case, workmen’s dues, which are

also unsecured debts, have traditionally been placed above most other debts. Thus, it can be seen that unsecured debts are of various kinds, and so long as there is some legitimate interest sought to be protected, having relation to the object sought to be achieved by the statute in question, Article 14 does not get infringed. For these reasons, the challenge to Section 53 of the Code must also fail.

*Epilogue*

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.

121. We are happy to note that in the working of the Code, the flow of financial resource to the commercial sector in India has increased exponentially as a result of financial debts being repaid. Approximately 4300 cases have been disposed of by the adjudicating authority based on out-of-court settlements between corporate debtors and creditors which themselves involved claims amounting to over INR 1,20,390 crores. Eighty cases have since been resolved by resolution plans being accepted. Of these eighty cases, the liquidation value of sixty three such cases is INR 29,788.07 crores. However, the amount realised from the resolution process is in the region of INR 60,000 crores, which is over 202% of the liquidation value. As a result of this, Reserve Bank of India has come out with figures which reflect these results. Thus, credit that has been given by banks and financial institutions to the commercial sector (other than food) has jumped up from INR 4952.24 crores in 2016-2017, to INR 9161.09 crores in 2017-2018, and to INR 13,195.20 crores for the first six months of 2018-2019. Equally, credit flow from non-banks has gone up from INR 6819.93 crores in 2016-2017, to INR 4718 crores for the first six months of 2018-2019. Ultimately, the total flow of resources to the commercial sector in India, both bank and non-bank, and domestic and foreign (relatable to the non-food sector) has gone up from a total of INR 14,530.47 crores in 2016-2017, to INR 18,469.25 crores in 2017-2018, and to INR 18,798.20 crores in the first six months of 2018-2019. These figures show that the experiment conducted in enacting the Code is proving to be largely successful. The defaulter's paradise is lost. In its place, the economy's rightful position has been regained. The result is that all the petitions will now be disposed of in terms of this judgment. There will be no order as to costs.

**Maithili Moondra**

**From:** Maithili Moondra  
**Sent:** 05 January 2023 20:12  
**To:** cirpsupertech.nonev2@gmail.com; iphiteshgoel@gmail.com  
**Cc:** teamsupertech@alvarezandmarsal.com; Aparna Rawat; Jay Bhupali; Gaurav Luhadia; Ruchir Jauhari; Ajay Bhargava; Wamika Trehan  
**Subject:** FW: FW: L&T Housing Finance Limited (LTHF) - Financial Creditor Claim update  
**Attachments:** Response on behalf of L&T Finance Limited\_05.01.23.pdf

Dear Mr Goel

We write to you for and on behalf of our Client, L&T Finance Limited who has instructed us to issue upon you the response to your email dated 03 January 2023, whereby you have sought to reverse the earlier admission of our Client's legal and legitimate claim of INR 1895,77,34,490 (Indian Rupees One Thousand Eight Hundred Ninety Five Crores Seventy Seven Lakhs Thirty Four Thousand Four Hundred and Ninety only) and out of this admitted amount baselessly rejected our Client's claim of INR 630,04,98,903 (Indian Rupees Six Hundred and Thirty Crores Four Lakhs Ninety-Eight Thousand Nine Hundred and Three only).

Please find attached the response dated 05 January 2023 issued by and on behalf of our Client to your email dated 03 January 2023.

Regards

li  
Moondra

Maithi

Khaitan & Co

----- Forwarded message -----

**From:** CIRP Supertech Non Eco-Village 2 <[cirpsupertech.nonev2@gmail.com](mailto:cirpsupertech.nonev2@gmail.com)>  
**Date:** Tue, 3 Jan 2023 at 8:54 AM  
**Subject:** Re: L&T Housing Finance Limited (LTHF) - Financial Creditor Claim update  
**To:** Gaurav Luhadia <[gauravluhadia@ltfs.com](mailto:gauravluhadia@ltfs.com)>, Jay Bhupali <[jaybhupali@ltfs.com](mailto:jaybhupali@ltfs.com)>  
**Cc:** Hitesh Goel <[iphiteshgoel@gmail.com](mailto:iphiteshgoel@gmail.com)>, Ruchir Jauhari <[ruchirjauhari@ltfs.com](mailto:ruchirjauhari@ltfs.com)>, Aparna Rawat <[aparna.rawat@ltfs.com](mailto:aparna.rawat@ltfs.com)>, teamsupertech <[teamsupertech@alvarezandmarsal.com](mailto:teamsupertech@alvarezandmarsal.com)>

Dear Gaurav and Jay,

Thank you for your email. We have gone through the same and have noted the contents thereof. Albeit, we have the following reservations against the judgments shared by you:

1. In the Supreme Court order dated September 12, 2022, the parties therein have only been directed to maintain *status quo* but no observation has been made regarding the position adopted by the NCLAT in the *Abhinav Mukherjee* judgment, and therefore the observations therein continue to remain binding.
2. Kindly refer to paragraph 25 of the *Abhinav Mukherjee* judgment (attached herewith). Both the judgments relied upon by LTHF, namely *Axis Bank v Edu Smart* and *Andhra Bank v F.M. Hammerle Textiles* have been distinguished and stated to be inapplicable in view of the NCLAT's subsequent judgment in ***Edelweiss Asset Reconstruction Co. Ltd. v. OMLL***, subsequently upheld by the **Hon'ble Supreme Court in *Ghanshyam Mishra v. EARC, (2021) 9 SCC 657***, wherein the said NCLAT decision was upheld and it was observed that the Corporate Guarantee not having been invoked prior to the moratorium, the Corporate Guarantee holder's claim was rightly rejected by the Resolution Professional. The said judgment is attached herewith for your reference. Relevant observations in this regard may be seen from para 25 of the *Abhinav Mukherjee* judgment (order dated 14th March 2022), as the Supreme Court observations in this regard have been reproduced therein. In any case, *Ghanshyam Mishra* judgment being a Supreme Court judgment and later in time, the judgments cited by LTHF no longer have a bearing on the issue.

TRUE COPY

**WITHOUT PREJUDICE****BY EMAIL**

05 January 2023

To

**Mr Hitesh Goel,**  
Interim Resolution Professional,  
Supertech Limited

**Registered Address:**

C4/1002 The Legend Apartments,  
Sector 57, Gurgaon, Haryana -122011

**Correspondence Address:**

Supertech Limited 21st-25th Floor,  
E-Square, Plot No. C2, Sector - 96, Noida,  
Gautam Buddha Nagar,  
Uttar Pradesh – 201303

**Our Client: L&T Finance Limited****Subject: Response on behalf of L&T Finance Limited to the email dated 03  
January 2023**

Dear Mr Goel

We write to you for and on behalf of our Client, L&T Finance Limited who has instructed us to issue upon you the present response to your email dated 03 January 2023, whereby you have sought to reverse the earlier admission of our Client's legal and legitimate claim of INR 1895,77,34,490 (Indian Rupees One Thousand Eight Hundred Ninety Five Crores Seventy Seven Lakhs Thirty Four Thousand Four Hundred and Ninety only) and out of this admitted amount baselessly rejected our Client's claim of INR 630,04,98,903 (Indian Rupees Six Hundred and Thirty Crores Four Lakhs Ninety-Eight Thousand Nine Hundred and Three only).

From a bare perusal of your email, it is evident that all claims and allegations made in the email are bereft of any truth. In view thereof, our response to your email is as under.

*Asst*  
**TRUE COPY**

At the outset, our Client denies all averments, allegations or contentions and submissions made in your email, save and except what is borne out of the record and save what is specifically admitted in the present response.

As already submitted to you vide our Client's email dated 30 December 2022, ***IDBI Trusteeship Services Limited v. Mr. Abhinav Mukherji & Ors, C.A. (AT) (INS.) No. 356 of 2022***, on facts, cannot be applicable to the present scenario. It is reiterated that the facts of judgments passed by the Hon'ble National Company Law Appellate Tribunal in ***Axis Bank Limited v. Edu Smart Services Private Limited, Company Appeal (AT) (Insolvency) No. 302 of 2017*** and ***Andhra Bank v. M/s F.M. Hammerle Textile Limited, Company Appeal (AT) (Insolvency) No. 61 of 2018*** squarely apply to the present scenario and that your interpretation of the judgments passed by the Hon'ble Supreme Court in ***Ghanshyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited (2021) 9 SCC 657*** and ***Swiss Ribbons Private Limited and Another v. Union of India & Others (2019) 4 SCC 17***, is utterly erroneous. That the aforesaid, makes it clear and evident that you are acting in a *malafide* manner.

That section 3(6) of the Insolvency and Bankruptcy Code, 2016 (“Code”) defines the term ‘claim’, whereby sub-section (6)(ii) provides that claim means that right to payment exists in case of a breach of contract, even if the claim is unmatured. That section 3(6) of the Code is reproduced hereinunder:

- “(6) “**claim**” means –
- (a) *a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured, or unsecured;*
- (b) **right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;**”

In view of the aforesaid, without prejudice, claims which are unmatured also have to be admitted by the IRP, as were already admitted by you and that it is not mandatory to invoke Corporate Guarantee. In terms of the Code, rules and regulations, it is a settled procedure that the IRP cannot arbitrarily deny the claims already admitted by him earlier. That without any change in the scenario, circumstances or facts, the IRP cannot review or change his decision after already admitting the claims. That in the present scenario, you had already admitted the claims of our Client vide an email dated 16 November 2022 and thereafter rejected the claims vide emails dated 19 December 2022 and 03 January 2023 without any valid reasoning.



In view thereof, we request you to kindly admit our Client's claims amounting to INR 630,04,98,903 (Indian Rupees Six Hundred and Thirty Crores Four Lakhs Ninety-Eight Thousand Nine Hundred and Three only) thereby tallying the total admitted claims to INR 1895,77,34,490 (subject to upward revisions on clarifications to be provided by our Client) which are due and payable to our Client and confirm the admission of our Client's claims, at the earliest.

The present response is issued without prejudice to our Clients' rights and remedies available in law, which are hereby expressly reserved against you, the Corporate Debtor, the Corporate Guarantor, including the promoters, directors, management, employees, personnel, etc of the Corporate Debtor and the Corporate Guarantor."

Yours sincerely



**Maithili Moondra**  
**For Khaitan & Co LLP**



IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 9090-9091/2018

ATYANT CAPITAL INDIA FUND I

Appellant

VERSUS

RESOLUTION PROFESSIONAL  
JEKPL PRIVATE LIMITED & ANR.

Respondents

WITH

CIVIL APPEAL NO. 10134/2018

O R D E R

CIVIL APPEAL NOS. 9090-9091/2018

We have heard learned counsel for the parties and perused the relevant material on record.

The civil appeals are dismissed.

CIVIL APPEAL NO. 10134/2018

We have heard learned counsel for the parties and perused the relevant material on record.

The civil appeal is dismissed.

It will be open for the appellant to urge all points as may be available to it in law before the appropriate forum, if so advised.

.....CJI  
[Ranjan Gogoi]

.....J.  
[L. Nageswara Rao]

.....J.  
[Sanjiv Khanna]

Validity unknown  
Digitally signed by  
DEEPAK K. GUPTA  
Date: 2019.01.23  
17:06:04 IST  
Reason:

New Delhi;  
January 23, 2019.

*Handwritten signature*  
COPY

ITEM NO.2

COURT NO.1

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 Nos. 9090-9091/2018

ATYANT CAPITAL INDIA FUND I

Appellant

VERSUS

RESOLUTION PROFESSIONAL  
JEKPL PRIVATE LIMITED & ANR.

Respondents

(I.A. No. 171532/2018 - CLARIFICATION/DIRECTION, I.A. No. 175406/2018 - INTERVENTION/IMPLEADMENT, I.A. No. 169825/2018 - PERMISSION TO FILE ADDL. DOCUMENTS/FACTS/ANNEXURES, I.A. NO. 124610/2018 - STAY APPLICATION, I.A. No. 162976/2018 - VACATING STAY)

WITH

C.A. No. 10134/2018 (XVII)

(IA No.134869/2018-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.134870/2018-STAY APPLICATION and IA No.134867/2018-PERMISSION TO FILE APPEAL)

Date : 23-01-2019 This matter was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE L. NAGESWARA RAO  
HON'BLE MR. JUSTICE SANJIV KHANNA

For Appellant

Dr. Abhishek Manu Singhvi, Sr. Adv.  
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Mr. Nidhi Ram, Adv.  
Mr. Ashwin G. Raj, Adv.  
Mr. Javedur Rahman, Adv.  
Mr. Rajesh Imandar, Adv.

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Mr. Rajesh Kumar Chaurasia, AOR  
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For Respondents/  
Applicants

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Mr. Harshit Garg, Adv.  
Mr. Anurag Kumar Singh, Adv.

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Mr. Rajesh Kumar, AOR

Mr. Jayant Mehta, Adv.  
Mr. Anshuman Sharma, Adv.  
Mr. S.K. Pandey, Adv.  
Mr. Chandra Shekhar C., Adv.  
Mr. Anshul Rai, Adv.  
Mr. Awanish, Adv.  
Mr. Sajal Jain, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The civil appeals are dismissed in terms of the signed order.

Pending interlocutory applications, if any, shall stand disposed of.

(Deepak Guglani)  
Court Master

(Anand Prakash)  
Court Master

(signed order is placed on the file)



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*Sanjit B22-17*  
*[Signature]* B19421  
AUTHORISED SIGNATORIES  
Please sign above

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