

**BEFORE THE NATIONAL COMPANY LAW APPELLATE
TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI
I.A. NO. OF 2023
IN
COMPANY APPEAL (AT)(INS) NO. 406 OF 2022**

In the matter of –

Ram Kishor Arora Suspended Director of M/s Supertech Ltd.
1114, 11th Floor, Hemkunt Chambers
89, Nehru Place, New Delhi 110019
Email : headoffice@supertechlimited.com

....Appellant

Versus

Union Bank of India & Anr.
Union Bank Bhava, 239, Vidhan Bhavan Marg,
Nariman Point, Mumbai-400021, Maharashtra
Email: investorservices@unionbankofindia.bank.

...Respondents

And in the matter of –

1. Rahul Agarwal

2. Pooja Agarwal

(Both r/o B-178, 2nd Floor, CR Park

New Delhi 110019)

...Applicants

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x *Rohant Hawani*

(APPLICANT NO. 1)

x *Rohant Hawani*
(APPLICANT NO.2)

THROUGH

Rohan Thawani

New Delhi

Date : 17-07-2023

(ROHAN THAWANI)
Advocate for the Applicants
C-64 Basement
Defence Colony
New Delhi 110024
9810802319
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1. The present appeal has been filed by the above named Appellant against the order dated 25.03.2022 passed by the National Company Law Tribunal, New Delhi, whereby the CIRP was initiated against the Corporate Debtor M/s Supertech Ltd. The insolvency proceedings arise out of failure of the Corporate Debtor to pay back the loan facilities extended to it by the Union Bank of India and Bank of Baroda (Financial Creditors) in respect of a project being executed by the Corporate Debtor known as "Eco Village II".
2. Through this application, the Applicants seek clarification of order dated 10.06.2022 passed by this Hon'ble Tribunal in the present appeal, to the extent that they may be allowed to pursue their execution application against the Corporate Debtor before the Haryana Real Estate Regulatory Authority, Gurugram. This application arises in the following circumstances.
3. The Applicants herein invested their hard earned money into an apartment admeasuring 1945 square feet, bearing No. A-1802, 18th Floor, Tower A, in the project being developed by the Corporate Debtor in Gurugram, Haryana, known as 'Araville', situated at Sector 79 Gurugram. The booking was made on 28.07.2012, and the possession of the apartment was to be handed over by October 2016. The Applicants paid the Corporate Debtor a total sum of Rs. 1,22,70,356/- for the apartment.

4. Since the Corporate Debtor failed to deliver the possession within the stipulated time, the Applicants exercised their option to terminate the agreement with the Corporate Debtor and sought refund of the amounts paid by them along with interest and compensation. Upon failure of the Corporate Debtor to repay the Applicants, they filed a complaint with the Haryana Real Estate Regulatory Authority (HRERA) seeking refund and compensation.
5. Ultimately, on 19.03.2021, the HRERA allowed the Applicants complaint and passed a decree in favor of the Applicants, directing the Corporate Debtor to refund the sum of Rs. 1,22,70,356/- to the Applicants along with interest @9.3% p.a. along with a sum of Rs. 20,000/- as compensation. True copy of decree dated 19.03.2021 passed by the Haryana Real Estate Regulatory Authority Gurugram in Complaint No. 1057/2020 is **Annexure A-1**.
6. Upon failure of the Corporate Debtor to honor the decree, the Applicants were constrained to file Execution Application No. 2757/2021 before the HRERA on 09.07.2021. At that point in time, inclusive of interest, the Corporate Debtor owed a sum of Rs. 2,10,87,830/- to the Applicants.
7. On 07.08.2021 the HRERA issued notice to the Corporate Debtor on the Execution application, and subsequently the Corporate Debtor put in appearance before the HRERA.

8. For the purposes of this application, it is sufficient to state that despite being given opportunity, the Corporate Debtor still failed to comply with the decree and hence on 14.12.2021 the HRERA issued warrants of arrest against the Directors of the Corporate Debtor. True copy of order dated 14.12.2021 passed by the Haryana Real Estate Regulatory Authority Gurugram in E/2757/2021/1057/2019 is **Annexure A-2**.
9. On 21.03.2022 the counsel for the Corporate Debtor appeared before the HRERA and gave a cheque of Rs. 11 Lakhs to the Applicants which was accepted without prejudice. The Corporate Debtor then sought further time to pay the balance amount. In the meantime the service of warrants was not effected and report was called in that regard. True copy of order dated 21.03.2022 passed by the Haryana Real Estate Regulatory Authority Gurugram in RERA-GRG-2757-2021 is **Annexure A-3**.
10. At this stage, it appears that the present Respondents/ Financial Creditors approached the NCLT New Delhi with an application u/s 7 of the IBC 2016 in respect of the default committed by the Corporate Debtor qua the loans taken for the project "Eco Village II". On 25.03.2022 the NCLT New Delhi was pleased to admit the application and thus the CIRP in respect of the Corporate Debtor came into being. One Mr. Hitesh Goel was appointed as the IRP and, inter alia, moratorium u/s 14 of the IBC was declared qua the Corporate Debtor. True copy of order dated 25.03.2022 passed by the NCLT New Delhi Bench –IV in IB-204/(ND)/2021 is **Annexure A-4**.

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11. Upon coming to know of the admission of the Corporate Debtor into CIRP by way of public advertisements issued by the IRP, the Applicants, by way of abundant caution, submitted their claim to the IRP in the prescribed Form F (for creditors other than Financial Creditors and Operational Creditors) on 03.04.2022. True copy of Form F along with acknowledgment email dated 03.04.2022 is **Annexure A-5**.
12. On 07.04.2022 the HRERA adjourned the pending execution application in view of the Corporate Debtor being admitted into CIRP and consequent moratorium coming into force. True copy of order dated 07.04.2022 passed by the Haryana Real Estate Regulatory Authority Gurugram in E/2757/2021/1057/2019 is **Annexure A-6**.
13. Thereafter the present Appellant, being the suspended Director of the Corporate Debtor, filed an appeal before this Hon'ble Tribunal, assailing the order of the NCLT admitting the Corporate Debtor into CIRP. On 12.04.2022, this Hon'ble Tribunal passed an interim order directing the IRP not to constitute the Committee of Creditors till the next date. True copy of order dated 12.04.2022 passed by this Hon'ble Tribunal in Company Appeal (AT)(INS) No. 406 of 2022 is **Annexure A-7**.
14. On 10.06.2022, this Hon'ble Tribunal took up the matter and passed an order restricting the CIRP only to the project "Eco Village II". The IRP was directed to constitute the Committee of

Creditors only for the project “Eco Village II”. With regard to other projects, it was observed in para 25(v) of the order that “...*That all other projects of the Corporate Debtor apart from the Eco Village II Project shall be kept as ongoing project. The construction of all other Projects shall continue with overall supervision of the IRP with the assistance of the ex-management and its employees and workmen...*”. It was further directed that no account of the Corporate Debtor would be operated without the counter signature of the IRP, and all expenses and payments in different projects would only be under the approval of the IRP. True copy of order dated 10.06.2022 passed by this Hon’ble Tribunal in Company Appeal (AT)(INS) No. 406 of 2022 is **Annexure A-8**.

15. On 12.09.2022 this Hon’ble Tribunal passed another order wherein it was pleased to observe that the CIRP order had not been stayed and the moratorium is continuing. True copy of order dated 12.09.2022 passed by this Hon’ble Tribunal in Company Appeal (AT)(INS) No. 406 of 2022 is **Annexure A-9**.
16. On 14.10.2022 this Hon’ble Tribunal passed another order clarifying that the IRP is to receive and verify claims with respect to all the projects. True copy of order dated 14.10.2022 passed by this Hon’ble Tribunal in Company Appeal (AT)(INS) No. 406 of 2022 is **Annexure A-10**.
17. At this stage, it appears that some of the Financial Creditor of the Corporate Debtor approached the Hon’ble Supreme Court of

India against the order dated 10.06.2022 passed by this Hon'ble Tribunal. On 27.01.2023 the Hon'ble Supreme Court requested this Hon'ble Tribunal to keep the proceedings in abeyance. This Hon'ble Tribunal took note of the order and adjourned the appeal to await further orders of the Supreme Court. It was further stated that parties may move an application for fixing a date after an order is received from the Hon'ble Supreme Court. True copy of order dated 31.01.2023 passed by this Hon'ble Tribunal in Company Appeal (AT)(INS) No. 406 of 2022 is **Annexure A-11**.

18. Since the execution application was adjourned, and there was no progress on the claim submitted before the IRP either, the Applicants wrote an email to the IRP asking for the progress. On 06.02.2023 the IRP wrote back to the Applicants giving a brief outline of the matter and stated that the matter was at the stage of technical, financial and tax due diligence of non "Eco Village II" projects, as also commercial assessment of proposals for non "Eco Village II" projects. True copy of email of the IRP dated 06.02.2023 is **Annexure A-12**.
19. On 11.05.2023 the Hon'ble Supreme Court passed an interim order in the civil appeal, maintaining the CIRP for "Eco Village II" only, subject to the modification that this Hon'ble Tribunal may deal with offers said to have been received and pass appropriate orders, but the entire process would remain subject to the orders to be passed by the Hon'ble Supreme Court. True copy of order dated 11.05.2023 passed by the Supreme Court of India in Civil Appeal No. 1925 of 2023 is **Annexure A-13**.

20. Thereafter on 05.06.2023, the execution application filed by the present Applicants was listed before the HRERA along with several other similar cases. At this hearing, the various decree holders sought continuation of the execution proceedings against the Corporate Debtor, on the basis that the CIRP had been restricted only to one project i.e. "Eco Village II". However, the HRERA took the view that since the CIRP had been initiated against the Corporate Debtor and moratorium u/s 14 was declared, there is no reason to continue with the execution applications and all the matters were adjourned sine die subject to the orders passed in the insolvency proceedings. True copy of order dated 05.06.2023 passed by the Haryana Real Estate Regulatory Authority Gurugram in E/6118/2022/4032/2021 is **Annexure A-14**.
21. From the above narration of facts, it may be seen that the Applicants, who are decree holders against the Corporate Debtor, are left without any remedy in law to recover their dues from the Corporate Debtor under the decree passed by the HRERA, which has become final and has not even been appealed against by the Corporate Debtor. The execution proceedings filed before the HRERA are not being continued due to the CIRP order and consequent moratorium. The HRERA in its last order has adjourned the execution applications against the Corporate Debtor sine die to await the outcome of the CIRP proceedings. This is despite the fact that this Hon'ble Tribunal has restricted the CIRP to one project of the Corporate Debtor only, i.e. "Eco

Village II”, and has allowed the construction to continue of the other projects albeit under the supervision of the IRP. Further, the Corporate Debtor can also use its bank accounts, again under the countersignature and with prior approval of the IRP. Thus, it is not a situation where the Corporate Debtor is not carrying out any of its normal business for any project other than “Eco Village II”. Even the Supreme Court in its order of 11.05.2023 has not disturbed this order of this Hon’ble Tribunal, save certain modifications as mentioned in the order.

22. It is respectfully submitted that confining the CIRP to one project only, i.e. “Eco Village II”, should not result in the suspension of execution proceedings against the Corporate Debtor which arise out of its dues owed to the Applicants under a decree of the HRERA, in respect of another project i.e. ‘Araville’, if there is no CIRP across the board for the Corporate Debtor.
23. It may also be stated that the Applicants had submitted their claim to the IRP by way of abundant caution, however, since there is no CIRP for any other project, it is doubtful if the claim of the Applicants will be processed by the IRP either. Certainly till date there is no visibility on settlement of claims for creditors such as the Applicants, who are no longer homebuyers, nor financial or operation creditors. It may also be noted that the claim was submitted to the IRP at a time prior to the passing of the order dated 10.06.2022 by this Hon’ble Tribunal, restricting the CIRP to “Eco Village II” project only.

24. Thus, the present situation has resulted in tremendous prejudice and failure of justice to the Applicants, who are virtually left without any recourse in law to recover their legitimate dues. Neither is the execution application proceeding before the HRERA due to the CIRP, nor is the claim submitted to the IRP being processed for the reason that the CIRP is only restricted to the “Eco Village II” project only. The Applicants are decree holders, having dues legitimately owed to them by the Corporate Debtor under the process of law, under a decree which is final. However, there is no remedy for them under the present situation.
25. Hence, the Applicants submit it would be in the interests of justice for this Hon’ble Tribunal to clarify that the order dated 10.06.2022, wherein the CIRP has been restricted only to the “Eco Village II” project of the Corporate Debtor, would not come in the way of the HRERA Gurugram adjudicating the execution application filed by the Applicants in accordance with law. If such clarification is not given, the HRERA will not proceed with the execution, and the Applicants will be left without any remedy in law.
26. Hence, the Applicants have filed the present application, which is made bonafide and in the interests of justice.

PRAYER

It is therefore most respectfully prayed that this Hon'ble Tribunal may be pleased to –

- A) Issue an appropriate order clarifying that the order of this Hon'ble Tribunal dated 10.06.2022, which has restricted the CIRP of the Corporate Debtor only to the "Eco Village II" project, does not prohibit the Haryana Real Estate Regulatory Authority, Gurugram, from adjudicating the execution application filed by the Applicants herein in accordance with law;
- B) Pass any other or further order as this Hon'ble Tribunal may deem fit in the facts of this case

x Rahul Agrawal

(APPLICANT NO. 1)

x Rohan Thawani

(APPLICANT NO.2)

THROUGH

Rohan Thawani

(ROHAN THAWANI)
Advocate for the Applicants
C-64 Basement
Defence Colony
New Delhi 110024
9810802319
rohan@jnalaw.in
rohanthawani@gmail.com

New Delhi

Date : 17.07.2023

12

**BEFORE THE NATIONAL COMPANY LAW APPELLATE
TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI**

I.A. NO. OF 2023

IN

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

In the matter of –

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

...Appellant

Versus

Union Bank of India & Anr.

...Respondents

And in the matter of –

1. Rahul Agarwal

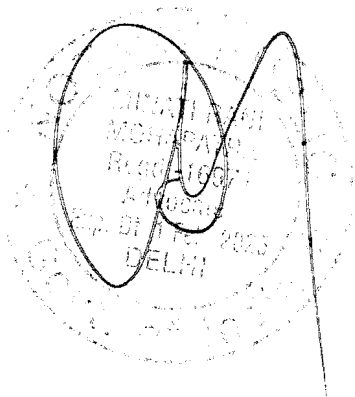
2. Pooja Agarwal

...Applicants

AFFIDAVIT

I, Rahul Agarwal, s/o Shri Ram Nath Agarwal, aged 48 years, r/o B-178,
2nd Floor, C.R. Park, New Delhi 110019, Applicant No.1 above named,
do hereby affirm and state on oath as under –

1. I say that I am the Applicant No.1 above named, and I am conversant with the facts of this case and am competent to swear the instant affidavit.
2. I say that I have read and understood the contents of the accompanying application which has been drafted under my instructions, and I say that the contents thereof are true and correct to my knowledge and nothing material is concealed.
3. I say that the annexures filed with this application are true copies of their respective originals.



Rahul Agarwal

DEPONENT

VERIFICATION –

I, the deponent above named, do hereby verify that the contents of the accompanying affidavit are true and correct to my knowledge and nothing material is concealed herefrom.

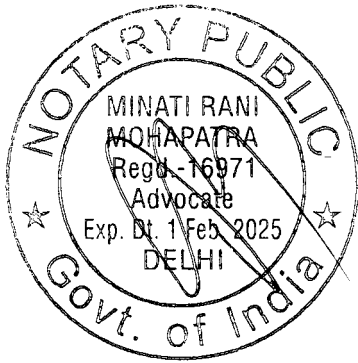
Verified at New Delhi on this 17 JUL ~~2022~~ day of July 2023

Rahul Gargwal
DEPONENT

Identified
Rohan Thakur

Rohan Thakur
IDENTIFIED

17 JUL 2023



Rohan Thakur
IDENTIFIED

17 JUL 2023

ATTESTED
MINATI RANI MOHAPATRA
ADVOCATE (NOTARY)
Mob. No.: 8130128457

14

**BEFORE THE NATIONAL COMPANY LAW APPELLATE
TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI
I.A. NO. OF 2023
IN
COMPANY APPEAL (AT)(INS) NO. 406 OF 2022**

In the matter of –

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

...Appellant

Versus

Union Bank of India & Anr.

...Respondents

And in the matter of –

1. Rahul Agarwal
2. Pooja Agarwal

...Applicants

AFFIDAVIT

I, Pooja Agarwal, s/o Shri Rahul Nath Agarwal, aged 45 years, r/o B-178, 2nd Floor, C.R. Park, New Delhi 110019, Applicant No.2 above named, do hereby affirm and state on oath as under –

1. I say that I am the Applicant No.2 above named, and I am conversant with the facts of this case and am competent to swear the instant affidavit.
2. I say that I have read and understood the contents of the accompanying application which has been drafted under my instructions, and I say that the contents thereof are true and correct to my knowledge and nothing material is concealed.
3. I say that the annexures filed with this application are true copies of their respective originals.




DEPONENT

VERIFICATION –

I, the deponent above named, do hereby verify that the contents of the accompanying affidavit are true and correct to my knowledge and nothing material is concealed herefrom.

Verified at New Delhi on this 17 JUL 2023 day of July 2023

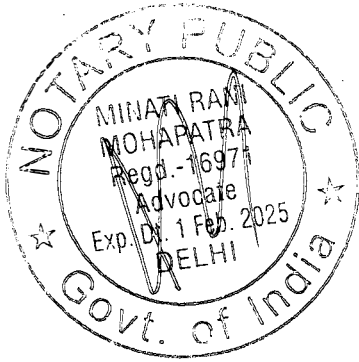
[Signature]
DEPONENT

17 JUL 2023

Identified

Rajni Thakur
Adv.

Rajni Thakur
IDENTIFIED



17 JUL 2023

ATTESTED
[Signature]
MINATI RANI MOHAPATRA
ADVOCATE (NOTARY)
Mob. No.: 8130128457

16

ANNEXURE A-1



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम

गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

**BEFORE S.C. GOYAL, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

Complaint No. : 1057/2020

Date of Decision : 19.03.2021

**Rahul Aggarwal & Pooja Aggarwal
R/o B-178, 2nd Floor, C.R. Park,
New Delhi-110019**

Complainants

V/s

**M/s Supertech Ltd.
1114, 11th Floor, Hemkunt Chambers
89, Nehru Place, New Delhi-110019**

Respondent

**Complaint under Section 31
of the Real Estate (Regulation
and Development) Act, 2016**

Argued by:

**For Complainants:
For Respondent:**

**Shri Rahul Aggarwal in person
Shri Brighu Dhami, Advocate**

ORDER

This is a complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as Act of 2016) read with rule

29 of the Haryana Real Estate (Regulation and Development) Rules, 2017

*Shri c c f w
19/3/2021*

1



ATTESTED

**EXAMINER
COPYING NO. 16/12
HARYANA REAL ESTATE REGULATORY**

Rohit Thakur
TRUE COPY

(hereinafter referred as the Rules of 2017) filed by Shri Rahul Aggarwal and Smt .Pooja Aggarwal seeking refund of Rs.22,70,356/- deposited with the respondent-builder for booking a residential unit No.A-1802 18th Floor, Tower-A of its project known as 'Araville', situated in Sector 79, Gurugram against a total sale consideration of Rs.1,05,17,005/-besides taxes etc on account of violation of obligations of the respondent/promoter under section 11(4) of the Real Estate(Regulation & Development) Act, 2016. Before taking up the case of the complainants, the reproduction of the following details is must and which are as under:

Project related details		
I.	Name of the project	"Araville" Sector 79, Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	A-1802, 18 th floor
V.	Tower No. / Block No.	Tower A
VI	Size of the unit	Measuring 1945 sq ft.
VII	Size of the unit	-DO-
VIII	Ratio of carpet area and super area	-DO-
IX	Category of the unit/ plot	Residential
X	Date of booking(original)	28.07.2012
XI	Date of Allotment(original)	
XII	Date of execution of FBA (copy of FBA enclosed)	09.07.2014

ATTESTED



EXAM/1672

Bhuvan Thakur
TRUE COPY

Shree
19/2/2021

XIII	Due date of possession as per FBA	October, 2016 with a grace period of six months
XIV	Delay in handing over possession till date	More than two years
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said BBA	R.5/- per sq ft of super area of unit per month for the period of delay.
Payment details		
XVI	Total sale consideration	Rs.1,05,17,005/-
XVII	Total amount paid by the complainants	Rs.1,22,70,356/-

2. Brief facts of the case can be detailed as under.

A project known by the name of 'Araville' situated at Sector 79, Gurugram was to be developed by the respondent-builder. The complainants coming to know about the same, booked the above mentioned unit in that project for a total sale consideration of Rs.1,05,17,005/-. A Builder Buyer Agreement dated 09.07.2014 was executed between the parties. It is the case of the complainants that in pursuance to that document, they started depositing various amounts against the allotted unit and paid a total sum of Rs.1,22,17,356/-. Since the booking of the allotted unit was under the construction linked plan, so as per due date of April, 2017 for offering possession, there was no progress of the project at the spot. A number of reminders asking the respondent to complete the project and hand over possession of the allotted unit were made but without any positive result. Lastly, finding no alternative, the complainants served a notice Annexure P-12 dated 20.11.2018 upon the respondent and sought refund of the amount deposited with it besides interest and compensation.

Shree C
19/3/2018
3
ATTESTED
2
16/11/2018

Board Treasurer
TRUE COPY

3. But the case of the respondent as set up in the written reply is that though the complainants booked a unit in the above mentioned project under the construction linked plan but they were not regular in making payment and committed default in the same. It was denied that the project is not progressing well. In fact, the occupation certificate has been received in two other towers and the construction of tower in which the unit in question is located is at advanced stage and its possession would be offered by December, 2021. Moreover, due the various factors, the construction of the project could not be completed. There was shortage of labour, raw-material, demonetisation and various restraint orders passed by different statutory authorities and which created an impediment in the pace of construction of the project. It was denied that the complainants are entitled for refund of the amount. Moreover, if the refund of the deposited amount is allowed, then it may hamper the progress of the project and would be detrimental to the interest of other allottees. Lastly, it was pleaded that the complaint filed by the complainants is premature as the matter is sub-judice before the Hon'ble Apex Court of the land.

4. All other averments made in the complaint were denied in toto.

5. I have heard the learned counsel for the parties and have also perused the case file.

6. Some of the admitted facts of the case are that on 28.07.2012, Rahul Aggarwal, complainant booked a flat No.A-1802, measuring 1945 sq ft. in the above mentioned project of the respondent for a total sale consideration of Rs.1,05,17,005/-. He deposited different amounts with the respondent upto 14.02.2014. A Flat Buyer Agreement with regard to that unit was executed between the complainants and the respondent-builder on 09.07.2014. As

per that document possession of the allotted unit was promised to be

19/11/2021



ATTESTED

EXAMINER
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HARYANA REAL ESTATE REGULATORY

Bharat Thakur

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handed over by October, 2016. However, on 25.11.2014, an addendum Annexure 9 to that allotment letter was made and as per the same, the promised due date of the allotted unit was agreed upon as April, 2017. It is also a fact that unit Nos.1103 was also allotted to the complainants in the same project and which was surrendered and the amount received against that unit was transferred to the unit in question. Its approval was also conveyed to the complainants by the respondent vide email Annexure 11 dated 22.08.2017. An affidavit dated 20.11.2017 was also executed by the complainants in this regard. So, in this way, the complainants deposited Rs.1,22,70,356/- against the allotment of the unit in question with the respondent. Though the project was required to be completed by April, 2017 and its possession was to be offered to the complainants by that date but nothing materialised. The complainants waited for more than 1 ½ years. So, ultimately, they send a notice dated 20.11.2018 Annexure 12 to the respondent and sought refund of the amount deposited with it as per provision of Section 18 of Real Estate(Regulation and Development) Act, 2016. The contention of the complainants is that when they had deposited more than the amount required, then the respondent was required to complete the project and offer possession of the unit to them. The allotment of the unit in question was made under the construction linked plan and as per Annexure 2-C of FBA dated 09.07.2014, the respondent was required to offer possession of the allotted unit by October, 2016 with a grace period of six months(clause E-1). So, after the expiry of that period, they were not obligated to wait indefinitely for completion of the project and were entitled to withdraw from the project and seek refund. In cases **Fortune Infrastructure & Anr Vs Trevor D'Lima & Ors, 2018(5) SCC 442** and followed by another judgement in case of **Ireo Grace Real Tech Pvt Ltd.**

Vs Abhishek Khanna & Others, Civil Appeal No. 5785 of 2019 TESTED

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19/3/2024

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HARYANA REAL ESTATE REGULATORY AUTHORITY

Rohan Thakur

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11.01.2021, it was held by the Hon'ble Apex Court of the land that a person cannot be allowed to wait indefinitely for possession of the unit allotted to him and is entitled to seek refund of amount paid by him alongwith compensation. Moreover, when the due date has already expired then, the allottee cannot be made to wait to seek refund of the amount deposited with the respondent and offer of possession. Then, Section 18 of Real Estate (Regulation and Development) Act, 2016 provides for return of the amount with interest and compensation to the allottee when the developer fails to complete the construction and give possession as per agreement of sale. So, plea of the respondent-builder that refund of the deposited amount paid against the allotted unit should not be allowed is untenable.

7. The second plea advanced on behalf of the respondent is that though there is delay in completion of the project but that is due various reasons such as demonetisation, shortage of labour and various restrain orders passed by the different statutory authorities. Moreover, the project is at an advanced stage and after completion, the possession of the allottee unit would be handed over to the complainants by December, 2021. But again the plea advanced in this regard is devoid of merit. The due date for completion of the project and handing over the possession of the allotted unit to the complainant was April, 2017. The complainant waited for more 1 ½ years and served notice Annexure P/12 upon the respondent asking to refund the amount deposited by them with it. However, nothing materialised. So ultimately, the same led to filing of the complainant on 13.11.2019 seeking refund of the amount deposited with the respondent. There may be shortage of labour, building material and some restraint orders passed by statutory authorities but the same are not sufficient for delay in completion of the project. It could have been understandable if there

is delay a year or so in completion of the project. A period of four years is

Chc

19/11/2021

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EXAMINER

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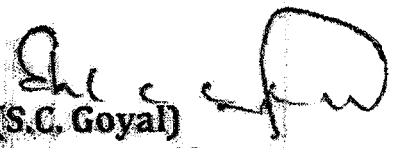
going to expire after the due date and even during the course of arguments, it is pleaded that the same would be delivered by December, 2021 and then the possession of the allotted unit would be offered to the complainants. So, all this show that the respondent has failed to complete the project and offer ~~the~~ possession of the allotted unit to the complainants by the due date. So, in such a situation, the complainants are entitled to seek refund of the amount deposited with the respondent.

8. Thus, in view of my discussion above, the complaint filed by the complainants is hereby ordered to be accepted. Consequently, ^{the} following directions are hereby ordered to be issued:

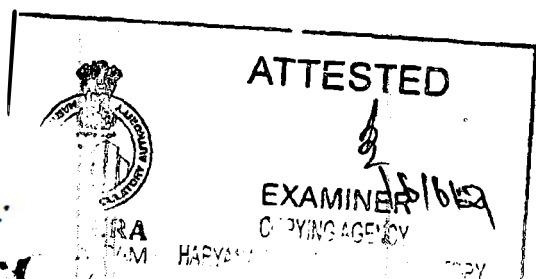
- i) The respondent is directed to refund a sum of Rs.1,22,70,356/- to the complainants with interest @ 9.30%p.a. till the whole amount is paid;
- ii) The respondent is also directed to ^{pay} a sum of Rs.20,000/- as compensation inclusive of litigation charges to the complainants;
- iii) The above mentioned directions be complied with by the respondent within a period of 90 days and failing legal consequences would.

13. File be consigned to the Registry.

19.03.2021


(S.C. Goyal)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram 19-3-2021

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DECREE SHEET

Complaint No. 1057 of 2019

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**BEFORE S.C GOYAL ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM**

Complaint No.	:	1057/2019
Date of Institution	:	19.03.2019
CR No.	:	CR/1057/2019
Date of Decision	:	19.03.2021

Rahul Aggarwal Pooja Aggarwal R/o B-178, 2 nd Floor, C.R. Park, New Delhi-110019	Complainants
Versus	
M/s Supertech Ltd. 1114, 11 th Floor, Hemkunt Chambers 89, Nehru Place, New Delhi -110019	Respondent

CORAM:	
Shri S.C. GOYAL	ADJUDICATING OFFICER

APPEARANCE:	
Shri Rahul Aggarwal	Complainants in Person
Shri Brighu Dhani	Advocate for the Respondent

CLAIM FOR:
Allottee's complaint against the promoter for non-compliance of obligations by the promoter under the Real Estate (Regulation and Development) Act, 2016: obligation of promoter in case of failure of promoter to give refund of the entire amount with interest of allotted unit no.-A-1802, 18 th floor, measuring about

Shri C
10/2/2021

Bhuvan Thakur

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19/3/2021

DECREE SHEET

Complaint No. 1057 of 2019

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HARERA
GURUGRAM

1945 sq. ft. in the project "Araville", Sector-79, Sohna, Gurugram, Haryana.

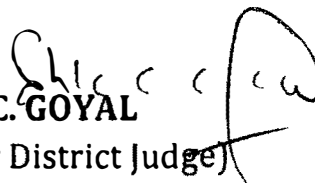
DECREE ORDER UNDER SECTION 37 OF THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016:

- (i) The respondent is directed to refund a sum of Rs.1,22,70,356/- to the complainants with interest @ 9.30% p.a. till the whole amount is paid.
- (ii) The respondent is also directed to ^{pay} a sum of Rs. 20,000/- as compensation inclusive of litigation charges to the complainants.
- (iii) The above-mentioned directions be complied with by the respondent within a period of 90 days and failing legal consequences would follow.

MEMO OF COSTS

Sr. No.	Description	Complainant(s) (Rs.)	Respondent(s) (Rs.)
1.	Complaint registration fee	1000.00	-
2.	Stamp on annexures	300	-
3.	Stamp for power	05.00	00.00
4.	Miscellaneous expenses	00.00	
	Total	1305.00	00.00

Given under our hand and seal of the authority, this 19th day of March 2021.


S.C. GOYAL
(Former District Judge)
Adjudicating Officer

Haryana Real Estate Regulatory Authority, Gurugram


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ANNEXURE A-2



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाइंस गुरुग्राम हरियाणा

PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 14.12.2021
Complaint No.	E/2757/2021/1057/2019 Case titled Rahul Agarwal VS Supertech Limited
Complainant	Rahul Agarwal
Represented through	Mr Iqram Govind Singh, Adv
Respondent	Supertech Limited
Respondent Represented through	Mr Brighu Dhami, Adv
Last date of hearing	
Proceeding Recorded by	S.L. Chanana

Proceedings

Learned counsel for DH has filed an application giving details of directors of JD with request to commit them to civil imprisonment.

Issue show cause notice to directors of JD as why they may not be committed to civil prison. Reply of directors of JD be called in this regard for next date.

To come on 19.01 2022 for further proceedings.

(Rajender Kumar)
Adjudicating Officer
14.12.2021

Rajender Kumar

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An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016
Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अंतर्गत गठित प्राधिकरण
भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16



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ANNEXURE A-3

Comprehensive Complaint Details

Complaint Detail:RERA-GRG-2757-2021

Party Dtls	Self / Adv Name	District	Current Status	Next Date of Hearing	Complaint Dispatched	Complaint Dispatched On	Dispatched Tracking Id	Co Di: Re
RAHUL AGARWAL V/S SUPERTECH LTD	ROHAN THAWANI	OUTSIDE HARYANA	PENDING	07-Apr-2022	Not Yet			

Complaint Listing Details

Date of Hearing	Status	Proceedings of the day	Bench	Order
21-Mar-2022	PENDING	<p>Warrants of arrest were issued against the directors of JD, to be Commissioner of Police, Gurugram was authorized to get said directors arrested and to be produced before this forum. No report about service of process. Let explanation of Registry be called in this regard. Heard on an application filed by the JD. The latter wants permission of this forum to satisfy the decree in instalments. No permission is required from this forum to pay the decretal amount. So far as payment in installments is concerned, JD may approach the DH. No reason for this forum to allow JD to pay the decretal amount in installments. Application is thus dismissed. Counsel for JD has handed over a cheque No.010464 dated 16.04.2022 for Rs.11,00,000/- issued in favour of Shri Rahul Agarwal, which is accepted by the DH. Learned counsel for JD seeks some more time to pay the balance amount to the DH. Not opposed. To come on 07.04.2022 for further proceedings.</p>	RAJINDER KUMAR	---

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ANNEXURE A-4

**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

Rohan Thakur
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[Signature]

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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

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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

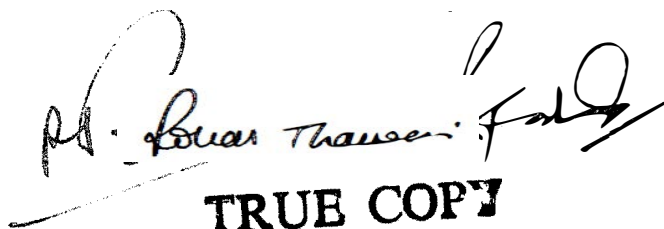

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thereon within the stipulated period to the Financial Creditor, without any delay, demur or protest. However, despite various reminders and requests made by the Financial Creditor, the Corporate Debtor failed to honor its obligation and failed to make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


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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

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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

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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.

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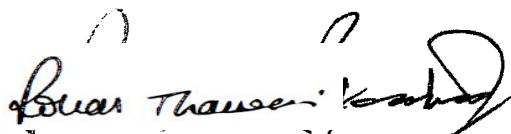
- That the Claim Amount of the Applicant/Petitioner is completely substantiated by its Statement of Account and Balance Confirmation filed along with filing of Claim Form
4. We have gone through the documents filed by both the parties and heard the arguments made by the counsels. The applicant has claimed 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

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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

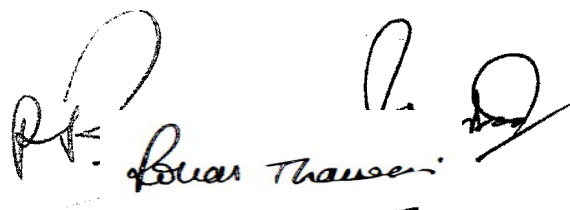

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signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and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

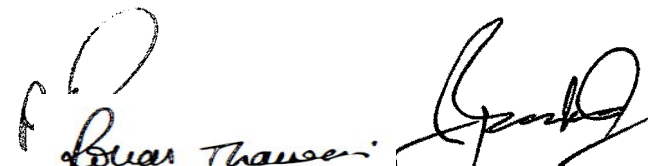
10. It is thus seen that the *requirement of sub-section 5 (a) of Section 7 of the code* stands satisfied as default has occurred, the present application filed under Section 7 is complete, and as no disciplinary proceeding against the proposed IRP is pending.

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.


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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:


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“(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

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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-

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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.

[Handwritten signature]
-sd-

(SHRI. RAHUL BHATNAGAR)

MEMBER (TECHNICAL)

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(SHRI. P.S.N. PRASAD)

MEMBER (JUDICIAL)

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ANNEXURE A-5

FORM F

PROOF OF CLAIM BY CREDITORS (OTHER THAN FINANCIAL CREDITORS AND OPERATIONAL CREDITORS)

{Under Regulation 9A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016}

Date 03 April 2022

To

Mr. Hitesh Goel, IIBI Registration no IIBI/PA-001/PP/P-01405/2018 -2019/12224
The Interim Resolution Professional / Resolution Professional
KPMG Restructuring Services L.P.
Building no. 10, Tower C, 8th Floor,
DLF Cyber City, Phase 2,
Gurgaon
Haryana - 122002

From Rahul Agarwal and Pooja Agarwal, B-178, 2nd floor, Chittaranjan Park, New Delhi - 110019

Subject: Submission of proof of claim.

Madam / Sir.

I, Rahul Agarwal & Pooja Agarwal, hereby submit the following proof of claim in respect of the corporate insolvency resolution process in the case of Supertech Limited. The details of the same are set out below:

PARTICULARS

1.	Name of the creditor	Rahul Agarwal, Pooja Agarwal
2.	Identification number of the creditor (If an incorporated body corporate, provide identification number and proof of incorporation. If a partnership or individual, provide identification record* of all partners or the individuals)	PAN Number Rahul Agarwal - AERPA6434P Pooja Agarwal - AERPA6433L Aadhaar Number Rahul Agarwal - 3207 2638 0449 Pooja Agarwal - 9051 3869 1425
3.	Address and email address of the creditor for correspondence	B - 178, second floor, Chittaranjan Park, New Delhi - 110019 <u>pr2rahul@gmail.com</u>
4.	Description of the claim (Including the amount of the claim as at the insolvency commencement date)	Decree issued on 19.03.2021 by Haryana Real Estate Regularity Authority in complaint No. 1057 of 2019 for refund of Rs. 1,22,70,356 with interest @9.3% p.a. in respect of Unit No. A - 1802 Araville, Naurangpur Road.

Rahul Agarwal

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5.	Details of documents by reference to which claim can be substantiated	Naurangpur, Sector 79, Gurugram, Haryana 122004 Decree issued by Haryana Real Estate Regularity Authority on 19.03.2021 in complaint No. 1057 of 2019 Calculation sheet based on the decree document.
6.	Details of how and when the claim arose	Claim arose based on the Decree issued by Haryana Real Estate Regularity Authority on 19.03.2021 in complaint No. 1057 of 2019
7.	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	A payment of INR 11,00,000/- (Eleven Lakhs Only) was paid by cheque number 33010464, drawn on Union Bank of India dated 16 th March 2022 (image attached).
8.	Details of: a. any security held, the value of security and its date, or b. retention title arrangement in respect of goods or properties to which the claim refers	NA
9.	Details of bank account to which the amount of the claim or any part thereof can be transferred pursuant to a resolution plan	ICICI Bank Account number: 002901017259 IFSC Code: ICIC0000029 Branch: Greater Kailash I, New Delhi - 110048
10.	List of documents attached to this claim in order to prove the existence and non-satisfaction of claim due to the creditor	
1.	Copy Decree issued by Haryana Real Estate Regularity Authority in complaint No. 1057 of 2019	
2.	Copy of Refund order issued by Haryana Real Estate Regularity Authority in complaint No. 1057 of 2019	
3.	Copy of Calculation sheet based on the Decree	
4.	Copy of Execution application made to Haryana Real Estate Regularity Authority no. 2757 of 2021	
5.	Copies of Orders passed by Haryana Real Estate Regularity Authority for execution application no. 2757 of 2021	
6.	Copy of proceedings at Haryana Real Estate Regularity Authority for execution application no. 2757 of 2021	
7.	Image of cheque number 33010464, drawn on Union Bank of India, dated 16th March 2022 for an amount Rs. INR 11,00,000/- (Eleven Lakhs Only).	
8.	Copy of PAN Cards and Copy of Aadhaar Cards of creditors	
9.	Copy of Cancelled cheque of creditors' account	
10.	Copy of Booking application form	
11.	Copy of Flat Buyer Agreement	
12.	Copy of addendum to Flat Buyer Agreement	

Sonal Thakur

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13. Copies of payment receipts for the property in consideration as per the Flat Buyer agreement
14. Copy of Payments received schedule from Supertech Customer Portal
15. Copy of Account statement for payment made to Supertech
16. Copy of the transfer documents
17. Copy of payment transfer receipt for
18. Notice to Supertech under Section 18(1)

Rahul Agarwal

Pooja Agarwal

Signature of the creditor or any person authorised to act on his behalf

(Please enclose the authority if this is being submitted signed on behalf of the creditor)

Name in BLOCK LETTERS - RAHUL AGARWAL, POOJA AGARWAL

Position with or in relation to the creditor - SELF (CLAIMANTS)

Address of the person signing - B - 178, Second Floor, Chittaranjan Park, New Delhi - 110019

* PAN, Passport, AADHAAR or the identity card issued by the Election Commission of India.

Rohan Thakur

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DECLARATION

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1. Rahul Agarwal and Pooja Agarwal, currently residing at B - 178, Second Floor, Chittaranjan Park, New Delhi - 110019, do hereby declare and state as follows:

1. **Supertech Limited**, the corporate debtor was, at the insolvency commencement date, being the 25th day of MARCH 2022, actually indebted to me in the sum of Rs. INR 2,18,66,764/-.
2. In respect of my claim of the said sum or any part thereof, I have relied on the documents specified below:
 1. Copy Decree issued by Haryana Real Estate Regularity Authority in complaint No. 1057 of 2019
 2. Copy of Refund order issued by Haryana Real Estate Regularity Authority in complaint No. 1057 of 2019
 3. Copy of Calculation sheet based on the Decree
 4. Copy of Execution application made to Haryana Real Estate Regularity Authority no. 2757 of 2021
 5. Copies of Orders passed by Haryana Real Estate Regularity Authority for execution application no. 2757 of 2021
 6. Copy of proceedings at Haryana Real Estate Regularity Authority for execution application no. 2757 of 2021
 7. Image of cheque number 33010464, drawn on Union Bank of India, dated 16th March 2022 for an amount Rs. INR 11,00,000/- (Eleven Lakhs Only).
 8. Copy of PAN Cards and Aadhaar Cards of creditors
 9. Copy of Cancelled cheque of creditors' account
 10. Copy of Booking application form
 11. Copy of Flat Buyer Agreement
 12. Copy of addendum to Flat Buyer Agreement
 13. Copies of payment receipts for the property in consideration as per the Flat Buyer Agreement
 14. Copy of Payments received schedule from Supertech Customer Portal
 15. Copy of Account statement for payment made to Supertech
 16. Copy of the transfer documents
 17. Copy of payment transfer receipt for
 18. Notice to Supertech under Section 18(1)
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:

Rahul Agarwal
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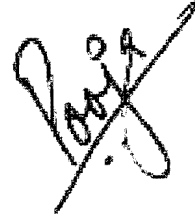
46

cheque (number 33010464, drawn on Union Bank of India) dated 16th March 2022 (image attached) for an amount Rs. INR 11,00,000/- (Eleven Lakhs Only) was handed over through HRERA to the claimants by the counsel of the debtors on 21st March 2022. The cheque amount was credited to the claimants account on 23rd March 2022.

Date: 3rd April 2022

Place: New Delhi

Ram Aggarwal



(Signature of the claimant)

Bhar Thakur
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VERIFICATION

I, *[Rahul Agarwal & Pooja Agarwal]*, the claimants 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 3rd of April, 2022

Rahul Agarwal

Pooja

(Signature of the claimant)

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

Bhar Thawani
TRUE COPY

From: <Donotreply@supertech.com>
Date: Sun, Apr 3, 2022 at 10:30 PM
Subject: Auto Notification-Supertech (Submitted)
To: <pr2rahul@gmail.com>
Cc: <irpsupertech@kpmg.com>

48

Dear Rahul Agarwal,

Greetings.

Thank you for registering your claim via EaseMyClaim. This is an auto notification mail to acknowledge that we have received your claim and our team shall soon process your claim.

Do check the claim status in the claimant portal regularly for the latest updates.

User ID: RAHULPOOJA_SUPERTECH

Form Submitted: Form F

Form Description: Submission of Claim By Creditors (Other than Financial creditors and operational Creditors)

Status: Submitted

Total Claim Submitted: 21866764

Your Sincerely,

Supertech Claims Team

Note: This notification is system generated. Do not reply to this auto-generated notification.

Rahul Thakur
TRUE COPY



HARERA
GURUGRAM

49
ANNEXURE A-6
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा मू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा


PROCEEDINGS OF THE DAY

Day and Date	Thursday and 07.04.2022
Complaint No.	E/2757/2021/1057/2019 Case titled Rahul Agarwal Vs Supertech Ltd.
Complainant	Rahul Agarwal
Represented through	Mr. Rohan, Adv
Respondent	Supertech Ltd.
Respondent Represented through	Mr Prateek Popli Adv
Last date of hearing	
Proceeding Recorded by	S.L. Chanana

Proceedings

It is submitted by learned counsel for DH that respondent-M/s Supertech Limited has been declared as insolvent and an IRP has been appointed. His client has already filed claim before the said IRP. Long adjournment is requested. Allowed.

To come on 10.10.2022 for further proceedings.


(Rajender Kumar)
Adjudicating Officer
07.04.2022



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An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016
Act No. 16 of 2016 Passed by the Parliament

मू-संपदा (विनियमन और विकास) अधिनियम, 2016-की धारा 20के अर्हतत यदित प्राधिकरण
भारत की संसद द्वारा पारित 2016का अधिनियम संख्यांक 16

50 ANNEKURE A-7

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

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

IN THE MATTER OF:

**Ram Kishor Arora
Suspended Director of Supertech Ltd. ...Appellant**

Versus

Union Bank of India & Anr. ...Respondents

Present:

For Appellant: Shri Arun Kathpalia, Sr. Advocate with Mr. Abhijeet Sinha, Mr. Siddharth Bhatii and Ms. Lakshita Dhingra, Advocates.

**For Respondents: Mr. Alok Kumar, Advocate for R-1.
Mr. Bishwajit Dubey, Ms. Srideepa Bhattacharyya,
Mr. Aishwarya Gupta and Ms. Neha Shivhare,
Advocates for R-2.**

Mr. Arving Nayar, Sr. Advocate with Mr. Ajay Bhargava, Ms. Wamika Trehan and Mr. Siddhant Kumar, Advocates for L&T Finance.

ORDER

(Virtual Mode)

12.04.2022: Shri Arun Kathpalia, learned senior counsel for the Appellant submits the Appeal be adjourned for one week to enable him approach the Bank again. At his request, let this Appeal be listed on next Tuesday i.e. on **19.04.2022**.

Till the next date, IRP shall not constitute the CoC.

**[Justice Ashok Bhushan]
Chairperson**

**[Dr. Alok Srivastava]
Member (Technical)**

Archana/nn

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**[Shreesha Merla]
Member (Technical)**

Archana/nn

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

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

IN THE MATTER OF:

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

...Appellant

Versus

Union Bank of India & Anr.

...Respondents

Present:

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

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

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

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

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

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

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

ORDER

Ashok Bhushan, J:

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

Ashok Bhushan

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

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

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

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

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

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

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

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

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

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

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

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

Bhuvan Thakur

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

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

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

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

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

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

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

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

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

“

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

13. Annexure E detailing the Operational Creditor Claim.

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

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

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

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

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

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

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

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

Rohan Thakur

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

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

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

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

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

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

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

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

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

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

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

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

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

Bhuvan Thakur

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

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

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

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

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

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

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

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

[Justice Ashok Bhushan]
Chairperson

[Mr. Naresh Salecha]
Member (Technical)

Roop Thansen

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10.06.2022
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ANNEXURE A-9

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI

Company Appeal (AT) (Ins) No. 406 of 2022 &
I.A. No. 2663 of 2022

IN THE MATTER OF:

Ram Kishor Arora

Suspended Director of Supertech Ltd.

...Appellant

Versus

Union Bank of India & Anr.

...Respondents

Present:

For Appellant : Mr. Krishnan Venugopal Sr. Advocate with Mr. Abhijeet Sinha, Mr Siddharth Bhatli, Ms. Lashita Dhingra, Mr. Krishnan Agarwal, Ms. Pallavi Srivastava, Advocates

For Respondents : Mr. Alok Kumar, Mr. Manan Gambhir, Advocates
Mr. Udit Mendiratta, Ms. Kiran Sharma, Ms. Niharika Sharma, Mr. Hitesh, IRP
Mr. Rajiv Nayar, Sr. Advocate with Ms Vanita Bhargava, Mr. Siddhant Kumar, Ms Wamika Trehan, for Land T Finance Ltd..
Mr. S.Roy, Mr. Prabudh Singh, Kr. Kaushal Sharma, Advocates
Mr. A.Tandon, Ms. Pooja Singh, Advocates
Ms. Priyadarshini, Ms. Saloni Sharma, Advocates
Mr. P. Nagesh, Sr. Advocate with Ms. Kanika Sachdeva, Advocate for Homebuyers.
Mr. P.Sahay, Ms. Eccha Shukla, Advocates for Homebuyers.
Mr. Aditya Wadhwa and Mr. Shivansh Agarwal, Advocates in I.A. No. 2717/2022 in TBPL & Anr.

ORDER

12.09.2022: In pursuance of the order dated 29.08.2022, an affidavit has been filed dated 09.09.2022 by the Appellant.

Company Appeal (AT) (Ins) No. 406 of 2022 & I.A. No. 2663 of 2022

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2. Learned Counsel appearing for Union Bank of India submits that Financial Creditors were not effectively associated with any discussion with regard to the proposal.

3. Learned Counsel for the IRP submits that he is not aware of any of the meeting which was held on Wednesday with the Financial Creditors.

4. Learned Counsel for the L&T also submits that they have huge exposure against the projects and they were also not associated with any discussion regarding any proposal.

5. A statement has been made by Union Bank of India that if any meeting is to be held regarding consideration of any proposal for carrying construction of projects, it should be under the Chairmanship of the IRP, who is at the helm of the affairs and all discussions and proposal should emanate from IRP which may also include proposal of paying off the dues of the Financial Creditor.

We, thus, adjourn this appeal for two weeks.

6. Learned Counsel for IRP has proposed meeting of all Financial Institutions with Suspended Directors and financial entities on 21.09.2022.

Company Appeal (AT) (Ins) No. 406 of 2022 & I.A. No. 2663 of 2022

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7. Learned Counsel for IRP shall inform all concerned of the date, time and agenda of the meeting for effective discussion and Learned IRP shall submit a report on proposal, if any, for carrying out the construction and mechanism to pay the Financial Creditor and with regard to infusion of funds, not confined to Eco-village. The expenses of conducting the meeting will be borne by the Appellant.

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

List this matter on **28.09.2022 at 2.00 P.M.**

Interim Order to continue.

**[Justice Ashok Bhushan]
Chairperson**

**[Mr. Barun Mitra]
Member (Technical)**

ss/nn

Barun Thakur

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ANNEXURE A-10

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI

Company Appeal (AT) (Ins.) No. 406 of 2022 &
I.A. No. 2246, 2646 & 2663 & of 2022

IN THE MATTER OF:

Ram Kishor Arora
Suspended Director of Supertech Ltd.

....Appellant

Vs.

Union Bank of India & Anr.

....Respondents

Present:

Mr. Abhijeet Sinha, Mr. Siddharth Bhotli, Ms. Lashita Dhingra, Advocates
Ms. Saloni Sharma, Mr. Tejaswi Bhanu, Mr. C.Priyadarshi, Advocates
Mr. Krishnendu Datta, Sr. Advocate, Ms. Varsha Himatsingka, Ms. Kanika Sachdeva, Advocates
Mr. R.Sudhinder, Mr. Udit Mendiratta, Ms. Niharika Sharma for IRP
Mr. Alok Kumar, Mr. Manan Gambhir, Ms. Neetu Rahi, Advocates for R-1/UBI
Mr. Sumesh Dhawan, Mr. Nikhil, Advocates for ACRE
Mr. Aditya Wadhwa, Mr. Shivansh Agarwal, Advocates for TBPL & Anr.
Mr. Arvind Nayar, Sr. Advocate with Ms. Vanita Bhargava, Ms. Wahika Trehan, Mr. Siddhant Kumar, Advocates for L&T.
Mr. M.P Sahay, Ms. Eccha Shukla, Advocates for Homebuyers
Mr. Amish Tandon, Ms. Pooja Singh, Applicants in I.A. 3281/2022
Ms. Priyadarshini and Mr. Krishna Mohan Menon, Advocates for Homebuyers (EV-2, Sports Village)

ORDER

14.10.2022: In pursuance of our earlier order dated 28.09.2022, Learned Counsel for the parties submit that the due diligence as requested by the new investor in process. It has been pointed out that in the earlier status report

Company Appeal (AT) (Ins.) No. 406 of 2022 &
I.A. No. 2246, 2646 & 2663 & of 2022

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which was submitted, it was mentioned that the claims of Rs. 1245/- has been received and some are still in verification.

2. Learned Counsel for the applicants submits that whether the verification and compilation of the data is to confined to the Eco Village only. We make it clear that verification of the claim has to be with regard to all projects. 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. It has been further submitted by Shri Sinha, Learned Counsel for the Appellant that the investor is of the opinion that the due diligence conducted by the IRP shall be taken into consideration by the investor, IRP being the neutral person.

3. Learned Counsel for the IRP submits that due diligence with regard to both technical, financial and commercial shall require sufficient time and he seeks further time to complete the due diligence. Further the investor and the Appellants have to submit a proposal as was indicated and noted by our earlier orders.

4. We, thus, are of the view that some more time be allowed to complete the:-

- (i) process of verification of the claims;
- (ii) completion of due diligence; and
- (iii) submission of the revised proposal as was indicated to the court.

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5. Learned Counsel for the IRP submit that with regard to cost which is to be incurred by the IRP, certain directions may be issued.

6. Learned Counsel for the Appellant states that in so far costs for carrying out the due diligence, for keeping the Company as a going concern and verification of the claim, the IRP is at liberty to employ the personnels and experts and the costs shall be borne by the Appellant which may be taken as interim finance and may be adjusted subsequently.

7. Let the IRP submit his status report within four weeks i.e. by 14th November.

We fix the matter on **21.11.2022 at 2.00 P.M.**

8. Before the date fixed, the Appellant shall also submit a revised proposal for consideration of the Court. Appellant shall also give advance copy of the revised proposal, if any, to the IRP and the Financial Institutions.

Interim order to continue.

[Justice Ashok Bhushan]
Chairperson

Barun Thakur

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[Mr. Barun Mitra]
Member (Technical)

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Company Appeal (AT) (Ins.) No. 406 of 2022 &
I.A. No. 2246, 2646 & 2663 & of 2022

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 406 of 2022 &
I.A. No. 2246, 2646 & 2663 of 2022

IN THE MATTER OF:

Ram Kishor Arora
Suspended Director of Supertech Ltd.

....Appellant

Vs.

Union Bank of India & Anr.

....Respondents

Present:

Mr. Siddharth Bhatli, Ms. Lashita Dhingra, Advocates for Appellant.

Mr. M.P Sahay, Ms. Awanitika, Advocates for Homebuyers.

Mr. R. Sudhinder, Mr. Udit Mendiratta, Ms. Kiran Sharma, Ms. Niharika Sharma, Advocates for IRP.

Mr. Alok Kumar, Ms. Garima Soni, Mr. Rohil Pandit, Advocates for R-1/UBI.

Ms. Anwasha Dasgupta, Mr. Saurav Agarwal, Mr. Mohit Kishore, Mr. Siddharth Srivastava, Advocates for Applicant in I.A. No. 4966 of 2022.

Mr. Shaurya Krishna and Mr. Amit Garg, Advocates for Impleador in I.A. No. 4713/2022.

Mr. Sumesh Dhawan, Mr. Nikhil Mehndiratta, Mr. Shaurya Shyam, Advocates for Applicant/Intervenor in I.A. No. 3776 of 2022.

Ms. Vatsala Kak, Mr. Raghav Dembla, Advocates for Indiabulls.

Ms. Vanita Bhargava, Ms. Wamika Trehan, Mr. Siddhant Kumar, Ms. Maithili Moondra, Advocates for L&T finance in I.A. No. 3034 of 2022.

Mr. Rohit Oberoi and Mr. Raghav Sethi, Advocates for Applicant in I.A. No. 4574/2022 & 4575/2022.

Mr. Rupesh Gupta, Ms. Eesha Sharma, Advocates for Homebuyers (Intervenor).

Mr. Sourav Roy, Mr. Prabudh Singh, Advocates in I.A. No. 3206/2021.

Ms. Adya Jha, Advocate for Applicant in I.A. Nos. 2717/2022 & 4213/2022.

ORDER

31.01.2023: Learned Counsel for the parties have placed before us the order passed by Hon'ble Supreme Court dated 27.01.2023 which is to the following effect:

"Taking note of the submissions sought to be made in these matters, we are clearly of the view that as at present, the offers said to have been made by the prospective resolution applicants may be evaluated and may be placed for consideration before the NCLAT but beyond that process, we would request the NCLAT to keep the proceedings in abeyance and await further order of this Court.

List these matters on 16.02.2023."

In view of the aforesaid order of the Hon'ble Supreme Court the appeal is adjourned to await further orders of Hon'ble Supreme Court.

Parties are at liberty to file an application for fixing a date after an order is received from the Hon'ble Supreme Court.

**[Justice Ashok Bhushan]
Chairperson**

Barun Thakur

**[Barun Mitra]
Member (Technical)**

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ANNEXURE A-12

Fwd: Awaiting Information on way forward

rahul agarwal <pr2rahul@gmail.com>

Mon 06/02/2023 15:15

To: Rohan Thawani <rohan@jnalaw.in>

Fyi

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

From: **CIRP Supertech Non Eco-Village 2**

<cirpsupertech.nonev2@gmail.com>

Date: Mon, 6 Feb 2023, 15:11

Subject: Re: Awaiting Information on way forward

To: rahul agarwal <pr2rahul@gmail.com>

Dear Sir/Madam,

Rohan Thawani

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Thank you for your recent communication.

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In this regard, it will be helpful for you to be aware of the following background information:

Pursuant to an application filed by Union Bank of India before the New Delhi bench of the National Company Law Tribunal (“NCLT”), the NCLT has initiated the Corporate Insolvency Resolution Process (“CIRP”) of Supertech Limited (“Corporate Debtor” or “Supertech”) vide its order dated 25 March 2022 (“Admission Order”) as per the provisions of the Insolvency and Bankruptcy Code, 2016 and the regulations framed thereunder (collectively, “IBC” or “Code”). The NCLT vide the Admission Order appointed Mr. Hitesh Goel (IBBI/IPA-001/IP-P01405/2018-19/12224) as the Interim Resolution Professional (“IRP”) of the Corporate Debtor.

Further, the suspended director of the Corporate Director filed an appeal bearing Company Appeal (AT) (Ins) No. 406 of 2022 on April 7, 2022 (“Admission Appeal”) before the Hon’ble National Company Law Appellate Tribunal at New Delhi (“NCLAT”), against the Insolvency Admission Order.

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Arjun Thakur

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The Hon'ble NCLAT vide order dated June 10, 2022 ("Modification Order"), modified the CoC Stay Order to the extent that the IRP may constitute the CoC only in relation to the Project Eco Village II of the Corporate Debtor.

In addition, Hon'ble NCLAT ordered that all other projects of the Corporate Debtor apart from the Eco Village II Project shall be kept as ongoing projects. The Construction of all other projects shall continue with the overall supervision of the IRP with the assistance of the ex-management and its employees and workmen.

It may be noted that there are very limited funds available with Supertech at this stage. Accordingly, Supertech is not able to carry out large scale construction activities required for completion of projects.

In furtherance thereof, the Promoters proposed a settlement-cum-resolution plan before the Hon'ble NCLAT. Hon'ble NCLAT in its order dated September 12, 2022 directed the IRP to convene a Lenders' meeting. In the said meeting, the Promoters presented a settlement cum resolution plan to the lenders of Non-Eco Village 2 projects during the Joint Lenders Meeting held

Rohan Thakur TRUE COPY

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on September 21, 2022. Subsequently, lenders expressed that an independent assessment of the situation is required for assessment of the same. Also, as per the Interim Funding term sheet (Non-binding) of Proposed Investor one of the condition precedents was that a due diligence exercise be conducted in respect of Non-Eco Village 2 projects.

Subsequently, the Hon'ble NCLAT vide its order dated October 14, 2022 in para 4 stated that:

“4. We, thus, are of the view that some more time be allowed to complete the:-

(i) process of verification of the claims;

(ii) completion of due diligence; and

(iii) submission of the revised proposal as was indicated to the court....”

Bruce Trause
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Pursuant to the said order of the Hon'ble NCLAT and keeping in mind a timely resolution, the IRP initiated the process to invite technical and financial bids from multiple agencies/advisors for the following three scopes of work:

- Technical Due Diligence of Non-Eco Village II Projects of Supertech Limited
- Financial & Tax Due Diligence of Non-Eco Village II Projects of Supertech Limited
- Commercial Assessment of Resolution Cum Settlement Proposal for Non-Eco Village II Projects of Supertech Limited

Subsequently, post-analysis by the IRP, investors and lenders, appointments were made for the scopes mentioned above. The Due-Diligence and Commercial Assessment exercises are meant to be time-bound exercises as directed by the Hon'ble NCLAT and agencies are given stringent timelines. The due diligence exercises are expected to be completed in 4 to 5 weeks.

We look forward to your support in the process.

Ravi Thakur

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Kind Regards,

85

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

Rohas Thakur

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Correspondence Address:

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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

On Mon, Feb 6, 2023 at 2:55 PM rahul agarwal
<pr2rahul@gmail.com> wrote:

Dear Mr. Hitesh Goel,

This is with reference to our previous exchange of emails (in trail mail) regarding the way forward for projects other than Eco village 2.

Rahul Agarwal

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87
In the last hearing at hrera (on October 10th, 2022), we were surprised to know that nclat in its order dated 26th September has mentioned that the moratorium is still in effect. While as per the mail to us from your office dated 29th September there wasn't any such input.

Request you to let us know the recourse for buyers who are left in the lurch with no progress whatsoever in the matter due to this. Neither are the projects being completed nor is there a refund/ further action on the legal cases. We had paid over INR 1.23 crore rupees between 2012 to 2015 and all the hard earned, tax paid money is stuck here through these proceedings.

With regards

Rahul and Pooja Agarwal

Rahul Agarwal

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----- Forwarded message ----- 88

From: **CIRP Supertech EV2** <cirpsupertech@gmail.com>

Date: Mon, 6 Feb 2023, 14:51

Subject: Re: Awaiting Information on way forward

To: rahul agarwal <pr2rahul@gmail.com>, <cirpsupertech.nonev2@gmail.com>

Dear Sir,

for queries related to projects other than eco village 2, kindly communicate @cirpsupertech.nonev2@gmail.com.

Thanks & Regards

Hitesh Goel

Bhar Thansen

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Resolution Professional of Supertech Limited (Project Ecovillage II)

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

Rohan Thakur

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TRUE COPY

E-mail: iphiteshgoel@gmail.com

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Correspondence Address:

Supertech Limited

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

Sector - 96, Noida, Gautam Buddha Nagar,

Uttar Pradesh – 201303

E-mail: cirpsupertech@gmail.com

Bhuvan Thakur

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(Supertech Limited is under Corporate Insolvency Resolution Process as per the provisions of the Insolvency and Bankruptcy

Code, 2016. Its affairs, business and assets are being managed by the Interim Resolution Professional, Mr. Hitesh Goel, appointed by the New Delhi Bench of Hon'ble National Company Law Tribunal vide order dated 25 March 2022 under the provisions of the Code)

On Mon, 6 Feb 2023 at 14:44, rahul agarwal <pr2rahul@gmail.com> wrote:

Dear Mr. Hitesh Goel,

This is with reference to our previous exchange of emails regarding the way forward for projects other than Eco village 2.

In the last hearing at hrera (on October 10th, 2022), we were surprised to know that nclat has mentioned that the moratorium is still in effect.

Rohit Thakur

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Request you to let us know the recourse for buyers who are left in the lurch with no progress whatsoever in the matter due to this. Neither are the projects being completed nor is there a refund/ further action on the legal cases. We had paid over INR 1.23 Lakh rupees between 2012 to 2015 and all the hard earned, tax paid money is stuck here through these proceedings.

With regards

Rahul and Pooja Agarwal

On Wed, 7 Sept 2022, 10:11 rahul agarwal, <pr2rahul@gmail.com> wrote:

Dear Mr. Hitesh Goel

Rahul Agarwal
TRUE COPY

My wife and I (Pooja Agarwal and Rahul Agarwal) had filed the claim as per the process on the claims portal. We were allottees of a flat at Araville project in Gurgaon.

As over five months have passed by and NCLAT has also restricted the insolvency to one project, request you to let us know about the way ahead for the allottees of the other projects. It has been more than ten years that we have been waiting, having paid more than the due amount, having had a refund order passed by HRERA over 1.5 years ago and for also having received execution orders on the refund order by HRERA just before insolvency was declared.

You can imagine that for a middle class salaried person, these are life savings that are stuck (which are made after paying all taxes, taking care of family needs, medical and education expenses, old parents needs and more). We continue to pay

Rahul Agarwal TRUE COPY

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house rent even after having made such a big investment in an apartment for our own housing needs.

Looking forward to hearing from you on a positive note.

Warm regards

Rahul Agarwal
9818399388

(Allottees of A-1802, Araville).

--

Thanks & Regards

Hitesh Goel

Bruce Thawson

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Resolution Professional of Supertech Limited (Project Ecovillage II)

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

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E-mail: iphiteshgoel@gmail.com

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Correspondence Address:

Supertech Limited

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

Sector - 96, Noida, Gautam Buddha Nagar,

Uttar Pradesh – 201303

E-mail: cirpsupertech@gmail.com

Surinder Thakur
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(Supertech Limited is under Corporate Insolvency Resolution Process as per the provisions of the Insolvency and Bankruptcy

Code, 2016. Its affairs, business and assets are being managed by the Interim Resolution Professional, Mr. Hitesh Goel, appointed by the New Delhi Bench of Hon'ble National Company Law Tribunal vide order dated 25 March 2022 under the provisions of the Code)

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ANNEXURE A-13

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

INDIABULLS ASSET RECONSTRUCTION
COMPANY LIMITED

....APPELLANT(S)

VERSUS

RAM KISHORE ARORA & ORS.

....RESPONDENT(S)

WITH

CIVIL APPEAL NO. 5941 OF 2022

CIVIL APPEAL NO. 1975 OF 2023

ORDER

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

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

with an appeal against the order dated 25.03.2022 passed by the

Signature Not Verified
Digitally signed by
ARJUN BISPL
Date: 2024.03.11
15:49:41 IST
Reason:

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

Arjun Bispl

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

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

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

2 Hereinafter referred to as 'the Tribunal' or 'NCLT'.

3 Hereinafter referred to as 'IBC' or 'the Code'.

4 For short, 'CIRP'.

5 For short, 'CoC'.

6 For short, 'IRP'.

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abeyance and await further orders of this Court. Thereafter, we heard the learned counsel for the parties at substantial length as regards the propositions towards interim relief/interim arrangement in view of the typical issues involved in these matters.

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

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

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

4.3. Union Bank of India filed an application under Section 7 of the Code on 20.03.2021, claiming a total amount of Rs. 431,92,53,302 as on 31.01.2021, along with accrued interest. The NCLT, by its order dated 25.03.2022, admitted the Section 7 application and directed for initiation

Sudha Thakur

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of CIRP for the corporate debtor. Following this, Mr. Hitesh Goel – respondent No. 3 was appointed as the IRP.

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

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

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

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

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

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

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

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

vii. No account of Corporate Debtor shall be operated without the counte signature of the IRP. All expenses and payments in different projects, shall be only with the approval of the IRP. All receivables in different projects shall be deposited in the account as per 'RERA' Guidelines and 70% of the amount shall be utilized for the construction purpose only. With regard to the disbursement of rest of the 30 %, appropriate direction shall be issued subsequently after receiving the status report and after hearing all concerns.

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

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

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

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

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

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

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

6. It has been contended on behalf of the appellants that the Appellate Tribunal does not have power under IBC to allow project-wise CIRP and does not have power to accept a resolution plan presented by the promoter without giving opportunity to the CoC to study the commercial viability of the plan. It has also been contended that there is

no concept of project-wise resolution under IBC and the order impugned was passed by the Appellate Tribunal without notice to the appellants, who are the financial creditors having substantial stakes in the matter.

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

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

Bhuvan Thakur

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

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

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

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

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

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

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

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

resolution” as adopted by the Appellate Tribunal. The question, at present, is as to what should be the interim relief/interim arrangement until disposal of these appeals. In regard to this question, we may take note of the relevant principles in relation to the matter concerning grant of interim relief which have been re-emphasized by this Court in the case of

Union of India and Ors. v. M/s Raj Grow Impex LLP and Ors.: 2021

SCC OnLine SC 429 as follows:-

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

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

(emphasis in bold supplied)

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

“16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status

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quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. **But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines.** Generally stated these guidelines are:

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

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

(emphasis in bold supplied)

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

operation of the notifications was stayed and thereby, the markets of India were allowed to be flooded with excessive quantity of the said imported peas/pulses.”

10. In the light of the principles aforesaid, in our view, as at present, we should adopt the course which appears to carry lower risk of injustice, even if ultimately in the appeals, this Court may find otherwise or choose any other course. In that regard, the element of balance of convenience shall have its own significance. On one hand is the position that the Appellate Tribunal has adopted a particular course (which it had adopted in another matter too) while observing that the project-wise resolution may be started as a test to find out the success of such resolution. The result of the directions of the impugned order dated 10.06.2022 is that except Eco Village-II project, all other projects of the corporate debtor are to be kept as ongoing projects and the construction of all other projects is to be continued under the supervision of the IRP with the ex-management, its employees and workmen. Infusion of funds by the promoter in different projects is to be treated as interim finance, regarding which total account is to be maintained by IRP. If at the present stage, on the submissions of the appellants, CoC is ordered to be constituted for the corporate debtor as a whole in displacement of the directions of the Appellate Tribunal, it is likely to affect those ongoing projects and thereby cause immense hardship to the home buyers while throwing every project into a state of uncertainty. On the other hand, as indicated before us, the other projects are being continued by the IRP and efforts are being made for infusion of funds with the active assistance of the ex-management but

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without creating any additional right in the ex-management. In our view, greater inconvenience is likely to be caused by passing any interim order of constitution of CoC in relation to the corporate debtor as a whole; and may cause irreparable injury to the home buyers. In this view of the matter, we are not inclined to alter the directions in the order impugned as regards the projects other than Eco Village-II.

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

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

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

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

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

Civil Appeal No. 1975 of 2023

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

Regarding interlocutory applications

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

..... J.
(DINESH MAHESHWARI)

..... J.
(SANJAY KUMAR)

NEW DELHI;
MAY 11, 2023.

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ITEM NO.1502

COURT NO.5

SECTION XVII

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

Civil Appeal No(s).1925/2023

INDIABULLS ASSET RECONSTRUCTION
COMPANY LIMITED

Appellant(s)

VERSUS

RAM KISHOR ARORA & ORS.

Respondent(s)

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

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

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

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

For Appellant(s)

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

Mr. Balaji Srinivasan, AOR

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

For Respondent(s)

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

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

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

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

Mr. Divyesh Pratap Singh, AOR

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

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

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

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

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

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

Bhuvan Thakur

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Regarding interlocutory applications

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

(ARJUN BISHT)
COURT MASTER (SH)

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

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HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह सिविल लाईंस गुरुग्राम हरियाणा

PROCEEDINGS OF THE DAY

Day and Date	Monday and 05.06.2023
Complaints/Petitions No.	<ol style="list-style-type: none"> 1. E/6118/2022/4032/2021 Case titled Vishal Kaushal and Ruchika Singhal Vs Supertech Limited 2. E/1147/2022/3624/2019 Piush Saggi Vs Supertech Ltd. 3. E/6505/2022/1163/2021 Case titled Devarpita Banerjee Vs Supertech Limited. 4. E/2757/2021/1057/2019 Case titled Rahul Agarwal Vs Supertech Limited. 5. E/4531/2021/1438/2020 Case titled Rajat Gandhi Vs Supertech Limited 6. E/3106/2020/637/2018 Case titled Sumit Kumar Vs Supertech Limited 7. E/4354/2020/479/2020 Case titled Ajeet Kumar Vs Supertech Limited 8. E/827/2020/15/2018 Case titled Kanika Sharma Vs Supertech Limited 9. E/3730/2020/3946/2019 Case titled Rovin Goel Vs Supertech Limited 10 E/1110/2022/4604/2020 Case titled Vipin Singhal Vs Supertech Limited 11 E/1537/2021/536/2018 Case titled Pankaj Gupta Vs Supertech Limited 12 E/636/2020/293/2018 Case titled Vijay Kumar Dhar Vs Supertech Limited 13 E/509/2022/911/2019 Case titled Dr. Anurag Bansal Vs Suprtech Limited 14 E/5730/879/2019 Case titled Sushil Kumar Vs Supertech Limited 15 E/79/2022/4923/2020 Case titled Neelam Rathore Vs Supertech Limited

Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016
Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अंतर्गत गठित प्राधिकरण

द्वारा पारित 2016 का अधिनियम संख्याक 16

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	16 E/1010/2022/819/2022 Case titled RP Singh and Krishna Singh Vs Supertech Limited
	17 E/5093/2019 Case titled Abhishek Singhal and Preeti Singhal Vs Supertech Limited
	18 E/884/2022/1306/2019 Case titled Lahana Singh Saini Vs Supertech Limited
	19 E/1912/2021/792/2018 Case titled Arun Kumar Ravindran Vs Supertech Limited
	20 E/4635/2022/3109/2020 Case titled Neeraj Kaswan and Ramswaroop Kaswan Vs Supertech Limited
Proceeding Recorded by	Jyoti Malik

Proceedings

Cases detailed above are petitions seeking execution of orders passed by The Haryana Real Estate Regulatory Authority, Gurugram (in brief the Authority). In all these matters, the JD/respondent (M/s Supertech Ltd.) has requested for adjournment sine die, stating that insolvency proceedings are going on against it (JD). Ld. counsel for JD took me through various orders passed by NCLT and NCLAT.

On the other hand, the petitioner's request to continue with execution proceedings. It is contended that even if insolvency proceedings are going on, the same are in relation to one project only i.e. ECO village-II and not about other projects. Attention of this Forum (Adjudicating Officer) is drawn to an order passed by National Company Law Appellate Tribunal, New Delhi (NCLAT New Delhi) dated 10.06.2022, where it was clarified that all other projects of corporate debtor apart from "Eco Village II" project shall be kept as ongoing projects. The construction of all other project shall continue----- IRP was asked to constitute COC with regard to "Eco Village II" only.

The NCLT, New Delhi in matter **Union Bank of India Versus M/s Supertech Limited No.IB-204/(ND)/2021** has initiated corporate insolvency resolution process (CIRP) by allowing an application filed by **Union Bank of India** under section 7 of The Insolvency and Bankruptcy Code, 2016 ("the

Code”) alleging default on the part of the respondent in settling amount of Rs.431,92,53,302/-. It was held by the Hon’ble NCLT 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 in repayment of loan amount and initiated CIRP on the Corporate Debtor, with immediate effect.

On an appeal filed by the Suspended Director of Supertech Ltd. i.e. Company Appeal (AT) (Insolvency) No. 406 of 2022, National Company Law Appellate Tribunal Bench, New Delhi (in brief AT) through an order dated 10.06.2022 held as follows:-

Considering the submissions of counsel for the appellant that large number of projects of the Corporate Debtor are ongoing projects where substantial completion has been made and large number of units have also been handed over to the home buyers and rest units shall also be handed over, in event the construction of the projects are allowed to proceed as ongoing project, the promoters of the Corporate Debtor are willing to extend all cooperation to the IRP for carrying out the ongoing projects. It is submitted that CIRP need not to be allowed to continue for all the 20 projects rather it may be undertaken on projects basis as has been held by this Tribunal in its Judgment of “Flat Buyers Association Winter Hills -77 Gurgaon Versus Umang Realtech Pvt. Ltd. Through IRP & Ors”.

Hon’ble Tribunal made it clear that same was conscious of the fact that ‘CIRP’ has been initiated against the Corporate Debtor (Supertech Ltd.). CIRP has commenced against all the projects of the Corporate Debtor. CIRP encompasses all the assets of the Corporate Debtor including all Bank Accounts.

Citing all this, it is contended by learned counsel for the respondent that as CIRP encompasses all the assets of the Corporate Debtor (Supertech Ltd) including all Bank Accounts, no property or Bank account of JD can be attached to realise decretal amount. Even otherwise, according to him, moratorium has come into force and hence all cases including execution proceedings are liable to be stayed. Even NCLAT in its order 10.06.2022, as relied upon by the petitioners, has allowed, the construction of projects other than “ECO Village II” with overall supervision of IRP.

Learned counsel for the respondent pointed out that even the Supreme Court of India, New Delhi in case **Indiabulls Assets Reconstruction Company Limited versus Ram Kishore Arora & Ors** Civil Appeal No.1925 of 2023 made following observations :-

The result of the directions of the impugned order dated 10.06.2022 is that except Eco Village-II, all other projects of the corporate debtor are to be kept as ongoing projects and the construction of all other projects is to be

continued under the supervision of the IRP with the ex-management, its employees and workmen. Infusion of funds by the promoter in different projects is to be treated as interim finance, regarding which total account is to be maintained by IRP. If at the present stage, on the submissions of the appellants, COC is ordered to be constituted for the corporate debtor as a whole in displacement of the directions of the Appellate Tribunal, it is likely to affect those ongoing projects and thereby cause immense hardship to the home buyers while throwing every project into a state of uncertainty. On the other hand, as indicated before us, the other projects are being continued by the IRP and efforts are being made for infusion of

funds with the active assistance of the ex-management but without creating any additional right in the ex-management. In our view, greater inconvenience is likely to be caused by passing any interim order of constitution of COC in relation to the corporate debtor as a whole; and may cause irreparable injury to the home buyers. In this view of the matter, we are not inclined to alter the directions in the order impugned as regards the projects other than Eco Village-II”.

The petitioner claimed that some of them have approached IRP but their claims were not entertained. All this is refuted by learned counsel for the respondent. No evidence is shown by any of the petitioners to verify that any such claim was preferred before the IRP or same refused to entertain it.

Learned counsel for the respondent pointed out that the IRP (Mr. Hitesh Goel) also filed an application to the authority with a prayer for dismissal of all complaints/execution petitions or to adjourn the same, sine die, referring insolvency proceedings.

It is also a contention of the petitioners that they are still getting notices/demand letters from the respondent company, to pay outstanding dues, to complete the project.

Learned counsel for the respondent submitted that no such demand letter was issued by the ex-management of the respondent company. No demand letter allegedly issued to any of the allottee, has been shown by the petitioners.

While admitting the application filed by the **Union of India**, to initiate corporate insolvency resolution process against the respondent (Supertech Ltd.) under section 7 of the Code, NCLT appointed Interim Resolution Professional (IRP), namely, Hitesh Goel with certain directions. Public announcement was ordered to be made in pursuance of section 13 (2) of the Code. The NCLT declared moratorium in terms of Section 14 of the Code. All this invited prohibitions including ---

- (a) institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment,

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HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह सिविल लाईंस गुरुग्राम हरियाणा

decree or order in any court of law, tribunal, arbitration panel or other authority.

Considering the facts as described above, no reason to continue with execution proceedings by this forum (A.O). I allow the prayer of the respondent to adjourn this matter sine die i.e. subject to order passed by the NCLT or tribunal etc. regarding insolvency proceedings.

Files be consigned to the record room, with direction not to weed out the same, till further orders.

(Rajender Kumar)
Adjudicating Officer
05.06.2023

Rajender Kumar
TRUE COPY

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**BEFORE THE NATIONAL COMPANY LAW APPELLATE
TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI**

I.A. NO. OF 2023

IN

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

In the matter of –

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

...Appellant

Versus

Union Bank of India & Anr.

...Respondents

And in the matter of –

1. Rahul Agarwal

2. Pooja Agarwal

(Both r/o B-178, 2nd Floor, CR Park

New Delhi 110019)

...Applicants

**APPLICATION UNDER RULE 11 OF THE NATIONAL
COMPANY LAW APPELLATE TRIBUNAL RULES, 2016, FOR
IMPLEADMENT**

To

The Hon'ble Chairperson of the Hon'ble National Company Law
Appellate Tribunal and his Companion Members of the Hon'ble
Tribunal

The humble application of the Applicants above named

Most respectfully showeth –

1. The present appeal has been filed by the above named Appellant against the order dated 25.03.2022 passed by the National Company Law Tribunal, New Delhi, whereby the CIRP was initiated against the Corporate Debtor M/s Supertech Ltd. The insolvency proceedings arise out of failure of the Corporate Debtor to pay back the loan facilities extended to it by the Union Bank of India and Bank of Baroda (Financial Creditors) in respect of a project being executed by the Corporate Debtor known as "Eco Village II".
2. Through this application, the Applicants seek impleadment in the present proceedings as they are vitally affected by the present appeal, in the circumstances set out hereinbelow.
3. The Applicants herein invested their hard earned money into an apartment admeasuring 1945 square feet, bearing No. A-1802, 18th Floor, Tower A, in the project being developed by the Corporate Debtor in Gurugram, Haryana, known as 'Araville', situated at Sector 79 Gurugram. The booking was made on 28.07.2012, and the possession of the apartment was to be handed over by October 2016. The Applicants paid the Corporate Debtor a total sum of Rs. 1,22,70,356/- for the apartment.
4. Since the Corporate Debtor failed to deliver the possession within the stipulated time, the Applicants exercised their option to terminate the agreement with the Corporate Debtor and sought refund of the amounts paid by them along with interest and

compensation. Upon failure of the Corporate Debtor to repay the Applicants, they filed a complaint with the Haryana Real Estate Regulatory Authority (HRERA) seeking refund and compensation.

5. Ultimately, on 19.03.2021, the HRERA allowed the Applicants complaint and passed a decree in favor of the Applicants, directing the Corporate Debtor to refund the sum of Rs. 1,22,70,356/- to the Applicants along with interest @9.3% p.a. along with a sum of Rs. 20,000/- as compensation.
6. Upon failure of the Corporate Debtor to honor the decree, the Applicants were constrained to file Execution Application No. 2757/2021 before the HRERA on 09.07.2021. At that point in time, inclusive of interest, the Corporate Debtor owed a sum of Rs. 2,10,87,830/- to the Applicants.
7. On 07.08.2021 the HRERA issued notice to the Corporate Debtor on the Execution application, and subsequently the Corporate Debtor put in appearance before the HRERA.
8. For the purposes of this application, it is sufficient to state that despite being given opportunity, the Corporate Debtor still failed to comply with the decree and hence on 14.12.2021 the HRERA issued warrants of arrest against the Directors of the Corporate Debtor.

9. On 21.03.2022 the counsel for the Corporate Debtor appeared before the HRERA and gave a cheque of Rs. 11 Lakhs to the Applicants which was accepted without prejudice. The Corporate Debtor then sought further time to pay the balance amount. In the meantime the service of warrants was not effected and report was called in that regard.
10. At this stage, it appears that the present Respondents/ Financial Creditors approached the NCLT New Delhi with an application u/s 7 of the IBC 2016 in respect of the default committed by the Corporate Debtor qua the loans taken for the project "Eco Village II". On 25.03.2022 the NCLT New Delhi was pleased to admit the application and thus the CIRP in respect of the Corporate Debtor came into being. One Mr. Hitesh Goel was appointed as the IRP and, inter alia, moratorium u/s 14 of the IBC was declared qua the Corporate Debtor.
11. Upon coming to know of the admission of the Corporate Debtor into CIRP by way of public advertisements issued by the IRP, the Applicants, by way of abundant caution, submitted their claim to the IRP in the prescribed Form F (for creditors other than Financial Creditors and Operational Creditors) on 03.04.2022.
12. On 07.04.2022 the HRERA adjourned the pending execution application in view of the Corporate Debtor being admitted into CIRP and consequent moratorium coming into force.

13. Thereafter the present Appellant, being the suspended Director of the Corporate Debtor, filed an appeal before this Hon'ble Tribunal, assailing the order of the NCLT admitting the Corporate Debtor into CIRP. On 12.04.2022, this Hon'ble Tribunal passed an interim order directing the IRP not to constitute the Committee of Creditors till the next date.
14. On 10.06.2022, this Hon'ble Tribunal took up the matter and passed an order restricting the CIRP only to the project "Eco Village II". The IRP was directed to constitute the Committee of Creditors only for the project "Eco Village II". With regard to other projects, it was observed in para 25(v) of the order that "*... That all other projects of the Corporate Debtor apart from the Eco Village II Project shall be kept as ongoing project. The construction of all other Projects shall continue with overall supervision of the IRP with the assistance of the ex-management and its employees and workmen...*". It was further directed that no account of the Corporate Debtor would be operated without the counter signature of the IRP, and all expenses and payments in different projects would only be under the approval of the IRP.
15. On 12.09.2022 this Hon'ble Tribunal passed another order wherein it was pleased to observe that the CIRP order had not been stayed and the moratorium is continuing.
16. On 14.10.2022 this Hon'ble Tribunal passed another order clarifying that the IRP is to receive and verify claims with respect to all the projects.

17. At this stage, it appears that some of the Financial Creditor of the Corporate Debtor approached the Hon'ble Supreme Court of India against the order dated 10.06.2022 passed by this Hon'ble Tribunal. On 27.01.2023 the Hon'ble Supreme Court requested this Hon'ble Tribunal to keep the proceedings in abeyance. This Hon'ble Tribunal took note of the order and adjourned the appeal to await further orders of the Supreme Court. It was further stated that parties may move an application for fixing a date after an order is received from the Hon'ble Supreme Court. \
18. Since the execution application was adjourned, and there was no progress on the claim submitted before the IRP either, the Applicants wrote an email to the IRP asking for the progress. On 06.02.2023 the IRP wrote back to the Applicants giving a brief outline of the matter and stated that the matter was at the stage of technical, financial and tax due diligence of non "Eco Village II" projects, as also commercial assessment of proposals for non "Eco Village II" projects.
19. On 11.05.2023 the Hon'ble Supreme Court passed an interim order in the civil appeal, maintaining the CIRP for "Eco Village II" only, subject to the modification that this Hon'ble Tribunal may deal with offers said to have been received and pass appropriate orders, but the entire process would remain subject to the orders to be passed by the Hon'ble Supreme Court.

20. Thereafter on 05.06.2023, the execution application filed by the present Applicants was listed before the HRERA along with several other similar cases. At this hearing, the various decree holders sought continuation of the execution proceedings against the Corporate Debtor, on the basis that the CIRP had been restricted only to one project i.e. "Eco Village II". However, the HRERA took the view that since the CIRP had been initiated against the Corporate Debtor and moratorium u/s 14 was declared, there is no reason to continue with the execution applications and all the matters were adjourned sine die subject to the orders passed in the insolvency proceedings.
21. From the above narration of facts, it may be seen that the Applicants, who are decree holders against the Corporate Debtor, are left without any remedy in law to recover their dues from the Corporate Debtor under the decree passed by the HRERA, which has become final and has not even been appealed against by the Corporate Debtor. The execution proceedings filed before the HRERA are not being continued due to the CIRP order and consequent moratorium. The HRERA in its last order has adjourned the execution applications against the Corporate Debtor sine die to await the outcome of the CIRP proceedings. This is despite the fact that this Hon'ble Tribunal has restricted the CIRP to one project of the Corporate Debtor only, i.e. "Eco Village II", and has allowed the construction to continue of the other projects albeit under the supervision of the IRP. Further, the Corporate Debtor can also use its bank accounts, again under the

countersignature and with prior approval of the IRP. Thus, it is not a situation where the Corporate Debtor is not carrying out any of its normal business for any project other than “Eco Village II”. Even the Supreme Court in its order of 11.05.2023 has not disturbed this order of this Hon’ble Tribunal, save certain modifications as mentioned in the order.

22. It is respectfully submitted that confining the CIRP to one project only, i.e. “Eco Village II”, should not result in the suspension of execution proceedings against the Corporate Debtor which arise out of its dues owed to the Applicants under a decree of the HRERA, in respect of another project i.e. ‘Araville’, if there is no CIRP across the board for the Corporate Debtor.
23. It may also be stated that the Applicants had submitted their claim to the IRP by way of abundant caution, however, since there is no CIRP for any other project, it is doubtful if the claim of the Applicants will be processed by the IRP either. Certainly till date there is no visibility on settlement of claims for creditors such as the Applicants, who are no longer homebuyers, nor financial or operation creditors. It may also be noted that the claim was submitted to the IRP at a time prior to the passing of the order dated 10.06.2022 by this Hon’ble Tribunal, restricting the CIRP to “Eco Village II” project only.
24. Thus, the present situation has resulted in tremendous prejudice and failure of justice to the Applicants, who are virtually left without any recourse in law to recover their legitimate dues.

Neither is the execution application proceeding before the HRERA due to the CIRP, nor is the claim submitted to the IRP being processed for the reason that the CIRP is only restricted to the “Eco Village II” project only. The Applicants are decree holders, having dues legitimately owed to them by the Corporate Debtor under the process of law, under a decree which is final. However, there is no remedy for them under the present situation.

25. Hence, the Applicants submit it would be in the interests of justice for this Hon’ble Tribunal to permit the Applicants to be impleaded in the present proceedings and permit them to place their submissions, as they are vitally affected by the outcome of the present appeal.
26. Hence, the Applicants have filed the present application, which is made bonafide and in the interests of justice.

PRAYER

It is therefore most respectfully prayed that this Hon’ble Tribunal may be pleased to –

- A) Issue an appropriate order impleading the Applicants as party Respondents in the present appeal;

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B) Pass any other or further order as this Hon'ble Tribunal may deem fit in the facts of this case



(APPLICANT NO. 1)



(APPLICANT NO.2)

THROUGH



(ROHAN THAWANI)

Advocate for the Applicants

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New Delhi

Date : 17.07.2023

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**BEFORE THE NATIONAL COMPANY LAW APPELLATE
TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI
I.A. NO. OF 2023
IN
COMPANY APPEAL (AT)(INS) NO. 406 OF 2022**

In the matter of –

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

Versus

Union Bank of India & Anr. ...Respondents

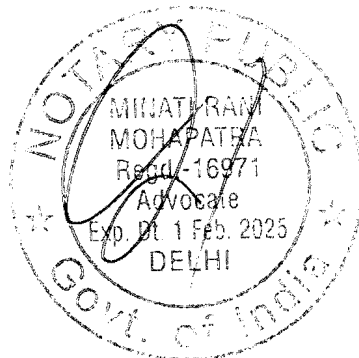
And in the matter of –

1. Rahul Agarwal
2. Pooja Agarwal ...Applicants

AFFIDAVIT

I, Rahul Agarwal, s/o Shri Ram Nath Agarwal, aged 48 years, r/o B-178,
2nd Floor, C.R. Park, New Delhi 110019, Applicant No.1 above named,
do hereby affirm and state on oath as under –

1. I say that I am the Applicant No.1 above named, and I am conversant with the facts of this case and am competent to swear the instant affidavit.
2. I say that I have read and understood the contents of the accompanying application which has been drafted under my instructions, and I say that the contents thereof are true and correct to my knowledge and nothing material is concealed.
3. I say that the annexures filed with this application are true copies of their respective originals.



Rahul Agarwal
DEPONENT

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VERIFICATION –

I, the deponent above named, do hereby verify that the contents of the accompanying affidavit are true and correct to my knowledge and nothing material is concealed herefrom.

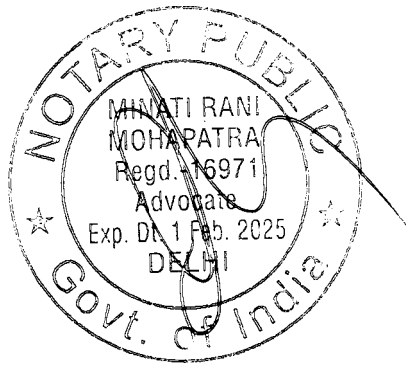
Verified at New Delhi on this 17 JUL 2023 day of July 2023

Rehmat Javed
DEPONENT

17 JUL 2023

Identified
Rohan Thakur in
Adv.

Rohan Thakur
IDENTIFIED



ATTESTED
MM
MINATI RANI MOHAPATRA
ADVOCATE (NOTARY)
Mob. No.: 8130128457

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**BEFORE THE NATIONAL COMPANY LAW APPELLATE
TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI
I.A. NO. OF 2023
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...Appellant

Versus

Union Bank of India & Anr.

...Respondents

And in the matter of –

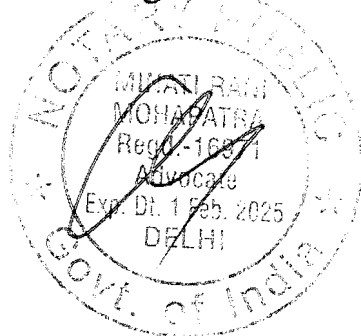
1. Rahul Agarwal
2. Pooja Agarwal

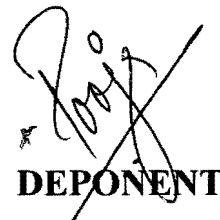
...Applicants

AFFIDAVIT

I, Pooja Agarwal, s/o Shri Rahul Nath Agarwal, aged 45 years, r/o B-178, 2nd Floor, C.R. Park, New Delhi 110019, Applicant No.2 above named, do hereby affirm and state on oath as under –

1. I say that I am the Applicant No.2 above named, and I am conversant with the facts of this case and am competent to swear the instant affidavit.
2. I say that I have read and understood the contents of the accompanying application which has been drafted under my instructions, and I say that the contents thereof are true and correct to my knowledge and nothing material is concealed.
3. I say that the annexures filed with this application are true copies of their respective originals.




DEPONENT

132

VERIFICATION –

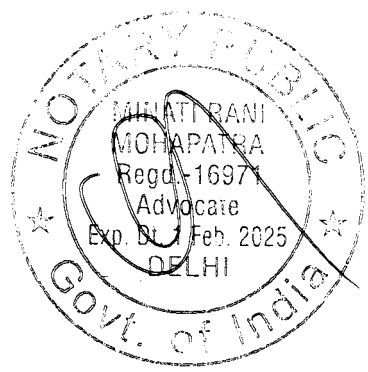
I, the deponent above named, do hereby verify that the contents of the accompanying affidavit are true and correct to my knowledge and nothing material is concealed herefrom.

Verified at New Delhi on this 17 JUL 2023 day of July 2023

[Signature]
* **DEPONENT**

17 JUL 2023

Identified
Rohan Thakur
Rohan Thakur
IDENTIFIED



ATTESTED
[Signature]
MINATI RANI MOHAPATRA
ADVOCATE (NOTARY)
Mob. No.: 8130128457

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BEFORE THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

I.A. NO. OF 2023

IN

COMPANY APPEAL (AT)(INS) 406 OF 2022

IN THE MATTER OF:

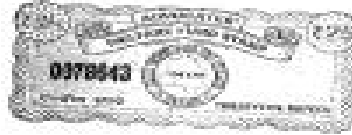
Ram Kishor Arora, Suspended Director of M/s Supertech Ltd.

...Appellant

Versus

Union Bank of India & Anr.

...Respondents



And in the matter of –

- 1. Rahul Agarwal
- 2. Pooja Agarwal

...Applicants

VAKALATNAMA

KNOW ALL to whom these presents shall that I/we **RAHUL AGARWAL & POOJA AGARWAL**, above named **APPLICANTS** do hereby appoint

ROHAN THAWANI, POOJA DHAR, PRATUL PRATAP SINGH, AAKRITI VIKAS, S. AMBICA ADVOCATES

To be my/ our advocate/s in the above named cause and authorize them to act appear and plead in the above noted cause in this court or in any other court in which the same be tried or heard and also in the appellate courts

To sign, file, verify and present pleadings, replications, appeals cross- objection, or petitions for execution, review, revision, restoration, withdrawal compromise and file replies to petitions, objections or affidavits as may be deemed necessary or proper for the prosecution of the said cause in all its stages;

To file and take back documents;

To withdraw, compromise the said cause or submit to arbitration any differences or disputes that may arise touching or in any manner relating to the said cause;

To take out execution proceedings; to deposit, and receive monies, cheques and amounts, refunds of court fees etc. and grant receipt thereof and to do all other acts and things which may be necessary to be done for the progress and in the cause of the prosecution of the said cause;

To appoint and instruct any other legal practitioner authorizing him to exercise the powers and authorities hereby conferred upon the ADVOCATES whether he may think fit to do so and to sign the proper of attorney on my/our behalf;

And I/we undersigned do hereby agree to rectify and confirm all acts done by the advocates or their substitute/s in the Matter as my/our own acts, as if done by me/us to all intents and purposes;

And I/we undertake that I/We or duly authorised agent would appear in court on all hearings and will inform the Advocate for appearance when the cause is called.

And I/We the undersigned do hereby agree not to hold the Advocate or his substitute responsible for the result of the said cause as a consequence of his absence from Court when the said cause is called for hearings or for any negligence of the said Advocate or his substitute.

And I we the undersigned hereby agree that in the event of the whole or any part of the fee agreed by me/us to be paid to the Advocate remaining unpaid he shall be entitled to withdraw from the prosecution of the cause until same is paid. If any costs are allowed for an adjournment the Advocate would be entitled to same.

IN WITNESS WHEREOF I/We do have unto set my/our hands to these presents the contents of which have been understood by me us on this 10th DAY OF July, 2023

ACCEPTED, Identified and certified

Rohan Thawani
 (ROHAN THAWANI)
 D-1061/2002
 C-64, LGF, DEFENCE COLONY, NEW DELHI 110024
 9810802319/rohanthawani@gmail.com

Pratul Prasad Singh
 S. Ambica
 D/1125/2022 D/10631/2022

Aakriti Vikas, Adv.
 D/12958/2022

Rahul Agarwal
 (RAHUL AGARWAL)

Pooja Agarwal
 (POOJA AGARWAL)

Identified
Rohan Thawani
Adv.