

**IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL  
AT NEW DELHI  
(APPELLATE JURISDICTION)  
I.A. No.            of 2022  
IN  
COMPANY APPEAL (AT) (INSOLVENCY) NO. 406 of 2022**

**IN THE MATTER OF:**

VEENA KUMARI

... APPLICANT

**AND**

**IN THE MATTER OF:**

RAM KISHOR ARORA

SUSPENDED DIRECTOR OF SUPERTECH LTD.

... APPELLANT

**VERSUS**

UNION BANK OF INDIA & ANR.

... RESPONDENT

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**FILED BY:**

Shaurya Krishna  
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**COMPANY APPEAL (AT) (INSOLVENCY) No. 406 of 2022**

**IN THE MATTER OF:**

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W/o Mr. Subhash Chander Bhatia

R/o H. No. 197, Jaggi Colony,

Phase-2, Ambala City,

Ambala, Haryana – 134007

**... APPLICANT**

**AND**

**IN THE MATTER OF:**

RAM KISHOR ARORA

SUSPENDED DIRECTOR OF SUPERTECH LTD.

**... APPELLANT**

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**... RESPONDENT**

**ADVOCATE FOR THE APPLICANT: SHAURYA KRISHNA**

IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL  
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Place: New Delhi

Dated: 07/12/2022

FILED BY:

*Shaurya K.*

(SHAURYA KRISHNA)

ADVOCATE (UP06753/2018)

Add - D - 111, First Level,

Defence Colony, New Delhi

Mob. 8521228202

COUNSEL FOR THE APPLICANT

IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL  
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I.A. No. of 2022

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

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VERSUS

UNION BANK OF INDIA & ANR.

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APPLICATION FOR IMPLEADMENT OF APPLICANT AS A  
PARTY AND SEEKING CLARIFICATION/DIRECTION OVER  
THE ORDER PASSED BY THE LD. ADJUDICATING  
AUTHORITY, NATIONAL COMPANY LAW TRIBUNAL, NEW  
DELHI ON 25.03.2022

**MOST RESPECTFULLY SHOWETH:-**

1. That it is respectfully submitted that in the abovesaid matter, an appeal is preferred against the impugned order dated 25.03.2022 passed by the Ld. Adjudicating Authority, NCLT, New Delhi wherein the Hon'ble Appellate Tribunal has also passed subsequent orders. The true copy of the impugned order is herein marked and annexed as **ANNEXURE NO. A-1.**
2. That at the onset the Ld. Adjudicating Authority vide its order dated 25.03.2022 by way of paragraph 16 of the order, has imposed a moratorium in terms of section 14 of the Code, which is resulted into no suits shall be instituted against the corporate debtor including execution of judgment, decree or order in any Court of Law.
3. That it is it is furthermore submitted that the applicant has been awarded an execution decree against the order of refund passed by the Ld. UP RERA. It is humbly submitted that subsequently, a Recovery Challan dated 07.02.2020 was also issued against the appellant herein. The true copy of the recovery challan dated 07.02.2020 is herein marked as **ANNEXURE NO. A-2.**
4. That in the present appeal, the Hon'ble Appellate Tribunal has specifically passed various directions vide order dated 10.06.2022 and directed that the IRP may constitute the CoC with regard to the

Project Eco Village II only. The true copy of the order dated 10.06.2022 is herein attached as ANNEXURE NO. A-3.

5. That it is humbly submitted that the applicant has a decree passed by UP RERA and recovery challan dated 07.02.2022 regarding the project namely Supertech Eco Village I which is a project of the respondent company other than Supertech Eco Village II that does not come under the project specified by the Hon'ble Appellate Authority vide order dated 10.06.2022.
6. That it is furthermore submitted that to execute the recovery challan, the applicant has also filed a **Contempt Application (Civil) No. 115 of 2022** before the Hon'ble High Court having its judicature at Allahabad on the ground of violation of the order passed by the Hon'ble High Court in **WRIT-C No. 23420 of 2020**. In the aforesaid Writ Petitioner, the Hon'ble High Court had directed the concerned authority vide order dated 22.01.2021 to execute the recovery challan to its logical conclusion and the concerned authority shall be at liberty to call for police aid, if any, as expeditiously as possible, preferably within 3 months from the date of production of this order. The true copy of the order in the WRIT-C No. 23420 dated 22.01.2021 is herein annexed as ANNEXURE NO. A-4.

7. That since the moratorium is imposed on the appellant company, the Hon'ble High Court in the contempt application vide order dated 5.08.2022 was pleased to defer the proceedings against the appellant company for three months. The Contempt Application is yet to be listed for arguments on the same ground before the Hon'ble High Court. The true copy of the order dated 05.08.2022 is marked as ANNEXURE NO. A-5.
8. That it is further submitted that the recovery challan cannot be reached to its logical conclusion as ordered by the Hon'ble High Court vide order dated 22.01.2020 unless the order regarding moratorium passed by the Ld. Adjudicating Authority, NCLT, New Delhi on every project and on the appellant company as a whole is modified and further directions are passed.
9. That therefore, the present I.A. is filed to be impleaded as a party and to seek modification regarding the moratorium imposed on the recovery proceedings against the projects other than Eco Village II under section 14 of the IBC. It is most humbly submitted that such modification may help the applicant in contesting the contempt proceedings before the Hon'ble High Court and other litigants as well whose matters are pending before any court of law.
10. That a great prejudice and irreparable injury would be caused to the applicant if the present application is not allowed.



11. That the present application is bona fide and in the interest of justice.

**PRAYER**

It is therefore, humbly prayed that this Hon'ble Appellate Tribunal may graciously be pleased to grant the following reliefs: -

- i) Pass an order directing the applicant herein to be impleaded in the instant Appeal;
- ii) Modify the relevant paragraph 16 of the order dated 25.03.2022
- iii) Pass an order wherein the moratorium is imposed only on the project namely Supertech Eco Village II and not on any other project of the appellant company.
- iv) Pass any other order as this Hon'ble Appellate Tribunal may deem fit and proper in the present circumstances of the case and in the larger interest of justice.

Place: *New Delhi*

Date: *07.12.2022*

*Verna*  
APPLICANT

THROUGH

*Shaurya Krishna*

**SHAURYA KRISHNA**  
Advocate  
Supreme Court of India  
D-111, 1st Level, DLC,  
Defence Colony, New Delhi-110024  
Mob +91-8521228202

DECLARATION

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

*Shaurya Krishna*

Verified at New Delhi dated at 07 this day December of 2022

**SHAURYA KRISHNA**  
Advocate  
Supreme Court of India  
D-111, 1st Level, DLC,  
Defence Colony, New Delhi-110024  
Mob +91-8521228202  
Counsel for Applicant

*Veena*  
Applicant

IDENTIFIED

VERIFICATION

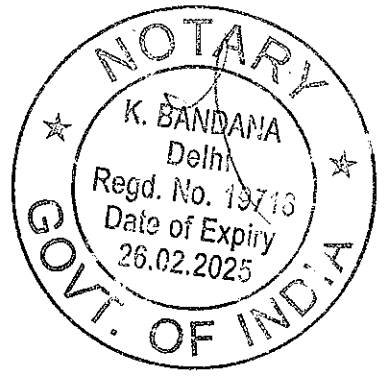
I, Veena Kumari, W/o Mr. Subhash Chandel, age 68 years, working as a housewife, resident of H. No. 197, Jaggi Colony, Phase-2, Ambala City, Ambala, Haryana - 134007, presently at - NEW DELHI do hereby verify that the contents of the paras 1 to 7 are true to my personal knowledge / derived from official record ) and para 8 to 11 are believed to be true on legal advice and that I have not suppressed any material facts.

Date: 07 .12.2022

Place: New Delhi

*Veena*

Signature of the Applicant



ATTESTED  
NOTARY PUBLIC, DELHI  
GOVT. OF INDIA

IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL  
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VERSUS

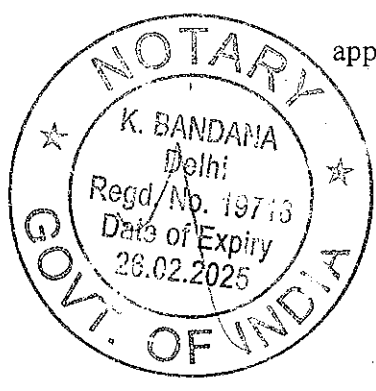
UNION BANK OF INDIA & ANR.

... RESPONDENT

AFFIDAVIT

I, Veena Kumari, W/o Mr. Subhash Chander Bhatia R/o H. No. 197, Jaggi Colony, Phase-2, Ambala City, Ambala, Haryana - 134007, presently at - NEW DELHI do hereby solemnly affirm and state as under:

1. That I am well aware of the facts of the case and am competent to execute the present affidavit.
2. That I have read and understood the contents of the attached application and state that the same has been drafted under my



instructions and as per the records maintained by the Applicant and nothing material has been concealed therefrom.

Date: New Delhi  
Place: 07.12.2022

Veena  
DEPONENT

**VERIFICATION**

I, the Deponent above-mentioned, verify that the contents of the aforesaid Para 1 to 2 of the Affidavit are true and correct to the best of my knowledge and nothing material has been concealed therefrom.

Verified at New Delhi on 07 day of December 2022.

IDENTIFIED

07 DEC 2022

Veena  
DEPONENT



ATTESTED  
[Signature]  
NOTARY PUBLIC, DELHI  
GOVT. OF INDIA

Annexure - 1

**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

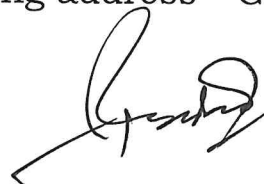
IB-204/ND/2021

**Coram:****SHRI. P.S.N. PRASAD, Hon'ble Member (Judicial)****SHRI. RAHUL BHATNAGAR, Hon'ble Member (Technical)****Counsel for Petitioner/Financial Creditor: Adv. Alok Kumar****Counsel for Respondent/Corporate Debtor: Adv. Kanishk Khetan****ORDER****Per SHRI. P.S.N PRASAD, MEMBER (JUDICIAL) &  
SHRI.RAHUL BHATNAGAR, MEMBER (TECHNICAL)****Date:25.03.2022**

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

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

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



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

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





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

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



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

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

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

- That the NPA classification is contrary to guidelines issued by the Reserve Bank of India.
- That the Statement of Account as filed by the Applicant Bank is not in accordance with the mandatory requirement of law. That the Applicant has failed to annex copy of the Certificate required under Section 2(a) of the Bankers Book Evidence Act, 1891 which is a mandatory requirement Under Column 7 of Part V of FORM -1.
- That the Applicant has failed to furnish the calculation chart and thereby the claim of the Applicant is unsubstantiated, exorbitant and thus, the same is liable to be rejected at the outset.

3. Pursuant to the Respondent's reply, the applicant has filed its Rejoinder in which the following contentions were made:

- That Sh. Shakti Yadav has been given general authorisation by the Bank with respect to all the business and affairs of the Bank, including commencement of legal proceedings before any court or tribunal with respect to any demand



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

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



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

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

7. In the light of the aforesaid facts, we find that the documents submitted by the Financial Creditor and the Corporate Debtor clearly substantiate the Financial Creditor's claim that the Corporate Debtor has indebted and defaulted the repayment of loan amount.
8. In light of the above discussion, after giving careful consideration to the entire matter, hearing the arguments of the parties and upon appreciation of the documents placed on record to substantiate the claim, this Tribunal **admits** this petition and initiates CIRP on the Corporate Debtor with immediate effect.
9. Sub-section (3) (b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Hitesh Goel for appointment as Interim Resolution Professional having registration number IBBI/IPA-001/IP-P-01405/2018-2019/12224. Mr. Hitesh Goel has agreed to accept the appointment as the interim resolution professional and has

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

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



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





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

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

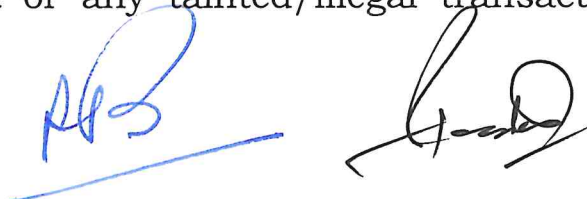
*(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*

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

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

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

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



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

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

-sd-

**(SHRI. RAHUL BHATNAGAR)**

**MEMBER (TECHNICAL)**

-sd-

**(SHRI. P.S.N. PRASAD)**

**MEMBER (JUDICIAL)**

# उ०प्र० भू-सम्पदा विनियामक प्राधिकरण

क्षेत्रीय कार्यालय, एच-169, सेक्टर गामा-2

ग्रेटर नोएडा सिटी, गौतमबुद्धनगर

संख्या: 1130/यूपी०रेरा/क्ष०का०/वसूली/2020-21

दिनांक: 28/10/2020

## वसूली प्रमाण-पत्र

(अंतर्गत धारा-40 भू-सम्पदा (नियमन एवं विकास) अधिनियम, 2016)

प्रेषक,

सचिव,

उ.प्र. भू-सम्पदा विनियामक प्राधिकरण,  
क्षेत्रीय कार्यालय, ग्रेटर नोएडा, गौतमबुद्धनगर।

सेवा में,

जिलाधिकारी,

गौतमबुद्ध नगर।

महोदय,

उ०प्र० भू-सम्पदा विनियामक प्राधिकरण द्वारा भू-सम्पदा (विकास एवं नियमन) अधिनियम-2016 की धारा-31 के अंतर्गत संस्थित शिकायत संख्या- NCR144/05/0281/2019 रीता शर्मा बनाम मे० सुपरटेक लि० में नियमानुसार सुनवाई उपरान्त दिनांक 17.09.2019 को उ०प्र० भू-सम्पदा विनियामक प्राधिकरण द्वारा निम्नवत् आदेश पारित किये गये हैं:-

“यदि विपक्षी 31 अक्टूबर 2019 तक शिकायतकर्तागण को कब्जा देने में असफल रहता है, तो 31 अक्टूबर 2019 के पश्चात दो किशतों में अदा करना सुनिश्चित करें। प्रथम किशत 31 अक्टूबर 2019 के पश्चात 30 दिन के अन्दर और दूसरी किशत 31 अक्टूबर 2020 या यूनिट पुर्नविक्रय हो जाने पर जो भी पहले हो तक, शिकायतकर्ता द्वारा समस्त जमा धनराशि MCLR+1 प्रतिशत की दर से जमा करने की तिथि से भुगतान करने की तिथि तक मय ब्याज अदा करना सुनिश्चित करें। यदि इस यूनिट पर बैंक से कोई ऋण ली गयी हो, तो पहले भुगतान बैंक को की जाये और शेष धनराशि शिकायतकर्तागण को वापस की जाये।”

प्रमोटर/विकासकर्ता द्वारा आदेश का अनुपालन नहीं किया गया है। शिकायतकर्ता/आवंटी रीता शर्मा ने दिनांक 04.12.2019 को प्रार्थना-पत्र देकर आदेश का क्रियान्वयन कराने का अनुरोध किया है।

भू-सम्पदा (नियमन एवं विकास) अधिनियम, 2016 की धारा-40 में प्राविधानित है कि “यदि कोई प्रवर्तक या आवंटी अथवा भू-सम्पदा अभिकर्ता, जैसा मामला हो, इस अधिनियम या इसके अधीन निर्मित नियमों तथा विनियमों के अधीन न्यायनिर्णायक अधिकारी या विनियामक प्राधिकरण अथवा अपील अधिकरण, जैसा मामला हो, द्वारा उस पर अधिरोपित किसी ब्याज या शास्ति अथवा क्षतिपूर्ति का भुगतान करने में असफल रहता है, तब ऐसे प्रवर्तक या आवंटी अथवा भू-सम्पदा अभिकर्ता से ऐसी रीति से, जो विहित की जा सकेगी, भू-राजस्व बकाये के रूप में उसकी वसूली की जाएगी।”

अतः उ०प्र० भू-सम्पदा विनियामक प्राधिकरण पर अधिनियम की धारा-40 के अंतर्गत प्रदत्त शक्तियों का उपयोग करते हुये आवंटी शिकायतकर्ता को देय धनराशि की वसूली विपक्षी प्रमोटर मे० सुपरटेक लि० से भू-राजस्व के बकाये की भाँति कराने का निर्णय लिया गया है।

**वसूली की जाने वाली धनराशि तथा पक्षकारों का पूर्ण विवरण निम्नवत् है:-**

1. शिकायतकर्ता का नाम व पता:- रीता शर्मा, पता:- 406, ब्लॉक 16 लोधी कालोनी  
ऑन जोर बाग रोड, नई दिल्ली।
2. कम्पनी/व्यक्ति (डिफाल्टर) का नाम: मेसर्स सुपरटेक लि०।
3. पता जिससे वसूली की जानी है  
स्थायी पता: 1114, हेमकुंट चैम्बर्स, 89, नेहरू प्लेस, नई  
दिल्ली-110019।  
स्थलीय पता:- ई-स्केयर, प्लॉट सी-2, फ्लोर 21-25,  
सेक्टर-96, नोएडा, गौतमबुद्धनगर,  
उ०प्र०-201301।
4. कम्पनी के चेयरमैन तथा डायरेक्टर धनराशि चुकाने के लिये विधि अनुसार उत्तरदायी हैं।
5. जमा मूल धनराशि : ₹0 15,13,603.00
6. वसूली योग्य धनराशि  
i. मूल धनराशि ₹0 15,13,603.00  
ii. ब्याज (दि०-07.01.2011 से 31.10.2020 तक आगणित) ₹0 13,75,582.40
7. वसूली हेतु कुल योग (i+ii) ₹0 28,89,185.40
8. उपरोक्त आगणन दिनांक 31.10.2020 तक का है, अतएव दिनांक 01.11.2020 से जमा मूल धनराशि ₹0 15,13,603.00 पर 9.35 प्रतिशत वार्षिक साधारण ब्याज देय होगा।
9. वसूल धनराशि के सापेक्ष नियमानुसार संग्रह व्यय वसूल किया जा सकेगा।

वसूली प्रमाण-पत्र तीन प्रतियों में भेजते हुये अनुरोध है कि उपरोक्त वर्णित धनराशि ₹0 28,89,185.40 (रुपया-अट्ठाईस लाख नवासी हजार एक सौ पिचासी पैसा चालीस) विपक्षी कम्पनी मे० सुपरटेक लि० से भू-राजस्व के बकाये की भौति वसूल कराकर सम्पूर्ण धनराशि उ०प्र० भू-सम्पदा विनियामक प्राधिकरण के नाम बैंक ड्राफ्ट के माध्यम से जो लखनऊ में देय होगा, सहित वसूली प्रमाण-पत्र पूर्ण विवरण सहित उपलब्ध कराने का कष्ट करें।

भवदीय,

(राजेश कुमार त्यागी)  
सचिव

## Annexure - 3

**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 25<sup>th</sup> March, 2022 passed by the Adjudicating Authority (National Company Law Tribunal, New

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

**2.** The Corporate Debtor is a ‘Real Estate Company’ engaged in construction of various projects in the National Capital Region (NCR). Union Bank of India vide its Sanction Letter dated 19.10.2013/16.12.2013 granted credit facilities of Rs. 150 Crores for the development of ‘Eco Village II Project’. The Union Bank of India and Bank of Baroda agreed to extend second credit facilities of Rs. 200 Crores where total exposure of Union Bank of India was Rs. 100 Crores which was sanctioned by Letter dated 21.11.2015. Credit Facilities was secured by execution of mortgage and with corporate guarantees and personal guarantees. There being default on the part of the Corporate Debtor in repaying the loan, the Account was declared as ‘Non-Performing Assets’ (NPA) on 20<sup>th</sup> June, 2018. An application under Section 7 was filed by the Union Bank of India on 20<sup>th</sup> March, 2021 claiming total amount of Rs. 431,92,53,302/- as on 31<sup>st</sup> January, 2021 and interest thereon. The Adjudicating Authority vide the Impugned Order dated 25<sup>th</sup> 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 12<sup>th</sup> 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 17<sup>th</sup> 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 31<sup>st</sup> 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 31<sup>st</sup> May, 2022 giving details of various facts regarding the claim management, construction, cash flow and list of key issues, details of finances provided to 'M/s. Supertech Limited' by different Financial Creditors, Financial Creditors Claim as well as the details of various

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

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

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

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

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

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

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

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

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

“

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

**13.** Annexure E detailing the Operational Creditor Claim.

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

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

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



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

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

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

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

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

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

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

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

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

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

**18.** An appeal was also filed before the Hon’ble Supreme Court of India vide Diary No. 13889-2020 in the matter of Narendra Singh Vs. M/s. Umang Realtech Pvt. Ltd. against the Order dated 04.02.2020 of this Tribunal in Company Appeal (AT) Ins. No. 926 of 2019 which was dismissed by an Order dated 11<sup>th</sup> 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            |
| <b>Total</b> |                             | <b>49,554</b> | <b>38,603</b> | <b>11,953</b>  | <b>27,673</b>    | <b>9,705</b>                | <b>6,015</b>                  | <b>21,881</b>            | <b>10,951</b> |

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

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

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

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

dated 12<sup>th</sup> 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 12<sup>th</sup> 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 12<sup>th</sup> 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 **27<sup>th</sup> July, 2022.**

**[Justice Ashok Bhushan]**  
**Chairperson**

**[Mr. Naresh Salecha]**  
**Member (Technical)**

**New Delhi**  
**10.06.2022**  
Basant

**Case :-** WRIT - C No. - 23420 of 2020

**Petitioner :-** Veena Kumari And Another

**Respondent :-** State Of U.P. And 3 Others

**Counsel for Petitioner :-** Arvind Agrawal, Adya Shankar Chaturvedi

**Counsel for Respondent :-** C.S.C., Wasim Masood

**Hon'ble Naheed Ara Moonis, J.**

**Hon'ble Dinesh Pathak, J.**

Heard Sri Arvind Agrawal, learned counsel for the petitioners, Sri Wasim Masood, learned counsel for RERA - respondent no. 4 and the learned Standing Counsel for respondent nos. 1 & 2.

The petitioners, who are home buyers, booked an apartment in a project floated by respondent no.3, but as the project could not attain completion for reason attributable to respondent no. 3, they applied for refund of the booking amount, but as the same was not refunded, petitioners approached respondent no. 4/RERA, Gautam Budh Nagar, which upheld their claims under the order dated 13.11.2019 directing the respondent no.3 to refund the deposit amount along with interest MCLR plus 1% per annum from the date of deposit upto date of the order with a further direction to refund the said amount within 45 days.

It is submitted by learned counsel for the petitioner that despite issuance of recovery citation (Annexure-3), till date no recovery has been effected.

Sri Waseem Masood, learned counsel for RERA and the learned Standing Counsel submit that no useful purpose would be served in keeping this petition pending, same be disposed of by giving appropriate direction to the authority concerned.

The writ petition is disposed of with the direction that in the event, the petitioner approaches Collector, Gautam Budh Nagar/respondent no.2 along with copy of this order, he shall ensure that the recovery citation (Annexure-3) is executed to its logical conclusion and if needed, the authority shall be at liberty to call for police aid, if any, as expeditiously as possible, preferably within 3 months from the date of production of this order.

**Order Date :-** 22.1.2021

nd

**Case :-** CONTEMPT APPLICATION (CIVIL) No. - 115 of 2022

**Applicant :-** Veena Kumari And Another

**Opposite Party :-** Suhas L.Y., District Collector

**Counsel for Applicant :-** Saumitra Dwivedi

**Hon'ble Rohit Ranjan Agarwal,J.**

Heard Sri Abhishek Tiwari, Advocate holding brief of Sri Saumitra Dwivedi, learned counsel for applicants and Sri P.K. Giri, learned Additional Chief Standing Counsel.

Learned Additional Chief Standing Counsel pointed out that the National Company Law Tribunal (hereinafter called as "NCLT"), New Delhi vide order dated 25.03.2022 exercising power under Section 13 (2) of the Insolvency and Bankruptcy Code (IBC), 2016 had appointed Interim Resolution Professional. Further, a moratorium in terms of Section 14 of the Code, 2016 was also declared and following prohibitions were imposed by the Tribunal. Relevant para 16 is extracted herein as under:-

*"We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:*

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

Learned Additional Chief Standing Counsel invited the attention of the Court to the letter dated 01st July, 2022 addressed to the Chairman, U.P., Real Estate Regulatory Authority (hereinafter called as "RERA"), wherein it was requested that all the RCs issued by RERA should be withdrawn during the pendency of the matter before NCLT. It is further contended that initially the recovery was issued by RERA on 07.02.2020 and when the same was not executed, the applicant had approached this Court through Writ-C No.23420 of 2020, wherein this Court, on 22.01.2021, without expressing any opinion on the merit of the case had directed the Collector, Gautam Budh Nagar to expeditiously conclude the proceedings within three months. The order dated 22.01.2021 is extracted herein as under:-

*"Heard Sri Arvind Agrawal, learned counsel for the petitioners, Sri Wasim Masood, learned counsel for RERA - respondent no. 4 and the learned Standing Counsel for respondent nos. 1 & 2.*

*The petitioners, who are home buyers, booked an apartment in a project floated by respondent no.3, but as the project could not attain completion for reason attributable to respondent no. 3, they applied for refund of the booking amount, but as the same was not refunded, petitioners approached respondent no. 4/RERA, Gautam Budh Nagar, which upheld their claims under the order dated 13.11.2019 directing the respondent no.3 to refund the deposit amount along with interest MCLR plus 1% per annum from the date of deposit upto date of the order with a further direction to refund the said amount within 45 days.*

*It is submitted by learned counsel for the petitioner that despite issuance of recovery citation (Annexure-3), till date no recovery has been effected.*

*Sri Waseem Masood, learned counsel for RERA and the learned Standing Counsel submit that no useful purpose would be served in keeping this petition pending, same be disposed of by giving appropriate direction to the authority concerned.*

*The writ petition is disposed of with the direction that in the event, the petitioner approaches Collector, Gautam Budh Nagar/respondent no.2 along with copy of this order, he shall ensure that the recovery citation (Annexure-3) is executed to its logical conclusion and if needed, the authority shall be at liberty to call for police aid, if any, as expeditiously as possible, preferably within 3 months from the date of production of this order. "*

It is also contended that as the NCLT has imposed moratorium and had directed that no suits shall be instituted or continued or any proceedings against the corporate debtor including execution of judgment, decree or order in any Court of Law, the recovery proceedings initiated by the RERA cannot be executed.

In view of the said fact, the contempt proceedings are deferred for three months.

List this matter in November, 2022.

Personal appearance of the officer concerned is exempted until further orders of this Court.

**Order Date :- 5.8.2022**

**V.S.Singh**

**VAKALATNAMA**

IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL AT  
NEW DELHI

I.A. No. of 2022

IN

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

In re:

**VEENA KUMARI (Applicant)**

AND

**RAM KISHORE ARORA (Appellant)**

VERSUS

**UNION BANK OF INDIA AND ANR. (Respondent)**

KNOW ALL to whom these present shall come that I, Veena Kumari.

The above-named Applicant do hereby appoint

**SHAURYA KRISHNA**

Advocate

Leg No.-UP06753/2018

D-111, First Floor, Defence Colony,

New Delhi-110024

Mobile: 8521228292

(hereinafter called by Advocate(s) to be my/our Advocate in the above-noted case and authorise him/them:

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

To file and take back documents as admit &/or deny the documents of opposite party. To withdrawal or compromise the said case or submit to arbitration any differences or disputes that may arise touching or in any manner relating to the said case.

To take execution proceedings. To deposit, draw and receive money, cheques, cash, and grant receipts thereof and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.

To appoint and instruct any other Legal practitioner or person authorizing him to exercise the power and authority hereby conferred upon the Advocate whatever he may think fit to do so and sign the power of attorney.

And I/We undersigned do hereby agree to ratify and confirm all acts done by the Advocate or his substitute 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 my/our duly authorized agent would appear in the court & on all hearings and will inform the Advocate for appearance when the case is called.

And I/we undersigned do hereby agree not to hold the advocate or his substitute responsible for the result of the said case. The adjournment costs whatever ordered by the Court shall be of the Advocate which he shall receive and retain for himself. The Advocate is not responsible if the case is dismissed in default or otherwise.

And I/We the undersigned do hereby agree that in the event of the whole or 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 said case until the same is paid up. The fee settled on for the above case and above court for a period of three year only. I/we hereby agree that once the fee paid I/we will not be entitled for the refund of the same in any case whatsoever.

IN WITNESS WHERE OF I/WE do hereby set forth my/our hand to these present contents which have been understood by me/us on this 07 day of December, 2022.

Accepted subject to the terms of fees.

**SHAURYA KRISHNA**  
Advocate  
Supreme Court of India  
D-111, 1st Level, DLC,  
Defence Colony, New Delhi-110024  
Mob +91-8521228202  
(SHAURYA KRISHNA)  
Advocate

*Bhavya K!*  
07/12/2022

*Veena*  
Client

