

**BEFORE THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
AT NEW DELHI
COMPANY APPEAL (AT) (INS) NO. 406 OF 2022**

IN THE MATTER OF:

RAM KISHOR ARORA
SUSPENDED DIRECTOR OF
SUPERTECH LIMITED

...APPELLANT

VERSUS

UNION BANK OF INDIA & ANR.

...RESPONDENTS

**SUMMARY OF OBJECTIONS TO I.A. NO. 6557/ 2024 FILED ON BEHALF OF
THE INTERIM RESOLUTION PROFESSIONAL OF SUPERTECH LIMITED,
THE RESPONDENT NO. 2 HEREIN IN COMPLIANCE OF ORDER DATED
SEPTEMBER 19, 2024**

Most Respectfully Showeth:

1. This instant summary of objections is being submitted by Interim Resolution Professional (“IRP”) of Corporate Debtor on the website, in compliance of order dated September 19, 2024, wherein Hon’ble Appellate Tribunal has passed the following directions:
*“Heard Shri Nakul Dewan, Ld. Sr. Counsel appearing for the IRP, Shri Gopal Jain, Ld. Sr. Counsel appearing for IA No. 6557 of 2024 filed by the NBCC.
2. Ld. Counsel for the Noida, Greater Noida, Landowners, Lenders and Yamuna Expressway Authority of India as well as the Homebuyers are allowed two weeks to file objection to the IA No. 6557 of 2024 which objection be also given to the IRP. All objections may be tabulated by the IRP and substance of the objection in a chart-form be placed before the court on the next date of hearing so that NBCC’s application and the objections can be considered and disposed of.
3. All the Lenders, Homebuyers, Landowners, Banks are permitted to e-file the objections with a copy to IRP. Copy of the objection to the NBCC’s application be served to the Ld. Counsel appearing for the Applicant Shri Gopal Jain and the Appellant.
4. Shri Nakul Dewan, Ld. Sr. Counsel submits that the summary of all objections received to the NBCC’s application shall be put on the website so that everybody can access to the website.
5. List on 21.10.2024 at 2: 00 PM high on the board for rest of the matters.”*
2. It is respectfully submitted that the IRP has filed his observations regarding the Terms of Reference submitted by the National Buildings Construction Corporation (NBCC) as outlined in the Status Report dated September 11, 2024. For the sake of brevity, the details of such observations are not reiterated herein.

3. It is submitted that IRP has endeavored to the best of his abilities, to summarize the substantive objections submitted by various stakeholders in response to the Terms of Reference filed by the NBCC vide application No. IA 6557/2024. This summary has been prepared in tabulated form, in accordance with the directions issued by the Hon'ble Appellate Tribunal. As of October 15, 2024, the IRP has received the following objections (“**Objections**”):
 - a. Objection on behalf of Yamuna Expressway Industrial Development Authority dated October 9, 2024
 - b. Objections of behalf of Assets Care and Reconstruction Enterprise dated October 4, 2024.
 - c. Objections of behalf of L& T Finance Ltd. dated October 3, 2024 and additional objections dated October 15, 2024.
 - d. Objections of behalf of Homebuyers of Project Eco-Village II and IV dated October 14, 2024
 - e. Objection on behalf of Homebuyers of Project Eco Village II dated October 14, 2024.

The tabulated summary of above-referred objections is annexed herewith and marked as **Annexure A**.

4. At the outset, the IRP denies all such averments, allegations, contentions, and submissions made in the above-referred objections, in respect of the IRP/ Corporate Debtor. Nothing in the said Objections may deem to have been admitted for non-traverse. The IRP crave leave to file detailed para-wise reply to the same as and when the Hon'ble Appellate Tribunal may so direct.
5. It is submitted that as per the directions of the Hon'ble Appellate Tribunal, the instant summary of objections is being uploaded on the website of Corporate Debtor. The link for the same is as below:
<https://supertechlimited.com>
6. It is submitted that, in case of any additional observations/objections, please send the same at iphiteshgoel@gmail.com by October 18, 2024, so that the same can be incorporated while filing the report before the Hon'ble Appellate Tribunal.

Hitesh Goel

Interim Resolution Professional of Supertech Limited (Non-Eco Village II Projects)

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Annexure A

**SUMMARY OF OBJECTIONS ON BEHALF OF YAMUNA EXPRESSWAY
INDUSTRIAL DEVELOPMENT AUTHORITY (“YEIDA”)**

Sl. No.	Key Points	YEIDA’s Comments
1.	YEIDA’s Claim and its repayment not provided under NBCC TOR (para 22 to 23)	<p>YEIDA has submitted a claim of INR 3,96,76,44,257 towards its outstanding dues. However, NBCC has failed to include any provision or proposal addressing the repayment of these dues in the TOR.</p> <p><i>In view of the law laid down in Jaypee Kensington Boulevard Apartments Welfare Association & Ors. v. NBCC (India) Ltd. & Ors.; Civil Appeal No. 3395 of 2020, NBCC is obligated to admit the YEIDA’s claim in its entirety and make provisions for their repayment.</i></p> <p>As the TOR submitted by NBCC fails to include any provision for the repayment of the YEIDA’s dues, YEIDA rejects the NBCC's TOR in its entirety.</p> <p>YEIDA further rejects NBCC’s request for any financial concessions or any other form of concession.</p> <p>YEIDA cannot be compelled to relinquish their assets without full payment of their dues.</p>
2.	YEIDA is the Secured Financial Creditor (para 21)	<p>YEIDA is the Secured Financial Creditor in view of Section 13-A of the UP Act, relying upon the ratio laid down in <i>Greater Naida v. Prabhjit Singh Soni</i>, 2024 SCC OnLine SC 122 (“Prabhjit Singh Soni Judgment”), whereby the Hon'ble Supreme Court held that the Greater Naida Authority is a secured creditor under Section 13-A of the UP Act.</p>
3.	NBCC’s TOR is contrary to law (para 28)	<p>NBCC's TOR runs contrary to Section 7 of the UP Act, which governs the transfer of lands leased by the Applicant. In view of the said statutory provisions and the binding precedents of the Hon’ble Supreme Court and the law laid down by this Hon’ble Tribunal, the TOR filed by NBCC is contrary to the law.</p>
4.	Lease Deed has been cancelled by YEIDA and hence cannot be restored (para 29)	<p>NBCC has proposed to construct and deliver projects without restoring the Lease Deed. It is a matter of record that the Lease Deed was cancelled due to persistent defaults in the payment of dues under the Lease Deed, including dues that accrued after the commencement of the CIRP.</p> <p>Under these circumstances, the restoration of the Lease Deed is not possible unless the YEIDA’s dues are paid in full and all requirements for lease restoration as per applicable policy, are fulfilled.</p>
5.	Inclusion of YEIDA in the Court Committee (para 30)	<p>In the absence of any authorized representatives of YEIDA (land owning agencies) on the Court Committee, the Applicant rejects NBCC’s TOR.</p>

6.	Prayers (para 31)	Pass an order rejecting the NBCC's TOR and directing NBCC to amend its proposal/TOR to include the claims payable to the YEIDA.
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SUMMARY OF OBJECTIONS ON BEHALF OF ASSETS CARE AND RECONSTRUCTION ENTERPRISE LIMITED (ACRE)

Sl. No.	Key Points	ACRE's Comments
1.	Completion of Phase II Projects: (para VI)	ACRE recommends that NBCC prioritize the completion of Meerut Sports City Project, which stands included in Phase II of NBCC's proposal, construction of which would commence pursuant to completion of Phase I, within a clear and reasonable timeline.
2.	Inclusion of ACRE in Court Committee: (para A)	ACRE is broadly aligned with the proposal from NBCC to establish a Court Committee that includes representatives from the IRP, NBCC, lenders, and a construction expert. However, ACRE suggests that such committee shall be strictly structured on a project-wise basis to ensure that key stakeholders are represented for each specific project to ensure a balanced and fair decision-making process. ACRE being a secured Financial Creditor of the Corporate Debtor and enjoying a first-ranking exclusive charge over Meerut Sports City Project, units at North Eye Project and school plot, ACRE shall be part of court committee appointed for such projects.
3.	Separate designated accounts for each project: (para B)	ACRE objects to creation of unencumbered designated project accounts in terms of Clause 1.4(d) of TOR, as formation of common Designated Account would ultimately result in an increase in the risk of fund misallocation, wherein resources intended for completion for one project might be diverted to another. Accordingly, it is recommended that separate accounts shall be designated for project Meerut Sports City and North Eye in order to maintain fairness and transparency.
4.	Exemption from RERA Act: (para 12)	In terms of Clause 1.4 d(iii) of the TOR, NBCC has sought direction to be exempted from applicability of provisions of RERA Act. ACRE objects to request made in TOR for exemption from Section 4 (2) (I)(D) of RERA Act, which mandates opening of a separate account by the promoter and 70% of the amounts realized from the allottees in the project is to be deposited in such account and used solely for construction purposes. Thus, ACRE recommends Designated Accounts proposed to be opened should continue to operate in the manner to maintain 70:30 fund flow mechanism, where 30% of the funds can be used to repay the secured financial creditors of the

		respective project in case where the project generate sufficient surplus.
5.	ACRE must be treated as Financial Creditor: (para C)	The IRP has recognized ACRE to have filed a “corporate guarantee related claim” for the Facility extended under the Facility Agreement to the Principal Borrower, against which the Corporate Guarantee was executed by the Corporate Debtor to secure the amounts extended therein. ACRE in its capacity as a secured financial creditor filed its claim under Form C dated April 8, 2022, as the amounts owed to ACRE classify as financial debt under Section 5(8) of the Code. Further, the claim of ACRE has already been partially admitted by the IRP in the CIRP of the Corporate Debtor on February 7, 2023, to the extent of Rs. 151 Crores, out of the total claim of Rs. 417.21 Crores. The partial acceptance of ACRE's claim fortifies its status as a secured financial creditor. Accordingly, ACRE also holds first exclusive charge over Meerut Sports City Project, North Eye Units and School Plot, the NBCC whilst proposing a resolution in relation to Meerut Sports City and North Eye, must ensure that ACRE is treated as a secured financial creditor of the Corporate Debtor.
6.	ACRE’s right to simultaneously proceed against Principal Borrower and Corporate Debtor under the Code: (para D)	IRP in its reply to the TOR is seeking directions from Hon'ble Tribunal that charge holders / corporate guarantee related claimants to first proceed against the principal borrowers to recover their dues, and only upon the failure to recover any part of such dues, would their claims be considered for payment under the resolution of the Corporate Debtor. This is in violation of settled law which affirm the lender's right to simultaneously proceed against both the principal borrower and corporate guarantors. There is no basis, legal or otherwise, for the IRP to suggest that the Corporate Debtor's liability is contingent upon repayment in the CIRP of the Principal Borrower. Therefore, any liability towards ACRE by the Corporate Debtor is concurrent with the liability of the Principal Borrower.

SUMMARY OF OBJECTIONS ON BEHALF OF ECO VILLAGE II WELFARE ASSOCIATION (“ASSOCIATION”)

Sl. No.	Key Points	Association’s Comments
1.	Fee / Cost (para 3 (i))	PMC Fee / Cost Estimates needs reconsideration to ensure that the PMC Fee, Marketing Fee and Cost Estimates do not lead to cost escalation beyond BBA rates for homebuyers.
2.	Timeline (para 3 (ii))	The Proposal should provide for definite and reasonable timelines for delivery of units with registry and approvals and sanctions from RERA. NBCC should provide specific timelines for completion of activities such as construction of schools etc.

3.	Maintenance (para 3 (iii))	NBCC should maintain the projects for 5 years from the date of completion of the Project and ECO Village II should be included in Phase I and given priority. It is also suggested that the Promoters, ex-directors and management must be totally ousted from being involved in any capacity.
4.	Defect Liability (para 3 (iv))	Defect Liability Period should be guaranteed for 5 years and must be elaborated by NBCC.
5.	Construction (para 3 (v))	The layout plans, approvals, approved FARs, construction of tower and facilities of the common area should be as per the approved plans. Facilities and amenities should be as per the Builder Buyer Agreement / Allotment Letters. NBCC should hire Tier-I contractors who are capable and competent. NBCC should be made liable for construction quality.
6.	Funds (para 3 (vii))	NBCC should ensure capital infusion through bank participation and also explore ensuring funding from SWAMIH fund.
7.	Utilisation of Funds (para 3 (viii))	Any money received from homebuyers, from the launched phases or otherwise should be utilized for construction in priority and any payments to authorities, lenders and operational creditors should be made only after the construction is completed in its entirety. Any surplus money should be used in the interest of homebuyers.
8.	Escrow Account (para 3 (x))	An escrow bank account for Eco Village -II Project should be opened and regulated.
9.	Court Committee (para 3 (xi))	The Court Committee should include representative of homebuyers from Eco Village II Project and all updates should be given through e-mail, with access to records, books, approvals, physical inspection and inspection of funds. NBCC should hold regular meetings with ARs and tower wise representatives of Eco Village II Project.
10.	Escalation (para 3 (xii))	Process of escalation of grievances of homebuyers should be formulated.
11.	Sale of units (para 3 (xv))	Sales rights of units should vest in NBCC only and it should take responsibility for unsold units. Priority should be given to existing homebuyers when unsold units are sold and switching of units be allowed to existing homebuyers on priority.
12.	Insurance (para 3 (xvi))	Insurance should be taken for the entire project by NBCC and potential delays or risks should be mitigated by it.
13.	Delay Penalty / Compensation (para 3 (xviii))	Delay penalty / interest raised by builder should be waived. Delay compensation must be adjusted in remaining demands of home buyers.
14.	Subvention Scheme (para 3 (xix))	Benefit of Subvention scheme amount being pre-emi interest amount till offer of possession or assured return or lease rental scheme and all other scheme 50:50, 10:90, 20:80 etc. as per terms of the BBA/Allotment letter should be included in the claims of homebuyers.
15.	NBCC support (para 3 (xxiii))	NBCC should provide post possession support such as completion of documentation towards occupancy certificates etc. NBCC should outline plans for handing over of Supertech office to AOA/RWA and usage of

		commercial units should not create disruptions for residents.
16.	Compliances (para 3 (xxviii))	NBCC should ensure proper payments and compliances for water and electricity with the concerned authorities such as Jal Board, NPCL etc. for current residents and in future as well. NBCC should take responsibility for ensuring water, electricity and fire connections NOCs and other necessary compliances.
17.	Forensic Audit (para 3 (xxxii))	Forensic audit of the Supertech Ltd. and its sister concern through which maintenance is done should be conducted. Any fraudulent / dummy sale of car parking should be rejected. Recovery of siphoned amounts and diversion of funds be recovered.

SUMMARY OF OBJECTIONS ON BEHALF OF L&T FINANCE LIMITED
("L&T")

Sl. No.	Key Points	L&T's Comments
1.	Phase Wise Segregation of projects (Para 5 (1))	NBCC should take over the projects for which L&T is concerned at once and construction of the projects should be done immediately on pool and build mechanism.
2.	Court Committee (Para 5 (2))	It is submitted that the committee should be formed on a project specific basis. Further, it is also stated that the industry expert should be a reputed IPC (International property Consultant) as they have in depth knowledge and expertise regarding all aspects of real estate business (construction, sales, approvals, etc.) and will help in providing updated market intelligence for expedited delivery and quality construction. All key decisions such as sale price for unsold inventories, appointment of marketing agents, balance construction cost, etc. should be made basis the recommendation of industry expert, that is, the International Property Consultants (IPC) and the project specific lenders will have a final say in the matter.
3.	Opening of Designated Account (Para 5 (3))	It is submitted that the Designated Account should also be project - specific, this will ensure collection from each project is utilized for completion of the same project only and will also ensure strict monitoring of cash flow movement.
4.	Commencement of work and due diligence (Para 5 (4))	L&T Finance Limited submits that construction work should commence immediately basis the existing due diligence reports prepared by the RP. As stated above, there is already a delay in completion of projects by 8-10 years and taking up projects in phase wise manner will further and inordinately delay the completion of projects.

**SUMMARY OF OBJECTIONS ON BEHALF OF REPRESENTATION ON
BEHALF OF HOMEBUYERS OF ECO-VILLAGE 2 AND ECO-VILLAGE 2
(PHASE II) TO THE APPLICATION/ TERMS / PROPOSAL FILED BY NBCC
(INDIA) LIMITED**

Sl. No.	Key Points	Homebuyers' Comments
1.	Fee / Cost estimates are vague (fee @ 8% actual cost of work + 1% for channel partner). No cost escalation beyond BBA rate for home buyers. (para 2 (i))	There should be no cost escalation for Homebuyers (the fault of delay lies with builder, hence allottees cannot be penalized for the act of builder) irrespective of their payment plan. The contracted rate as per BBA to be adhered to. <i>“Unsold or un-allotted”</i> inventory can be sold at escalated rates to garner funds.
2.	Definite / reasonable timelines for delivery of units with Registry with approvals and sanctions from RERA (para 2 (ii))	Proposed construction timelines must be reasonable and valid. The current phase-wise proposal extending up till 5 years is not suitable. All towers should be built at priority to generate funds and in parallel there should be a small team to complete the near completion towers. In essence, NBCC must commence work on varying levels in all projects / towers.
3.	NBCC must not be simply PMC and must take over completely and ousting ex-Management completely (para 2 (iv))	<p>a. NBCC and / or any other viable entity with equivalent technical, Financial, PMC/EPC expertise and experience of handling large-scale residential projects must be brought in as SRA / executing agency, and they must be directed to consider the various issues / grievances and suggestions of the homebuyers.</p> <p>b. Supertech Ltd., its Promoters, ex- Directors and Management must be totally ousted from being involved with any of the projects in any manner or capacity.</p> <p>c. NBCC may itself undertake construction activity or by appointing third party for the same. However, in the latter scenario, the cost of construction may go high as NBCC will then be charging 8% + 1% and on top of it, and in such a scenario, the burden thereof may not be put on the homebuyers.</p>
4.	Capital Infusion must be done by NBCC (para 2 (v))	<p>a. NBCC must seek banks' participation and cannot rely simply on assumed <i>“funds generation”</i> from existing units and unsold inventory. NBCC can also look up to avenues such as <i>“SWAMIH”</i> funds.</p> <p>b. NBCC shall insure the funds arrangements in advance and submit the plan in phase manner.</p>
5.	Delay penalty imposed by builder must be waived off and delay compensation must be provided to homebuyers as per RERA	<p>a. RP must provide delay compensation which is a lawful right of home buyers who are waiting for their homes, on an average since last over 14 years.</p>

	<p>(para 2 (vi))</p> <p>Utilization of surplus money if any must be spelt out in NBCC's Terms of Reference</p>	<p>b. Delay compensation / delay payment penalty shall be as per RERA on both sides (RA and Allotee) and this delay compensation be adjusted in remaining demands of home buyers and after this if any amount is left, the home buyers may be asked to pay the same.</p> <p>c. If any balance remains, the home buyers, lenders and land-owning authority may be provided credit note and can be adjusted when unlaunched phases have surplus cash inflow</p>
<p>6.</p>	<p>Subvention amounts must be included in claims of homebuyers (para 2 (vii))</p>	<p>a. All and any claims of "assured returns," "Subvention Scheme," or "Delay Penalty" or any other contracted return to any allottee(s) of any Projects, whether accrued or payable before or post the insolvency commencement date, should be accounted for and factored in and paid for at the time of the Approval Date.</p> <p>b. Any amounts charged by the builder under "delayed payment by homebuyer" must be returned as project delay is caused solely by the builder and homebuyer has a right as per law to withhold payment of any instalment seeing no progress in construction and development. For instance, claims towards subvention etc. has been taken into account in the admitted claims.</p> <p>c. The RP and Supertech Ltd. should settle subvention dues with banks keeping in view the terms of the various contractual agreements and homebuyers should not be held accountable for pending dues by Supertech towards banks against Subvention dues.</p>
<p>7.</p>	<p>Representative of homebuyers from each project in the proposed Court Committee (para 2 (x))</p>	<p>Court Committee must be formed and must consist of representatives of homebuyers and all updates should be given to them regularly. Homebuyers' representatives should also have access to physical inspections, statutory records, maps, plans and approvals etc., access to books to account and inspection of funds etc.</p>
<p>8.</p>	<p>Tier-I contractors capable and competent must be hired (para 2 (xi))</p>	<p>-</p>
<p>9.</p>	<p>Facilities and Amenities as per BBA must be provided without any changes (para 2 (xii))</p>	<p>a. NBCC should be held responsible for construction quality.</p> <p>b. In cases where OC/CC has been received from authority, possession can be offered with legitimated demand as per BBA and further, the towers / projects which meet the requirement of OC/CC, directions should be issued to the respective authority to issue OC/CC for the same.</p>

		<p>c. The NBCC or the SRA should complete the project as per the initially laid down specifications for each sub type of units. The SRA may complete the project on a standalone basis and a proper BBA having clauses as per RERA guidelines including delay penalty etc should be executed with the home buyers.</p>
10	<p>Sales rights of units must vest with NBCC (para 2 (xiii))</p>	<p>The illegal sale of common areas within the apartment premises should be nullified. Appropriate measures should be taken to reassign these areas to the Apartment Owners Association / RWA by voiding such sales or allocations. Affected homebuyers should be offered suitable compensation.</p>
11	<p>NBCC must ensure responsibility for water, electricity and FIRE connections, NOCs and compliances. (para 2 (xiv))</p>	-
12	<p>Negotiation for land dues with authorities, possible haircuts and with banks and lenders as well. (para 2 (xvi))</p>	<p>The amount received from home buyers must be utilized for construction only. No amount received from the launched phases must be used to pay land dues of land-owning authority or to repay the lenders' dues.</p>
13	<p>Other Observations/Suggestions (para 3)</p>	<p>a. NBCC should be accountable for any non-conformities and must ensure the quality of the construction work</p> <p>b. There should not be any handover the flats to IRP and if so, NBCC should intimate the RWAs as well in parallel.</p> <p>c. The definition of scope of defect liabilities must be elaborated by NBCC.</p> <p>d. NBCC should highlight any concept shortfall in the concept planning, layout deficiencies.</p> <p>e. All the disputes at the latter stage should be addressed by NBCC only</p> <p>f. All the dues, rents, taxes, OC, CC, etc. to be factored in the NBCC report and should reflect in the balance sheet.</p> <p>g. NBCC should outline the support towards the representatives of Homebuyers.</p> <p>h. The PMC fees/all other cost of NBCC must be borne from the project itself by selling the</p>

		<p>unsold inventory and / or by any other valid means.</p> <p>i. There exists a potential risk that neither NBCC, the Interim Resolution Professional (IRP), Supertech, nor any investor proposed by Supertech may be able to complete the project due to judicial orders, should the current phasing plan be maintained.</p>
14	<p>Forensic Audit of Supertech Limited and YG Estates (para 2 (iii))</p>	<p>a. There must be a forensic audit of both Supertech Ltd. and YG Estates. This is for maximization of assets for all stakeholders and reducing our liability towards lenders and authority etc.</p> <p>b. The erstwhile directors who have siphoned-off hard earned monies and life-long savings cannot go unpunished. The monies/ assets if recovered from the fraudulent / avoidable transactions done by the Corporate Debtor should be later equally distributed in favour of all stake holders as per their voting share and/ or for the completion of the project.</p> <p>c. The personal assets of ex- management of promoters should be attached to secure funds “including return of siphoned off funds as reported in the TAR and vide multiple sources and further as may come out in the forensic audit(s).</p> <p>d. The forensic audit, as suggested, must verify the accuracy of account statements, investigate potential financial irregularities and determine the actual value of unsold inventory to avoid possible misrepresentation of financials, potential loss to homebuyers/investors and lack of transparency in accounting practices.</p> <p>e. YG Estates is the “maintenance agency” which is collecting electricity and water bills from the resident allottees but is not paying it further to the authority(ies) concerned as <i>challans</i> are being issued in the name of Supertech Limited. YG Estates has been engaged to act as proxy for Supertech Limited and to channel, divert and proportion money on its behalf. A forensic audit be conducted of both these entities to unearth the money trail, use / misuse of money among various other aspects.</p>
15	<p>Due Diligence (para 3)</p>	<p>The Cost of DD (Due Diligence) must be borne by the CD</p>

		<p>NBCC must highlight all liabilities towards land dues, authorities' penalty in their DD report.</p> <p>All the delay penalty agreed by the builder through the agreement should be calculated and provision for payout/adjustment as part of DD report.</p>
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