

H730/25

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2240 of 2025

(Appeal under Section 62 of the Insolvency and Bankruptcy Code, 2016 arising out of the final Impugned Judgment and order dated 12 December 2024 passed by the Hon'ble National Company Law Appellate Tribunal, Principal Bench New Delhi in I.A. No. 6557 of 2024 in Company Appeal (AT) (Insolvency) No. 406 of 2022)

IN THE MATTER OF:

Yamuna Expressway Industrial Development Authority

...Appellant

VERSUS

NBCC (India) Ltd. & Ors

...Respondents

WITH

I.A. No. 36569 OF 2025

**APPLICATION FOR EXEMPTION FROM FILING OFFICIAL
TRANSLATION AS ANNEXURES**

P A P E R B O O K

Volume-I

(at page No. A-327)


(FOR INDEX PLEASE SEE INSIDE)

ADVOCATE FOR THE APPELLANT: DIVYAM AGARWAL

Diary No 4730 of 2025

DECLARATION

All defects have been duly cured. Whatever has been added/deleted/modified in the petition is the result of curing of defects and nothing else. Except curing the defects, nothing has been done. Paper books are completed in all respects.


(Divyam Agarwal)
Advocate-on-Record
Code No. 2165

Date: 06.01.2025

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2025

IN THE MATTER OF:

Yamuna Expressway Industrial Development Authority

...Appellant

VERSUS

NBCC (India) Ltd. & Ors

...Respondents

OFFICE REPORT ON LIMITATION

1. The Petition is/are within time.

2. The petition is barred by time and there is delay of days in filing the same against final Impugned order date 12.12.2024 petition for Condonation of days delay has been filed.

3. There is delay of days in refilling the petition and petition for Condonation ofdays delay in refilling has been filed.

NEW DELHI

BRANCH OFFICER

Dated: 25.01.2025

A)

PROFORMA FOR FIRST LISTING

SECTION- XVII

The case pertains to (Please tick/check the correct box):


- Central Act : (Title) Insolvency and Bankruptcy Code, 2016
- Section : Under Section 62
- Central Rule : (Title) N.A.
- Rule No. (s) : N.A.
- State Act : (Title) N.A.
- Section : N.A.
- State Rule : (Title) N.A.
- Rule No(s): N.A.
- Impugned Interim Order: (date) 12.12.2024
- Impugned Final Order/Decree: (Date) NA
- High court (Name): N.A
- Names of Judges: Justice Ashok Bhushan Chairperson and Barun Mitra Technical Member,
- Tribunal/Authority:(Name) National Company Law Appellate Tribunal Chennai Bench

-
1. Nature of Matter: **CIVIL** Criminal
2. (a) Petitioner/appellant No. 1: Yamuna Expressway Industrial Development Authority
- (b) e-mail ID:N.A.
- (c) Mobile Phone number:N.A
3. (a) Respondent No. 1: NBCC (India) Ltd.
- (b) e-mail ID:N.A.
- (C) Mobile Phone number:N.A.
4. (a) Main Category Classification: 10 Company Law, MRTP, TRAI, SEBI, IDRAI & RBI.
- (b) Sub classification: 1006 Others.

Az

5. Not to be listed before: N.A.
6. (a) Similar disposed of matter with citation, if any & case details: **No similar disposed matter in this Hon'ble Court.**
(b) Similar pending matter with case details: **No similar pending matter in this Hon'ble Court**
7. **Criminal matter:**
(a) Whether accused/convict has surrendered: Yes No
(b) FIR No.N.A.....Date:N.A.
(c) Police Station:N.A.
(d) Sentence Awarded.....NA.
(e) Sentence Undergone:N.A
(f) whether any earlier case between the same parties is filed.
N.A
(g) particulars of the FIR and CaseN.A.
(h) whether any bail application was preferred earlier and decision thereupon.....NA
8. **Land Acquisition Matter:**
(a) Date of Section 4 notification:N.A.
(b) Date of Section 6 notification:N.A ...
(c) Date of Section 17 notification:N.A.
9. **Tax Matters:** State the tax effect:N.A.
10. **Special Category**
 Senior Citizen > 65 years SC/ST Woman/child
disabled Legal Aid case In custody
11. Vehicle Number (in case of Motor Accident Claim matters):
N.A
12. Whether there was/is litigation on the same point of law, if yes details thereofN.A.

Dated. 25.01.2025


(DIVYAM AGARWAL)
Advocate for the Appellant
Registration No. 2165
divyam.agarwal@jsalaw.com

B

SYNOPSIS

1. Yamuna Expressway Industrial Development Authority (“**Appellant**” or “**YEIDA**”) is filing the present civil appeal under Section 62 of the Insolvency and Bankruptcy Code, 2016 (“**IBC**” or the “**Code**”) challenging the judgment dated 12 December 2024 (“**Impugned Judgment**”) passed by the Ld. National Company Law Appellate Tribunal, Delhi (“**NCLAT**”) in I.A. No. 6557 of 2024 in Company Appeal (AT)(Insolvency) No. 406 of 2022 (“**Appeal**”).
2. The Appeal before the NCLAT arose from an application under Section 7 of the IBC filed by M/s Union Bank of India against M/s Supertech Limited (“**Supertech**” or the “**Corporate Debtor**”). By an order dated 10 June 2022, the Ld. NCLAT resorted to “reverse CIRP”/ “project wise insolvency” and thus, chose to follow a procedure which is alien to the IBC and not at all envisaged therein. The so called reverse CIRP has no basis in law and the statutory framework provided under the IBC.
3. Amongst the various projects for which ‘reverse CIRP’ was initiated, the land for ‘Project Upcountry’ (“**Project Upcountry**”) was leased by the Appellant under a lease deed dated 13 August

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2010 (“**Lease Deed**”). Under the terms of the Lease Deed, the Corporate Debtor was obligated to pay a land premium, annual lease rent, and an additional 64.7% farmer compensation (as upheld by this Hon’ble Court in *YEIDA v. Shakuntla Education, 2022 SCC OnLine SC 655*). However, the Corporate Debtor breached the terms of the Lease Deed by failing to make timely payments, resulting in an outstanding amount of approx. INR 396 Crores as of the CIRP commencement date (25 March 2022). The Appellant is a secured creditor by virtue of the charge created under Section 13 read with Section 13-A of Uttar Pradesh Industrial Area Development Act, 1976 (“**UP Act**”) in respect of these outstanding dues.

4. After the initiation of CIRP, further amounts became due including current dues on account of annual lease rent. The Corporate Debtor failed to pay these current dues and consequently, the Appellant, in accordance with the Explanation to Section 14(1)(d) of the IBC, cancelled the Lease Deed vide order dated 28 February 2023 (the “**Cancellation Order**”) for default in payment of dues accruing subsequent to the commencement of insolvency proceeding. The Cancellation Order was confined to the areas allotted for commercial and institutional

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purposes; the area allotted for the homebuyers was left intact and their rights were thus fully protected (Group Housing area).

5. The Interim Resolution Professional of the Corporate Debtor (“**IRP**”) filed an application before the Ld. NCLT seeking setting aside of the Cancellation Order. The said application is currently pending and the lease for Project Upcountry remains cancelled (to the extent as described above).
6. Vide the Impugned Judgment, the Ld. NCLAT allowed M/s NBCC (India) Pvt. Ltd. (“**NBCC**”) to undertake the construction of various incomplete projects of the Corporate Debtor in terms of the proposal submitted by it, despite the Appellant’s objection that the proposal makes no provision for payment of the Appellant’s dues besides being unviable for various reasons as explained hereafter.
7. The Ld. NCLAT, completely ignored the termination of the lease for the Project Upcountry, and the objections raised by the Appellant in that regard and delivered the Impugned Judgment allowing development as proposed by NBCC (subject to certain conditions) for the Corporate Debtor’s projects, including Project

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Upcountry without making adequate provision for repayment of the Appellant's dues.

8. It is pertinent to note that NBCC's Proposal and the Impugned Judgment extensively relies on this Hon'ble Court's decision in *Bikram Chatterji & Ors. v. Union of India & Ors., W.P. (Civil) No. 940 of 2017* ("**Amrapali Judgment**"), which has no application to the present case. The decision in *Amrapali* was given in special facts of that case and the findings made by this Hon'ble Court regarding acts of fraud. That is not the case here as shown below.

9. The Impugned Judgment does not provide any road map for payment of land dues. The Impugned Judgment approving the NBCC's Proposal allegedly focuses on the completion of stalled projects. However, the completion of the said projects is only a part of the problems plaguing these projects. Equally grave and insurmountable problem that plagues the Corporate Debtor is the payment of the land dues, which has not been addressed in the Impugned Judgment.

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10. The Impugned Judgment directs that dues owed to financial institutions, banks, and the Appellant be recovered from 30% of the Project's 'receivables', subject to the approval of the 'Apex Court Committee.' The remaining 70% of the receivables is necessarily to be used for construction. Further, the 'Apex Court Committee' is empowered to take decision for transferring surplus amount from one project to another project. As per the projection made by NBCC itself, Project Upcountry (which concerns the Appellant) is expected to have receivables of approximately INR 1080.72 crores, while the tentative construction cost is estimated at approximately INR 1079.86 crores. It is, thus, obvious that all of the projected receivables will be required to be appropriated for construction of the project. This being so, the arrangement made in the Impugned Judgment is clearly unviable and if implemented, the Appellant will not be able to secure payment of all its land dues.

11. While the Appellant supports the rehabilitation and timely completion of the Project, as a statutory authority engaged in public function, it is also duty bound to secure payment of its dues, which, upon recovery, will be utilized for development work. The Appellant is engaged in public service and is not a private

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enterprise driven by profit. The non-payment of dues to the Appellant, such as by the Corporate Debtor in the present case, results in direct loss to the public exchequer and harm to the public interest.

12. The Appellant submits that the Impugned Judgement suffers from grave errors of law and fact as demonstrated below and it ought to be set aside inter alia for the following reasons:
 - a. The Impugned Judgment completely fails to consider the termination of the Lease Deed by the Appellant vide its Cancellation Order. The Cancellation Order terminated the Lease Deed to the extent of institutional (25,000 sq. mtr.) and commercial area (13,270 sq. mtr.) due to the non-payment of its dues which accrued and became payable after the initiation of insolvency process. The leased area intended for housing project remains intact under the Cancellation Order, and the rights of the homebuyers remain fully protected. The Ld. NCLAT, inexplicably ignored the Cancellation Order, and allowed NBCC to commence construction work and directed the Appellant to extend cooperation in this regard.

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- b. The Ld. NCLAT failed to appreciate that the NBCC's Proposal was a non-starter since it did not deal with all the issues regarding the various projects of the Corporate Debtor. The Impugned Judgment also fails to adhere to Section 30(2) and Section 31(1) of the IBC which require a resolution plan to address the treatment of debts. The NBCC's proposal does not adequately address the treatment of debt owed to land owning authorities, rendering it non-compliant with mandatory provisions of the IBC.
- c. The Impugned Judgment blatantly disregards the Authority's substantial claims/outstanding dues of approx. INR 396 Crores (as on the CIRP commencement date). The Impugned Judgment directs that dues owed to financial institutions, banks, and the Appellant be recovered from 30% of the Project's 'receivables', subject to the approval of the 'Apex Court Committee.' The remaining 70% of the receivables is necessarily to be used for construction. However, the Ld. NCLAT has failed to specify the mode and manner of distributing payments among competing creditors, including financial, operational, secured, and unsecured creditors. It has also overlooked the sufficiency of funds to meet these obligations. Consequently, the Impugned

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Judgment deviates from the statutory framework and lacks clarity or certainty on the procedure for paying creditors like the Appellant.

- d. The Impugned Judgment fails to provide a concrete plan for repaying the Authority's outstanding dues and lacks any timeline or method for payment. There is no definitive and specific direction for payment of amount to the Authority, which is a secured debt. Additionally, the Impugned Judgment permits NBCC to utilize public resources without any corresponding accountability or responsibility.
- e. Vide the Impugned Judgment, the Ld. NCLAT has granted unbridled and blanket power to the Apex Committee to appropriate the proceeds towards payment to land-owning agencies, completely disregarding the fact that two members of the Apex Committee are financial institutions with competing claims on the proceeds. As a result, there is a conflict of interest in fair distribution of the proceeds. It is highly likely that these financial institutions will prioritize payment toward their own claims, and the third member, represented by NBCC, is likely to align with their position. Together, they would form the majority and decide the appropriation of the proceeds as they

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see fit. The Apex Committee as constituted, therefore, does not offer sufficient representation or safeguards for the Authority. The denial of meaningful participation in the decision-making process means that the Authority's concerns as the land-owning agency are overlooked and its interests are placed at risk, thereby violating basic principles of fairness.

- f. The Ld. NCLAT failed to recognize the glaring non-viability of the NBCC's proposal. NBCC, under the garb of this Hon'ble Court's judgment in *Amrapali*, made a proposal that involves construction on leased land while seeking cooperation from the Appellant without making any provision for payment. The Impugned Judgment as well as the NBCC incorrectly relied on the *Amrapali* Judgment to justify the proposal for undertaking construction without re-payment of dues. The Appellant submits that the case of *Amrapali* cannot be equated with the present case by any reasoning or logic. In the *Amrapali* case, this Hon'ble Court issued directions for completion of the project based on findings of breach of public trust and to prevent fraud. It was in those circumstances, this Hon'ble Court directed special measures for rehabilitation of the Amrapali projects.

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However, there is not even any allegation, leave aside finding, of breach of public trust in the present case.

- g. The Impugned Judgment fails to address that the Appellant is a secured creditor in view of Sections 13 read with 13-A of the UP Act and its dues were to be given priority. The Impugned Judgment also contravenes Clause C(25) of the Lease Deed, which gives the Appellant a first charge on the plot for its dues.
- h. The Ld. NCLAT does not possess the authority under the IBC to permit 'reverse CIRP' or 'project-wise CIRP,' nor does it have the power to accept a plan without providing the Committee of Creditors ("CoC") an opportunity to evaluate its commercial viability. There is no legal basis for the concept of 'reverse CIRP' or 'project-wise CIRP' within the statutory framework of the IBC.

In view of the above, it is submitted that the Impugned Judgment be set aside to the extent it fails to provide for the re-payment of dues owed to the Appellant, and appropriate directions be issued thereof to safeguard the Appellant's interests.

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Date	Event
2001	<p>The Appellant, a statutory authority, was initially constituted by the Government of Uttar Pradesh in the name of Taj Expressway Industrial Development Authority through a notification dated 24 April 2001 issued under the UP Act.</p> <p>The purpose of constituting the Appellant was to undertake planned development through the implementation of the “Yamuna Expressway Project”, which included: (i) construction of a six-lane 160 km long super expressway connecting NOIDA and Agra (“Yamuna Expressway”) along with service roads and allied facilities; and (ii) development of several thousand acres of land abutting the Yamuna Expressway.</p>
13.08.2010	<p>The Appellant entered into a lease deed (“Lease Deed”) with the Corporate Debtor for the purpose of setting up a residential township at Plot No. TS-01, Sector 17A (“Leased Premises”), allotted under scheme YEA-RT-01 (“Scheme”), situated in Yamuna Expressway Industrial Development Area,</p>

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District Gautam Buddha Nagar, (UP) for a land admeasuring 407949.94 sq. mtr. (“**Leased Premises**”)

The Lease Deed was structured as a ‘finance lease’, in which all the risks and rewards were transferred to the Lessee i.e. the Corporate Debtor, and the Appellant’s role was limited to ensuring compliance with the terms of the Lease Deed.

Payment Terms of the Lease Deed:

- (i) Land premium: The total premium consideration amounted to INR 146,86,19,784/- (out of which INR 17,26,19,784/- was already paid by the Corporate Debtor at the time of execution of the Lease Deed).
- (ii) Payment of balance principal consideration: The principal amount of the balance premium was INR 129,60,00,000/-, which was to be paid in 20 half-yearly instalments (“**Principal Land Premium**”).
- (iii) Payment of Lease Rent: Additionally, 1% of the Land Premium was to be paid each year as annual lease rent (“**Lease Rent**”).

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(iv) Default Interest: In case of default, the Corporate Debtor was liable to pay default interest @ 15% p.a. compoundable half-yearly.

In addition to the payment terms contemplated under the Lease Deed, the Corporate Debtor was legally bound to pay 64.7% additional compensation (“**Additional Compensation**”) in terms of this Hon’ble Court’s judgment in *YEIDA v. Shakuntla Education, 2022 SCC OnLine SC 655* (“**Shakuntala Judgment**”).

- 11.03.2015- The Corporate Debtor persistently and consistently
- 04.02.2020 defaulted on payment of its dues in terms of the Lease Deed. The Appellant issued several default letters to the Corporate Debtor directing it to pay the outstanding amount to no avail. The Appellant also granted various opportunities to the Corporate Debtor to avail the Appellant’s reschedulement policy.
- 04.02.2021 On 04 February 2024, the Appellant issued notice granting the Corporate Debtor further opportunity to deposit/ repay the outstanding amounts by 31

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	<p>March 2021 (“Default Notice”). The Appellant also offered the benefit of the re-schedulement. However, the Corporate Debtor failed to deposit the due amount or respond to the notice.</p>
16.07.2021	<p>The Appellant sent a notice dated 16 July 2021 (“Final Notice”), offering one last opportunity to the Corporate Debtor to deposit the total outstanding amount by 30 June 2021. However, once again, the Corporate Debtor failed to deposit the outstanding amounts.</p>
2021	<p>The Union Bank filed an application [IB-204/(ND)/2021] under Section 7 of the IBC before the Ld. National Company Law Tribunal (“Ld. NCLT”) for initiating the insolvency of the Corporate Debtor.</p>
25.03.2022	<p>The Ld. NCLT admitted the Corporate Debtor into insolvency. Mr. Hitesh Goel was appointed as the IRP.</p>
04.2022	<p>The Corporate Debtor filed the Company Appeal before the Ld. NCLAT against the NCLT’s order admitting its insolvency.</p>

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12.04.2022 The Ld. NCLAT passed an order directing the IRP to not constitute the CoC.

28.04.2022 The Appellant submitted its claims to the Corporate Debtor's IRP in Form C and, *alternatively and without prejudice*, in Form B The details of the claim submitted by the Appellant are as under:

Particulars	Amount (INR)
Lease Premium (A)	204,23,31,474
Additional Compensation payable to farmers @64.7% (B)	164,42,64,492
Lease Rent (C)	28,10,48,291
TOTAL CLAIM (A+B+C)	396,76,44,257/- ("Claim Amount")

10.06.2022 The Ld. NCLAT passed an order ("**Reverse CIRP Order**") resorting to 'project wise insolvency'/'reverse CIRP', restricting the Corporate Debtor's CIRP to a single project i.e. Eco Village-II Project. The Ld. NCLAT issued the following directions:

- (i) The IRP should constitute the CoC only with respect to Eco Village II. All other projects shall be kept as ongoing projects and

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	<p>construction shall continue under the supervision of the IRP with the assistance of ex-management and their employees.</p> <p>(ii) The promoters shall infuse the funds as arranged by them in different projects.</p>
2022	<p>The Reverse CIRP Order was challenged before this Hon'ble Court by various creditors of the Corporate Debtor in Civil Appeal No.1925/2023 and 5941 of 2022. The said civil appeals are currently pending.</p>
27.01.2023	<p>This Hon'ble Court in Civil Appeal No.1925/2023 passed an order requesting the Ld. NCLAT to keep the Company Appeal proceedings in abeyance until further orders.</p>
28.02.2023	<p>During the CIRP of the Corporate Debtor, further amounts became payable including current dues on account of Lease Rent.</p> <p>The Corporate Debtor failed to pay these current dues and consequently, the Appellant, in accordance with the Explanation to Section 14(1)(d) of the IBC, cancelled the Lease Deed vide order dated 28 February 2023 (the "Cancellation Order") for default in payment of dues accruing</p>

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subsequent to the commencement of insolvency proceeding.

The Cancellation Order terminated the Lease Deed to the extent of institutional (25,000 sq. mtr.) and commercial area (13,270 sq. mtr.) due to non-payment of its dues which accrued and became payable after the initiation of insolvency process. The leased area intended for housing projects remains intact under the Cancellation Order, and the rights of the homebuyers remain fully protected.

2023 The IRP challenged the Cancellation Order *vide* an intervention application numbered I.A. No. 2776 of 2023 (“**IRP’s Application**”) in CP (IB) - 204/(ND)/2021 before the Ld. NCLT. The application is currently pending.

11.05.2023 This Hon’ble Court in Civil Appeal No.1925/2023 passed an order regarding “*interim relief and/or interim arrangement*” during pendency of civil appeals challenging the Ld. NCLAT’s Reverse CIRP Order (“**Supreme Court’s Interim Order**”). This Hon’ble Court allowed the operation of the

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	NCLAT's Reverse CIRP Order " <i>subject to the final orders to be passed in these appeals</i> ".
12.02.2024	The Ld. NCLAT directed the IRP to submit project-wise resolution proposals.
01.04.2024	The IRP submitted draft project-wise resolution proposal for Project Upcountry to the Ld. NCLAT (" IRP's Proposal ") and circulated it to the Appellant.
02.05.2024	The Appellant objected to the IRP's Proposal <i>vide</i> a letter addressed to the IRP. The Appellant <i>inter alia</i> objected to the IRP's failure to admit its entire Claim Amount and the IRP's request for waiver of 100% interest/penal interest. The Appellant also informed the IRP that for restoration of Lease Deed, the Corporate Debtor is required to pay the Appellant's dues in full and comply with the requirements of the Appellant's applicable policy regarding restoration of lease.
02.05.2024	Without considering and addressing the Appellant's objections, the IRP filed its final report before the Ld. NCLAT (" IRP's Report "). In his report, the

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IRP collated the inputs received from various stakeholders on his proposals but failed to include the objections submitted by the Appellant.

- 03.05.2024 The Ld. NCLAT took note of the IRP Report and allowed the various stakeholders to file their objections to the same.
- 23.05.2024 Pursuant to the Ld. NCLAT's direction, the Appellant filed an intervention application [I.A. No. 3978 of 2024] ("**Intervention Application**") to intervene and filed its objections to the IRP's Report.
- 29.05.2024 The Appellant also filed its affidavit of objections to the IRP's Report and Proposal ("**Objection Affidavit to IRP Report**").
- 08.07.2024 The Ld. NCLAT noted NBCC's submission that it was interested in undertaking the projects of the Corporate Debtor. The NCLAT directed NBCC to make an appropriate request to the IRP for access to the details of the projects and other data.

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- 09.07.2024 The Ld. NCLAT permitted the Appellant to intervene in the matter and took the Intervention Application and the Objection Affidavit on record.
- 15.07.2024 The Ld. NCLAT directed the IRP to submit necessary data and documents to NBCC and allowed NBCC to submit its proposal for undertaking the Corporate Debtor's projects before the next date of hearing.
- 31.07.2024 NBCC submitted an application before the Ld. NCLAT expressing its interest to undertake the completion of the Corporate Debtor's projects and requested 2 months' time to conduct detailed study.
- 09.08.2024 The Ld. NCLAT directed the NBCC to complete its due diligence and submit a detailed project report and its proposal on or before 06 September 2024.
- 03.09.2024 NBCC filed an application for intervention before this Hon'ble Court in the civil appeals challenging the Ld. NCLAT's Reverse CIRP Order [I.A. No. 199233 of 2024 in Civil Appeal No. 5941 of 2022].
- 06.09.2024 NBCC submitted an application before the Ld. NCLAT, containing its proposal ("NBCC's

V

Proposal”), to act as Project Management Consultant to undertake the completion of the stalled/incomplete projects of the Corporate Debtor. The salient components of the NBCC Proposal were as follows:

- (i) NBCC, as PMC, will not contribute any funds towards completion of projects.
- (ii) NBCC will not undertake any liability in relation to the land or the project, including the payment of any dues or penalty to any authority or land owners.
- (iii) NBCC made a recommendation to appoint a Court Committee to take decisions on the projects and phase-wise completion of construction.
- (iv) NBCC will charge PMC fee at the rate of 8% on the Actual Cost of work and Marketing fee of 1% on the sale value of the project.

01.10.2024 This Hon’ble Court passed an order on the NBCC’s intervention application in the civil appeals challenging the NCLAT’s Reverse CIRP Order. This Hon’ble Court observed that the pendency of the said civil appeals will not come in the way of

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the Ld. NCLAT examining and deciding the NBCC' proposal.

09.10.2024 The Appellant also submitted its objections to the NBCC's Proposal. The Appellant, inter alia, raised following objections to the NBCC's Proposal:

- (i) The NBCC's Proposal failed to provide for any provision or proposal addressing the repayment of land dues to the Appellant, which is a secured creditor under the UP Act.
- (ii) The NBCC proposed construction and delivery of the Project Upcountry without restoring the Lease Deed, which was cancelled due to the Corporate Debtor's defaults in repayment of current dues that accrued after the commencement of the CIRP.
- (iii) NBCC failed to include any representative of the Appellant in the proposed Court Committee.

21.10.2024 The Ld. NCLAT directed the IRP to compile all the objections and communicate the same to NBCC. Further, NBCC was directed to submit a "*concrete proposal/composite proposal project wise and its comments on the different objections*".

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- 11.11.2024 Accordingly, NBCC filed its response to objections raised by the creditors, homebuyers and other stakeholders before the Ld. NCLAT. Further, the NBCC updated certain aspects of its proposal.
- 20.11.2024 The IRP submitted a report *inter alia* containing the following details (“**Status Report**”):
- (i) Summary of the objections filed against the NBCC Proposal;
 - (ii) Key changes in the updated proposal by the NBCC;
 - (iii) Key concerns not addressed by the updated proposal; and
 - (iv) Updates on specific projects
- 29.11.2024 After hearing all the concerned stakeholders in respect of the various applications and objections filed in the matter, the Ld. NCLAT reserved judgement on the NBCC’s Proposal.
- 02.12.2024 The IRP submitted a process note (“**IRP Process Note**”) to outline the process which may be adopted for smooth and effective implementation of the proposal submitted by the NBCC.

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02.12.2024	The Appellant filed its written submissions objecting to the NBCC's Proposal.
12.12.2024	<p>The Ld. NCLAT passed the Impugned Judgment inter alia directing the following:</p> <ul style="list-style-type: none"><li data-bbox="540 870 1271 970">(i) NBCC be allowed to carry out construction in 16 projects including Project Upcountry.<li data-bbox="540 997 1271 1220">(ii) Statutory authorities such as the Appellant to provide necessary approvals in a timely manner for expeditious completion of the projects.<li data-bbox="540 1247 1271 1470">(iii) 70% of receivables in each project have to be allocated for construction and land cost, while 30% of the projected cash flows can be utilized for repayment of dues.<li data-bbox="540 1497 1271 1849">(iv) Formation of an Apex Court Committee and a Project-wise Court Committee to make decisions regarding the completion of projects and repayment of debts. Pertinently, the Apex Court Committee does not include any representative of the Appellant.
25.01.2025	Hence, the present civil appeal.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2025

(Appeal under Section 62 of the Insolvency and Bankruptcy Code, 2016 arising out of Impugned Judgment dated 12 December 2024 passed by the Hon'ble National Company Law Appellate Tribunal, Principal Bench, New Delhi, in I.A. No. 6557 of 2024 in Company Appeal (AT) (Insolvency) No. 406 of 2022)

BETWEEN

**POSITION OF
PARTIES**

	Before the Hon'ble NCLAT	IN THIS COURT
YAMUNA EXPRESSWAY INDUSTRIAL DEVELOPMENT AUTHORITY First Floor, Commercial Complex, P-2, Sector Omega 1, Greater NOIDA Dist., Gautam Budh Nagar, Uttar Pradesh 201308 Through its Mr. Gajendra Singh, Manager, YEIDA	Intervenor	Appellant

Versus

1 NBCC (INDIA) LIMITED NBCC Bhawan, Lodhi Road New Delhi 110003 Through its Executive Director (Finance)	Applicant	Contesting Respondent No.1
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- 2 MR. HITESH GOEL, INTERIM
RESOLUTION PROFESSIONAL
OF M/S SUPERTECH LIMITED**
Supertech Limited, 21st-25th Floor,
E-Square, Plot No. C2, Sector - 96,
Noida, Gautam Buddha Nagar,
Uttar Pradesh – 201303 Respondent
No.2 Contesting
Respondent
No.2
- 3 RAM KISHOR ARORA
SUSPENDED DIRECTOR OF
SUPERTECH LIMITED**
Supertech Limited, 21st-25th Floor,
E-Square, Plot No. C2, Sector - 96,
Noida, Gautam Buddha Nagar,
Uttar Pradesh – 201303 Appellant Contesting
Respondent
No. 3
- 4 UNION BANK OF INDIA**
Union Bank Bhavan, 239, Vidhan
Bhavan Marg, Nariman Point,
Mumbai, Maharashtra – 400021 Respondent
No. 1 Proforma
Respondent
No.4
Through its Manager

TO,
THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS HON'BLE COMPANION JUSTICES
OF THE HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION
OF THE APPELLANT ABOVENAMED:

MOST RESPECTFULLY SHOWETH:

1. Yamuna Expressway Industrial Development Authority
("Appellant" or "YEIDA") is filing the present statutory appeal

under Section 62 of the Insolvency and Bankruptcy Code, 2016 (“**IBC**” or the “**Code**”) against judgment dated 12 December 2024 (“**Impugned Judgment**”) passed by the Ld. National Company Law Appellate Tribunal, Delhi (“**Ld. NCLAT**”) in I.A. No. 6557 of 2024 in Company Appeal (AT) (Insolvency) No. 406 of 2022 (“**Company Appeal**”).

2. The Company Appeal before the Ld. NCLAT arose from admission of an application under Section 7 of the IBC filed by M/s Union Bank of India (“**Union Bank**”) against M/s Supertech Limited (“**the Corporate Debtor**”). By an order dated 10 June 2022, the Ld. NCLAT resorted to “reverse CIRP”/ “project wise insolvency” and thus, chose to follow a procedure which is alien to the IBC and not at all envisaged therein. The so called reverse CIRP has no basis in law and the statutory framework provided under the IBC.
3. Amongst the various projects for which ‘reverse CIRP’ was initiated, the land for ‘Project Upcountry’ (“**Project Upcountry**”) was leased by the Appellant under a lease deed dated 13 August 2010. Vide the Impugned Judgment, the Ld. NCLAT allowed M/s NBCC (India) Pvt. Ltd. (“**NBCC**”) to undertake the construction of various incomplete projects of the Corporate Debtor (including

Project Upcountry) in terms of the proposal submitted by it, despite the Appellant's objections that the proposal makes no provision for payment of the Appellant's dues besides being unviable for various reasons.

4. As explained in details hereafter, the Ld. NCLAT completely ignored the termination of the lease for the Project Upcountry (pertaining to institutional and commercial areas), and the Appellant's objections in that regard and delivered the Impugned Judgment allowing development as proposed by NBCC (subject to certain conditions) for the Corporate Debtor's projects, without making adequate provision for repayment of the Appellant's dues.
5. While the Appellant supports the rehabilitation and timely completion of the project, as a statutory authority engaged in public function, it is also duty bound to secure payment of its dues, which, upon recovery, will be utilized for development work.

6. QUESTIONS OF LAW

- I. Whether the Ld. NCLAT erred by allowing the NBCC's proposal to undertake the construction of various incomplete projects of the Corporate Debtor (including Project Upcountry), despite the

Appellant's objections that the proposal makes no provision for payment of the Appellant's dues?

- II. Whether the Ld. NCLAT erred in law by ignoring the Appellant's cancellation of the Lease Deed (pertaining to institutional and commercial areas) for defaults by the Corporate Debtor in payment of current dues accruing subsequent to the commencement of insolvency proceedings?
- III. Whether the Ld. NCLAT erred by completely ignoring that the Appellant is a secured creditor by virtue of the charge created under Section 13 read with Section 13-A of Uttar Pradesh Industrial Area Development Act, 1976?
- IV. Whether the Impugned Judgment violates Sections 30(2) and 31(1) of the IBC by approving the NBCC's proposal despite it failing to address the treatment of land dues owed to the Appellant?
- V. Whether the Ld. NCLAT erred by delegating unbridled and blanket decision-making to the Apex Court Committee, without ensuring fair and adequate representation to the Appellant?
- VI. Whether the Ld. NCLAT failed to appreciate that NBCC's reliance on this Hon'ble Court's judgment in *Bikram Chatterji &*

Ors. v. Union of India & Ors., W.P. (Civil) No. 940 of 2017

(“**Amrapali Judgment**”) to justify its proposal is misplaced?

- VII. Whether the Ld. NCLAT erred by adopting “reverse CIRP” or “project-wise insolvency,” which is not envisaged within the statutory framework of the IBC?
- VIII. Any other question of law that arises from and is raised in the grounds of appeal.

7. FACTUAL BACKGROUND

- 7.1. The Appellant, a statutory authority, was initially constituted by the Government of Uttar Pradesh in the name of Taj Expressway Industrial Development Authority through a notification dated 24 April 2001 issued under the Uttar Pradesh Industrial Area Development Act, 1976 (the “**UP Act**”). A copy of the Uttar Pradesh Industrial Area Development Act, 1976 is annexed herewith as **Annexure A-1 at page No. 103-115**.
- 7.2. The purpose of constituting the Appellant was to undertake planned development through the implementation of the “Yamuna Expressway Project”, which included: (i) construction of a six-lane 160 km long super expressway connecting NOIDA

and Agra (“**Yamuna Expressway**”) along with service roads and allied facilities; and (ii) development of several thousand acres of land abutting the Yamuna Expressway.

THE LEASE DEED

- 7.3. The Appellant entered into a lease deed dated 13 August 2010 (“**Lease Deed**”) with the Corporate Debtor for the purpose of setting up a residential township at Plot No. TS-01, Sector 17A (“**Leased Premises**”), allotted under scheme YEA-RT-01 (“**Scheme**”), situated in Yamuna Expressway Industrial Development Area, District Gautam Buddha Nagar, (UP) for a land admeasuring 407949.94 sq. mtr. (“**Leased Premises**”). Copies of the Lease Deed dated 13 August 2010 and the Scheme No. YEA-RT-01, issued by the Appellant, is annexed herewith as **Annexure A-2 at page No. 116-128** and **Annexure A-3 at page No. 129-142**, respectively.
- 7.4. The Corporate Debtor undertook ‘**Project Upcountry**’ on the Leased Premises. The Lease Deed was structured as a ‘finance lease’, wherein all the risks and rewards incidental to the Leased Premises were transferred to the Lessee i.e. the Corporate Debtor, and the Appellant’s role was limited to ensuring compliance with

the terms of the Lease Deed. The Corporate Debtor had the liberty to decide the size of the built-up area (subject to building by-laws). The Corporate Debtor also had the liberty to either sub-lease portions of the Leased Premises, or to develop flats/plots and sub-lease those, at its own price.

- 7.5. The following were the payment terms under the Lease Deed:
- (i) Land premium: The total premium consideration amounted to INR 146,86,19,784/- (out of which INR 17,26,19,784/- was already paid by the Corporate Debtor at the time of execution of the Lease Deed).
 - (ii) Payment of balance principal consideration: The principal amount of the balance premium was INR 129,60,00,000/-, which was to be paid in 20 half-yearly instalments (**“Principal Land Premium”**).
 - (iii) Payment of Lease Rent: Additionally, 1% of the Land Premium was to be paid each year as annual lease rent (**“Lease Rent”**).
 - (iv) Default Interest: In case of default, the Corporate Debtor was liable to pay default interest @ 15% p.a. compoundable half-yearly.

7.6. In addition to the payment terms contemplated under the Lease Deed, the Corporate Debtor was legally bound to pay 64.7% additional compensation (“**Additional Compensation**”) in terms of the Government Order dated 29 August 2014 (“**GO**”), accepted and adopted by the Appellant through its Resolution dated 15 September 2014 (“**Board Resolution**”). It is pertinent to note that this Hon’ble Court in *YEIDA v. Shakuntla Education, 2022 SCC OnLine SC 655* (“**Shakuntala Judgment**”) has upheld the legal validity of the Appellant’s demand for Additional Compensation. A copy of the judgment in *YEIDA v. Shakuntla Education, 2022 SCC OnLine SC 655*, passed by this Hon’ble Court on 19 May 2022 is annexed herewith as **Annexure A-4 at page No. 143-161.**

CORPORATE DEBTOR’S DEFAULT

7.7. Since March 2015, the Corporate Debtor has persistently and consistently defaulted in payment of its dues in terms of the Lease Deed. Considering the Corporate Debtor’s defaults, the Appellant issued various default notices to the Corporate Debtor. However, the Corporate Debtor failed to rectify its defaults. The Appellant also granted various opportunities of re-schedulement in terms of its re-schedulement policy.

7.8. On 04 February 2021, the Appellant issued notice granting the Corporate Debtor further opportunity to deposit/ repay the outstanding amounts by 31 March 2021 (“**Default Notice**”). The Appellant also offered the benefit of the re-schedulement. However, the Corporate Debtor failed to deposit the due amount or respond to the notice. A copy of the Default Notice dated 04 February 2021 issued by the Appellant is annexed herewith as **Annexure A-5 at page No.163-175.**

7.9. Thereafter, the Appellant issued a final default notice on 16 July 2021 (“**Final Notice**”), providing the Corporate Debtor a last opportunity to deposit the total outstanding amounts. However, once again, the Corporate Debtor failed to deposit the outstanding amounts. A copy of the Appellant’s Final Notice dated 16 July 2021 is annexed herewith as **Annexure A-6 at page No. 176-178.**

INSOLVENCY OF THE CORPORATE DEBTOR

Initiation of CIRP and YEIDA’s Claims

7.10. The Union Bank filed an application [IB-204/(ND)/2021] before the Ld. National Company Law Tribunal, New Delhi, Bench-VI (“**Ld. NCLT**”), under Section 7 of the Insolvency and

Bankruptcy Code (“IBC”), for initiating the insolvency of the Corporate Debtor. By an order dated 25 March 2022, the Ld. NCLT admitted the Corporate Debtor into insolvency. The Corporate Insolvency Resolution Process (“CIRP”) was initiated against the Corporate Debtor and Mr. Hitesh Goel was appointed as the Interim Resolution Professional (“IRP/ Respondent No. 2”). A copy of the Ld. NCLT’s order dated 25 March 2022 in IB-204/(ND)/2021 is annexed herewith as **Annexure A-7 at page No.179-193.**

7.11. Upon commencement of the CIRP against the Corporate Debtor, the Appellant submitted its claims to the Corporate Debtor’s IRP in Form C and, *alternatively and without prejudice*, in Form B on 28 April 2022. A copy of the Appellant’s Form C and Form B (without annexures) are annexed herewith as **Annexure A-8 at page No.194-210.**

7.12. A summary of the claims (as on the date of CIRP) filed by the Appellant is tabulated below:

Particulars	Amount (INR)
Lease Premium (A)	204,23,31,474/-

75

Additional Compensation payable to farmers @64.7% (B)	164,42,64,492/-
Lease Rent (C)	28,10,48,291/-
TOTAL CLAIM (A+B+C)	396,76,44,257/- (“Claim Amount”)

Of the Appellant’s total claim, an amount of approx. INR 390.16 Crores was admitted by the IRP.

“Reverse CIRP” by Ld. NCLAT and resultant proceedings

7.13. Thereafter, the Corporate Debtor filed the Company Appeal before the Ld. NCLAT, challenging the NCLT’s order dated 25 March 2022, which had initiated its CIRP. By an order dated 12 April 2022, the Ld. NCLAT passed an order directing the IRP to not constitute the Committee of Creditors (“CoC”). A copy of the Ld. NCLAT’s order dated 12 April 2022 in Company Appeal (AT)(Insolvency) No. 406 of 2022 is annexed herewith as **Annexure A-9 at page No. 211.**

7.14. On 10 June 2022, the Ld. NCLAT passed an order resorting to ‘reverse CIRP’/ ‘project wise insolvency’ and thus, chose to follow a procedure which is alien to the IBC and not at all envisaged therein (“**Reverse CIRP Order**”). The Ld. NCLAT

restricted the Corporate Debtor's CIRP to only one project – 'Eco Village-II'. Further, the Ld. NCLAT directed the following:

- (i) The IRP should constitute the CoC only with respect to Eco Village-II. All other projects shall be kept as ongoing projects and construction shall continue under the supervision of the IRP with the assistance of ex-management and their employees.
- (ii) The promoters shall infuse the funds as arranged by them in different projects.

A copy of the Ld. NCLAT's order dated 10 June 2022 in Company Appeal (AT)(Insolvency) No. 406 of 2022 is annexed herewith as **Annexure A-10 at page No. 212-232.**

Proceedings before this Hon'ble Court

7.15. Various creditors of the Corporate Debtor, including M/s Indiabulls Assets Reconstruction Company Limited and the Union Bank, challenged the Ld. NCLAT's Reverse CIRP Order before this Hon'ble Court [Civil Appeal Nos. 1925 of 2023 and 5941 of 2022].

7.16. This Hon'ble Court, vide an order dated 27 January 2023, requested the Ld. NCLAT to keep the Company Appeal proceedings in abeyance until the further orders. A copy of this

Hon'ble Court's order dated 27 January 2023 in Civil Appeal No. 1925 of 2023 is annexed herewith as **Annexure A-11 at page No.233-235.**

7.17. Thereafter, on 11 May 2023, this Hon'ble Court passed an order regarding "*interim relief and/or interim arrangement*" during pendency of civil appeals challenging the NCLAT's Reverse CIRP Order ("**Supreme Court's Interim Order**"). This Hon'ble Court allowed the operation of the NCLAT's Reverse CIRP Order "*subject to the final orders to be passed in these appeals*", and inter alia directed as follows:

- (i) In regard to Eco Village – II, any process beyond voting on the resolution plan should not be undertaken without specific orders of this Hon'ble Court.
- (ii) The Ld. NCLAT may deal with the offers said to have been received for the projects and pass an appropriate order thereupon but, the entire process shall remain subject to the orders to be passed in the appeals challenging the Reverse CIRP Order.

A copy of this Hon'ble Court's Order dated 11 May 2023 in Civil Appeal No. 1925 of 2023 is annexed herewith as **Annexure A-12 at page No. 236-248.**

CANCELLATION OF THE LEASE DEED

7.18. After the initiation of the Corporate Debtor's CIRP, further amounts became due including current dues on account of annual lease rent. The Corporate Debtor failed to pay these current dues and consequently, the Appellant, in accordance with the Explanation to Section 14(1)(d) of the IBC, cancelled the Lease Deed vide order dated 28 February 2023 (the "**Cancellation Order**") for default in payment of dues accruing subsequent to the commencement of insolvency proceeding. The Cancellation Order terminated the Lease Deed to the extent of institutional (25,000 sq. mtr.) and commercial area (13,270 sq. mtr.) due to non-payment of its dues which accrued and became payable after the initiation of insolvency process. The leased area intended for housing projects remains intact under the Cancellation Order, and the rights of the homebuyers remain fully protected. A copy of the Appellant's Cancellation Order dated 28 February 2023 is annexed herewith as **Annexure A-13 at page No.249-254.**

7.19. The IRP challenged the Cancellation Order *vide* an interlocutory application numbered I.A. No. 2776 of 2023 ("**IRP's Application**") in CP (IB) -204/(ND)/2021 before the Ld. NCLT. The application is currently pending before the Ld. NCLT. A copy

of I.A. No. 2776 of 2023 in CP (IB) - 204/(ND)/2021 challenging the Cancellation Order (without annexures) is annexed herewith as **Annexure A-14 at page No. 255-270.**

PROPOSAL BY IRP AND YEIDA'S INTERVENTION

- 7.20. Vide an order dated 12 February 2024, the Ld. NCLAT directed the IRP to submit project-wise resolution proposals and circulate them to all the stakeholders for their inputs.
- 7.21. The IRP submitted draft project-wise resolution proposals to the Ld. NCLAT ("**IRP's Proposal**") and circulated it to the Appellant on 01 April 2024. A copy of the IRP's Proposal dated 01 April 2024 is annexed herewith as **Annexure A-15 at page No. 271-291.**
- 7.22. In response to the IRP's Proposal, the Appellant submitted its objections to the IRP vide letter dated 02 May 2024. The Appellant *inter alia* objected to the IRP's failure to admit its entire Claim Amount and the IRP's request for waiver of 100% interest/penal interest. The Appellant also informed the IRP that for restoration of Lease Deed, the Corporate Debtor is required to pay the Appellant's dues in full and comply with the

requirements of the Appellant's applicable policy regarding restoration of lease.

A copy of the Letter dated 02 May 2024 issued by the Appellant to the IRP is annexed herewith as **Annexure A-16 at page No.292-297.**

7.23. Without considering and addressing the Appellant's objections, the IRP filed its final report before the Ld. NCLAT on 02 May 2024 ("**IRP's Report**"). In his report, the IRP collated the inputs received from various stakeholders on his proposals but failed to include the objections submitted by the Appellant. A copy of the IRP's Report dated 02 May 2024 in Company Appeal (AT)(Insolvency) No. 406 of 2022 (without annexures) is annexed herewith as **Annexure A-17 at page No. 298-327.**

7.24. The Ld. NCLAT, *vide* order dated 03 May 2024, took note of the IRP's Report and allowed various stakeholders to file their objections. A copy of the NCLAT's order dated 03 May 2024 in Company Appeal (AT)(Insolvency) No. 406 of 2022 is annexed herewith as **Annexure A-18 at page No. 328-331.**

7.25. Pursuant to the Ld. NCLAT's direction, the Appellant filed an intervention application on 23 May 2024 [I.A. No. 3978 of 2024]

(“**Intervention Application**”) to intervene and filed its objections to the IRP’s Report. A copy of the Appellant’s Intervention Application I.A. No. 3978 of 2024 in Company Appeal (AT)(Insolvency) No. 406 of 2022 (without annexures) is annexed herewith as **Annexure A-19 at page No. 332-346.**

7.26. On 29 May 2024, the Appellant also filed its affidavit of objections to the IRP’s Report and Proposal (“**Objection Affidavit to IRP Report**”). A copy of the Appellant’s affidavit of objections dated 29 May 2024 in Company Appeal (AT)(Insolvency) No. 406 of 2022 (without annexures) is annexed herewith as **Annexure A-20 at page No. 347-364.**

7.27. The Ld. NCLAT, *vide* order dated 09 July 2024, permitted the Appellant to intervene in the matter and took the Intervention Application and the Objection Affidavit on record. A copy of the Order dated 09 July 2024 passed by the Ld. NCLAT in Company Appeal (AT)(Insolvency) No. 406 of 2022 is annexed herewith as **Annexure- 21 at page No.365-370.**

PROPOSAL BY NBCC

7.28. On 08 July 2024, the Ld. NCLAT noted NBCC’s submission that it was interested in undertaking the projects of the Corporate

Debtor. The NCLAT directed NBCC to make an appropriate request to the IRP for access to the details of the projects and other data. A copy of the Ld. NCLAT's order dated 08 July 2024 in Company Appeal (AT)(Insolvency) No. 406 of 2022 is annexed herewith as **Annexure A-22 at page No.371-378.**

7.29. On 15 July 2024, the Ld. NCLAT directed the IRP to submit necessary data and documents to NBCC and allowed NBCC to submit its proposal for undertaking the Corporate Debtor's projects before the next date of hearing. A copy of the Ld. NCLAT's order dated 15 July 2024 in Company Appeal (AT)(Insolvency) No. 406 of 2022 is annexed herewith as **Annexure A-23 at page No. 379-382.**

7.30. On 31 July 2024, NBCC filed an application before the Ld. NCLAT expressing its interest to undertake the Corporate Debtor's projects as 'Project Management Consultant'. By way of the application, NBCC prayed for 2 months' time to conduct detailed study of the Corporate Debtor's projects. NBCC also relied on this Hon'ble Court's judgment in *Bikram Chatterji & Ors. v. Union of India & Ors., W.P. (Civil) No. 940 of 2017*

(“**Amrapali Judgment**”) to highlight its past experiences regarding construction of Amrapali Projects.

A copy of the NBCC’s application dated 31 July 2024 in Company Appeal (AT)(Insolvency) No. 406 of 2022 is annexed herewith as **Annexure A-24 at page No. 383-400.**

A copy of this Hon’ble Court’s Judgement dated 23 July 2019 in *Bikram Chatterji & Ors. v. Union of India & Ors., W.P. (Civil) No. 940 of 2017* is annexed herewith as and **Annexure A-25 at page No.401-670.**

7.31. Considering the NBCC’s application, the Ld. NCLAT, *vide* order dated 09 August 2024, directed the NBCC to complete its due diligence and submit a detailed project report and its proposal on or before 06 September 2024. A copy of the Ld. NCLAT’s order dated 09 August 2024 in Company Appeal (AT)(Insolvency) No. 406 of 2022 is annexed herewith as **Annexure A-26 at page No. 671-678.**

7.32. Meanwhile, on 03 September 2024, the NBCC filed an application for intervention in the civil appeals challenging the NCLAT’s Reverse CIRP Order [I.A. No. 199233 of 2024 in Civil Appeal No. 5941 of 2022]. In its intervention application, the

NBCC stated that it will submit proposals for the feasible Supertech projects on similar terms as in the Amrapali projects. A copy of the intervention application I.A. No. 199233 of 2024 in Civil Appeal No. 5941 of 2022 filed by the NBCC before this Hon’ble Court is annexed herewith as **Annexure A-27 at page No. 679-683.**

7.33. On 06 September 2024, NBCC submitted an application before the Ld. NCLAT, containing its proposal (“**NBCC’s Proposal**”), to act as Project Management Consultant to undertake the completion of the stalled/incomplete projects of the Corporate Debtor. The salient components of the NBCC Proposal were as follows:

S. No.	Point in proposal	Particulars
1.	1.3	NBCC will only act as a Project Management Consultant (PMC) for completion of balance works. NBCC will not undertake any construction works by itself and will appoint separate agencies/contractors for the completion of the balance works.
2.	1.3(q)	NBCC will not contribute funds, sponsor or otherwise make any investment for the completion of the Projects.
3.	1.2	NBCC recommended that the Ld. NCLAT shall constitute a Court Committee consisting of representatives from NBCC, Financial

		Institutions, an expert from the construction industry and IRP, etc. The said Court Committee will take all the decisions related with the projects of the Corporate Debtor.
4.	1.4(g)	NBCC shall not undertake any liability in relation to the land and/or the Project(s), including the payment of penalty, fees or any dues, under any name and nature, to any person including any authority or governmental department, land owners.
5.	1.7(c)	NBCC shall also not be liable for any claims / dues, including those of existing allottees, land owners, co-developers, vendors, suppliers, Governmental authorities etc. and in the event any such liability arises, the same shall be strictly borne by the Corporate Debtor
6.	1.5	NBCC will charge PMC fee at the rate of 8% on the Actual Cost of work and Marketing fee of 1% on the sale value of the project.

A copy of the NBCC's Proposal dated 06 September 2024 [I.A. No. 6557 of 2024 in Company Appeal (AT) (Insolvency) No. 406 of 2022] is annexed herewith as **Annexure A-28 at page No.684-729.**

7.34. On 01 October 2024, this Hon'ble Court passed an order on the NBCC's intervention application in the civil appeals challenging the NCLAT's Reverse CIRP Order. This Hon'ble Court observed that the pendency of the said civil appeals will not come in the

way of the Ld. NCLAT examining and deciding the NBCC's proposal.

A copy of this Hon'ble Court's order dated 01 October 2024 in I.A. No. 199233 of 2024 in Civil Appeal No. 5941 of 2022 is annexed herewith as **Annexure A-29 at page No. 730-734.**

7.35. Various stakeholders, including the homebuyers, financial creditors and land-owning authorities submitted their objections to the NBCC's Proposal before the Ld. NCLAT. The Appellant also submitted its objections to the NBCC's Proposal. The Appellant, inter alia, raised following objections to the NBCC's Proposal:

- (i) The NBCC's Proposal failed to provide for any provision or proposal addressing the repayment of land dues to the Appellant, which is a secured creditor under the UP Act.
- (ii) The NBCC proposed construction and delivery of the Project Upcountry without restoring the Lease Deed, which was cancelled due to the Corporate Debtor's defaults in repayment of current dues that accrued after the commencement of the CIRP.
- (iii) NBCC failed to include any representative of the Appellant in the proposed Court Committee.

A copy of the Appellant's Objection Affidavit in I.A. No. 6557 of 2024 in Company Appeal (AT) (Insolvency) No. 406 of 2022 (without annexures) is annexed herewith as **Annexure A-30 at page No. 735-749.**

7.36. In view of the various objections received by the Ld. NCLAT against the NBCC's Proposal, the Ld. NCLAT, *vide* an order dated 21 October 2024, directed the IRP to compile all the objections and communicate the same to NBCC. Further, NBCC was directed to submit a "*concrete proposal/composite proposal project wise and its comments on the different objections*". A copy of the order dated 21 October 2024 passed by the Ld. NCLAT in Company Appeal (AT) (Insolvency) No. 406 of 2022 is annexed herewith as **Annexure A-31 at page No. 750-756.**

7.37. Accordingly, on 11 November 2024, NBCC filed its response to the objections raised by the creditors, homebuyers and other stakeholders before the Ld. NCLAT. Further, the NBCC updated certain aspects of its proposal.

A copy of the NBCC's response to objections by various stakeholders dated 11 November 2024 in I.A. No. 6557 of 2024

in Company Appeal (AT) (Insolvency) No. 406 of 2022 is annexed herewith as **Annexure A-32 at page No. 757-897.**

7.38. Further, the IRP submitted a report containing *inter alia* the following details (“**Status Report**”):

- (i) Summary of the objections filed against the NBCC Proposal;
- (ii) Key changes in the updated proposal by NBCC;
- (iii) Key concerns not addressed in the updated proposal by NBCC; and
- (iv) Updates on specific projects.

A copy of the Status Report submitted by the IRP in I.A. No. 6557 of 2024 in Company Appeal (AT) (Insolvency) No. 406 of 2022 is annexed herewith as **Annexure A-33 at page No.898-1025.**

7.39. The IRP also submitted a process note dated 02 December 2024 (“**IRP Process Note**”) to outline a process which may be adopted for smooth and effective implementation of the proposal submitted by the NBCC.

A copy of the IRP’s process note dated 02 December 2024 in I.A. No. 6557 of 2024 in Company Appeal (AT) (Insolvency) No. 406

of 2022 is annexed herewith as **Annexure A-34 at page No.1026-1039.**

7.40. On 02 December 2024, the Appellant also filed its written submissions objecting to the NBCC's Proposal.

A copy of the written submissions dated 02 December 2024 filed by the Appellant in I.A. No. 6557 of 2024 in Company Appeal (AT) (Insolvency) No. 406 of 2022 is annexed herewith as **Annexure A-35 at page No.1040-1043.**

IMPUGNED JUDGEMENT

7.41. On 12 December 2024, the Ld. NCLAT passed the Impugned Judgment inter alia directing the following:

- (i) NBCC be allowed to carry out construction in 16 projects including Project Upcountry.
- (ii) Statutory authorities such as the Appellant to provide necessary approvals in a timely manner for expeditious completion of the projects.
- (iii) 70% of receivables in each project have to be allocated for construction and land cost, while 30% of the projected cash flows can be utilized for repayment of dues.

(iv) Formation of an Apex Court Committee and a Project-wise Court Committee to make decisions regarding the completion of projects and repayment of debts. Pertinently, the Apex Court Committee does not include any representative of the Appellant.

8. GROUNDS

The findings/ directions in the Impugned Judgment deserve to be set aside on the following grounds, amongst others, which are taken without prejudice to each other:

- 8.1. The Ld. NCLAT resorted to “reverse CIRP”/ “project wise insolvency” and thus, chose to follow a procedure which is alien to the IBC and not at all envisaged therein. The so called reverse CIRP has no basis in law and the statutory framework provided under the IBC.
- 8.2. Under the terms of the Lease Deed, the Corporate Debtor was obligated to pay a land premium, annual lease rent, and an additional 64.7% farmer compensation (as upheld by this Hon’ble Court in *YEIDA v. Shakuntla Education*, 2022 SCC OnLine SC 655). However, the Corporate Debtor breached the terms of the Lease Deed by failing to make timely payments, resulting in an

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outstanding amount of approx. INR 396 Crores as of the CIRP commencement date (25 March 2022). After the initiation of CIRP, further amounts became due including current dues on account of annual lease rent. The Corporate Debtor failed to pay these current dues and consequently, the Appellant, in accordance with the Explanation to Section 14(1)(d) of the IBC, cancelled the Lease Deed vide the Cancellation Order for default in payment of dues accruing subsequent to the commencement of insolvency proceeding. The Cancellation Order was confined to the area allotted for commercial (25,000 sq. mtr.) and institutional purpose (13,270 sq. mtr.) only; the area allotted for the homebuyers was left intact and their rights were thus fully protected (Group Housing area). The Ld. NCLAT, completely ignored the termination of the lease for the Project Upcountry, and the objections raised by the Appellant in that regard and delivered the Impugned Judgment allowing development as proposed by NBCC (subject to certain conditions) for the Corporate Debtor's projects, including Project Upcountry without making adequate provision for repayment of the Appellant's dues.

- 8.3. The Impugned Judgment completely fails to consider the termination of the Lease Deed by the Appellant vide its

Cancellation Order. The Ld. NCLAT, inexplicably ignored the Cancellation Order, and allowed NBCC to commence construction work and directed the Appellant to extend cooperation in this regard.

8.4. Without prejudice, the Appellant submits that the Impugned Judgment allows construction and delivery of the Project Upcountry without restoration of the Lease Deed. It is a matter of record that the Lease Deed was cancelled due to persistent defaults in the payment of current dues under the Lease Deed. Under these circumstances, the restoration of the Lease Deed is not possible unless the Appellant's dues are paid in full and all requirements for lease restoration, as per the Appellant's applicable policy, are fulfilled. As such, the NBCC's Proposal and its approval by the Impugned Judgments runs contrary to Section 7 of the UP Act, which governs the transfer of lands leased by the Appellant.

8.5. NBCC, under the garb of this Hon'ble Court's judgment in *Amrapali*, made a proposal that involves construction on leased land while seeking cooperation from the Appellant without making any provision for payment. The Impugned Judgment as well as the NBCC incorrectly relied on the *Amrapali* Judgment to

justify the proposal for undertaking construction without repayment of dues. The Appellant submits that the case of *Amrapali* cannot be equated with the present case by any reasoning or logic. In the *Amrapali* case, this Hon'ble Court issued directions for completion of the project based on findings of breach of public trust and to prevent fraud. It was in those circumstances, this Hon'ble Court directed special measures for rehabilitation of the Amrapali projects. However, there is not even any allegation, leave aside finding, of breach of public trust in the present case.

- 8.6. Vide the Impugned Judgment, the Ld. NCLAT allowed NBCC's Proposal to undertake the construction of various incomplete projects of the Corporate Debtor in terms of the proposal submitted by it, despite the Appellant's objections that the proposal makes no provision for payment of the Appellant's dues.
- 8.7. It is pertinent to mention that the Appellant is a public and self-financing authority. The Appellant is engaged in public service and not a profit-driven private enterprise. Any default by its allottees, such as the Corporate Debtor in the present case, directly impacts the public exchequer, resulting in a loss to public funds and causing significant harm to the public interest.

- 8.8. The Impugned Judgment does not provide any road map for payment of land dues. The Impugned Judgment approving the NBCC's Proposal allegedly focuses on the completion of stalled projects. However, the completion of the said projects is only a part of the problems plaguing these projects. Equally grave and insurmountable problem that plagues the Corporate Debtor is the payment of the land dues, which has not been addressed in the Impugned Judgment.
- 8.9. The Impugned Judgment failed to appreciate that the NBCC's Proposal was a non-starter since it did not deal with all the issues regarding the various projects of the Corporate Debtor.
- 8.10. The Impugned Judgment directs that due owed to financial institutions, banks, and the Appellant be recovered from 30% of the Project's 'receivables', subject to the approval of the 'Apex Court Committee.' The remaining 70% of the receivables is necessarily to be used for construction. Further, the 'Apex Court Committee' is empowered to take decision for transferring surplus amount from one project to another project. As per the projection made by NBCC itself, Project Upcountry (which concerns the Appellant) is expected to have receivables of approximately INR

1080.72 crores, while the tentative construction cost is estimated at approximately INR 1079.86 crores. It is, thus, obvious that all of the projected receivables will be required to be appropriated for construction of the project. This being so, the arrangement made in the Impugned Judgment is clearly unviable and if implemented, the Appellant will not be able to secure payment of all its land dues.

8.11. The Impugned Judgment also fails to adhere to Section 30(2) and Section 31(1) of the IBC which require a resolution plan to address the treatment of debts. The NBCC's proposal does not adequately address the treatment of debt owed to land owning authorities, rendering it non-compliant with mandatory provisions of the IBC. The Ld. NCLAT failed to appreciate that the NBCC's Proposal was a non-starter since it did not deal with all the issues regarding the various projects of the Corporate Debtor.

8.12. The Ld. NCLAT has failed to specify the mode and manner of distributing payments among competing creditors, including financial, operational, secured, and unsecured creditors. It has also overlooked the sufficiency of funds to meet these obligations. Consequently, the Impugned Judgment deviates from the statutory

framework and lacks clarity or certainty on the procedure for paying creditors like the Appellant.

8.13. The Impugned Judgment fails to provide a concrete plan for repaying the Authority's outstanding dues and lacks any timeline or method for payment. There is no definitive and specific direction for payment of amount to the Authority, which is a secured debt. Additionally, the Impugned Judgment permits NBCC to utilize public resources without any corresponding accountability or responsibility.

8.14. Vide the Impugned Judgment, the Ld. NCLAT has granted unbridled and blanket power to the Apex Committee to appropriate the proceeds towards payment to land-owning agencies, completely disregarding the fact that two members of the Apex Committee are financial institutions with competing claims on the proceeds. As a result, there is a conflict of interest in fair distribution of the proceeds. It is highly likely that these financial institutions will prioritize payment toward their own claims, and the third member, represented by NBCC, is likely to align with their position. Together, they would form the majority and decide the appropriation of the proceeds as they see fit. The Apex Committee as constituted, therefore, does not offer sufficient

representation or safeguards for the Authority. The denial of meaningful participation in the decision-making process means that the Authority's concerns as the land-owning agency are overlooked and its interests are placed at risk, thereby violating basic principles of fairness.

- 8.15. The Impugned Judgment fails to address that the Appellant is a secured creditor in view of Sections 13 read with 13-A of the UP Act and its dues were to be given priority. The Impugned Judgment also contravenes Clause C(25) of the Lease Deed, which gives the Appellant a first charge on the plot for its dues. Section 13A of the UP Act is quoted below for the ease of reference:

“13-A. Any amount payable to the Authority under section 13 shall constitute a charge over the property and may be recovered as arrears of land revenue or by attachment and sale of property in the manner provided under sections 503, 504, 505, 506, 507, 508, 509, 510, 512, 513, and 514 of the Uttar Pradesh Municipal Corporations Act, 1959 (Act no.2 of 1959) and such provisions of the said Act shall mutatis mutandis apply to the recovery of dues of an authority as they apply to the recovery of a tax due to a Municipal Corporation, so however, that references in the aforesaid sections of the said Act to ‘Municipal Commissioner’, ‘Corporation Officer’ and ‘Corporation’ shall be construed as references to ‘Chief Executive Officer’ and ‘Authority’ respectively:

Provided that more than one modes of recovery shall not be commenced or continued simultaneously.”

- 8.16. In *Greater Noida v. Prabhjit Singh Soni, 2024 SCC OnLine SC 122* (“**Prabhjit Singh Soni Judgment**”), this Hon’ble Court held that the Greater Noida Authority is a secured creditor under Section 13-A of the UP Act. This Hon’ble Court further observed that the failure to classify the authority under the UP Act as the secured creditor invalidates the order that upheld the resolution plan. Therefore, in light of Section 13-A of the UP Act and the Prabhjit Singh Soni Judgment, the Appellant ought to be treated as a Secured Creditor.
- 8.17. The Appellant’s rights and its position under the IBC is protected in terms of the judgment of this Hon’ble Court in *Jaypee Kensington Boulevard Apartments Welfare Association & Ors. v. NBCC (India) Ltd. & Ors., Civil Appeal No. 3395 of 2020*. This Hon’ble Court in the Jaypee Kensington Judgment has held that the claims of a public authority such as the Appellant cannot be extinguished for the asking.
- 8.18. The Ld. NCLAT does not possess the authority under the IBC to permit ‘reverse CIRP’ or ‘project-wise CIRP,’ nor does it have the power to accept a plan without providing the Committee of Creditors (“CoC”) an opportunity to evaluate its commercial viability. There is no legal basis for the concept of ‘reverse CIRP’

or 'project-wise CIRP' within the statutory framework of the Code.

PRAYER

It is therefore most humbly prayed that your Lordships may graciously be pleased to:

- (a) Allow and admit the present Civil Appeal and set aside the final Impugned Judgment and order dated 12 December 2024 passed by the Ld. National Company Law Appellate Tribunal, Principal Bench, New Delhi in I.A. No. 6557 of 2024 in Company Appeal (AT) (Insolvency) No. 406 of 2022;
AND
- (b) Stay the effect and operation of the Impugned Judgment during the pendency of the present Civil Appeal;
- (c) Pass such further order(s) or direction(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case

AND FOR THIS ACT OF KINDNESS THE APPELLANT AS IN DUTY BOUND SHALL EVER PRAY.

DRAWN & FILED BY:

Divya

**DIVYAM AGARWAL
ADVOCATE FOR APPELLANT**

Drawn on: 23.01.2025

Filed on: 25 .01.2025

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**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. _____ OF 2025**

IN THE MATTER OF:

YAMUNA EXPRESSWAY INDUSTRIAL

DEVELOPMENT AUTHORITY

...APPELLANT

VERSUS

NBCC (INDIA) Ltd. & ORS.

...RESPONDENTS

CERTIFICATE

Certified that the Civil Appeal is confined only to the pleadings before the court / tribunal whose order is challenged, and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the Civil Appeal. It is further certified that the copies of the documents/ annexures attached to the Civil Appeal are necessary to answer the questions of law raised in the petition or to make out grounds urged in the Civil Appeal for consideration of this Hon'ble Court. This certificate is given based on the instructions given by the person authorized by the Appellant whose affidavit is filed in support of the Civil Appeal.

FILED BY:



**DIVYAM AGARWAL
ADVOCATE FOR APPELLANT**

FILED ON: 25.01.2025

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. _____ OF 2025

IN THE MATTER OF:

YAMUNA EXPRESSWAY INDUSTRIAL
DEVELOPMENT AUTHORITY

...APPELLANT

VERSUS

NBCC (INDIA) LIMITED & ORS.

...RESPONDENT

AFFIDAVIT

I, Gajendra Singh, aged about 36 years, son of Shri Prem Singh, residing at H-290, Jalvayu Vihar, Greater Noida 201310, Uttar Pradesh, presently at New Delhi, do hereby solemnly affirm and state as under:

1. That I work as the Manager in the office of the Appellant and, being conversant with the facts and circumstances of the case, am competent to swear this Affidavit.
2. That I have read and understood the contents of the Civil Appeal at pages 64 to 99, paras 1 to 2, Synopsis and List of Dates at pages B to Y and the accompanying Applications and I say and submit that the facts stated therein are true and correct to the best of my knowledge and belief as derived from the records of the Appellant. The legal submissions made therein are based on legal advice believed to be true and correct. No part thereof is false and nothing material has been concealed therefrom.



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- 3. That the Annexures filed along with the Appeal are certified or true copies of their respective originals.
- 4. That the Appellant has not filed any other Appeal or Petition before this Hon'ble Court against the Impugned Judgment.

Pranav
 D/7002/19
 I identified the deponent who has signed in my presence.

VERIFICATION

I, the Deponent, do hereby verify that the contents of the foregoing Affidavit are true and correct to my knowledge as derived from the official records maintained by the Appellant. No part thereof is false and nothing material has been concealed therefrom.

24 JAN 2025

Verified at Delhi on the ___ day of January 2025.

[Signature]
DEPONENT
 गजेन्द्र सिंह
 प्रबंधक (सम्पत्ति)
 यमुना एक्सप्रेसवे औद्योगिक प्राधिकरण

[Signature]
 गजेन्द्र सिंह
 प्रबंधक (सम्पत्ति)
DEPONENT
 गजेन्द्र सिंह
 प्रबंधक (सम्पत्ति)
 यमुना एक्सप्रेसवे औद्योगिक प्राधिकरण



CERTIFIED THAT THE DEPONENT
 Shri/Smt./Km..... *Gajendra Singh*
 S/o, W/o, D/o..... *Prem Singh*
 R/o..... *Pranav Tanwar*
 identified by Shri/Smt..... *Pranav Tanwar*
 as Solemnly affirmed before me at *Adhwaal*
 New Delhi on *24 JAN 2025* as SI. No. *D/7002/19*
 that the Contents of the affidavit which have
 been read & explained to him are true and
 correct to this knowledge.

[Signature]
 Notary Public