

FORM-1

[See Rule 22]

Memorandum of Appeal Preferred under Section 421 of
The Companies Act, 2013

IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL

AT NEW DELHI

APPELLATE JURISDICTION

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

APPEAL UNDER SECTION 61(1) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 AGAINST ORDER DATED 20.09.2022 PASSED BY NATIONAL COMPANY LAW TRIBUNAL, BENCH II, NEW DELHI IN I.B. NO. 194/ (ND)/ 2021 NAMED & TITLED AS “MR. MANISH KUMAR GUPTA & ORS. V. M/S AJNARA INDIA LIMITED & ANR.”

IN THE MATTER OF

MR. ASHOK GUPTA

SUSPENDED DIRECTOR OF M/S AJNARA INDIA LIMITED

...APPELLANT

VERSUS

MR. MANISH KUMAR GUPTA & ANR.

(AUTHORIZED REPRESENTATIVE FOR CLASS OF CREDITORS)

...RESPONDENT(s)

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THROUGH COUNSEL



DATE: 11.10.2022

PLACE: New Delhi

Siddharth Bhatli / Lashita Dhingra
 Chamber No. 103, Lawyers Chamber Block 1,
 Delhi High Court, New Delhi.
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THROUGH COUNSEL

DATE: 11.10.2022

PLACE: New Delhi

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IN THE MATTER OF

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SUSPENDED DIRECTOR OF M/S AJNARA INDIA LIMITED

...APPELLANT

VERSUS

MR. MANISH KUMAR GUPTA & ANR.

(AUTHORIZED REPRESENTATIVE FOR CLASS OF CREDITORS)

...RESPONDENT(s)

MEMO OF PARTIES

MR. ASHOK GUPTA

SUSPENDED DIRECTOR OF M/S AJNARA INDIA LIMITED

ADDRESS: R/O B-189, YOJNA VIHAR, DELHI – 110092

CONTACT NUMBER: 9810023852

EMAIL: ashokajnara@gmail.com

...APPELLANT

VERSUS

MR. MANISH KUMAR GUPTA

(AUTHORIZED REPRESENTATIVE FOR CLASS OF CREDITORS)

ADDRESS: R/O A-1/538, SECTOR 6, ROHINI, NEW DELHI - 110085

CONTACT NUMBER: 9990933804

EMAIL: manish.bly@gmail.com

...RESPONDENT No. 1

MR. AMARPAL

INTERIM RESOLUTION PROFESSIONAL
IN THE MATTER OF ANJARA INDIA LIMITED
REGN NO. IBBI/IPA-001/IP/P-01584/2018-19/12411
EMAIL: amarpal@icai.org

...RESPONDENT No. 2



THROUGH COUNSEL

DATE: 5.10.2022

PLACE: New Delhi



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Delhi High Court, New Delhi.

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AJNARA INDIA LIMITED & ANR."**

IN THE MATTER OF**MR. ASHOK GUPTA****SUSPENDED DIRECTOR OF M/S AJNARA INDIA LIMITED****...APPELLANT****VERSUS****MR. MANISH KUMAR GUPTA & ANR.****(AUTHORIZED REPRESENTATIVE FOR CLASS OF CREDITORS)****...RESPONDENT(s)****SYNOPSIS**

Over the last 31 years, the company has grown from strength to strength and has completed close to 19 million square feet of construction, and close to 15 million Sq. Ft. is under construction and out of which the company has successfully delivered around 75 small, medium and big residential projects which include Group Housing and 17 commercial projects in the various corners of Delhi NCR. That the Corporate Debtor is engaged in the construction and development of a multistory residential and commercial project namely Ajnara Ambrosia. The Corporate Debtor laid down terms and conditions in the Builder Buyer Agreement, and as per the agreement, Corporate Debtor is under the obligation to hand-over the possession of the Units within 3 to 5 years from the date of signing of the agreement as per the said agreement. With a grace period of 6 months and exclusion of period where construction is stopped due to force majeure or reasons beyond the control of Corporate Debtor. That the construction activities of the Corporate Debtor have constantly been compromised and the development of the said Plot has been hindered due to

unforeseeable reasons and beyond the control of Company. However, despite various hardships and adversities, the Corporate Debtor was able to commence and continue with the development of its projects. That the Home-buyers / Respondent No.1 herein is restricted only to the extent of the *Ajnara Ambrosia* project of the Corporate Debtor. It is pertinent to consider that there are 1694 number of flats/apartments in *Ajnara Ambrosia*, including commercial, out of which 1318 flats/apartments have been booked/agreed to be sold. There are 157_ number of allottees who have paid their respective consideration amount in full and have taken possession. About 430 allottees (tower F, H and C) have been offered possession, except 157 who have cleared their dues and took possession, balance 273 out of these 430 have till date not paid in full and final and taken their possession. Corporate Debtor was even willing to satisfying these applicants with constructed units available with it however L & T did not allow the swapping of units against unclaimed units ready for possession. Aside to it, there are 273 allottees who have defaulted in making payment of their instalments due towards the Corporate Debtor. Overdue receivables to the tune of 26.55 crores are pending in the project ambrosia as a whole from all the allottees put together. That the Appellant herein is constrained to file the present Appeal seeking directions of this Hon'ble Appellate Tribunal to set aside the impugned order or in the alternative pass appropriate directions to the Ld. Adjudicating Authority to reconsider its decision to take the entire Company having as many as 8 projects under development into CIRP as the same is detrimental to the interests of the Appellant, home buyers, different financial institutions in different projects and other stakeholders of the Company. The Financial Creditors have failed to bring the relevant facts and circumstances of the case and tried to obtain the order without bringing to the attention of Tribunal the actual matrix of the case of the Appellant. Hence, the present Appeal.




THROUGH COUNSEL

DATE: 6.10.2022

PLACE: New Delhi

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VERSUS

MR. MANISH KUMAR GUPTA & ANR.

(AUTHORIZED REPRESENTATIVE FOR CLASS OF CREDITORS)

...RESPONDENT(s)

LIST OF DATES AND EVENTS

DATES	EVENTS
11 November 1991	the Corporate Debtor was incorporated
13 April 1992	The Corporate Debtor was converted into a Public Limited company
March 12, 2009	The name of the Corporate Debtor was changed to Ajnara India Limited
15.09.2011	the Uttar Pradesh Government granted the permission to the District Magistrate and the Chief Executive Officer for transfer and lease of total 103 Khasra of revenue village Sorkha Jahidabad admeasuring the total area of 57.7600 Hectares vide their letter No.- U.O.-35-1-6-2011-3(NT)-11-O.Vi.-3

19.04.2012	Lease Deed of Group Housing Plot No. GHP-0001,Sector 118, Noida for the area of 1,33,750.00 Sq. Mtr was executed and registered in favour of 'IVR PRIME DEVELOPER (AVADI) PVT. LTD.'
from 19.04.2012 to till date	The allotted land and the projects thereon have been continuously subjected to severe agitation and violence by farmers for want of resolution of disputes of erstwhile land owners particularly with regard to Khasra Nos.- 337, 338, 373, 386, 388, 389, 339, 344 and 340 by Noida Authority. The farmers have been creating severe law and order situation, force entering construction sites and offices, beating staff, threatening contractors and workers, damaging equipment's and preventing construction activities of the Corporate Debtor. Further, the Corporate Debtor has on several occasions requested the Authority to provide police protection.
19.04.2012 to 2018	The allotted plot was inaccessible till March, 2017 for want of approach road to the site which was to be provided by Noida Authority. The plot was inaccessible as road on Khasra No.-389 partly was constructed after March, 2017 and completed by Nov / Dec' 2018 and the remaining road through Khasra No.- 340 is still pending as land of this Khasra Number is under dispute because of non-acquisition of land by Authority.
23.10.2013	That the Lease Deed of Group Housing Plot No. GHP-0001,Sector 118, Noida for the area of 1,33,750.00 Sq. Mtr was executed and registered in favour of 'IVR PRIME DEVELOPER (AVADI) PVT. LTD.' on 19.04.2012 and for the area of 9,217.00 Sq. Mtr and a Supplementary Deed was executed and registered in favour of the Corporate Debtor.
From 14.08.2013 to 19.08.2015	Stoppage of construction Work on account of NGT Orders
03.12.2015 and 06.01.2016	the Uttar Pradesh Government granted the permission to the District Magistrate and the Chief Executive Officer for transfer and lease of total 103 Khasra of revenue village Sorkha Jahidabad admeasuring the total area of 57.7600 Hectares vide their letter No.- U.O.-35-1-6-2011-3(NT)-11-



	O.Vi.-3 dated 15.09.2011. But the Khasra Nos. vested in State Government and were falling in the said plot and in the approach / connecting road were not transferred till 06.01.2016 as mentioned in letter Nos.- Noida/Land/15/10564 dated 03.12.2015 and 657/D.L.R.C./2015-16 dated 06.01.2016 and farmers were cultivating there up on till then.
27 April 2016	That on several requests of the Corporate Debtor for physical possession of whole plot, in Apr' 2016, the Work Circle-VI and the Land Department jointly inspected the said plot and submitted the report on 27 April 2016 mentioning that the Khasra Nos- 338 and 389 has been transferred to Authority on 18.02.2016 and 18.04.2016 but no construction work is being carried out there upon along with Khasra Nos.- 373, 386, and 340. Also, it was admitted in said report that due to non-acquisition of whole land of Khasra Nos.- 340 and 389, the 30 Mtr wide approach / connecting road in front of the plot could not be constructed till November 2018.
03.02.2017	That the Work Circle-VI informed O.S.D. (GHP) on 03.02.2017 that due to non-acquisition of whole land of Khasra Nos.- 340 and 389, the 30 Mtr wide approach / connecting road in front of the plot could not be constructed till Nov / Dec' 2018 as the same was inaccessible till March 2017. After transfer of a portion of land of Khasra No.- 389, the 30 Mtr wide approach / connecting road 1/3 in front of the plot was constructed in November / December 2018 and 2/3 till date remains unconstructed.
15.02.2019	The Ajnara Ambrosia, project has been sanctioned vide license number III-277/1102 by the New Okhla Industrial Development Authority, Noida.
17.02.2022	that IVR Prime Developers (Avadi) Private Limited (Proforma Respondent in IB No. 194 (ND) of 2021 titled as 'Mr. Manish Kumar Gupta & Ors. v. M/s Ajnara India Limited & Anr') wrote a letter dated 17.02.2022 to New Okhla Industrial Development Authority (NOIDA) for seeking permission for sub-division of the group housing

	plot no GH 01, Sector 118, NOIDA, District Gautam Budh Nagar, Uttar Pradesh leased in favor of IVR Prime Developers Private Limited. It stated that the said plot is being developed in 2 clusters of towers- first, land admeasuring 74,946 sq. meters forming part of said plot is being developed as a residential group housing project under the name of 'Ambrosia'; second, land admeasuring 68,021 sq. meters forming part of said plot is being developed as another residential group housing project.
22.06.2022	in pursuant to the payment of dues to NOIDA, GNOIDA/ YEIDA; Larsen & Toubro Finance Limited has sent a letter dated 22.06.2022 to the Corporate Debtor that they are in-principle agreeable to consider to disburse Rs. 50,000,000/- against the dues payable to Noida. NOIDA was also apprised regarding the letter issued by L&T regarding in-principle agreeable to disburse the amount vide letter dated 23.06.2022.
10.10.2022	That the appellant has also wide E-mail dated 10.10.2022 provided an offer of settlement to the home buyers wherein they have undertaken to complete the construction and hand over flats to Home Buyers within 6 months of indulgence granted by the Hon'ble Tribunal with grace period of 3 months and had also offered a refund within 3 to 4 months.
29.07.2022	the Ld. Counsel for the Corporate Debtor cited the factum of unavailability of the Ld. Senior Advocate engaged on behalf of the Corporate Debtor to address arguments in respect of the merits of the case. That in light of the above facts, the Ld. Counsel for the Corporate Debtor had beseeched the kind indulgence of the Hon'ble Tribunal and sort a short accommodation in the present case. That the Hon'ble Tribunal had expressed its reluctance to adjourn the case and insisted that the Ld. Counsel for the Corporate Debtor address the final arguments on behalf of the Corporate Debtor. That on hearing the submissions of the Ld. Counsel for the Corporate Debtor had reserved its Order in the said case.
04.08.2022	an Application under Rules 11 of the NCLT Rules was moved by the Corporate Debtor on 04.08.2022 seeking liberty to place on record Written Submission/ Arguments.

18.08.2022	The contentions in the Interim application have not been considered in passing of Order dated 18.08.2022 and the said IA was dismissed by the Hon'ble Tribunal which has caused grave prejudice to Corporate Debtor.
20.09.2022	Impugned order dated 20.09.2022 passed by the Ld. National Company Law Tribunal, Bench II, New Delhi in IB No. 194 (ND) of 2021 titled as 'Mr. Manish Kumar Gupta & Ors. v. M/s Ajnara India Limited', wherein the Ld. Adjudicating Authority has erred in admitting the Section 7 Petition.
October 2022	Hence, the present Appeal.



THROUGH COUNSEL

DATE: 5.10.2022

PLACE: New Delhi



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(AUTHORIZED REPRESENTATIVE FOR CLASS OF CREDITORS)

...RESPONDENT(s)

MOST RESPECTFULLY SHOWETH:

1. DETAILS OF THE APPEAL

1.1. That the instant appeal has been preferred by Mr. Ashok Gupta, suspended director of M/s Ajnara India Limited (hereinafter referred to as '**Corporate Debtor**') under Section 61(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as '**Code**') against the impugned order dated 20.09.2022 passed by the Ld. National Company Law Tribunal, Bench II, New Delhi in *IB No. 194 (ND) of 2021* titled as '*Mr. Manish Kumar Gupta & Ors. v. M/s Ajnara India Limited*', wherein the Ld. Adjudicating Authority has erred in admitting the Section 7 Petition. The true certified copy of the impugned order dated 20.09.2022 is annexed as **Annexure 1**.

1.2. That the Appellant herein is constrained to file the present Appeal seeking directions of this Hon'ble Appellate Tribunal to set aside the impugned order or in the alternative pass appropriate directions to the Ld. Adjudicating Authority to reconsider its decision to take the entire Company having as many as 8 projects under development into CIRP as the same is detrimental to the interests of the Appellant, home buyers, different financial institutions in different projects and other stakeholders of the Company. Copy of the IBC Petition filed by the Respondent No. 1 on behalf of class of Creditors (home buyers) that is 113 in number. Other Intervention Applications filed on behalf of 15 Intervenors and 10 Intervenors have also been Annexed herewith, Reply filed by the Corporate Debtor and the Rejoinder of the same are annexed herewith as **Annexure A-2 to A-6** respectively.

1.3. That the Appellant most respectfully submits that the Company Petition, was listed before the Hon'ble Tribunal on 29.07.2022 and when the same was taken up for hearing, the Ld. Counsel for the Corporate Debtor cited the factum of unavailability of the Ld. Senior Advocate engaged on behalf of the Corporate Debtor to address arguments in respect of the merits of the case. That in light of the above facts, the Ld. Counsel for the Corporate Debtor had beseeched the kind indulgence of the Hon'ble Tribunal and sort a short accommodation in the present case. That the Hon'ble Tribunal had expressed its reluctance to adjourn the case and insisted that the Ld. Counsel for the Corporate Debtor address the final arguments on behalf of the Corporate Debtor. That on hearing the submissions of the Ld. Counsel for the Corporate Debtor had reserved its Order in the said case. It is submitted that the above circumstances evidence the fact that the Corporate Debtor has been deprived of a reasonable opportunity of being heard and presenting its *bonafide* and legitimate defense, which in turn is a violation of the principal of natural justice. Subsequently, an Application under Rules 11 of the NCLT Rules was moved by the Corporate Debtor on 04.08.2022 seeking liberty to place on record Written Submission/ Arguments. The contentions in the application have not be considered in passing of Order dated 18.08.2022 and the said IA was dismissed by the Hon'ble Tribunal which has caused grave prejudice to Corporate Debtor and the Appellant herein prays this Hon'ble Appellate Tribunal to consider the same in the interest of natural justice.



- 1.4. Further, the Financial Creditors have failed to bring the relevant facts and circumstances of the case and tried to obtain the order without bringing to the attention of Tribunal the actual matrix of the case of the Appellant.
- 1.5. That the Appellant herein is constrained to file the present Appeal seeking directions of this Hon'ble Appellate Tribunal to direct the Ld. Adjudicating Authority to:
- a. Set aside Impugned Order dated 20.09.2022 passed in IB-194/(ND)/2021 in the matter of "*Manish Kumar Gupta & Ors. versus M/s Ajnara India Limited*";
 - b. Direct that the Committee of Creditors in the present matter may not be constituted till the pendency of the present appeal;
 - c. and direct status quo of the CIRP pending the present Appeal;
 - d. In the alternative, order *Status Quo* on the functioning of the Committee of Creditors- if constituted;
 - e. Allow the suspended management of the Corporate Debtor to continue operations, development, construction and performance of all connected duties in tandem with the Insolvency Resolution Process holding that the projects of the Corporate Debtor are not to be treated under the present insolvency proceedings and operations in the same be allowed to continue under such an arrangement or directions issued by this Hon'ble National Company Law Appellate Tribunal under the reverse Insolvency Resolution mechanism in the best interest of the stakeholders;
 - f. Allow the management/promotor group company to continue construction activity and complete the project as each project of the Appellant is separately registered under RERA and has separate allotment of land by the Authorities, that is, NOIDA/GNIDA/YEIDA etc.
 - g. Set aside Order dated 20.09.2022 refusing to take written statement of the Corporate Debtor on record and directing Hon'ble Tribunal to pass a reasoned judgement taking in account the contentions and submissions in the written submissions.



- h. Pass an Order directing the Ld. National Company Law Tribunal and the Interim Resolution Professional to put a stay on calling of EOI/Resolution Plans and let the Interim Resolution Professional treat all projects of the Appellant herein as an ongoing concern and monitor development made therein by the suspended management in a time bound manner.

- i. Pass an order directing settlement between applicant and home buyers as the appellant is ready to furnish an undertaking of completing all the units in the project Ajnara Ambrosia within a period of 6 months with grace period of 3 months and in alternative if the Home Buyers choose to get a refund, the same may be carried out with a simple interest of 8%.

- j. Pass any such other or further order(s) as this Hon'ble Appellate Tribunal may deem fit and proper in the facts and circumstances of the present case.

2. DATE ON WHICH THE ORDER APPEALED AGAINST IS COMMUNICATED AND PROOF THEREOF, IF ANY.

That the impugned Order was passed by the Ld. Adjudicating Authority on 20.09.2022. Hence, the present appeal is well within limitation in terms of provisions of the Code and underlying Regulation.

3. ADDRESS OF THE APPELLANT FOR SERVICE:

- i. Name: Mr. Ashok Gupta
- ii. Postal Address including PIN Code: R/o B-189, Yojna Vihar, Delhi – 110092
- iii. Phone Number: +91- 9810023852
- iv. Email ID: ashokajnara@gmail.com
- v. Address of Legal Representative with Phone No., Fax No., E-Mail: Siddharth Bhatli / Lashita Dhingra Advocates, Chamber No. 103, Lawyers Chamber Block 1, Delhi High Court, New Delhi. Ph. No. +919899423924
E-Mail Id- office@lexlislaw.in

4. ADDRESS OF THE RESPONDENT FOR SERVICE OF ALL NOTICES IN THE APPEAL ARE AS SET OUT HEREUNDER:

Respondent No. 1 – Mr. Manish Kumar Gupta, Authorized Representative of Financial Creditors/ Home Buyers vide letter of Authorization dated 01.12.2020

- i. Postal Address including PIN code: R/o A-1/538, Sector 6, Rohini, New Delhi - 110085
- ii. Phone Number: 9990933804
- iii. E-mail: manish.bly@gmail.com

Respondent No. 2- INTERIM RESOLUTION PROFESSIONAL, Mr.

Amarpal

REGN NO. IBBI/IPA-001/IP/P-01584/2018-19/12411

- i. **Postal Address:** Office No. 201, Aggarwal Plaza, Sector-9, DC Chowk, Rohini, Delhi - 110085
- ii. **Phone Number:** +91-97171 05008
- iii. **EMAIL:** amarpal@icai.org, cirp.ajnaraindia@gmail.com

5. JURISDICTION

The Appellant declares that the subject matter of the instant appeal and the relief(s) sought for herein is within the jurisdiction of this Hon'ble Appellate Tribunal. The Impugned order was passed by the Ld. NCLT, Bench II, New Delhi.

6. LIMITATION

The Appellant declared that the present Appeal is within the period of limitation laid down under section 61(2) of the Insolvency and Bankruptcy Code, 2016. The Impugned order is dated 20.09.2022 and the instant appeal is preferred well before expiry of 30 days prescribed under Section 61 of the Insolvency and Bankruptcy Code, 2016 for preferring the appeal against the order of Adjudicating Authority.

7. FACTS OF THE CASE

7.1. That Ld. Adjudicating Authority vide impugned order dated 20.09.2022 admitted the Company Petition IB No. 194 (ND) of 2021 filed by Financial Creditor(s)/Home Buyers, Mr. Manish Kumar Gupta and Others for initiating CIRP against M/s Ajnara India Limited. That Mr. Amarpal, having registration no. IBBI/IPA-001/IP/P-01584/2018-19/12411 was appointed as IRP vide same order of this Ld. Adjudicating Authority.



7.2. That the Corporate Debtor namely, M/s Ajnara India Limited is a company incorporated on 11.11.1991 under the provisions of erstwhile Companies Act, 1956 with CIN U01111DL1991PLC046358, having its registered office at 502, 5th Floor, Sachdeva Corporate Tower 17, Karkardooma Community Centre, New Delhi – 110092, which is within the jurisdiction of the Hon'ble Tribunal. The Authorized Share Capital of the Corporate Debtor Company is Rs. 100,000,000/- and Paid-up Share Capital is Rs. 50,376,480/- as per the Master Data annexed. Copy of the Master Data of the Corporate Debtor is enclosed herewith and marked as **Annexure-7**

7.3. That the Corporate Debtor was incorporated on 11 November 1991 and was converted into a Public Limited company on 13 April 1992 and name of the Company was changed to Ajnara India Limited on March 12, 2009. The Corporate Debtor brings the expertise of all its divisions together to focus on every single aspect of Projects for making customer life easy within the society. The Company has evolved on the basic principle of 'Customer First'. Over the last 31 years, the company has grown from strength to strength and has completed close to 19 million square feet of construction, and close to 15 million Sq. Ft. is under construction and out of which the company has successfully delivered around 75 small, medium and big residential projects which include Group Housing and 17 commercial projects in the various corners of Delhi NCR. The details of the ongoing and completed projects of the Corporate Debtor are tabulated below

ONGOING PROJECTS



Completed and Ongoing Projects

S.No.	Project Name	Address	Status	Type	Total Delivered Units	Under Construction Units
1	AJNARA PLAZA	savita vihar	Completed	COMMERCIAL	25	0
2	AJNARA PLAZA	savita vihar	Completed	COMMERCIAL	25	0
3	AJNARA PLAZA	vivek vihar	Completed	COMMERCIAL	40	0
4	AJNARA PLAZA	INDIRAPURAM	Completed	COMMERCIAL	26	0
5	AJNARA PLAZA	INDIRAPURAM	Completed	COMMERCIAL	5	0
6	AJNARA ARCADE	CROSSINGS REPUBLIK	Completed	COMMERCIAL	175	0
7	ORBIT PLAZA	CROSSINGS REPUBLIK	Completed	COMMERCIAL	350	0
8	AJNARA ORCHID	RAJ NAGAR EXTN	Completed	COMMERCIAL	52	0
9	AJNARA CITY CENTER	RAJ NAGAR EXTN	Completed	COMMERCIAL	55	0
10	AJNARA ELEMENTS	SECTOR-137 NOIDA	Completed	COMMERCIAL	196	0
11	MART 137	SECTOR-137 NOIDA	Completed	COMMERCIAL	39	0
12	CONVINIO I2I	SECTOR-121 NOIDA	Completed	COMMERCIAL	39	0
13	AJNARA PLAZIO	I6B NOIDA EXT.	Completed	COMMERCIAL	40	0
14	AJNARA LEMART	I6 NOIDA EXT.	Completed	COMMERCIAL	54	0
15	Ajnara Estate	SHALIMAR GARDEN	Completed	GROUP HOISING	54	0
16	AJNARA ENCLAVE	CHANDER NAGAR	Completed	GROUP HOISING	76	0
17	AJNARA LANDMARK	VAISHALI	Completed	GROUP HOISING	140	0
18	AJNARA PRIDE	VASUNDHARA GHAZIABAD	Completed	GROUP HOISING	160	0
19	AJNARA GRACE	RAJ NAGAR EXTN	Completed	GROUP HOISING	154	0
20	AJNARA GENX	CROSSINGS REPUBLIK	Completed	GROUP HOISING	1086	0
21	GH7. CROSSINGS REPUBLIK	CROSSINGS REPUBLIK	Completed	GROUP HOISING	1950	0
22	AJNARA INTEGRITY PHASE I	RAJ NAGAR EXTN	Completed	GROUP HOISING	1452	0
23	AJNARA DAFFODIL	SECTOR-137 NOIDA	Completed	GROUP HOISING	1010	0
24	GARD AJNARA HERITAGE	SECTOR-74 NOIDA	Completed	GROUP HOISING	1492	0
25	AJNARA-HOMES I2I	SECTOR-121 NOIDA	Completed	GROUP HOISING	1728	0
26	AJNARA LOW RISE	savita vihar	Completed	RESIDENTIAL	3	0
27	AJNARA LOW RISE	DILSHAD COLONY	Completed	RESIDENTIAL	15	0
28	AJNARA LOW RISE	DILSHAD COLONY	Completed	RESIDENTIAL	9	0
29	AJNARA LOW RISE	DILSHAD COLONY	Completed	RESIDENTIAL	19	0
30	AJNARA LOW RISE	DILSHAD COLONY	Completed	RESIDENTIAL	30	0
31	AJNARA LOW RISE	DILSHAD COLONY	Completed	RESIDENTIAL	5	0
32	AJNARA LOW RISE	DILSHAD COLONY	Completed	RESIDENTIAL	15	0



33	AJNARA LOW RISE	DILSHAD COLONY	Completed	RESIDENTIAL	15	0
34	AJNARA LOW RISE	DILSHAD COLONY	Completed	RESIDENTIAL	17	0
35	AJNARA LOW RISE	DILSHAD COLONY	Completed	RESIDENTIAL	19	0
36	AJNARA LOW RISE	DILSHAD COLONY	Completed	RESIDENTIAL	12	0
37	AJNARA LOW RISE	DILSHAD COLONY	Completed	RESIDENTIAL	12	0
38	AJNARA LOW RISE	DILSHAD COLONY	Completed	RESIDENTIAL	12	0
39	AJNARA LOW RISE	DILSHAD COLONY	Completed	RESIDENTIAL	17	0
40	AJNARA LOW RISE	DILSHAD COLONY	Completed	RESIDENTIAL	27	0
41	AJNARA LOW RISE	DILSHAD COLONY	Completed	RESIDENTIAL	30	0
42	AJNARA LOW RISE	DILSHAD COLONY	Completed	RESIDENTIAL	12	0
43	AJNARA LOW RISE	DILSHAD COLONY	Completed	RESIDENTIAL	8	0
44	AJNARA LOW RISE	DILSHAD EXTENTION	Completed	RESIDENTIAL	12	0
45	AJNARA LOW RISE	DILSHAD EXTENTION	Completed	RESIDENTIAL	12	0
46	AJNARA LOW RISE	DILSHAD EXTENTION	Completed	RESIDENTIAL	14	0
47	AJNARA LOW RISE	DILSHAD EXTENTION	Completed	RESIDENTIAL	14	0
48	AJNARA LOW RISE	DILSHAD EXTENTION	Completed	RESIDENTIAL	14	0
49	AJNARA LOW RISE	DILSHAD EXTENTION	Completed	RESIDENTIAL	14	0
50	AJNARA LOW RISE	DILSHAD EXTENTION	Completed	RESIDENTIAL	14	0
51	AJNARA LOW RISE	DILSHAD EXTENTION	Completed	RESIDENTIAL	17	0
52	AJNARA LOW RISE	DILSHAD EXTENTION	Completed	RESIDENTIAL	17	0
53	Ajnara Nidhi Apartment	SHALIMAR GARDEN	Completed	RESIDENTIAL	27	0
54	Ajnara Sahyog Apartment	SHALIMAR GARDEN	Completed	RESIDENTIAL	32	0
55	AJNARA LOW RISE	SHALIMAR GARDEN	Completed	RESIDENTIAL	33	0
56	AJNARA LOW RISE	SHALIMAR GARDEN	Completed	RESIDENTIAL	21	0
57	AJNARA LOW RISE	SHALIMAR GARDEN	Completed	RESIDENTIAL	32	0
58	AJNARA LOW RISE	VIKRAM ENCLAVE	Completed	RESIDENTIAL	43	0
59	AJNARA LOW RISE	VAISHALI	Completed	RESIDENTIAL	12	0
60	AJNARA LOW RISE	VAISHALI	Completed	RESIDENTIAL	11	0
61	AJNARA LOW RISE	VAISHALI	Completed	RESIDENTIAL	14	0
62	AJNARA LOW RISE	VAISHALI	Completed	RESIDENTIAL	14	0
63	AJNARA LOW RISE	VAISHALI	Completed	RESIDENTIAL	9	0
64	AJNARA LOW RISE	VAISHALI	Completed	RESIDENTIAL	9	0
65	AJNARA LOW RISE	VAISHALI	Completed	RESIDENTIAL	12	0
66	AJNARA LOW RISE	VAISHALI	Completed	RESIDENTIAL	11	0

for

67	AJNARA LOW RISE	VAISHALI	Completed	RESIDENTIAL	6	0
68	AJNARA LOW RISE	VAISHALI	Completed	RESIDENTIAL	14	0
69	AJNARA LOW RISE	VAISHALI	Completed	RESIDENTIAL	13	0
70	AJNARA LOW RISE	VAISHALI	Completed	RESIDENTIAL	11	0
71	AJNARA LOW RISE *	RAMPRASTHA	Completed	RESIDENTIAL	3	0
72	AJNARA LOW RISE	RAMPRASTHA	Completed	RESIDENTIAL	11	0
73	AJNARA LOW RISE	RAMPRASTHA	Completed	RESIDENTIAL	9	0
74	AJNARA LOW RISE	SURYA NAGAR	Completed	RESIDENTIAL	11	0
75	AJNARA HOMES	16B NOIDA EXT.	Completed	GROUP HOISING	2277	0
76	AJNARA LEGARDEN	16 NOIDA EXT.	Under Construction	GROUP HOISING	2197	784
77	AJNARA PRIME TOWER	16 NOIDA EXT.	Under Construction	GROUP HOISING	0	239
78	CITY STREET	Greater Noida	Under Construction	COMMERCIAL	0	80
79	AJNARA CITY	Greater Noida	Under Construction	GROUP HOISING	0	3500
80	AJNARA INTEGRITY PHASE 2	RAJ NAGAR EXTN	Under Construction	GROUP HOISING	310	504
81	AJNARA FRAGRANCE	RAJ NAGAR EXTN	Under Construction	GROUP HOISING	0	460
82	EWS PMAY	RAJ NAGAR EXTN	Under Construction	GROUP HOISING	0	318
83	AJNARA FRAGRANCE WALK	RAJ NAGAR EXTN	Under Construction	COMMERCIAL	0	256
84	EWS INTEGRITY	RAJ NAGAR EXTN	Under Construction	GROUP HOISING	0	211
85	AJNARA AMBROSIA PHASE 2	SEC 118 NOIDA	Under Construction	GROUP HOISING	0	423
86	AJNARA AMBROSIA	SEC 118 NOIDA	Under Construction	GROUP HOISING	471	1140
87	SPANO SHOPEE	SEC 118 NOIDA	Under Construction	COMMERCIAL	0	70
88	AJNARA BELVEDERE	SEC 79 NOIDA	Under Construction	GROUP HOISING	0	636
89	AJNARA KLOCK TOWER	SECTOR-74 NOIDA	Under Construction	GROUP HOISING	172	83
90	CENTRAL PLAZA	SECTOR-74 NOIDA	Under Construction	COMMERCIAL	27	10
91	ROYAL STREET PHASE 2	YAMUNA EXPRESSWAY	Under Construction	COMMERCIAL	0	82
92	AJNARA PANORAMA PHASE 2	YAMUNA EXPRESSWAY	Under Construction	GROUP HOISING	0	276
93	VICE ROYALE	YAMUNA EXPRESSWAY	Under Construction	COMMERCIAL	0	673
94	AJNARA PANORAMA	YAMUNA EXPRESSWAY	Under Construction	GROUP HOISING	346	491
95	ROYAL STREET	YAMUNA EXPRESSWAY	Under Construction	COMMERCIAL	0	82
96	LONDON SQUARE VILLA	YAMUNA EXPRESSWAY	Under Construction	GROUP HOISING	175	12
Total					17161	10327



- 7.4. That the Corporate Debtor had entered into arrangements/collaborations with the companies and individuals that owned and possessed land totaling approximately 1,42,967 sq. mtrs. situated at Plot No. GH 01, Sector- 118, Gautam Budh Nagar, Noida, Uttar Pradesh (herein referred to as the '**said Plot**') for construction of the group housing project. That as per the Lease Deed executed between Authority and the IVR Prime Developers Pvt. Ltd., half portion of the group housing land i.e. 71,483.5 sq. meters of area was given to the Corporate Debtor for the development and construction of the project "**Ajnara Ambrosia**".
- 7.5. That the Corporate Debtor is engaged in the construction and development of a multistory residential and commercial project namely Ajnara Ambrosia at the abovementioned plot. The Corporate Debtor holds all the requisite approvals for the development of the said project including License from New Okhla Industrial Development Authority, Noida, Building Plans, Environment Clearance, etc. The project has been sanctioned vide license number III-277/1102 dated 15.02.2019 by the New Okhla Industrial Development Authority, Noida. The building plans of the project have been duly approved vide memo no. III-277/7/0. The said project is being developed and nearly completed by the Corporate Debtor.
- 7.6. That the Financial Creditor(s)/Home Buyers, who are total 128 (113 + 15) in number, being desirous of purchasing residential flats/Units in the said project and relying upon the goodwill of the Corporate Debtor in the real estate market, approached and requested for booking of respective flats/units in the project Ajnara Ambrosia, multistory residential project and paid respective amounts towards booking of the apartment. The applicants voluntarily on their own without any kind of inducement approached the Corporate Debtor with request for allotment of residential units in its project.
- 7.7. That the Corporate Debtor further offered the Home Buyers various options to enter into payment plans, at the time of booking of their units.
- 7.8. That after the Home buyers paid respective booking amounts as advance consideration towards advance booking of the Unit(s)/flats and further agreed to pay the installments towards the balance sale



consideration and allied charges. Accordingly, Builder Buyer Agreements were also executed between the parties on respective dates.

- 7.9. That the Corporate Debtor laid down terms and conditions in the Builder Buyer Agreement, and as per the agreement, Corporate Debtor is under the obligation to hand-over the possession of the Units within 3 to 5 years from the date of signing of the agreement as per the said agreement. With a grace period of _6 months and exclusion of period where construction is stopped due to force majeure or reasons beyond the control of Corporate Debtor.
- 7.10. That total number of units sold in this project (**Ambrosia**) is given in the table reproduced below:

Building No./ Tower Name	TOTAL	SOLD	UNSOLD
	No. of Units	No. of Units	No. of Units
OA	190	123	67
OB	142	83	59
OC	192	160	32
OD	190	117	73
OE	143	116	27
OF	138	137	1
OG	190	142	48
OH	142	140	2
OJ	142	98	44
OK	142	126	16
CA	42	36	6
C5	20	19	1
C6	21	21	-
TOTAL	1,694	1,318	376

- 7.11. That the construction activities of the Corporate Debtor have constantly been compromised and the development of the said Plot has been hindered due to unforeseeable reasons and beyond the control of Company. The reasons include but not limited to –

- (a) That the Lease Deed of Group Housing Plot No. GHP-0001, Sector 118, Noida for the area of 1,33,750.00 Sq. Mtr was executed and registered in favour of 'IVR PRIME DEVELOPER (AVADI) PVT. LTD.' on 19.04.2012 and for the area of 9,217.00 Sq. Mtr and a Supplementary Deed was executed and registered in favour of the Corporate Debtor on 23.10.2013. So, the total plot area is



1,42,967.00 Sq. Mtr and its symbolic possession was handed over to the Corporate Debtor.

- (b) That when, the Corporate Debtor visited the site for physical possession it was noticed that land falling within the said plot was being cultivated and crops were standing there upon and there was no approach / connecting road for the said plot. On inquiring from the Authority, the Corporate Debtor was informed that many Khasra Numbers falling in the said plot and in the approach / connecting road either not acquired by Authority or vested in State Government.
- (c) That the Uttar Pradesh Government granted the permission to the District Magistrate and the Chief Executive Officer for transfer and lease of total 103 Khasra of revenue village Sorkha Jahidabad admeasuring the total area of 57.7600 Hectares vide their letter No.- U.O.-35-1-6-2011-3(NT)-11-O.Vi.-3 dated 15.09.2011. But the Khasra Nos. vested in State Government and were falling in the said plot and in the approach / connecting road were not transferred till 06.01.2016 as mentioned in letter Nos.- Noida/Land/15/10564 dated 03.12.2015 and 657/D.L.R.C./2015-16 dated 06.01.2016 and farmers were cultivating there up on till then.
- (d) That on several requests of the Corporate Debtor for physical possession of whole plot, in Apr' 2016, the Work Circle-VI and the Land Department jointly inspected the said plot and submitted the report on 27 April 2016 mentioning that the Khasra Nos- 338 and 389 has been transferred to Authority on 18.02.2016 and 18.04.2016 but no construction work is being carried out there upon along with Khasra Nos.- 373, 386, and 340. Also, it was admitted in said report that due to non-acquisition of whole land of Khasra Nos.- 340 and 389, the 30 Mtr wide approach / connecting road in front of the plot could not be constructed till November 2018.
- (e) That the Work Circle-VI informed O.S.D. (GHP) on 03.02.2017 that due to non-acquisition of whole land of Khasra Nos.- 340 and 389, the 30 Mtr wide approach / connecting road in front of the plot could not be constructed till Nov / Dec' 2018 as the same was inaccessible till March 2017. After transfer of a portion of land of Khasra No.- 389, the 30 Mtr wide approach / connecting



road 1/3 in front of the plot was constructed in November / December 2018 and 2/3 till date remains unconstructed.

- (f) The old land owners are still creating the nuisance at our site by way threatening our staff and preventing us to continue the construction work. Even the owners of Khasra No.-340 created such type of nuisance that the Authority lodged a F.I.R. against them in the month of May' 2017 and the owner of Khasra No. 338 still creating nuisance and also he has submitted a complaint to Authority.
- (g) That the 10,130.00 Sq. Mtr. area of Khasra No.- 340 Sorkha Jahidabad falling in the said plot and 2/3 approach / connecting road in front of the plot is un-acquired and it was proposed at agenda item No.- 16 in 186th Board Meeting held on 18 Sep' 2015 and at agenda item No.- 15 in 188th Board Meeting held on 14 Mar' 2016 that the Authority shall give the compensatory land to old land owners of Khasra No. -340 in exchange for smooth development. It was approved in above said meetings by Board that the 7448.00 Sq. Mtr. Land of Khasra Nos.- 315 and 317 of revenue village Parthla Khanjarpur, which is in Authority's possession, shall be given to old land owners of Khasra No. -340 as compensatory land and for balance area of 2682.00 Sq. Mtr. the compensation shall be paid to them by Authority. But the said proposal is not executed till date.
- (h) **Stoppage of construction Work on account of NGT Orders (From 14.08.2013 to 19.08.2015):** Stoppage of work consequent to orders of the Hon'ble National Green Tribunal (NGT) at all construction sites within 10 kms from boundary of Okhla Bird Sanctury vide orders dated 14.08.2013 and 28.10.2013. The work remained suspended till 19.08.2015 when the Ministry of Environment & Forest issued Notification fixing the Eco Sensitive Zone. The above situation and the mounting financial losses suffered by our Company, are clearly due to the acts of omission and commission on the part of Noida Authority. The Noida Authority was well in its full knowledge about Notification issued by State of U P declaring "protected area" U/s 18(1) of the Wild Life (Protection) Act in respect of Okhla Bird Sanctuary, in spite of which the Authority proceeded on allotting land and granting necessary approvals. Further, Noida Authority by way of Affidavit dated 26.10.2017 admitted that Eco Sensitive



Zone was not clearly defined at the time of allotment of Plots which is also violation of the mandatory requirements. Noida Authority ought to have defined and reserved the mandatory Eco Sensitive Zone while offering land for allotment by way of Tender. Failure on the part of Noida Authority in complying with the mandatory requirements has resulted in the NGT Orders stopping construction.

- (i) **Non-provision of access road to the site by Noida Authority (19.04.2012 to 2018):** The allotted plot was inaccessible till March, 2017 for want of approach road to the site which was to be provided by Noida Authority. The plot was inaccessible as road on Khasra No.-389 partly was constructed after March, 2017 and completed by Nov / Dec' 2018 and the remaining road through Khasra No.- 340 is still pending as land of this Khasra Number is under dispute because of non-acquisition of land by Authority.
- (j) **Allotted land in dispute – (from 19.04.2012 to till date):** The allotted land and the projects thereon have been continuously subjected to severe agitation and violence by farmers for want of resolution of disputes of erstwhile land owners particularly with regard to Khasras Nos.- 337, 338, 373, 386, 388, 389, 339, 344 and 340 by Noida Authority. The farmers have been creating severe law and order situation, force entering construction sites and offices, beating staff, threatening contractors and workers, damaging equipment's and preventing construction activities of the Corporate Debtor. Further, the Corporate Debtor has on several occasions requested the Authority to provide police protection.

The dispute still continues and the Authority is yet to resolve the same with the farmers. Out of the total land of subject mentioned plot, the farmers/villagers have been continuously disputing and creating grave nuisance for the Corporate Debtor for the land bearing Khasra No. 337 (area 2530 Sq. Mtrs.), 338 (area 8728 Sq. Mtrs.), 389 (area 5958 Sq. Mtrs.) alleging the same to be State Government land (Rajya Sarkar land) and Khasra No. 373 (area 3158 Sq. Mtrs.), 386 (area 630 Sq. Mtrs.) and 388 (area 11630 Sq. Mtrs.) alleging the same to be Land Management Committee land (LMC land).



The land falling in the said plot for which, the farmers/villagers have been creating ruckus and violence regularly to forcibly grab possession of the land bearing Khasra No. 339 (area 1010 Sq. Mtrs.), Khasra No. 340 (area 8000 Sq. Mtrs.) and Khasra No. 344 (area 5280 Sq. Mtrs.) Khasra No. 337 (area 2530 Sq. Mtrs.), 338 (area 8728 Sq. Mtrs.), 389 (area 8958 Sq. Mtrs.), Khasra No. 373 (area 3158 Sq. Mtrs.), 386 (area 630 Sq. Mtrs.) and 388 (area 5350 Sq. Mtrs.). The total area of disputed land is 43644.00 sq. mtrs and till today a large chunk of whole area is still disputed.

It is reiterated that as a result of the orders of the Hon'ble NGT, non-availability of approach / connecting road to our plot and regular agitation and stoppage of work by farmers and encroachment of front, the booking of flats at the projects of the Corporate Debtor was severely affected. Allottees who had already booked their units, cancelled the booking and demanding refund, apart from there being no fresh booking. The Corporate Debtor had to suffer heavily since finances arranged at higher rate of interest and deployed on these projects remained unproductive and the interest burden accumulating.

- (k) That construction activities of the Corporate Debtor was severely slowed down due to the wide-spread onslaught pandemic, that is, the novel corona virus.
- (l) In submission all the above reasons have resulted in overall stoppage/ slow down of construction for a period of 8 yrs which if added to the period prescribed under agreement, is no default in present matter.

However, despite various hardships and adversities, the Corporate Debtor was able to commence and continue with the development of the Said plot.

7.12. That in the light of the hindrances faced by the Corporate Debtor and the havoc caused by the Covid-19 pandemic in the Country, the UP RERA has already extended the time period for completion of the project till March 2022. A copy of the notification(s) dated 06.06.2020, 03.02.2020 and 22.12.2021 along with tabular submission on extended dates has been attached and annexed herewith as-**Annexure 8 (Colly.)**



7.13. That without prejudice to the aforesaid contentions by the Corporate Debtor, even if it is admitted fact that there is some delay in handing over possession of the flats/units to the allottees due to the reasons stated above which are beyond the control of the Corporate Debtor no default can be attributable to the Corporate Debtor as per the agreement between the parties and principles of law. That it is pertinent to mention that despite the abovementioned difficulties faced by Corporate Debtor, it has completed the construction of towers F & H & C and has offered possession to the allottees/Homebuyer and allottess are already residing in F and H tower, therein which includes 15 home buyers of allottees out of class of allottees which are represented by Respondent No. 1 herein.

7.14. That the Builder Buyer Agreements entered into between the Allottees/Unit Holders and the Corporate Debtor entail the following two Clauses which are pertinent to mention in order to understand the fact and factum of the issue in hand-

CLAUSE 9.3

"The Company has explained and the Allottee has understood and agreed that in the event the offer of possession of the Said Apartment/Unit is delayed after the expiry of the grace period of six (6) months, except for Force Majeure circumstances and the Allottee not being in default/breach of the terms and conditions set out in this Allotment Letter including timely payment of installments, other charges and dues, the Company shall pay penalty charges @5/- (Rupees 5 only) per sq. ft. of super area of the said Apartment/ Unit per month to the Allottee whose name appears first in the Allotment Letter and not to anyone else. The Company has explained and the Allottee has agreed and confirmed that the Penalty Charges mentioned herein are just and proper and the Allottee shall have no other rights or claims whatsoever under any circumstances and shall not claim any damages or compensation etc. of any kind whatsoever on any account....."

"Definition of Force Majeure in the Recitals of the Agreement

"Force Majeure": "Force Majeure" means any event or combination of events or circumstances beyond the control of the Company which cannot by the exercise of reasonable diligence, or despite the adoption of reasonable precaution and/or alternative measures, be prevented, or caused to be prevented, and which

adversely affects the Company's liability to perform obligations under this Application, which shall include but not be limited to:

- (a) Acts of God i.e. fire, drought, flood, earthquake, epidemics, natural disaster etc.;
- (b) Explosions or accidents, air crashes and shipwrecks;
- (c) Strikes or lockouts, industrial dispute, civil commotion, farmers' unrest or agitation;
- (d) Non-availability of cements, steel or other construction materials due to strikes of manufacturers, suppliers, transporters or other intermediaries or due to any reason whatsoever;
- (e) War and hostilities of war, riots, bandh, act of terrorism;
- (f) The promulgation of or amendment in any law, rule or regulation or the issue of any injunction, Court Order or direction from any Governmental Authority that prevents or restricts the Company from complying with any or all of the terms and conditions as agreed in this Application;
- (g) Any Legislation, Order or Rule or Regulation made or issued by the Government or any other Authority or if any Competent or Statutory Authority (ies) refuses, delays, withholds or denies the grant of necessary approvals for the Said Complex/Project or Said Tower/Building or if any Matters, issues relating to such approvals, permissions, notices, notification by the Competent Authority (ies) become subject matter of any Legal Proceeding before any competent Court or for any reason whatsoever;
- (h) Any event or circumstances analogous to the foregoing."

CLAUSE 13

FORCE MAJEURE

“13.1. The Company has explained and the Allottee has agreed that the Company shall not be liable to perform any or all of its obligations during the subsistence of any Force Majeure circumstances and the time period required for performance of its obligations shall inevitably stand extended. If in the opinion of the Company Force Majeure continues for a



considerable time, then the Company may in its sole discretion put the construction of the Said Project in abeyance and cancel/amend/modify/vary the terms and conditions of this Allotment Letter. In case of such cancellation of this Allotment Letter, the Company shall be liable only to refund the entire amount received from the Allottee with simple interest @ 9% (nine percent) per annum calculated from the date of realization of respective amounts by the Company till the date mentioned in the letter/notice sent by the Company to the Allottee for such cancellation after a period of 90 days after such cancellation, provided the Allottee is not in breach or violation of any of the terms and conditions of this Allotment Letter. The Company has explained and the Allottee has understood and agreed that after such cancellation and dispatch of such refund amount cheque by the Company, the Allottee shall have no right, interest, claim and lien of any nature whatsoever on the Said Apartment/ Unit and against the Company. The Allottee has also agreed that in case two or more Allottees have been allotted the Said Apartment/ Unit jointly, such refund amount cheques shall be dispatched by the Company in the names of all the Allottees in equal ratio at the address of the first named Allottee. Thereafter the Allotment Letter shall be treated as null and void.

"13.2 The Company has explained and the Allottee has agreed that the Company may, in its sole discretion, suspend or terminate the Said Project or any part of the Said Project due to any Force Majeure circumstances or due to any other reason whatsoever and in such an eventuality, the Company shall be entitled to cancel the Allotment Letter of the Said Apartment/ Unit and on such cancellation, the Company shall be liable only to refund the entire amount received from the Allottee with simple interest @ 9% (nine percent) per annum calculated from the date of realization of respective amounts by the Company till the date mentioned in the letter/notice sent by the Company to the Allottee for such cancellation after a period of 90 days after such cancellation, provided the Allottee is not in breach or violation of any of terms and conditions of this Allotment Letter. The Company has explained and the Allottee has understood and agreed that after such cancellation and dispatch of such refund amount cheque by the Company, the Allottee shall have no right, interest, claim and lien of any nature whatsoever on the Said Apartment/ Unit and against the Company. The Allottee has also agreed that in case two or more Allottees have been allotted the Said Apartment/ Unit jointly, such refund amount cheques shall be dispatched by the Company in the names of all the Allottees in equal ratio at the



address of the first named Allottee. Thereafter, the Allotment Letter shall be treated as null and void."

7.15. That the Home-buyers / Respondent No.1 herein is restricted only to the extent of the *Ajnara Ambrosia* project of the Corporate Debtor. It is pertinent to consider that there are 1694 number of flats/apartments in *Ajnara Ambrosia*, including commercial, out of which 1318 flats/apartments have been booked/agreed to be sold. There are 157_ number of allottees who have paid their respective consideration amount in full and have taken possession. About 430 allottees (tower F, H and C) have been offered possession, except 157 who have cleared their dues and took possession, balance 273 out of these 430 have till date not paid in full and final and taken their possession. Corporate Debtor was even willing to satisfying these applicants with constructed units available with it however L & T did not allow the swapping of units against unclaimed units ready for possession. Aside to it , there are 273 allottees who have defaulted in making payment of their instalments due towards the Corporate Debtor. Overdue receivables to the tune of 26.55 crores are pending in the project ambrosia as a whole, list is attached as **Annexure-9.**

7.16. That Corporate Debtor has no *mala-fide* or dishonest intention against any of the Stakeholders of the said project. That it is pertinent to mention that the Corporate Debtor has faced unforeseeable issues which were unquestionably beyond the control of the Corporate Debtor. That due to reasons iterated above, including but not limited to Farmers aggressive agitation, elongated pendency of multiple land acquisition cases in the Hon'ble High Court of Judicature at Allahabad and Hon'ble Supreme Court of India, Restraint Order passed by the Hon'ble National Green Tribunal with respect to Okhla Bird Sanctuary as the project fell within the radius of 10 kms of the sanctuary, Non-availability of access roads to be provided by civic agencies and stoppage and halting of all works of the Corporate Debtor due to the sudden unprecedeted outbreak of the novel corona virus. Irrespective of the same, the Corporate Debtor has always evolved on the basic principle of 'Customer First'. With an experience in real estate of over 31 years, the company has grown from strength to strength and have



successfully delivered numerous projects in various corners of Delhi NCR.

7.17. That it is pertinent to note that Corporate Debtor has been putting all possible efforts to revive the project for successful completion and timely deliver homes to its Home buyers.

7.18. The Corporate Debtor Company has approached Punjab National Bank Housing Finance (herein referred as '**PNB HFL**') for One Time Settlement (herein referred to as '**OTS**') of their loan and the same is in its advance stage and near conclusion and it is further stated that PNB HFL was actively considering the OTS with the Corporate Debtor right up till the Corporate Debtor was admitted into Insolvency. That PNB HFL after reviewing the proposal is willing to accept the OTS subject to certain conditions and is waiting for final acceptance of the same by the Corporate Debtor company. The Email trail of the communication exchanged between Corporate Debtor Company and PNB HFL is herein annex as **ANNEXURE-10**.

7.19. That there is no default in repayment of loan by the Corporate Debtor advanced by TATA Capital Financial Services Limited and L&T Finance Limited. An interest of about Rs. 182 crores have been paid to L & T by the Corporate Debtor out of which nearly 90 crores burden is on account of COVID and other delays. payments to the Financial Lenders of the Corporate Debtor are paid-on time and up-to-date as on date of the initiation of the CIR Process against the Corporate Debtor.

7.20. That it is pertinent to note that IVR Prime Developers (Avadi) Private Limited (Proforma Respondent in IB No. 194 (ND) of 2021 titled as 'Mr. Manish Kumar Gupta & Ors. v. M/s Ajnara India Limited & Anr') wrote a letter dated 17.02.2022 to New Okhla Industrial Development Authority (NOIDA) for seeking permission for sub-division of the group housing plot no GH 01, Sector 118, NOIDA, District Gautam Budh Nagar, Uttar Pradesh leased in favor of IVR Prime Developers Private Limited. It stated that the said plot is being developed in 2 clusters of towers- first, land admeasuring 74,946 sq. meters forming part of said plot is being developed as a residential group housing project under the name of 'Ambrosia'; second, land admeasuring 68,021 sq. meters forming part of said plot is being developed as another residential group housing project. Corporate Debtor has on the letter received from



NOIDA dated 04.07.2022, provided the necessary details. It is pending for approval of NOIDA Authority. The copy of the Letter dated 17.02.2022 and the letter dated 04.07.2022 received from NOIDA Authority is herein attached as **ANNEXURE-11**.

7.21. That the development of the aforesaid plot has constantly been compromised and hindered due to various reasons mentioned above [refer to point 10(xi)]. The IVR Prime Developers (Avadi) Private Limited is facing continuous operational and commercial issues in effectively developing and handling the said plot. The IVR Prime Developers (Avadi) Private Limited is of the view that NOIDA allows to sub-divide first plot from the said plot and allow it to transfer the part together with Ambrosia to Ajnara India Limited.

7.22. That the appellant has also vide E-mail dated 10.10.2022 provided an offer of settlement to the home buyers wherein they have undertaken to complete the construction and hand over flats to Home Buyers within 6 months of indulgence granted by the Hon'ble Tribunal with grace period of 3 months and had also offered a refund within 3 to 4 months. The said Email dated 10.10.2022 is annexed as **ANNEXURE-12**. The proposal/ E-Mail circulated to the Home Buyers may be read as an undertaking of the Appellant to this Hon'ble tribunal. The appellant is duty bound and obligated to complete the said undertaking and continue to resolve issues of the Corporate Debtor and the *bonafide* of the Appellant is also proven from fact that till date Appellant has duly serviced debts of all lenders of the Corporate Debtor namely Tata , L&T and PNB HFL. And there has been no default in service of debt to lenders. The Corporate Debtor being positive in its net worth and cashflows is not an insolvent entity and therefore pushing the Corporate Debtor to CIRP will only result in grave miscarriage of justice depriving home buyers of their homes and lenders of recovery of debts. An urgent intervention is required by this Hon'ble Appellate Tribunal in interest of justice.

7.23. That in pursuant to the above payment of dues to NOIDA, GNOIDA/ YEIDA; Larsen & Toubro Finance Limited (herein referred as '**L&T**') has sent a letter dated 22.06.2022 to the Corporate Debtor that they are in-principle agreeable to consider to disburse Rs. 500,000,000/- (Rupees Fifty Crores Only) against the dues payable to Noida. NOIDA was also apprised regarding the letter issued by L&T regarding in-principle

agreeable to disburse the amount vide letter dated 23.06.2022. Copy of letter dated 22.06.2022 and 23.06.2022 is herein attached as **ANNEXURE – 13 (Colly.)**

8. That this appeal is made *bonafide* and in the interest of justice and deserves to be allowed.

8A. FACTS IN ISSUE

The facts in issue are detailed in Heading 7 titled “Facts of the case” above.

8B. QUESTIONS OF LAW

I. Whether the impugned Order dated 20.09.2022 passed by the Ld. Adjudicating Authority is contrary to the principles of natural justice?

II. Whether the commencement of CIRP will stall all the projects of the Appellant and cause prejudice to all Home-buyers, Investors and Stakeholders of the Developer?

Whether the Adjudicating Authority failed to realize that the Appellant has multiple Projects and having them all under the garb of insolvency will be of grave prejudice to all the stakeholders, Home-buyers and creditors of the Appellant?

III. Whether running a project-wise Insolvency is justified in the eyes of the law and under the Code?

IV. Whether the Adjudicating Authority failed to appreciate that the factum that the majority projects of the Appellant are complete and a huge number of people are in possession of their homes?

V. Whether the refusal of indulgence of the Hon'ble Tribunal in the Rule 11 Application filed by the Corporate Debtor to bring on record Written Submissions as on short accommodation sought due to the unavailability of Senior Arguing counsel was rejected by the Tribunal and the Order was reserved in the said matter. Even though the timeline to challenge the said Order has expired, can the same be challenged in the interest of justice and larger public good?



9. GROUNDS RAISED WITH LEGAL PROVISIONS

That the Appellant is aggrieved by the Impugned Order on the grounds mentioned hereinbelow, which are, where necessary, without prejudice and alternate to each other:

- I. BECAUSE the impugned Order dated 20.09.2022 passed by the Ld. Adjudicating Authority is contrary to the principles of natural justice.
- II. BECAUSE in the case of a real estate infrastructure company to keep the company going concern, the flats/Units and projects of the Appellant are to be completed.
- III. BECAUSE although the Homebuyers come within the meaning of 'Financial Creditors'. They do not have any expertise to assess 'viability' or 'feasibility' of a 'Corporate Debtor'. The above being the case and having regard to the fact that the Corporate Debtor in the instant case has a large size, scale and complexity owing to about multiple projects with thousands of allottees and separate lenders, RERA registrations, land owners and different timelines of delivery will make a CIRP complicated and without resolution having maximization of commercial value or the above-mentioned huge number of stake holders. The Corporate Debtor has delivered about 75 projects, **17000+ delivered Units** to Allottees, currently 16 projects are under construction with 6000+ units, over 3500+ units have been offered possession for. The structure of the project Ambrosia is 100% complete, only finishing is pending which will take about 6 to 9 months. As already stated before, 470 units are already under offer for possession out of which 157 has already been taken possession by the unit holders. The Applicant Financial Creditors are all part of this very project only. No other Financial Creditor to this Corporate Debtor is before Hon'ble NCLT as on date. Therefore, this aspect has not been considered by the Ld. Adjudicating Authority. For a project which is at such advance stage of completion, it is not justified to put the whole company to the rigours of CIRP.



- IV. BECAUSE even the Home-buyers other than the 113 +15 home-buyers who initiated the CIRP of the Corporate Debtor who are bound to take seat in the Committee of Creditors are also not inclined to adopt CIRP as a method for resolution and are supporting the contention to let the Ex Management continue to develop the project in a reverse CIRP mechanism under the supervision of the Ld. Adjudicating Authority and/or Resolution Professional. Further, several Homebuyers association have expressed their desire in line with above to stay out of the CIRP and support the suspended Management in completing the project. Copy of letters by Association of allottees as well as allottees groups are Annexed as **Annexure-14 (Colly)**.
- V. BECAUSE the Corporate Debtor Company has currently 8 projects undertaken by it, out of which one project have no debts from banks or financial institutions ,the company is only having joint development rights.. It is also pertinent to state that as all projects are at different stages of completion having major obligations towards homebuyers/allottees not having concern with the other projects as well as no joint lending across the projects, it is in the interest of all the stakeholders that committee of creditors, yif at all to be constituted, or resolution plan to be sought, should be on a project wise basis. And in the light of expression of interest by the suspended management, to continue the development and deliver the said projects, all projects at present stage should be allowed to be developed and delivered under the reverse insolvency resolution mechanism established by the Hon'ble Appellate tribunal especially for the benefit of homebuyers and allottees in the real estate sector
- VI. BECAUSE the Home-buyers / Respondent No. 1 herein is restricted only to the extent of the *Ajnara Ambrosia* project of the Corporate Debtor. . It is pertinent to consider that there are 1694 number of flats/apartments in *Ajnara Ambrosia*, including commercial, out of which 1318 flats/apartments have been booked/agreed to be sold. There are 157_ number of allottees who have paid their respective consideration amount in full and have taken possession. There are 273 allottees who have defaulted in making payment of their instalments due to the Corporate Debtor. The same has already



been dealt with above and is not being reiterated for the sake of brevity.

- VII. BECAUSE the projects of Corporate Debtor required only last mile funding to get the construction complete. The Appellant herein has managed to bring in an investor onboard who is ready to infuse funds to restart the stalled projects of the Corporate Debtor as last mile funding for the completion of construction, as it is a viable proposition.
- VIII. BECAUSE the Appellant is also ready to infuse Rs. 15 Crores as Interim Funding/priority funds towards the construction of the projects of the Corporate Debtor , which are returnable on priority over other financial creditors from cash flows .
- IX. BECAUSE the Appellant is willing to complete the projects in the time bound manner along with discharging liabilities of all Financial creditors, Homebuyers and even Operational Creditors.
- X. BECAUSE Corporate Debtor has sufficient receivables with positive net worth of Rs. 194 crores on the completion of the project Ambrosia. It is pertinent to mentioned that all projects of the Corporate Debtor require only a **last mile funding** for completing constructions which will result in generation of adequate cashflows to meet out all obligations of the Corporate Debtor. The Appellant herein has mobilized interested investors/ private financers and a strategic partner to bring in the last mile funding (priority funding) required to complete the said project of the Corporate Debtor and for completion of construction, as it is a viable proposition being made *bonafide* and in the interest of the Home Buyers, Stake Holders and the Corporate Debtor. Even a strategic partner has agreed “in-principle” to induce 200 crores to complete the stalled project of the Corporate Debtor. The said term sheet is annexed herewith as **ANNEXURE-15**.
- XI. BECAUSE the Corporate Debtor is a solvent Company (on a project completion basis) which fact is well evident in its Balance Sheets, project cash flows and the fact that it has Rs. 430 Crores approx. as receivables already due pending receivales of sold units of all



projects and Rs 2450 crores from unsold inventory and developments and about Rs. 200 Crores has a balance receivables of the project namely Ajnara Ambrosia. Further, another 2000 crores can be generated subject to resolution of dispute of one of the key projects called sports city of the corporate debtor. It is further pertinent to mention that admittedly there were some unforeseen issues relating to building of the project development for one or other reason beyond the control of the Corporate Debtor, that is, land dispute with the development authority, farmers agitation, the NGT blanket ban on construction from 01.11.2019 to 15.12.2019etc. caused the delay and thereafter, COVID-19 played major setback for real estate industry as well as the Corporate Debtor which reasons form part and parcel of the Appeal filed by the Appellant and are not reiterated herein for the sake of brevity. It is pertinent to mention that a huge amount to the about of INR 70 Crores approximately is immediately receivable by the corporate debtor which will start immediately on resumption of construction activity by the Corporate Debtor from the Homebuyers as per the construction linked payment plans. The same will substantially improve the liquidity of the Corporate Debtor. A Copy of latest audited Balance Sheet of Corporate Debtor is **Annexure-16**.

- XII. BECAUSE the objective of Insolvency and Bankruptcy Code is to reinstitute the Corporate Debtor and keep it a going concern while paying off the dues of the Financial Creditors which the Appellant here is very much inclined to achieve and, in this regard, has submitted OTS proposal to the PNB Housing Finance Limited.

- XIII. BECAUSE PNB HFL after reviewing the proposal is willing to accept the OTS subject to certain conditions and is waiting for final acceptance of the same by the Corporate Debtor company.

- XIV. BECAUSE the Ld. Adjudicating Authority has failed to appreciate the matter adjudicated by the Hon'ble National Company Law Appellate Tribunal, in the case of **Flat Buyers versus Umang Realtech Pvt Ltd judgement** dated 04.02.2020 passed in CA(AT)(Ins) No. 926 of 2019 which categorically states that

“...in Corporate Insolvency Resolution Process against a real estate, if allottees (Financial Creditors) or Financial



Institutions/Banks (Other Financial Creditors) or Operational Creditors of one project initiated Corporate Insolvency Resolution Process against the Corporate Debtor (real estate company), it is confined to the particular project, it cannot affect any other project(s) of the same real estate company (Corporate Debtor) in other places where separate plan(s) are approved by different authorities, land and its owner may be different and mainly the allottees (financial creditors), financial institutions (financial creditors, operational creditors are different for such separate project.

The asset of the company (Corporate Debtor – real estate) of that particular project is to be maximized for balancing the creditors such as allottees, financial institutions and operational creditors of that particular project. Corporate Insolvency Resolution Process should be project basis, as per approved plan by the Competent Authority. Any other allottees (financial creditors) or financial institutions/ banks (other financial creditors) or operational creditors of other project cannot file a claim before the Interim Resolution Professional of other project and such claim cannot be entertained.

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

... In the light of aforesaid discussion, as we find it is very difficult to follow the process as in normal course is followed in a Corporate Insolvency Resolution Process, we are of the view, that a ‘Reverse Corporate Insolvency Resolution



Process' can be followed in the cases of real estate infrastructure companies in the interest of the allottees and survival of the real estate companies and to ensure completion of projects which provides employment to large number of unorganized workmen."

XV. Further, the Hon'ble Supreme court has refused to interfere in such previous challenges in the matter of **Narender Singh Versus Umang Realtech** tagged with **Asset Reconstruction Company (India) Versus M/s Dagcon (India) Pvt. Ltd.** (CIVIL APPEAL Diary No(s). 14352/2020) stating that "*We find no ground to interfere with the impugned orders passed by the National Company Law Appellate Tribunal.*"

XVI. BECAUSE the Ld. Adjudicating Authority has failed to appreciate the Hon'ble National Company Law Appellate Tribunal, Principal Bench – New Delhi Judgement dated 10.06.2022 in the matter of **Ram Kishor Arora Suspended Director of M/s. Supertech Ltd Versus Union Bank of India & Anr.** having Company Appeal (AT) (Insolvency) No. 406 of 2022 wherein NCLAT started CIRP' Process, Project-Wise Resolution of Supertech Ltd and has issued following interim decisions

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

- i. The Interim Order dated 12th April, 2022 continuing as on date is modified to the extent that IRP may constitute the CoC with regard to the Project Eco Village II only.*
- ii. After constitution of CoC of Eco Village II Project, the IRP shall proceed to complete the construction of the project with the assistance of the ex management, its employees and workmen*
- iii. With regard to the Eco Village II Project, the IRP shall proceed with the completion of the project, Resolution and shall be free to prepare Information Memorandum, issue Form -G, invite Resolution Plan however no Resolution Plan be put for voting without the leave of the Court.*
- iv. All receivables with regard to the Eco Village II Project, shall be kept in the separate account, earmarked account*

and detail accounts of inflow and outflow shall be maintained by the IRP.

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

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

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

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

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

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

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

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

XVII. BECAUSE the Ld. Adjudicating Authority has failed to appreciate that Resolution is the primary object of the Insolvency and Bankruptcy Act, 2016 which was held by the Hon'ble Supreme Court of India Judgement dated

12.07.2022 in the matter of **Vidarbha Industries Power Limited Vs. Axis Bank Limited**, Civil appeal No. 4633 of 2021 which categorically states that:

"63. The meaning and intention of Section 7(5)(a) of the IBC is to be ascertained from the phraseology of the provision in the context of the nature and design of the IBC. This Court would have to consider the effect of the provision being construed as directory or discretionary.

*64. Ordinarily the word "may" is directory. The expression 'may admit' confers discretion to admit. In contrast, the use of the word "shall" postulates a mandatory requirement. The use of the word "shall" raises a presumption that a provision is imperative. However, it is well settled that the *prima facie* presumption about the provision being imperative may be rebutted by other considerations such as the scope of the enactment and the consequences flowing from the construction.*

80. The IBC, as observed above, is intended to consolidate and amend the laws with a view to reorganize Corporate Debtors and resolve insolvency in a time bound manner for maximization of the value of the assets of the Corporate Debtor.

81. The title "Insolvency and Bankruptcy Code" makes it amply clear that the statute deals with and/or tackles insolvency and bankruptcy. It is certainly not the object of the IBC to penalize solvent companies, temporarily defaulting in repayment of its financial debts, by initiation of CIRP. Section 7(5)(a) of the IBC, therefore, confers discretionary power on the Adjudicating Authority (NCLT) to admit an application of a Financial Creditor under Section 7 of the IBC for initiation of CIRP."

XVIII. BECAUSE the Ld. Adjudicating Authority has failed to appreciate the Hon'ble Supreme Court of India, in the matter of **Anand Murti Vs. Soni Infratech Private Limited & Anr.** (CA NO. 7534 OF 2021) held that:

"22. Taking into consideration the salient features of the undertaking given on affidavit by the Promoter, Shri Kashi Nath Shukla and the fact that there are only



seven out of the 452 homebuyers, who opposed the Settlement Plan, we find that it will rather be in the interest of the homebuyers that the appellant/promoter is permitted to complete the project as undertaken by him. It is pertinent to note that he has agreed that the cost of the flat will not be escalated. He has also given the time line within which the project would be completed. Not only this, but he has also undertaken to refund the amount paid by the seven objectors, if they so desire. He has further agreed that there shall be a team of 5 persons, 2 from the homebuyer's side and 2 from the management side and that the entire process shall be monitored by the IRP.

23. We find that there is every possibility that if the CIRP is permitted, the cost that the homebuyers will have to pay, would be much higher, inasmuch as the offer made by the resolution applicants could be after taking into consideration the price of escalation, etc. As against this, the Promoter has filed a specific undertaking specifying therein that the cost of the flat would not be escalated and that he would honour the BBA signed by the previous management."

XIX. BECAUSE the Ld. Adjudicating Authority has failed to appreciate the Hon'ble National Company Law Appellate Tribunal, New Delhi in the matter of **Rajesh Goyal Versus Babita Gupta & Ors.** (Company Appeal (AT) (Insolvency) No. 1056 of 2019) wherein the Hon'ble Court held that :

"The procedure as followed in "Flat Buyers Association Winter Hills - 77, Gurgaon" (Supra) shows curtailment of period of resolution without asking for 'resolution plan' from the third party before finalisation of the 'resolution plan'. The resolution can be taken even during the 'corporate insolvency resolution process', if any 'Promoter' as investor agrees to invest the money for keeping the company as a going concern and complete the project within the time frame. In view of the fact that part of the infrastructure (Apartments/Flats) has already been completed, the allottees (Financial Creditors) were the main beneficiaries of the infrastructure have already reached settlement with the 'Promoter' and the fact that the 'Promoter' as an 'outsider financial creditor' has agreed to invest the amount, not from the account of the 'Corporate Debtor' but from other sources to keep the infrastructure as a going concern, we in exercise of inherent powers conferred under Rule 11 of the NCLAT Rules, 2016, pass the following order:

- i. 'Rajesh Goyal' (Promoter) is directed to cooperate with the Interim Resolution Professional and disburse amount (apart from the amount already disbursed) from outside as Lender (financial creditor) not as Promoter to ensure that the project



- is completed within the time frame as given by him. The disbursement of amount which has been made by 'Rajesh Goyal.' and the amount as will be generated from dues of the Allottees (Financial Creditors) during the Corporate Insolvency Resolution should be deposited in the account of the Company (Corporate Debtor) to keep the Company a going concern. The amount can be utilized only by issuance of cheque signed by the authorised person of the Company (Corporate Debtor) with counter signature by the Interim Resolution Professional. The Bank in which the Corporate Debtor (Company) has account the amount should be deposited only for the purpose of completion of the Project. Banks will allow the cheques for encashment only with the counter signature of the Interim Resolution Professional.
- ii. The flats/apartments should be completed in all aspect by 30th June, 2020. All internal fit outs for electricity, water connection should be completed by 30th July, 2020. The allottees are directed to deposit their balance amount and pay 90% without penal interest, if not deposited, by 15th March, 2020. The Allottees in whose favour possession has been offered and clearance has been given by the competent authority are bound to pay the cost for registration and directed to deposit registration cost to get the flats/apartments registered after paying all the balance amount in terms of the agreement.
 - iii. Common area such as Swimming Pool, Club House etc. as per the agreement, be also completed by 30th August, 2020. The allottees are allowed to form 'Residents Welfare Association' and get it registered to empower them to claim the common areas.
 - iv. 'Rajesh Goyal' will return the amount to the allottees, who already sought for, within the time frame i.e. 30% of the principal amount within 90 days and rest 70% of the principal amount within 180 days. The interest be paid to them in the



- manner as detailed above by 30th. August, 2020. The 'Financial Institutions/ 'Banks' and 'Operational Creditors', if any should be paid simultaneously within the period of 180 days.
- v. All these processes should be completed by 30th August, 2020. If it completed, the Corporate Insolvency Resolution Process be closed after intimating it to the Adjudicating Authority (National Company Law Tribunal). The resolution cost including fee of the Interim Resolution Professional will be borne by the Promoter. Only after getting the certificate of completion from the Interim Resolution Professional/ Resolution Professional and approval of the Adjudicating Authority (National Company Law Tribunal) unsold flats/ apartments etc. be handed over to the Promoter.
- vi. It is made clear that even during the Corporate Insolvency Resolution Process, the Interim Resolution Professional can also sell the unsold flats/apartments, by way of a Tripartite Agreement between the Purchaser, Interim Resolution Professional/Resolution Professional and Promoter (Rajesh Goyal). The proceeds as may be generated from such sale should be utilized for completion of the project, payment to Financial Institutions/Banks, Operational Creditors and interest as is payable to the allottees whose principal amount is to be refunded. Once the project is completed, the 'Interim Resolution Professional' will move application before the Adjudicating Authority (National Company Law Tribunal) with the report of completion and ask for disposal of application under Section 7 of the 'I&B Code' filed by Ms. Babita Gupta, Mr. Manoj Kumar Gupta and Ms. Sweta Gupta (Allottees – Financial Creditors).
- vii. However, if the 'Promoter' fails to comply with the undertaking and fails to invest as financial creditor or do not cooperate with the Interim Resolution Professional/Resolution Professional, the Adjudicating Authority (National Company

Law Tribunal) will complete the Insolvency Resolution Process.

The appeal stands disposed of with aforesaid observations and directions."

That the allottees are the main beneficiaries of the infrastructure and the fact that the 'Promoter' as an 'outsider financial creditor' has agreed to invest the amount, not from the account of the 'Corporate Debtor' but from other sources to keep the infrastructure as a going concern has to be appreciated by th Hon'ble Court.

XX. BECAUSE the Ld. Adjudicating Authority has failed to appreciate the Hon'ble National Company Law Appellate Tribunal, in the matter of **Reliance Commercial Finance Limited Versus Darode Jog Builder Private Limited** (Company Appeal (AT) (Insolvency) No. 1005 of 2022) which categorically states that:

"56. Both, the Adjudicating Authority (NCLT) and the Appellate Tribunal (NCLAT) proceeded on the premises that an application must necessarily be entertained under Section 7(5)(a) of the IBC, if a debt existed and the Corporate Debtor was in default of payment of debt. In other words, the Adjudicating Authority (NCLT) found Section 7(5) (a) of the IBC to be mandatory. The Adjudicating Authority (NCLT) was of the view that Section 7(5)(a) did not admit any other interpretation, with which the Appellate Tribunal (NCLAT) agreed.

Even after debt and default, Adjudicating Authority has to apply its mind to assess the feasibility of initiating CIRP. When the Corporate Debtor has complied to deposit the entire defaulted amount of the Financial Creditor as permitted by the Adjudicating Authority, no purpose and occasion shall survive to still proceed with the Insolvency Resolution of the Corporate Debtor. Proceedings under Section 7 are for the resolution of insolvency. Adjudicating Authority had not erred in ascertaining whether the Corporate Debtor can comply to deposit the entire defaulted amount in Financial Creditor's bank account. It was observed that the Financial Creditor's interest was fully protected since liberty was already given to reviving the petition in case the full amount was not received within 45 days."



XXI. BECAUSE the Ld. Adjudicating Authority has failed to appreciate the Hon'ble Supreme Court in the matter of **Ashok G. Rajani vs. Beacon Trusteeship Ltd. and Ors.** (Civil Appeal No. 4911 of 2021) held that:

"The settlement cannot be stifled before the constitution of the Committee of Creditors in anticipation of claims against the Corporate Debtor from third persons. The withdrawal of an application for CIRP by the applicant would not prevent any other financial creditor from taking recourse to a proceeding under IBC. The urgency to abide by the timelines for completion of the resolution process is not a reason to stifle the settlement."

XXII. BECAUSE the Ld. Adjudicating Authority has failed to appreciate that Reverse Corporate Insolvency Resolution Process' can be followed in the cases of real estate infrastructure companies in the interest of the allottees and survival of the real estate companies promulgated by the Hon'ble National Company Law Tribunal, Bengaluru Bench Judgement dated 04.09.2020 in the matter of **Mr. Pratap Chandra Pandhy & Ors. Versus M/s Dreamz Infra India Ltd.** having CP (IB) No. 84/BB/2019 which categorically states that:

"It is stated that there are various projects initiated by the Corporate Debtor with various names, which are under stages viz some are nearing completion, some are under completion, some are not all started. It is natural that a person will book a flat in a particular project and he is entitled to get that particular booking the flat in that project only, not in all other projects unless the Corporate Debtor or real estate firm assures like that. However, the Applicant (RP) after admission of the case has issued public announcement (Form A) dated 03.09.2019 calling upon all Creditors of the Dreamz Infra India Limited (Corporate Debtor) to submit their claims with proof on or before 13.09.2019. therefore, hundreds of people belonging to all projects of Dreamz Infra India Limited have responded. The Applicant by concluding that same procedure what applies to DreamzSamadhur would also apply to all other projects of Dreamz Infra Indian Ltd in general, and thus invited all claims against it by notification and thus opened Pandora Box. And the issued raised by the Applicant in the instant Applications would have serious ramifications having civil consequences, which



cannot be adjudicated in summary proceedings contemplated under the provisions of the Code.

Naturally, every Real Estate project has its Customers and a customer of one project cannot claim against another project as the projects are separate and distinct unless the terms and conditions states contrary. In the instant case, the Petitioners have booked their Flats only in Dreamz Samadhur Project, they are not entitled for Flats in other projects of the Corporate Debtor. However, for the reasons best known to the Applicant, he has invited all Claimants against the Corporate Debtor. Therefore, several people, whose interest are going to be affected by virtue of illegal actions, have raised several objections opposing the efforts of the RP to inspect the other projects. Therefore, the Applicant not only expanded the scope of CIRP, in contrary to law but also responsible for several disputes. It is settled principle of Law that insolvency proceedings, under the provisions of Code, are summary in nature. The Applicant, in the present Applications has raised several issues, which are purely serious civil in nature, which requires proper adjudication by Civil Courts, basing on adducing evidence and examining witness etc. as per law.....”

XXIII. BECAUSE the Ld. Adjudicating Authority has failed to appreciate the view of the decision of the Hon'ble Supreme court in “**Pioneer Urban Land and Infrastructure Limited &Anr. v. Union of India &Ors.- (2019) SCC OnLine SC 1005**”, wherein the Hon'ble Supreme Court observed as follows:-

“This the real estate developer may do by pointing out, for example, that the allottee who has knocked at the doors of the NCLT is a speculative investor and not a person who is genuinely interested in purchasing a flat/apartment. They can also point out that in a real estate market which is falling, the allottee does not, in fact, want to go ahead with its obligation to take possession of the flat/apartment under RERA, but wants to jump ship and really get back, by way of this coercive measure, monies already paid by it.”



That in support of the same, it is astonishing and pertinent to mention herein that the said Appellant has been receiving from time to time fairly good number of letters approximately from its Allottees, intending to take possession of their Units and make payments of their outstanding amounts. This clearly shows that the Appellant herein is an honest Builder Company that wants to deliver on its promises.

- XXIV. BECAUSE so far there has been no successful resolution plan implemented in Uttar Pradesh NOIDA/GNIDA/YEIDA area because of contentious issues involved pending adjudication before various courts / forums, where most of the projects of Appellant/Corporate Debtor are situated. The matters are either stuck in courts during Corporate Insolvency Resolution Process or after approval of plan as State Authorities have challenged their creditor status and payouts which are still undecided. The Hon'ble Adjudicating Authority has also passed the impugned Order in a mechanical fashion ignoring the specific vagaries faced by Corporate Debtor and its stakeholders in the present matter. It is respectfully submitted that if the Hon'ble Authority would not interfere in the present matter to protect that interest of public at large a complicated resolution process is highly unlikely to bear any fruit or bring about any relief or resolution to the already stressed projects of the Corporate Debtor.

- XXV. BECAUSE in most cases, the Committee of Creditors take 'haircut'. The Resolution Applicants satisfy them most of the time with a lesser amount than the amount as determined. In the case of allottees (Financial Creditors), there cannot be a haircut of assets/ flats/ apartment. As 80 to 90 % construction is complete in *Ajnara Ambrosia*, let the (now) suspended management take charge along with the interim resolution professional, develop the project fully, and hand over possession to Home-buyers

- XXVI. BECAUSE the Hon'ble Adjudicating Authority has failed to appreciate that the harsh reality is that there is no resolution to the Builders and its Creditors if the Company goes under CIRP. Usually, resolution plans are not approved that easily, if they are approved then the NOIDA/GNOIDA and other Authorities object it. The entire process is a vicious cycle, if the process is stopped entirely due to triggering of a Corporate Insolvency Resolution



Process and all projects are stalled, the entire Corporate Debtor Company and its projects will reach a stand-still. Even those which are nearing completion, compliant and ready to be handed over. In such a case, possibility of cash-flow will be more lucrative for the Creditors of the Corporate Debtor.

- XXVII. BECAUSE the Impugned Order passed by the Ld. Adjudicating Authority has failed to appreciate that the preamble to the code is a composite statement referring to consolidation of laws relating to re-organization and insolvency resolution of corporates and individuals in a time-bound manner.
- XXVIII. BECAUSE Hon'ble National Company Law Appellate Tribunal in Company Appeal (AT) (CH) (INS) No. 164 of 2021 dated 30.07.2021 between **Periasamy Palani Gounder, Promoter & Erstwhile Director of Appu Hotels Limited Vs. Radhakrishnan Dharmarajan, RP of Appu Hotels Limited and Ors.** observed and held as follows:

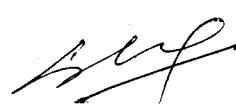
"The Learned Counsel for the Appellant informs this 'Tribunal' that the 'Appellant' is ready to pay all the 'Financial Creditors', 'Operational Creditors' and 'Unsecured Financial Creditors'.

25. The Learned Counsel for the 1st Respondent adverts to Section 12A of the I&B Code, which speaks of 'withdrawal of application admitted under Section 7, 9 or 10'. Also, on behalf of the 1st Respondent, a reference is made to Regulation 30-A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

26. The Learned Counsel for the 1st Respondent urges before this 'Tribunal' that during the last minute the 'Corporate Debtor' endeavoured to project Section 12A withdrawal application and in short, the process of law and Resolution cannot be subverted by anyone.

..Till the next date of 'Hearing', there shall be a stay of the implementation of the 'Impugned Order'."

- XXIX. BECUASE the Adjudicating Authority failed to consider the fact that the Resolution Professional has no adjudicatory power. The



power of 'Resolution Professional' also fell for consideration before the Hon'ble Supreme Court in '**Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors. - Writ Petition (Civil) No. 99 of 2018**'. In the said judgment dated 25th January 2019, the Hon'ble Supreme Court held that 'Resolution Professional' has no adjudicatory power. The 'Resolution Professional' has to vet and verify the claims made and ultimately determine the amount of each claim. As opposed to this, the 'Liquidator' in the Liquidation proceedings under the IBC has to consolidate and verify the claims and either admit or reject such claims under Sections 38 to 40 of the Code. It is impossible for the Resolution Professional or any Authority to take over the entire Appellant Company, all of its 8 Projects and run it in a systematic manner and refund monies. The Real Estate entire business of the Appellant Company will fall into ruins, all the Allottees and Home Buyers will lose a major chunk of their hard-earned money when monies are being disbursed. Banks outstanding amounts will not get paid and they will receive the maximum "haircut". Thus, the projects of the Appellant should be de-tagged from *Ajnara Ambrosia* during the CIRP Process.

XXX. BECAUSE the Hon'ble Supreme Court on 19.01.2021 in the matter of **Manish Kumar Vs. Union of India (UOI) and Ors.** (Writ Petition (C) Nos. 26, 53, 28, 47, 27, 73, 328, 210, 191, 164, 163, 166, 173, 182, 176, 177, 257, 341, 267, 333, 337, 388, 402, 390, 393, 783/2020) held that:

"140. The rationale behind, confining allottees to the same real estate project, is to promote the object of the Code. Once the threshold requirement can pass muster when tested in the anvil of a challenge based on Articles 14, 19 and 21, then, there is both logic and reason behind the legislative value judgment that the allottees, who must join the application under the impugned provisos, must be related to the same real estate project. The connection with the same real estate project is crucial to the determination of the critical mass, which Legislature has in mind, as a part of its scheme, to streamline the working of the Code. If it is to embrace the total number of allottees of all projects, which a Promoter of a real estate project, may be having, in one sense, it will make the task of the applicant himself, more cumbersome. It becomes a sword, which will cut both ways. This is for the reason that the complaints, relating to different projects, may be different. With regard to one project of a Promoter of real estate project, maybe, in the advanced stage, the allottees in a particular project, may not have much of a complaint. The complaint, in relation to yet another project, may be more serious. If the complaint in respect of the latter, attracts the attention of a critical mass of allottees, and the proposed



applicant is part of that project in the said project, then, it may be easier for the allottees to fulfil the statutory mantra in the impugned provisos, with the junction of likeminded souls. If, on the other hand, the requirement was to make a search for allottees of different projects, as would be the case, if the entirety of the allottees, under different projects, were to be reckoned, the task would have been much more cumbersome. The requirement of the allottees, being drawn from the same project, stands to reason and also does not suffer from any constitutional blemish, as pointed out."

XXXI. BECAUSE THE PETITION FILED UNDER SECTION 7 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 READ WITH RULE 4 OF THE INSOLVENCY AND BANKRUPTCY (APPLICATION TO ADJUDICATING AUTHORITY) RULES, 2016 WAS WITHOUT PROPER AUTHORITY AND IS DEFECTIVE

- a. The name of Mr. Manish Kumar Gupta has been subsequently inserted / affixed on the alleged authority letters dated 01.12.2020 having blank space using rubber stamp. The said stamping / correction has not been authenticated by the respective executants
- b. The case title namely "*Manish Kumar Gupta & Ors ... Financial Creditors / Applicants versus M/ s Ajnara India Limited & Anr ...Corporate Debtor / Respondent*" has been subsequently inserted / affixed on the alleged authority letters dated 01.12.2020 having blank space using rubber stamp. The said stamping / correction has not been authenticated by the respective executants.
- c. The Home-buyers have not executed any Special Power of Attorney / General Power of Attorney in favour of Mr. Manish Kumar Gupta to file the petition under Section 7 of Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor on behalf of the executant or to initiate any other proceedings before this Hon'ble Tribunal under the provisions of Insolvency and Bankruptcy Code, 2016
- d. The allegedly authorization letters filed by Mr. Manish Kumar Gupta along with Section 7 petition are not executed on the stamp papers of appropriate value.

- e. Mr. Manish Kumar Gupta has failed to file any document along with the petition under Section 7 of Insolvency and Bankruptcy Code, 2016 in respect of identity (Aadhar card, Pan card or Password etc) of other 112 Home-buyers on whose behalf he has allegedly filed the present petition

- f. The issue of specific authorization for filing any application under Section 7 or 9 of the IBC has been dealt with by the Hon'ble National Company Law Appellate Tribunal ("NCLAT") in the matter of **Palogix Infrastruture Private Limited v. ICICI Bank Limited, Company Appeal (AT) (INS) No. 30 of 2017 dated 20.09.2017**, wherein it was clarified that a general power of attorney or any such general authorization does not suffice as a valid authorization for filing an application for initiation of insolvency proceedings under the IBC

XXXII. BECAUSE THE CORPORATE DEBTOR IS SANGUINE TO PROTECT THE INTEREST OF ALL STAKEHOLDERS

- a. That the Corporate Debtor is an operating Company employing approximately 84 numbers of people excluding the contractor labour. In view of the same, initiation of the insolvency proceedings is not in the interest of any stakeholders including employees given the facts and circumstances of the case.

- b. It is submitted that the Corporate Debtor deals in real estate sector and there is a high possibility of change in the Government policies for Real Estate Sector which shall provide support to the Corporate Debtor and improve its performance in future which shall be in interest of all the stakeholders. Thus, in the present circumstances, the instant petition is liable to be dismissed by this Hon'ble Tribunal as the Corporate Debtor is willing to safeguard the interest of its stakeholders.

- c. Reliance must be placed on the latest statement by the UTTAR PRADESH GOVERNMENT sharing concern on increasing insolvencies of developers in NOIDA/GREATER NOIDA and continuing discords with the bankers and development authorities. Even the government has set up a committee to examine possible solutions to the said issue. The Corporate Debtor Company under its suspended management has steered through the above-mentioned difficult times and have been able to keep itself as a market leader instead of all the above adversaries and when the real estate sector is expected to see a revival post the pandemic era with joint efforts



of market leaders supported by the government it is most respectfully prayed that the Hon'ble Appellate Tribunal may also grant liberty sought for in the present appeal which will have a lasting economic impact on the real estate market as well as improve the market sentiments resulting in revival and maximization of values for all stake holders of Corporate Debtor as well as the Real Estate Sector on a whole. A copy of news article with respect to the statement of UP Government on escalation of Insolvency cases in NOIDA/ Greater NOIDA is **ANNEXURE-17.**

d. It is submitted that as the petition has been filed by the Home-buyers/ Respondent No.1 only for the purpose of recovery as against resolution. As per established legal position which is well settled that proceedings under IBC are resolution oriented and not for the purpose of recovery the impugned order deserves immediate interference by this Hon'ble Tribunal

XXXIII. BECAUSE the Appellant reasonably believes that the construction work and essential services like electricity, water fit-outs would be completed with in 9 months of this Hon'ble tribunal directions/ order, allowing the construction activity.

XXXIV. BECAUSE Corporate Insolvency Resolution Process will stall the project whereas the development through builder/reverse CIRP would be in the interest of the Home-buyers.

XXXV. BECAUSE the Appellant has completed a 75% of its project and delivered 17000+ units of the project. The Appellant assures to complete the project, namely, *Ajnara Ambrosia* and deliver all the pending units with in 9 months of this Hon'ble tribunal directions/ order, allowing the construction activity. Thus, CIRP against the rest of the projects of the Appellant be stopped/stayed/suspended and/or said project be kept out of CIRP Process, so that allottees will get possession of their dwelling units.

XXXVI. BECAUSE the Corporate Debtor Company has grown from its strength of keeping satisfaction of its customer at priority. It brings expertise of all its divisions together to focus on every single aspect of Projects for making customer life easy within the society. The Company have completed close to 20 million square feet of construction and out of which the company has delivered 17000+ Units out of 6000+ units under-construction. It has already delivered 75 small, medium and big residential projects which include group housing and currently 16 projects are under-construction at a full pace.

- XXXVII. BECAUSE IVR Prime Developers (Avadi) Private Limited (Proforma Respondent in IB No. 194 (ND) of 2021 titled as '**Mr. Manish Kumar Gupta & Ors. v. M/s Ajnara India Limited & Anr**') wrote a letter dated 17.02.22 to New Okhla Industrial Development Authority (NOIDA) for seeking permission for sub-division of the group housing plot no GH 01, Sector 118, NOIDA, District Gautam Budh Nagar, Uttar Pradesh leased in favor of IVR Prime Developers Private Limited which is being developed in 2 clusters of towers – first, land admeasuring 74,946 sq. meters forming part of said plot is being developed as residential group housing project under the name of 'Ambrosia'; second, land admeasuring 68,021 sq. meters forming part of said plot is being developed as another residential group housing project under the name of 'Romano'.
- XXXVIII. BEAUSE IVR Prime Developers (Avadi) Private Limited is facing continuous operational and commercial issues in effectively developing and handling the aforesaid plot. The IVR Prime Developers (Avadi) Private Limited is of the view that NOIDA allows the it to sub-divide first plot form the said plot and allow it to transfer the part together with Ambrosia to Ajnara India Limited
- XXXIX. BECAUSE the sub-division of the plot by NOIDA, will substantially result in streamlining the development of Ambrosia and safeguard the interests of all allottees/stakeholders.
- XL. BECAUSE IVR Prime Developers (Avadi) Private Limited clarified that they are conscious of its obligation for repayment of Noida Dues which it wishes to discharge in a timely manner as it will make an upfront payment of Rs. 50,000,000/-, subject to the in-principle approval granted regarding subdivision of First Plot from the said plot and permit to transfer it to Corporate Debtor and undertakes to make remaining payment within six months from the date of first payment and the balance will be paid in four equal instalments in next one year
- XLI. BECAUSE in pursuant to the above payment of dues to NOIDA, Larsen & Toubro Finance Limited (herein referred as 'L&T') has sent a letter dated 22.06.2022 to the Corporate Debtor that they are in-principle agreeable to consider to disburse Rs. 50,000,000/- against the dues payable to Noida. NOIDA was also apprised regarding the letter issued by L&T regarding in-principle agreeable to disburse the amount vide letter dated 23.06.2022.



10. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT

The Appellant declares that as on date of filing of the present Appeal, there is no other proceedings filed regarding the matter in respect of which this Appeal is preferred before any court or any other authority nor any such writ petition or suit is pending before any of them.

11. GROUND FOR RELIEF(S) AND THE LEGAL PROVISIONS, IF ANY RELIED UPON:

The Appellant declares that the grounds for relief and the legal provisions that are relied upon by the Appellant have been given in detail in the aforesaid paragraph of the appeal particularly discussed in paragraph _____ of the present appeal.

12. DETAILS OF INTERIM APPLICATION, IF ANY, PREFERRED ALONG WITH APPEAL.

Attached with the present appeal

13. DETAILS OF APPEAL/S, IF ANY PREFERRED BEFORE THIS APPELLATE TRIBUNAL AGAINST THE SAME IMPUGNED ORDER/DIRECTION, BY RESPONDENTS WITH NUMBERS, DATES AND INTERIM ORDER, IF ANY PASSED IN THAT APPEAL (IF KNOWN)

To the best of the Appellant's knowledge, no appeal has been preferred against the Impugned Order by any other party.

14. DETAILS OF INDEX

An index containing the details of the documents relied upon (in chronological order) is enclosed.

15. PARTICULARS OF FEE PAYABLE AND DETAILS OF BANK DRAFT IN FAVOUR OF PAY AND ACCOUNTS OFFICER, MINISTRY OF CORPORATE AFFAIRS, NEW DELHI, IN RESPECT OF THE FEE FOR APPEAL.

In respect of the fee for Appeal.

Fee has been paid online through Bharat Kosh



In respect of the fee for Interlocutory Application.
Fee has been paid online through Bharat Kosh

16. LIST OF ENCLOSURES:

As per Index enclosed.

17. WHETHER THE ORDER APPEALED AS COMMUNICATED IN ORIGINAL IS FILED?

Yes, a certified copy of the impugned Order dated 20.09.2022 passed by the Hon'ble Adjudicating Authority is being annexed along with the present Appeal.

18. WHETHER THE APPELLANT IS READY TO FILE WRITTEN SUBMISSIONS/ARGUMENTS BEFORE THE FIRST HEARING AFTER SERVING THE COPY OF THE SAME ON RESPONDENT?

The Appellant undertakes to file written submissions in case directed by this Hon'ble Appellate Tribunal.

19. WHETHER THE COPY OF MEMORANDUM OF APPEAL WITH ALL ENCLOSURES HAS BEEN FORWARDED TO ALL RESPONDENTS AND ALL INTERESTED PARTIES, IF SO, ENCLOSE POSTAL RECEIPT/COURIER RECEIPT IN ADDITION TO PAYMENT OF PRESCRIBED PROCESS FEE.

The Appellant has served all the concerned Respondents through email and shall serve in addition to email, if notice is issued by this Hon'ble Appellate Tribunal

20. ANY OTHER RELEVANT OR MATERIAL PARTICULARS / DETAILS WHICH THE APPELLANT DEEMS NECESSARY TO SET OUT:

NIL

21. RELIEFS SOUGHT

In view of the facts stated in para 7, facts in issue and questions of law stated in para 8B and grounds set out in para 9 hereinabove, the Appellant most respectfully prays that this Hon'ble Appellate Tribunal may be pleased to:

- a. Set aside Impugned Order dated 20.09.2022 passed in IB-194/(ND)/2021 in the matter of "*Manish Kumar Gupta & Ors. versus M/s Ajnara India Limited*";
- b. Direct that the Committee of Creditors in the present matter may not be constituted till the pendency of the present appeal;
- c. and direct status quo of the CIRP pending the present Appeal;
- d. In the alternative, order *Status Quo* on the functioning of the Committee of Creditors- if constituted;
- e. Allow the suspended management of the Corporate Debtor to continue operations, development, construction and performance of all connected duties in tandem with the Insolvency Resolution Process holding that the projects of the Corporate Debtor are not to be treated under the present insolvency proceedings and operations in the same be allowed to continue under such an arrangement or directions issued by this Hon'ble National Company Law Appellate Tribunal under the reverse Insolvency Resolution mechanism in the best interest of the stakeholders;
- f. Allow the management/promotor group company to continue construction activity and complete the project as each project of the Appellant is separately registered under RERA and has separate allotment of land by the Authorities, that is, NOIDA/GNIDA/YEIDA etc.
- g. Set aside Order dated 20.09.2022 refusing to take written statement of the Corporate Debtor on record and directing Hon'ble Tribunal to pass a reasoned judgment taking in account the contentions and submissions in the written submissions
- h. Pass an Order directing the Ld. National Company Law Tribunal and the Interim Resolution Professional to put a stay on calling of EOI/Resolution Plans and let the Interim Resolution Professional treat all projects of the Appellant herein as an ongoing concern and monitor development made therein by the suspended management in a time bound manner.



- i. Pass an order directing settlement between applicant and home buyers as the appellant is ready to furnish an undertaking of completing all the units in the project Ajnara Ambrosia within a period of 6 months with grace period of 3 months and in alternative if the Home Buyers choose to get a refund, the same may be carried out with a simple interest of 8%.

- j. Pass any such other or further order(s) as this Hon'ble Appellate Tribunal may deem fit and proper in the facts and circumstances of the present case.



APPELLANT

DATE: 6.10.2022

PLACE: NEW DELHI

THROUGH COUNSEL:



Siddharth Bhatli / Lashita Dhingra
 Chamber No. 103, Lawyers Chamber Block 1,
 Delhi High Court, New Delhi.
 Ph. No. +919899423924

E-Mail Id- office@lexlislaw.in

DECLARATION

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

Verified at **Delhi** on this 06 day of October 2022.

COUNSEL FOR APPELLANT



APPELLANT

VERIFICATION

I, Mr. Ashutosh Gupta, S/O Sh. C.P. Gupta, aged about 55 years, resident of _____, Appellant do hereby verify that the contents of the paras I to VII are true to my personal knowledge/ derived from official record) and para VIII & IX are believed to be true on legal advice and that I have not suppressed any material facts.



APPELLANT

DATE: 6.10.2022

PLACE: NEW DELHI

THROUGH COUNSEL:



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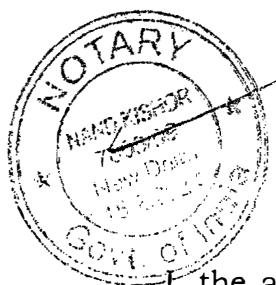
**IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT NEW DELHI
APPELLATE JURISDICTION
COMPANY APPEAL (AT) (INSOLVENCY) NO. OF 2022**

IN THE MATTER OF:**Mr. ASHOK GUPTA****SUSPENDED DIRECTOR OF M/S AJNARA INDIA LIMITED****...APPELLANT****VERSUS****MANISH KUMAR GUPTA & 112 ORS.****...RESPONDENT****AFFIDAVIT**

I, Mr. Ashok Gupta S/o Sh. Gyan Prakash Gupta aged about 55 years and resident of B-189, Yojna Vihar, Delhi-110095, the Appellant/Applicant do solemnly affirm and state on oath as under-

1. That I am the Appellant in the present matter hence am competent to swear this affidavit.
2. That the present appeal under Sec. 61(5) read with relevant Regulations of Insolvency Resolution Process for Corporate Persons Regulations, 2016, has been drafted by my counsel under my instructions.
3. That the contents of the appeal may be read as part and parcel of this affidavit.
4. That the contents of the same have been well understood by me and are not being repeated herein for the sake of brevity and to avoid repetition.

(Signature)
Who has signed in my presence
That the annexures annexed with the appeal are original or the true copies of respective originals. I will produce the same whenever directed to do so.



(Signature)
DEPONENT

OF VERIFICATION

I, the above-named deponent does hereby verify that the contents of the above affidavit are true and correct to the best of my knowledge and nothing material has been concealed there from.

Verified at _____ on this _____ day of September 2022.

(Signature)
DEPONENT

CERTIFIED THAT THE CONTENTS EXPLAINED TO THE
DEPONENT/EXECUTANT WHO IS SEEN PERFECTLY TO
UNDERSTAND AFFIRMED TO ME IN THE PRESENCE OF THE DEPONENT AT NEW DELHI
ON THE DAY OF SEPTEMBER 2022.

IDENTIFY THE DEPONENT AND THE EXECUTANT WHO HAS
SIGNED IN MY PRESENCE
NOTARY PUBLIC
NAND KISHOR AGRAWAL Advocate
JULY 2022