

**IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT NEW DELHI**

**I.A. NO. _____ OF 2025
IN
COMPANY APPEAL (AT)(Ins) No. 1243 OF 2022**


IN THE MATTER OF :

Ashok Gupta,
Suspended Director of Ajnara India Ltd.Appellant

Versus

Manish Kumar Gupta & Anr.
(Authorised Representative for Class of Creditors)
....Respondents

PAPER BOOK


[M L LAHOTY]
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Advocates

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Filed on : 14th April, 2025
Place : New Delhi





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AND IN THE MATTER OF :

Ajnara Ambrosia Social Welfare SocietyApplicant

Versus

Ashok Gupta & Anr.Respondents

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MEMO OF PARTIES

AND IN THE MATTER OF :

Ajnara Ambrosia Social Welfare Society

Through its Authorised Representative

D-63, Opposite Prayag Hospital,

Sector 49, NOIDA,

Gautam Budh Nagar, UP – 201301.

Contact Number: 9582709108

Email : ml_lahoty@yahoo.co.in

....Applicant

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Contact Number : 9810023852
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2. Mr. Amarpal,
Interim Resolution Professional
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....Respondents

THROUGH



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Email : amarpal@icai.org

....Respondents



**APPLICATION FOR IMPEADMENT ON BEHALF OF AJNARA
AMBROSIA SOCIAL WELFARE SOCIETY UNDER RULE 31 OF
THE NCLAT RULES 2016, IN COMPANY APPEAL (AT) (INS)
NO. 1243 OF 2022**

MOST RESPECTFULLY SHOWETH :

A. RELIEF SOUGHT :

In the interest of justice, it is most respectfully prayed that this Hon'ble Appellate Tribunal be pleased to :

[i] Pass appropriate order or direction permitting the Applicant to be impleaded as Respondents in the present Company Appeal (AT)(Ins) No. 1243 of 2023;

[ii] Pass appropriate order or direction setting aside the Order dated 17.10.2022 passed by this Hon'ble Appellate Tribunal directing reverse CIRP;

[iii] Pass appropriate order or direction dismissing the present Company Appeal thereby restoring the CIRP process of Corporate Debtor in terms of Order dated 20.09.2022 of the Adjudicating Authority in CP(IB) No. 194 (ND) of 2021;

[iv] Pass appropriate order or direction directing the Forensic Audit of the corporate debtor from the year 2012 till date;



[v] Pass appropriate order or direction to NOIDA Authority for computing the land dues of Plot GH-01 Sector 118, Noida so far as the Project Ajnara Ambrosia is concerned;

[vi] Pass such other order(s) as this Hon'ble Appellate Tribunal may deem fit and proper in the facts and circumstances of the present case.

B. BRIEF FACTS :

1. The present application is being filed by the Applicant Association representing over 235 member Home Buyers of the Project "Ajnara Ambrosia", Sector-118, Noida, seeking impleadment in the present proceedings to put forth the concerns and grievances of the largest number of Home Buyers of the Project in the present Appeal pending for over two and half years with not a single brick laid in the project. Out of 235 member Home Buyers, (i) 138 Home Buyers filed the Company Petition (IB) No. 194 (ND) of 2021 under Section 7 of the IBC Code before the Adjudicating Authority, and (ii) 51 Home Buyers have filed Impleadment Application (Diary) No. 49255 of 2024 in the present proceedings.

Copy of Registration Certificate dated 25.09.2023 of the Applicant Association is annexed herewith as **ANNEXURE – A1.**



Copy of List of members of the Applicant Association is annexed herewith as **ANNEXURE – A2.**

2. In 2012, M/s. Ajnara India Limited [Corporate Debtor] acquired the development rights from the Lessee M/s IVR Prime Developer (Avadi) Pvt. Ltd. for the land admeasuring 74,946 sq. meters situated at 1,42,967 sq.meters land of Plot No.GH-01, Sector-118, Gautam Budh Nagar, Noida-201301, UP and accordingly, launched a Housing Project, namely, "Ajnara Ambrosia" to be developed on the said land comprising of 10 Towers having 1,607 units in Phase 1, 2 and 3 with and a Future Phase 4 consisting of 425 Units in 4 Towers.

3. As back as 13 years, 2012 onward, the member Home Buyers of the Applicant Association booked their Flats and paid hefty booking amount acting on the tall promises and assurances of the Corporate Debtor made through Advertisements and Brochure boasting about the world class facilities and amenities in the Project as well as the commitment to handover the possession within a period of four years, i.e., between 2016 – 2017. Consequently, 1,239 Units out of the total 1,607 residential Units, were sold by the Corporate Debtor during this period for consideration paid by the Home Buyers running into hundreds of crores.



4. However, the Corporate Debtor started issuing the Allotment Letters but only from the year 2014 onwards. Vide Clause 9.1 of the Terms and Conditions, the possession of the Flat was committed on or before 30.11.2017 with a further grace period of six months. In the process, the Corporate Debtor enjoyed interest free payments by Home Buyers for a considerable period.

5. The Corporate Debtor having collected over hundreds of crores of rupees from the Home Buyers, defaulted in completing the Project and handover the possession by the committed date in 2017 and continued with its default till 2021 despite collecting substantial payments from the Home Buyers. In the circumstances, on 10.02.2021, 138 Home Buyers (initially 113 home buyers which were later joined by 28 home buyers through impleadment) as mentioned in List A of Annexure – A2 were compelled to file the Company Petition (IB) No. 194 (ND)/2021 under section 7 of the Insolvency and Bankruptcy Code, 2016 [“IBC”] before the National Company Law Tribunal, New Delhi [“Adjudicating Authority”] for initiating CIRP since the Corporate Debtor had committed financial default of over Rs. 100,59,53,480/- (Rs. 50,47,48,426/- plus interest) by the Corporate Debtor.



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6. The Adjudicating Authority by its Order dated 20.09.2022, being of the view that the Corporate Debtor defaulted in handing over the units to the respective Home Buyers as per the Builder Buyer Agreements and that Financial Creditors having established the default on part of the Corporate Debtor, admitted the Company Petition [para 18, 19]. Accordingly, moratorium under Section 14 of the Code was declared and IRP, Mr. Amarpal was appointed to initiate the CIRP of the Corporate Debtor.

7. In the limited time, the IRP received and verified the claims of 2020 Home Buyers of all the Ajnara Projects totaling to Rs. 711.79 Crores and 18 Banks & Financial Institutions totaling to Rs. 679.91 Crores making the voting share of the Home Buyers to 51.14% (approx.) and Financial Institutions to 48.85% (approx.).

8. Challenging the aforesaid Order of the Adjudicating Authority, Ashok Gupta, Suspended Director of the Corporate Debtor on 03.10.2022 filed the present Company Appeal (AT) (Insolvency) No. 1243 of 2022 seeking inter alia directions to (i) set-aside the Order dated 20.09.2022, (ii) allow the suspended management to continue construction and complete the project, (iii) IRP to monitor the development by suspended management in a time bound manner.



9. Pertinently, immediately before the first listing of the said Company Appeal before this Hon'ble Tribunal, the Appellant in an attempt to divert the attention of this Hon'ble Tribunal, on 10.10.2022 designedly sent Offer for Settlement of Claim to the 138 Home Buyers of Ajnara Ambrosia stating therein that "Allottees willing to acquire their respective units/flats in all 10 Towers of Ajnara Ambrosia will be handed over the possession over a period of six months extending to nine months (i.e. with three months of grace period) from the date of resumption of construction activity once the present settlement is entered and accepted in due process. The suspended management shall do so with their own resources"

10. Based on the misleading and circumventive picture presented by the Appellant that it had already completed two towers of the Project-Ajnara Ambrosia and possession had been handed over and further that an Offer dated 10.10.2022 has been submitted by the management to the authorized representative of home buyers stating that possession would be handed over within a period of 6 to 9 months, this Hon'ble Appellate Tribunal vide its Order dated 17.10.2022 confined the CIRP only to Ajnara Ambrosia Project and directed reverse CIRP by directing IRP not to take any further steps in pursuance of the Order dated 20.09.2022 of the Adjudicating Authority. IRP was further directed to continue



supervising the construction of the project with the assistance of the Corporate Debtor, its officers and employees.

Copy of Order dated 17.10.2022 is annexed herewith as **ANNEXURE-A3**.

11. Thereafter, on 10.01.2023, the Appellant being the suspended director of Corporate Debtor filed an Affidavit along with the Revised Proposal in the present Company Appeal, so far as the Project Ajnara Ambrosia is concerned, the Appellant have already started construction in project under the supervision of the IRP. The Appellant committed that (i) they had 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**, (ii) an amount of **Rs. 15 Crores** would be infused as priority funding, (iii) they were in close discussions with some investors for priority funding of around **Rs. 200 Crores**.

12. As the Appellant has failed to infuse the amount of Rs. 200 Crores towards interim funding committed by it in its Affidavit, it filed another a Supplementary Affidavit dated 11.08.2023 completely crushing the hopes of the home buyers by extending the construction timeline for Ambrosia from earlier committed 6 to



9 months to Five Years. Further, it claimed to have already infused Rs. 19 Crores in the Ambrosia Project.

13. The aforesaid claim of infusion of funds was found to be a blatant lie in the IA/4557/2023 filed by the IRP on 23.09.2023. The IRP at page 21 mentioned that only an amount of Rs. 3.9 Crores have been infused by the Suspended Directors that too after 14.09.2023. The IRP further mentioned at pages 11, 13, 17 that the Suspended Directors are incapable of infusing priority funding of Rs. 200 crores and that they have failed to carry on the construction since there is no progress at the project site and construction has come to a halt.

14. That the present Appeal came for hearing on 29.02.2024 before this Hon'ble Tribunal. After hearing the parties at length, as a last measure it was directed that all the stakeholders will have a project wise joint meeting under the chairmanship of IRP to discuss the completion of the Project.

15. Subsequently, in the meeting dated 23.03.2024, Resolution Professional appointed the contractor introduced by the Suspended Director, namely Gulshan Homz Pvt. Ltd. as Development Management Partner despite multiple objections of the



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representatives of the Home Buyers regarding (i) date of commencement of construction, (ii) period of due diligence, (iii) dues of Noida Authority, (iv) completion timeline of the project (v) additional fund requirement, (vi) delay compensation, etc. It is pertinent to mention here that the Term Sheet of Gulshan Homz, it would not construct the Project itself but monitor the construction. Further, while it committed to infuse Rs. 125 Crores in tranches, it has quoted to charge 18% towards interim fund cost, 10% as DM Fees, 7% towards brokerage charges and 2% as marketing cost, thereby drawing over Rs. 903 Crores from the funds of the Project, leaving the Lenders and Home Buyers with huge haircut. Even the proposal of Gulshan Homz was conditional upon the crystallization of land dues and in-principal approval of benefits of Legacy Stall Real Estate Policy of Noida Authority.

Copy of the relevant pages of the IRP Comprehensive Report dated 10.04.2024 is annexed herewith as **ANNEXURE – A4.**

16. That this entire exercise was only to derail the proceedings before this Hon'ble Court by consuming almost a year when finally on 28.01.2025 Gulshan Homz reiterated its pre-conditions to the IRP regarding approval from Noida Authority regarding the grant of 50% sub division of project land and the dues and also from UP



RERA for extension of project timelines, failing which it would withdraw its Term Sheet.

Copy of the email dated 28.01.2025 of Gulshan Homz is annexed herewith as **ANNEXURE – A5.**

17. Surprisingly, it is only after one whole year when Gulshan Homz expressed its unwillingness to continue, that the Suspended Director through the IRP on 07.02.2025 requested NOIDA Authority for restructuring of land dues for the relevant 50% portion of leased land of Ambrosia Project in name of M/s IVR Prime Developers (Avadi) Pvt. Ltd. and its proposal for repayment of land dues by availing the benefits of UP Real Estate Legacy Policy. However, till date, there is no update and nothing is known as to the response of NOIDA Authority.

Copy of Letter dated 07.02.2025 of IRP to NOIDA Authority is annexed herewith as **ANNEXURE – A6.**

18. It is submitted that so far as the dues of NOIDA Authority is concerned, NOIDA Authority had executed a Lease Deed on 19.04.2012 and Supplementary Lease Deed dated 23.10.2013 in favour of M/s IVR Prime Developers (Avadi) Pvt. Ltd. for the land



admeasuring 1,42,967 sq.mts. at Plot No. – GH 01, Sector 118, Noida. Later, IVR Prime Developers being the lease holder collaborated with M/s Supertech Ltd. and the Corporate Debtor (M/s Ajnara India Ltd.) vide separate collaboration agreements for the development and construction of two different projects by bifurcating the plot in 50:50 proportion. Accordingly, both got rights over 74,946 sq.mts land. On the Ajnara's share of the land, it launched the Project Ajnara Ambrosia. Thereafter, on 23.11.2022 NOIDA Authority has raised demand of entire land parcel to IVR Prime Developers for an amount of Rs. 659.02 Crores. Therefore, it is to be clarified by NOIDA Authority that so far as the dues from Ajnara is concerned for the Project Ambrosia, it is liable only for 50% of the amount, i.e., Rs. 329.86 crores (approx.).

19. It is further submitted there is a dire need for the Forensic Audit of the Corporate Debtor from the year 2012 till date for the following reasons :

i. The Project Ambrosia was launched with 10 Residential Towers having total 1,607 Units and 3 Commercial Towers having 83 Units. As per the IA dated 13.10.2021 filed by the Suspended Director before the NCLT, total unsold inventory in the 10 Residential Towers were 433 Units. However, at page 20 of the present Appeal dated 11.10.2022 of Suspended Director the



Unsold Inventory reduced to 376 Units that too in the 10 Residential and 3 Commercial Towers combined. Therefore, the Ex-management fraudulently sold/alienated more than 57 Units after the CIRP Order was passed by NCLT and before the filing of the Appeal in this Hon'ble Appellate Tribunal.

ii. From the Chart filed by the Suspended Director at pages 447 to 483 of Volume III of the Appeal, it is clear that 64 Units were sold between 13.10.2021 to 11.01.2022 during the pendency of Company Petition under Section 7 before the NCLT. Most of these Units have been sold or transferred to their contractors or suppliers that too without any consideration or negative balance.

A list of such doubtful Units is annexed herewith as **ANNEXURE – A7.**

iii. As per the Corporate Debtor's Loan Agreement dated with L&T (Arcil) for the Project Ambrosia for an amount of Rs. 400 Crores, L&T was obliged under Schedule V – Part B(v) read with Schedule VIII to disburse the loan amount as per the construction progress mentioned therein. Significantly, the 10 Towers at Ambrosia Project were merely constructed upto 60-70%, L&T released the entire loan amount to Corporate Debtor, when the construction had not achieved the prescribed completion



milestones and for the non-commenced Future Towers as well. Such act raises serious suspicion between the nexus of the builder and the lender as has also been discussed by the Hon'ble Supreme Court in Bikram Chatterji v. Union of India [(2019) 19 SCC 161].

Copy of the relevant pages of L&T Loan Agreement with Corporate Debtor is annexed herewith as **ANNEXURE – A8.**

iv. Furthermore, L&T Loan Agreement Schedule VIII mentions loan disbursement for Towers L, M, N, O, P, Q1 and Q2 which in reality, does not even exist at the project Ambrosia.

v. Moreover, the CAG Report for Group Housing Plots in Chapter 5.1 at paragraph 5.1.8.4 (at pages 106-108) have only recognized IVR Prime Developers and mentions that transfer of Plot to Corporate Debtor is irregular. The Report further mentions that NOIDA had not granted any permission for transfer of plot to Corporate Debtor. In such a scenario, L&T ought to have prudently carried out its due diligence before sanctioning loan to Corporate Debtor. As such, the Claim of L&T (Arcil) is liable to be rejected and set aside.

Copy of relevant pages of the CAG Report is annexed herewith as **ANNEXURE – A9.**



vi. Serious concerns of diversion of funds by Ex-management of the Corporate Debtor have also been raised by L&T in its IA/4476/2022 dated 28.11.2022 in the present Appeal wherein at Pg. 287, L&T has written to Ex-management on 22.03.2022 for cancelling the sales of commercial area valued at Rs. 33.15 Crores of which the consideration amount of Rs. 7.48 Crores was received by the Ex-management without routing through the escrow account. Further, L&T has mentioned that 29 Units with a consideration of Rs. 17.92 Crores were transferred without the consent of the L&T.

Copy of pages 287 and 288 of IA/4476/2022 filed by L&T (Arcil) is annexed herewith as **ANNEXURE – A10.**

20. It is further submitted that apart from the present Application on behalf of Applicant Association representing the largest group of 235 homebuyers of Ambrosia Project, there is another IA/5219/2023 wherein large number of buyers are proxy allottees of the Corporate Debtor being its Contractors or Suppliers. Moreover, the Authorised Representative Mr. Vivek Gupta is an ex director of Ajnara India Ltd. who was sold the Unit on 13.04.2022 on meagre amount of Rs. 50,000/- and no further demand was raised to him though he has already been handed over the Unit when he was an active director. Therefore, the said



A handwritten signature in blue ink, appearing to be "Vivek Gupta", written over the right side of the circular stamp.

Application has been filed only to support of ex-management to subdue the voice of genuine homebuyers of the project.

**C. BASIS ON WHICH FURTHER INTERIM DIRECTIONS
PRAYED FOR :**

a. In the backdrop of the aforesaid facts, it is submitted that the Suspended Director/ Appellant has filed the present Company Appeal only with the motive to stall the CIRP with the intention to keep the control of the Corporate Debtor with himself. The Appellant has yet again failed to complete the Project within 6 to 9 months as committed by him on 17.10.2022 before this Hon'ble Appellate Tribunal. Instead, the Appellant is only in an attempt to buy time by exploiting the provisions of IBC Code having sought for Reverse CIRP and not laid a single brick since over two and half years by keeping the frustrated homebuyers hanging in the middle of nowhere.

b. In the aforesaid circumstances, it is submitted that since the Appellant is repetitively persistent with his defaults and has even gone to the extent of defying the trust reposed in him by this Hon'ble Tribunal on multiple occasions, the Order dated 17.10.2022 for reverse CIRP should be set aside and appeal be dismissed, and accordingly the IRP be directed to conduct the



Forensic Audit of the Corporate Debtor and commence the CIRP as per the Code.

c. The Applicants do not have any efficacious and/or alternative remedy available with it, but for moving the present Application.

d. The application is moved bonafide and in the interest of justice.

D. BALANCE OF CONVENIENCE :

That the Applicant has a prima facie case on merits; both on law and on facts and balance of convenience is in its favour. Grave irreparable loss and injure, which cannot be compensated in terms of money, will be caused to the Applicant, if the prayer sought in the present Application are not allowed in the favour of the Applicant. Furthermore, if the Applicant is impleaded, it would not cause prejudice to any other Party in this Appeal.



FILED THROUGH

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Email: ml_lahoty@yahoo.co.in

Filed on : 14th April, 2025
Place : New Delhi



DECLARATION

The Applicant above named through the Authorised Representative solemnly declares that nothing material has been concealed or suppressed and further declares that the enclosure and typed sets of materials relied upon and filed herewith are true copies of their respective originals/fair reproduction of originals/fair reproduction of originals/true translation thereof.




Verified at New Delhi on 14th April, 2025


COUNSEL FOR APPLICANT


APPLICANT 

VERIFICATION

I, Skand Kumar Khurmi, son of Sh. Ashok Kumar Khurmi, aged about 43 years, R/o 119A, Pocket-B, Dilshad Garden, Delhi - 110095 Authorized Representative of the Applicant Association do hereby verify the contents of Para A to D of the Application are true to my personal knowledge and derived from personal / official records and are believed to be true on legal advice and that I have not suppressed any material records.


APPLICANT 

[M L LAHOTY]
[ANCHIT SRIPAT]

Advocates

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Email: ml_lahoty@yahoo.co.in

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सत्यमेव जयते

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Government of National Capital Territory of Delhi

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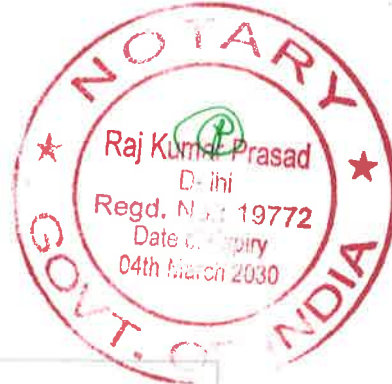
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RAJ KUMAR PRASAD Ph. 9818057940
NOTARY, DELHI R 19772 9818210721
GOVERNMENT OF INDIA
SUPREME COURT OF INDIA
COMPOUND NEW DELHI
Register Pg./Sl. No. 723

4 APR 2025

22

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Ajnara Ambrosia Social Welfare Society

....Applicant

Versus

Ashok Gupta & Anr.
Suspended Director of M/s Ajnara India Ltd.

....Respondents

AFFIDAVIT

I, Skand Kumar Khurmi, son of Sh. Ashok Kumar Khurmi, aged about 43 years, R/o 119A, Pocket-B, Dilshad Garden, Delhi - 110095, do hereby solemnly affirm and state as under :

1. I am the Authorized Signatory of the Applicant and well conversant of the facts and circumstances of the present case and as such I am fully competent and duly authorized to swear the present affidavit.
2. I state that the contents of accompanying application are true and correct to the best of my knowledge and belief and as they are derive from the records of the case.
3. I further state that the Annexures annexed with the application are true copies of their respective originals.

VERIFICATION :

I, the abovenamed deponent do hereby verify at New Delhi on this ___ day of April, 2025 that the contents of my above affidavit are true and correct and no part of it is incorrect and nothing material has been concealed therefrom.

DEPONENT

14 APR 2025

DEPONENT

CERTIFIED THAT THE CONTENTS EXPLAINED TO THE
DEPONENT BY THE SIGNATORY WERE TRUE AND CORRECT TO
UNDERSTAND & AFFIDAVIT DEPOSED BY HIM AT
DELHI ON 14 APR 2025
IDENTIFIED THE EXECUTANT (DEPONENT) AS
SIGNED IN MY PRESENCE.

IDENTIFIED



ATTESTED

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SUPREME COURT OF INDIA
COMPOUND NEW DELHI
Register Pg./Sl. No. 12374 APR 2025