

N.D.O.H. - 30-11-2022

**BEFORE THE NATIONAL COMPANY LAW APPELLATE
TRIBUNAL, NEW DELHI**

APPELLATE JURISDICTION

I.A. NO. _____ OF 2022

IN

COMPANY APPEAL (AT) (Insolvency) No. 1243 of 2022

(Appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 arising out of the order dated 17.10.2022 passed by the Ld. Adjudicating Authority, National Company Law Tribunal, Bench at New Delhi in (IB)-194(ND)/2021)

IN THE MATTER OF:

**APPEAL UNDER SECTION 61 OF THE INSOLVENCY AND
BANKRUPTCY CODE, 2016**

AND

IN THE MATTER OF:

L&T FINANCE LIMITED ...APPLICANT

AND

IN THE MATTER OF:

Ashok Gupta ...APPELLANT
Suspended Director of Ajnara India Limited

VERSUS

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

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New Delhi - 110025

Phone: 011 41115222

M: 8447865633

Dated: 16.11.2022

Place: New Delhi

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IN THE MATTER OF:

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Manish Kumar Gupta & Anr.

...RESPONDENT

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THROUGH:



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VERSUS

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

MEMO OF PARTIES

IN THE MATTER OF:

L&T FINANCE LIMITED
Through Authorised Representative,
Mr. Ruchir Jauhari
15th Floor, P.S. Srijan Tech Park,
Plot No 52 Block DN, Sector-V,

B

Salt Lake City, District Parganas (North),
Kolkata – 700 091, West Bengal, India

.. INTERVENOR/APPLICANT

AND IN THE MATTER OF:

**Ashok Gupta
Suspended Director of Ajnara India Limited**

504, 5th floor, Sachdeva Corporate Tower 17
Karkardooma Community Centre
New Delhi 110092

...APPELLANT

versus

Mr. Manish Kumar Gupta & 112 Ors.

(Authorised Representative for Class of Creditors)

R/o A-1/538, Sector -6, Rohini,
New Delhi – 110085

...RESPONDENT

THROUGH:

Borkataky
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Manish Kumar Gupta & Anr. ...RESPONDENT
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SYNOPSIS

1. The Applicant Financial Creditor is constrained to file the present application seeking intervention in the captioned appeal as it has been left with no other alternative but to agitate its rights before this Hon'ble Appellate Tribunal against the Corporate Debtor, who is amongst other breaches, in default in repayment of its financial dues, and thus pray before this Hon'ble Appellate Tribunal to continue the CIRP against Ajnara Ambrosia and also to extend the CIRP to Ajnara Panorama project.

2. The Applicant is one of the largest Financial Creditors (*apart from the Homebuyers*) having extended to the Corporate Debtor four (4) loan facilities aggregating to Rs. 625,00,00,000/-



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(Rupees Six Hundred and Twenty-Five Crore only) for the projects namely, **Ajnara Ambrosia** and **Ajnara Panorama**.

3. The present application for intervention is necessitated owing to the gross and blatant violations committed by the Corporate Debtor of the obligations under the above-mentioned Loan Agreements. It is respectfully submitted that not only is the Corporate Debtor commercially insolvent and has defaulted in repaying the loan amounts under the Loan Agreements, the Corporate Debtor's conduct (or more pertinently, *misconduct*) in managing *inter alia* its financial affairs in relation to both Ajnara Ambrosia and Ajnara Panorama projects is nowhere close to being reckoned as above board.
4. It is most respectfully submitted that the Corporate Debtor is in spiralling financial abyss, with its conduct having breached all standards of corporate propriety and compliance. Despite its efforts to underplay the extent of its desperation and impending financial doom (*through a purported 'settlement' with Ajnara Ambrosia's homeowners*) in truth, it is clear that the substratum of the Corporate Debtor is completely eroded, and its liabilities are far in excess of its project assets.
5. Moreover, the Corporate Debtor has, by stealth, engineered the incremental dissipation of the Applicant's valuable Security *inter alia* through diverting sale receivables, its wanton and sustained and precipitated breaches of its obligations to RERA and YEIDA, thus jeopardizing the Applicant's core security in relation to project lands in relation to both Projects. Under these circumstances, and the events which have been pleaded hereinabove and the economic situation in which the Corporate Debtor is placed, it is just and equitable that the Corporate Debtor should be admitted into CIRP. However, in the event, this Hon'ble Appellate Tribunal is of the view that the the CIRP ought to be carried out on a project-wise basis, in that event, it is

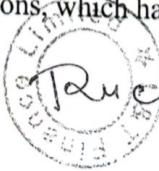


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prayed that the CIRP against Ajnara Ambrosia may be continued and the CIRP ought to be extended against Ajnara Panorama project, as well.

6. It is submitted (*as would be demonstrated hereinbelow*) that the conduct of the Corporate Debtor leaves no room for doubt that both the projects of the Corporate Debtor, i.e., Ajnara Ambrosia and Ajnara Panorama, (*with construction activity in a virtual standstill since June 2022 and April 2022 respectively*) are in the vortex of the Corporate Debtor's escalating financial paralysis and economic and financial instability and for reasons of which, both the afore stated projects ought to be resolved under CIRP.
7. In furtherance of the above the Applicant states as follows:
 - 7.1 Firstly, and most importantly, as on 30.10.2022 an amount to the tune of Rs. 643,87,44,563 (Rupees Six Hundred Forty-Three Crore Eighty-Seven Lakh Forty-Four Thousand Five Hundred and Sixty-Three only) is outstanding and payable as against the Corporate Debtor in the books of the Applicant towards principal and interest. The Corporate Debtor has repeatedly breached its payment obligations under the Loan Agreements with instalments being overdue on a continuous basis, finally leading to the loan accounts being declared NPA on 14.11.2022. It is submitted that the Corporate Debtor is in an extremely stressed financial situation and has very little corpus left with itself to settle the financial debt of the Applicant or that of any other creditor.
 - 7.2 While the default in payment of financial debt is the only prerequisite for initiation of CIRP, the Applicant is providing hereinbelow certain instances, which not only tantamount to a wilful breach by the Corporate Debtor of the key covenants under the Loan Agreements, but also other violations, which has put both Ajnara Ambrosia and



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Ajnara Panorama projects in great risk. These are as follows:

In re: both Project Ambrosia and Project Panorama

- 7.2.1 One of the paramount obligations of the Corporate Debtor under the Loan Agreements (*to secure the servicing of the loan amounts*) was for the Corporate Debtor to ensure that project receivables and all other receivables in respect of the projects are deposited only in the designated escrow account that was opened particularly for the said purpose.

The Loan Agreements further stipulate that in case the Corporate Debtor *inter alia* fails, neglects to deposit or route entire project receivables in the escrow account, the same would amount to an Event of Default. However, despite the same, and to the utter shock and surprise of the Applicant, while reviewing the inventory for the units sold for both Projects from January - July of 2022, it was noticed that an amount of Rs. 14.38 Crore approx., [Rs. 6.38 Crores for Ajnara Ambrosia & Rs. 8 Crores for Ajnara Panorama] purportedly collected as project receivables in relation to the two projects, were not deposited to the said escrow account and presumably misappropriated. Despite being questioned by the Applicant, the Corporate Debtor has failed to respond in this regard. It is submitted that the said *mala fide* act of the Corporate Debtor clearly demonstrates that it is wilfully violating all financial covenants under the Loan Agreements thereby completely putting the projects in jeopardy.

- 7.2.2 Another pertinent obligation of the Corporate Debtor was that it would obtain a no-objection certificate from the Applicant prior to entering into any new agreements for sale with the Customer(s) in connection to the Units in the



Ravinder Jauhar

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projects and any and all amounts accruing from such sale, shall form part of the project receivables, which were to be deposited in the escrow account and utilized in the manner provided in the Escrow Agreement. In addition to the above obligation, the Corporate Debtor was also obliged to prepay the differential amounts for the Units which were sold below the pre-determined minimum selling price ("MSP") as agreed between the parties. As stated hereinabove, not only has the Corporate Debtor been violating the requirement of depositing project receivables in the escrow account, but it has also been selling the Units without obtaining consent of the Applicant; and where consent has been obtained for sale of Units below the MSP, the Corporate Debtor has wilfully not deposited the differential amount in the escrow account. Accordingly, the Corporate Debtor has in the most illegal manner breached various material terms under the Loan Agreements. It is submitted that the Applicant had put the Corporate Debtor to notice in relation to the above material breaches as early as on 08.03.2022 and 22.03.2022, calling upon the Corporate Debtor to immediately cancel the unauthorized transfer of units. However, the Corporate Debtor in wanton disregard to its obligations under the Loan Agreement and in the most brazen and wilful manner has not, until date, even issued a response to the said notices.

7.2.3 That apart from the above-mentioned examples of corporate malpractices including *inter alia* a possible misappropriation of money, the Corporate Debtor has also failed to ensure that the value of the security provided to the Applicant by way of Mortgaged Properties ("**Security Cover**") in relation to both Ajnara Ambrosia and Ajnara Panorama projects is at least 1.5 times of the



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Outstanding Amounts in relation to the Loan, which in itself is an Event of Default.

7.2.4 Furthermore, the Corporate Debtor has failed in replenishing the Debt Service Reserve Accounts (“DSRA”) for both Projects. As on 31.10.2022, the DSRA is in deficit by an amount of Rs. 12,09,12,489/- (Rupees Twelve Crore Nine Lakh Twelve Thousand Four Hundred and Eighty-Nine Only) in relation to Ajnara Ambrosia and Rs. 12,04,54,674/- (Rupees Twelve Crore Four Lakh Fifty-Four Thousand Six Hundred and Seventy-Four Only) in relation to Ajnara Panaroma. This in itself also clearly demonstrates the Corporate Debtor is not commercially solvent.

7.2.5 It is further submitted that the Applicant has recently learnt that Achal Infrastructure Private Limited (*which is a third party mortgagor and is substantially owned by a subsidiary of the Corporate Debtor and had mortgaged its immovable property situated at Najafgarh, New Delhi as security for Ambrosia Loan Agreement 1 and Panorama Loan Agreement 1*), has brazenly sold a portion of the said mortgaged land without obtaining the Applicant’s permission, further eroding the already depleted Security Cover that the Applicant is entitled to.

In re: Project Ambrosia

7.2.6 It is submitted that the Corporate Debtor has failed to comply with the terms in relation to creation of security in favour of the Applicant in terms of the Loan Agreement, triggering an Event and Default, apart from leaving the Applicant financially vulnerable without its security cover.



Ruchir Jainchar

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7.2.7 Presently, it is important to highlight that the Corporate Debtor does not even possess a valid certificate for construction of project as the RERA Certificates issued by the authority in relation to the project Ajnara Ambrosia were valid till 28.02.2019, and then last extended till 12.06.2021.

In re: Project Panorama

7.2.8 A conditional Permission to Mortgage (PTM) was received from Yamuna Expressway Industrial Development Authority ("YEIDA") in 2018, with precondition for payment of premium of Rs. 17,03,43,911 (Rupees Seventeen Crore three Lakh Forty-Three Thousand Nine Hundred and Eleven only). The due date for the same was 30.10.2018, however the Corporate Debtor completely failed to pay such premium resulting in an Event of Default. Be that as it may, the Corporate Debtor has failed to otherwise fulfil its lease obligations and pay the due lease amounts, compelling YEIDA to cancel the lease granted to the Corporate Debtor over Ajnara Panorama project land vide its notice dated 21.04.2022.

7.2.9 It is submitted that presently the Hon'ble High Court of Judicature at Allahabad vide its order dated 13.05.2022, has stayed YEIDA's cancellation of the lease owing to the fact that the Corporate Debtor paid a sum of Rs. 7 Crore to YEIDA as per the said order. It is submitted that vide the said order, the Hon'ble High Court had also directed YEIDA to inform the Corporate Debtor about *inter alia* the balance amount payable after adjusting the amount already deposited by it. In that regard, YEIDA has issued a letter dated 06.07.2022 to the Corporate Debtor intimating it of the balance amount payable, i.e.,



Ruchir Tawhani

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Rs. 60,21,87,467.89 (Rupees Sixty Crore Twenty-One Lakh Eighty-Seven Thousand Four Hundred and Sixty Seven and Eighty Nine paisa only).

7.2.10 It is submitted that considering the Corporate Debtor's financial health there is every likelihood that the Corporate Debtor would fail in full repayment of its above dues to YEIDA resulting in cancellation of the Lease. It is submitted that in the event of such cancellation not only will the Applicant's mortgage become defective, but the entire project will become illegal which will have catastrophic consequences for all the homebuyers who have invested their hard-earned monies into the said project.

7.2.11 That apart, the Corporate Debtor had also given an undertaking that the RERA licenses would be renewed by end of June 2022, however, the same is still pending.

8. In view of the aforesaid, and other grounds as detailed in the accompanying application, the Applicant herein prays that this Hon'ble Appellate Tribunal may be pleased to allow the prayers of the Applicant.

THROUGH


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Rakesh Jauhar

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...RESPONDENT

(Authorised Representative for Class of Creditors)

LIST OF DATES

S.NO.	DATE	PARTICULARS
1.	09.06.2017	Loan Agreement executed between L&T Infrastructure Finance Company Limited with the Corporate Debtor and IVR Prime Developers (AVADI) Pvt. Ltd. for an aggregate principal amount of Rs. 350,00,00,000/- (Rupees Three



		Hundred and Fifty Crore only) ("Ambrosia Loan Agreement 1").
2.	27.11.2017	Loan Agreement executed between the Applicant and L&T Infrastructure Finance Company Limited jointly with the Corporate Debtor for a loan for an aggregate principal amount of Rs. 185,00,00,000/- (Rupees One Hundred and Eighty-Five Crore only) ("Panorama Loan Agreement 1").
3.	16.11.2021	A supplemental loan agreement executed between the Applicant and the Corporate Debtor for grant of an additional term loan financial assistance of up to Rs. 50,00,00,000/- (Rupees Fifty Crore only) ("Ambrosia Loan Agreement 2").
4.	09.05.2022	A supplemental loan agreement executed between the Applicant and the Corporate Debtor for the grant of an additional term loan financial assistance of up to Rs. 40,00,00,000/- (Rupees Forty Crore only) ("Panorama Loan Agreement 2").
5.	Various Dates	The Corporate Debtor had to provide various securities for Ambrosia Loan Agreement 1, Ambrosia Loan Agreement 2, Panorama Loan Agreement 1 and Panorama Loan Agreement 2 which are detailed in Annexure-3 (Colly).
6.	15.02.2021 & 19.03.2021	Orders passed by the Ld. NCLT at Mumbai & Kolkata allowing the scheme of amalgamation by way of merger of L&T Housing Finance Limited and L&T Infrastructure Finance Company Limited with the Applicant.
7.	12.06.2021	The RERA certificate of the Corporate Debtor was last extended till 12.06.2021 in relation to



Ruchir Jainkar

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		Ajnara Ambrosia and thereafter the same stands lapsed.
8.	January – July 2022	Between the said period, the Applicant has failed to deposit the amount of Rs. 14.38 Crore approx., [Rs. 6.38 Crores for Ajnara Ambrosia & Rs. 8 Crores for Ajnara Panorama] purportedly collected as project receivables in relation to the two projects, in the escrow account maintained by the Corporate Debtor with the Applicant, thus being in breach of the Loan Agreements and Escrow Agreement.
9.	08.03.2022	The Applicant informed the Corporate Debtor of its failure to deposit the differential amount towards the units sold below the minimum selling price in terms of the No objection Certificate provided for the sale of the units to the Applicant.
10.	22.03.2022	The Applicant informed the Corporate Debtor of its breach of sale of units without obtaining the No objection certificate provided for the sale of the units to the Applicant.
11.	21.04.2022	YEIDA cancelled the lease granted to the Corporate Debtor of the Ajnara Panorama project land vide its notice.
12.	April 2022 onwards	The construction of the Ajnara Panorama has been at a standstill.
13.	13.05.2022	The Hon'ble High Court of Judicature at Allahabad vide its order stayed YEIDA's cancellation of the lease and directed the Corporate Debtor to pay a sum of Rs. 7 Crore to YEIDA. It is submitted that vide the said order, the Hon'ble High Court had also directed YEIDA to inform the Corporate Debtor about <i>inter alia</i>



Rajender Jain & Co.

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		the balance amount payable after adjusting the amount already deposited by it.
14.	June 2022 onwards	The construction of the Ajnara Ambrosia has been at a standstill.
15.	06.07.2022	YEIDA has issued a letter dated 06.07.2022 to the Corporate Debtor intimating it of the balance amount payable, i.e., Rs. 60,21,87,467.89 (Rupees Sixty Crore Twenty-One Lakh Eighty-Seven Thousand Four Hundred and Sixty-Seven and Eighty-Nine paisa only). However, the same has not been paid by the Corporate Debtor.
16.	20.09.2022	The Ld. Adjudicating Authority admitted the Corporate Debtor into CIRP and declared a moratorium. Further, Mr. Amarpal was appointed as the Interim resolution Professional ("IRP").
17.	04.10.2022	The Applicant submitted its claim as a Financial Creditor (Form C) to the IRP of the Corporate Debtor claiming an amount of INR 6,35,44,04,077 (Rupees Six Hundred Thirty-Five Crores Forty-Four Lakhs Four Thousands and Seventy-Seven), i.e., its total claim against Ajnara/ Corporate Debtor.
18.	17.10.2022	This Hon'ble Appellate Tribunal passed an order in the captioned appeal <i>inter alia</i> observing that the CIRP was currently confined only to Ajnara Ambrosia and directed the IRP to continue to supervise the construction of Project Ajnara Ambrosia with the assistance of the Corporate Debtor, its Officers and employees. Further, the IRP was directed to not take any further steps in pursuance of order dated 20.09.2022 admitting the Corporate Debtor in CIRP.



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19.	30.10.2022	As on the said date, an amount to the tune of Rs. 643,87,44,563 (Rupees Six Hundred Forty Three Crore Eighty-Seven Lakh Forty Four Thousand five Hundred and Sixty Three only) is outstanding and payable as against the Corporate Debtor in the books of the Applicant towards principal and interest.
20.	31.10.2022	The Corporate Debtor has failed in replenishing the Debt Service Reserve Accounts ("DSRA") for both Projects. As on 31.10.2022, the DSRA is in deficit by an amount of Rs. 12,09,12,489/- (Rupees Twelve Crore Nine Lakh Twelve Thousand Four Hundred and Eighty-Nine Only) in relation to Ajnara Ambrosia and Rs. 12,04,54,674/- (Rupees Twelve Crore Four Lakh Fifty-Four Thousand Six Hundred and Seventy-Four Only) in relation to Ajnara Panaroma.
21.	14.11.2022	The loan accounts of the Corporate Debtor maintained with the Applicant were declared NPA.
22.	17.11.2022	The Applicant preferred the said application.

THROUGH:

Kochhar & Co

Samiron Borkataky/ Kritika Angirish
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Dated: 16.11.2022
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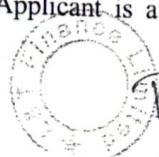
**APPLICATION UNDER SECTION 60 (5) OF THE
INSOLVENCY AND BANKRUPTCY CODE, 2016 READ WITH
RULE 11 OF THE NATIONAL COMPANY LAW APPELLATE
TRIBUNAL RULES, 2016 SEEKING PERMISSION TO
INTERVENE IN THE PRESENT APPEAL**

Ruchir Janakari



MOST RESPECTFULLY SHOWETH:

1. The Applicant herein, L&T Finance Limited is a public limited company incorporated under the Companies Act, 1956 and having its registered office at 15th Floor, P.S. Srijan Tech Park, Plot No 52 Block DN, Sector-V, Salt Lake City, District Parganas (North), Kolkata - 700 091, West Bengal, India (“Applicant” and/or “LTFS”). The present application is being filed through Mr. Ruchir Jauhari, who has been duly authorized vide Authority Letter dated October 04, 2022. Copy of the Authority Letter dated October 04, 2022, is annexed hereto and marked as **Annexure A-1**.
2. It is respectfully submitted that the Applicant is one of the largest Financial Creditors (*apart from the Homebuyers*) to the Corporate Debtor herein, which has defaulted in repayment of its financial debt. In view of the same, it is needless to state that the Applicant is a major stakeholder in relation to the corporate insolvency resolution process (“CIRP”) of the Corporate Debtor and any decision regarding the same would certainly have a substantial impact on the Corporate Debtor.
3. The present application is being filed by the Applicant seeking permission to intervene in the captioned appeal to bring on record certain critical and overwhelming facts in relation to the conduct of the Corporate Debtor for a complete and holistic adjudication of the present appeal. As would be demonstrated in detail herein below, the Applicant is a proper party to the appeal and its



Ruchir Jauhari

presence is required for a complete adjudication of the questions involved in this appeal.

Brief background

4. The Applicant is a secured Financial Creditor of the Corporate Debtor having extended to it four (4) loan facilities aggregating to Rs. 625,00,00,000/- (Rupees Six Hundred and Twenty-Five Crore only) for the projects namely, **Ajnara Ambrosia** and **Ajnara Panorama**, in the following manner:

Ajnara Ambrosia

- 4.1 L&T Infrastructure Finance Company Limited (which merged with the Applicant vide orders dated 15.03.2021 and 19.03.2021 passed by the Ld. NCLT at Mumbai and Kolkata, respectively) had executed a loan agreement dated 09.06.2017 with the Corporate Debtor and IVR Prime Developers (AVADI) Pvt. Ltd. (“**Ambrosia Loan Agreement 1**”) vide which the Applicant had advanced to the Corporate Debtor a loan for an aggregate principal amount of Rs. 350,00,00,000/- (Rupees Three Hundred and Fifty Crore only) on the terms and conditions contained therein.

- 4.2 Subsequently, the Applicant executed a supplemental loan agreement dated 16.11.2021 and granted an additional term loan financial assistance of up to Rs. 50,00,00,000/-



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Bhadrak

(Rupees Fifty Crore only) ("Ambrosia Loan Agreement 2") for the purposes and on the terms and contained therein and in the Ambrosia Loan Agreement 1.

Ajnara Panorama

4.3 The Applicant and L&T Housing Finance Limited (*which merged with the Applicant vide orders dated 15.03.2021 and 19.03.2021 passed by the Ld. NCLT at Mumbai and Kolkata, respectively*) had jointly executed a loan agreement dated 27.11.2017 with the Corporate Debtor ("Panorama Loan Agreement 1") vide which a loan for an aggregate principal amount of Rs. 185,00,00,000/- (Rupees One Hundred and Eighty-Five Crore only) was advanced to the Corporate Debtor on the terms and conditions contained therein.

4.4 Subsequently, the Applicant executed a supplemental loan agreement dated 09.05.2022 and granted an additional term loan financial assistance of up to Rs. 40,00,00,000/- (Rupees Forty Crore only) ("Panorama Loan Agreement 2") for the purposes and on the terms and contained therein and in the Panorama Loan Agreement 1.

The above-referenced loan agreements and supplemental loan agreements of the Applicant with the Corporate Debtor (*for the Ajnara Ambrosia and Ajnara Panorama projects respectively*) are hereby collectively referred to as "Loan Agreements". The



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loan amounts provided to the Corporate Debtor vide the Loan Agreements are segregated and summarised in the table below for ease of reference:

S. No.	Project	Date of Loan Agreement/ Supplemen tal Loan Agreement	Sanctioned Amount in INR (with disbursement break- up)	
1.	Ambrosia Loan Agreement 1	09.06.2017	1,55,63,61,794	
			350,00,00,000	1,15,00,00,000
				79,36,38,206
2.	Ambrosia Loan Agreement 2	16.11.2021	50,00,00,000	
3.	Panorama Loan Agreement 1	21.11.2017	185,00,00,000	1,35,00,00,000
				50,00,00,000
4.	Panorama Loan Agreement 2	09.05.2022	40,00,00,000	
	Total		625,00,00,000	

Copies of the Loan Agreements dated 09.06.2017, 21.11.2017

16.11.2021 & 09.05.2022 and the merger orders are annexed

hereto and marked as **Annexure A-2 (Colly)**.



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5. For securing the aforesaid loans extended by the Applicant, the Corporate Debtor had provided various securities for each sanctioned loan. The list of securities created for each loan is annexed hereto and marked as **Annexure A-3**.

Grounds for intervention

6. The present application for intervention is necessitated owing to the gross and blatant violations committed by the Corporate Debtor of the obligations under the above-mentioned Loan Agreements. It is respectfully submitted that not only is the Corporate Debtor commercially insolvent and has defaulted in repaying the loan amounts under the Loan Agreements, the Corporate Debtor's conduct (or more pertinently, *misconduct*) in managing *inter alia* its financial affairs in relation to both Ajnara Ambrosia and Ajnara Panorama projects is nowhere close to being reckoned as above board.
7. It is further submitted (*as would be demonstrated hereinbelow*) that the conduct of the Corporate Debtor leaves no room for doubt that both the projects of the Corporate Debtor, i.e., Ajnara Ambrosia and Ajnara Panorama, (*with construction activity in a virtual standstill since June 2022 and April 2022 respectively*) are in the vortex of the Corporate Debtor's escalating financial paralysis and economic and financial instability and for reasons of which, both the afore stated projects ought to be resolved under CIRP. Accordingly, the Corporate Debtor's averments



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(leading this Hon'ble Appellate Tribunal to form a view that “[...] CIRP, at present, is confined to only the Ajnara Ambrosia Project”) have been deliberately interpolated by the Corporate Debtor to underplay its cascading defaults and mislead this Hon'ble Appellate Tribunal as to the actual precarity of its financial position.

8. In furtherance of the above the Applicant states as follows:

8.1 Firstly, and most importantly, as on 30.10.2022 an amount to the tune of Rs. 643,87,44,563 (Rupees Six Hundred Forty-Three Crore Eighty-Seven Lakh Forty-Four Thousand Five Hundred and Sixty-Three only) is outstanding and payable as against the Corporate Debtor in the books of the Applicant towards principal and interest. The Corporate Debtor has repeatedly breached its payment obligations under the Loan Agreements with instalments being overdue on a continuous basis, finally leading to the loan accounts being declared NPA on 14.11.2022. It is submitted that the Corporate Debtor is in an extremely stressed financial situation and has very little corpus left with itself to settle the financial debt of the Applicant or that of any other creditor.

8.2 While the default in payment of financial debt is the only prerequisite for initiation of CIRP, the Applicant is providing hereinbelow certain instances, which not only



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tantamount to a wilful breach by the Corporate Debtor of the key covenants under the Loan Agreements, but also other violations, which has put both Ajnara Ambrosia and Ajnara Panorama projects in great risk. These are as follows:

In re: both Project Ambrosia and Project Panorama

8.2.1. One of the paramount obligations of the Corporate Debtor under the Loan Agreements (*to secure the servicing of the loan amounts*) was for the Corporate Debtor to ensure that project receivables and all other receivables in respect of the projects are deposited only in the designated escrow account that was opened particularly for the said purpose.

The Loan Agreements further stipulate that in case the Corporate Debtor *inter alia* fails, neglects to deposit or route entire project receivables in the escrow account, the same would amount to an Event of Default. However, despite the same, and to the utter shock and surprise of the Applicant, while reviewing the inventory for the units sold for both Projects from January - July of 2022, it was noticed that an amount of Rs. 14.38 Crore approx., [Rs. 6.38 Crores for Ajnara Ambrosia & Rs. 8 Crores for Ajnara Panorama] purportedly collected as project receivables in relation to the two projects, were not deposited to the said escrow account and presumably



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misappropriated. Despite being questioned by the Applicant, the Corporate Debtor has failed to respond in this regard. It is submitted that the said *mala fide* act of the Corporate Debtor clearly demonstrates that it is wilfully violating all financial covenants under the Loan Agreements thereby completely putting the projects in jeopardy.

8.2.2. Another pertinent obligation of the Corporate Debtor was that it would obtain a no-objection certificate from the Applicant prior to entering into any new agreements for sale with the Customer(s) in connection to the Units in the projects and any and all amounts accruing from such sale, shall form part of the project receivables, which were to be deposited in the escrow account and utilized in the manner provided in the Escrow Agreement. In addition to the above obligation, the Corporate Debtor was also obliged to prepay the differential amounts for the Units which were sold below the pre-determined minimum selling price ("MSP") as agreed between the parties. As stated hereinabove, not only has the Corporate Debtor been violating the requirement of depositing project receivables in the escrow account, but it has also been selling the Units without obtaining consent of the Applicant; and where consent has been obtained for sale of Units below the MSP, the Corporate Debtor has



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wilfully not deposited the differential amount in the escrow account. Accordingly, the Corporate Debtor has in the most illegal manner breached various material terms under the Loan Agreements. It is submitted that the Applicant had put the Corporate Debtor to notice in relation to the above material breaches as early as on 08.03.2022 and 22.03.2022, calling upon the Corporate Debtor to immediately cancel the unauthorized transfer of units. However, the Corporate Debtor in wanton disregard to its obligations under the Loan Agreement and in the most brazen and wilful manner has not, until date, even issued a response to the said notices.

8.2.3. That apart from the above-mentioned examples of corporate malpractices including *inter alia* a possible misappropriation of money, the Corporate Debtor has also failed to ensure that the value of the security provided to the Applicant by way of Mortgaged Properties ("Security Cover") in relation to both Ajnara Ambrosia and Ajnara Panorama projects is at least 1.5 times of the Outstanding Amounts in relation to the Loan, which in itself is an Event of Default.

8.2.4. Furthermore, the Corporate Debtor has failed in replenishing the Debt Service Reserve Accounts ("DSRA") for both Projects. As on 31.10.2022, the DSRA is in deficit by an amount of Rs. 12,09,12,489/-



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(Rupees Twelve Crore Nine Lakh Twelve Thousand Four Hundred and Eighty-Nine Only) in relation to Ajnara Ambrosia and Rs. 12,04,54,674/- (Rupees Twelve Crore Four Lakh Fifty-Four Thousand Six Hundred and Seventy-Four Only) in relation to Ajnara Panorama. This in itself also clearly demonstrates the Corporate Debtor is not commercially solvent.

8.2.5. It is further submitted that the Applicant has recently learnt that Achal Infrastructure Private Limited (*which is a third party mortgagor and is substantially owned by a subsidiary of the Corporate Debtor and had mortgaged its immovable property situated at Najafgarh, New Delhi as security for Ambrosia Loan Agreement I and Panorama Loan Agreement I*), has brazenly sold a portion of the said mortgaged land without obtaining the Applicant's permission, further eroding the already depleted Security Cover that the Applicant is entitled to.

In re: Project Ambrosia

8.2.6. It is submitted that the Corporate Debtor has failed to comply with the terms in relation to creation of security in favour of the Applicant in terms of the Loan Agreement, triggering an Event and Default, apart from leaving the Applicant financially vulnerable without its security cover.



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8.2.7. Presently, it is important to highlight that the Corporate Debtor does not even possess a valid certificate for construction of project as the RERA Certificates issued by the authority in relation to the project Ajnara Ambrosia were valid till 28.02.2019, and then last extended till 12.06.2021.

In re: Project Panorama

8.2.8. A conditional Permission to Mortgage (PTM) was received from Yamuna Expressway Industrial Development Authority ("YEIDA") in 2018, with precondition for payment of premium of Rs. 17,03,43,911 (Rupees Seventeen Crore three Lakh Forty-Three Thousand Nine Hundred and Eleven only). The due date for the same was 30.10.2018, however the Corporate Debtor completely failed to pay such premium resulting in an Event of Default. Be that as it may, the Corporate Debtor has failed to otherwise fulfil its lease obligations and pay the due lease amounts, compelling YEIDA to cancel the lease granted to the Corporate Debtor over Ajnara Panorama project land vide its notice dated 21.04.2022.

8.2.9. It is submitted that presently the Hon'ble High Court of Judicature at Allahabad vide its order dated 13.05.2022 has stayed YEIDA's cancellation of the lease owing to



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the fact that the Corporate Debtor paid a sum of Rs. 7 Crore to YEIDA as per the said order. It is submitted that vide the said order, the Hon'ble High Court had also directed YEIDA to inform the Corporate Debtor about *inter alia* the balance amount payable after adjusting the amount already deposited by it. In that regard, YEIDA has issued a letter dated 06.07.2022 to the Corporate Debtor intimating it of the balance amount payable, i.e., Rs. 60,21,87,467.89 (Rupees Sixty Crore Twenty-One Lakh Eighty-Seven Thousand Four Hundred and Sixty Seven and Eighty Nine paisa only).

8.2.10. It is submitted that considering the Corporate Debtor's financial health there is every likelihood that the Corporate Debtor would fail in full repayment of its above dues to YEIDA resulting in cancellation of the Lease. It is submitted that in the event of such cancellation not only will the Applicant's mortgage become defective, but the entire project will become illegal which will have catastrophic consequences for all the homebuyers who have invested their hard-earned monies into the said project.

8.2.11. That apart, the Corporate Debtor had also given an undertaking that the RERA licenses would be renewed by end of June 2022, however, the same is still pending.



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The copy of the communications issued by the Corporate Debtor in relation to requirement of escrow agreement dated 28.08.2022 and unauthorised/ irregular sale of Units dated 08.03.2022 and 22.03.2022 are annexed hereto and marked as **Annexure A-4 (Colly)**.

The copies of the communications dated 29.09.2022 issued by the Applicant to the Corporate Debtor are annexed hereto and marked as **Annexure A-5 (Colly)**.

The copies of the order dated 13.05.2022 passed by the Hon'ble High Court of Judicature at Allahabad and the letter dated 06.07.2022 issued by YEIDA to the Corporate Debtor are annexed hereto and marked as **Annexure A-6 (Colly)**.

9. It is most respectfully submitted that even a bare perusal of the litany of defaults above, leaves no room for doubt that the Corporate Debtor is in spiralling financial abyss, with its conduct having breached all standards of corporate propriety and compliance. Despite its efforts to underplay the extent of its desperation and impending financial doom (*through a purported 'settlement' with Ajnara Ambrosia's homeowners*) in truth, it is clear that the substratum of the Corporate Debtor is completely eroded, and its liabilities are far in excess of its project assets. Moreover, the Corporate Debtor has, by stealth, engineered the incremental dissipation of the Applicant's valuable Security *inter alia* through diverting sale receivables, its wanton and sustained



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and precipitated breaches of its obligations to RERA and YEIDA, thus jeopardizing the Applicant's core security in relation to project lands in relation to both Projects. Under these circumstances, and the events which have been pleaded hereinabove and the economic situation in which the Corporate Debtor is placed, it is just and equitable that the Corporate Debtor should be admitted into CIRP.

10. It is submitted that the Ld. Adjudicating Authority, National Company Law Tribunal, Bench at Delhi ("Ld. **Adjudicating Authority**"), had *vide* order dated 20.09.2022 ("**Impugned Order**") admitted an application under section 7 of the Insolvency and Bankruptcy Code 2016 ("**I&B Code, 2016**") filed by Manish Kumar Gupta & 112 others ("**Respondent**"), and commenced CIRP against the Corporate Debtor. Further, it is respectfully submitted that *vide* the Impugned Order, Mr. Amarpal was appointed as the Interim resolution Professional ("**IRP**"). Copy of the Impugned Order is annexed hereto and marked as **Annexure A-7**.
11. Subsequent to passing of the Impugned Order, the IRP *vide* its public announcement (Form A) called for proof of claims against the Corporate Debtor. The copy the public announcement in Form A by the IRP is annexed hereto and marked as **Annexure A-8**.



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12. Accordingly, the Applicant on 04.10.2022 submitted its claim as a Financial Creditor (Form C) to the IRP of the Corporate Debtor claiming an amount of INR 6,35,44,04,077 (Rupees Six Hundred Thirty-Five Crores Forty Four Lakhs Four Thousand and Seventy Seven), i.e. its total claim against Ajnara/ Corporate Debtor. A copy of Form C submitted by the Applicant to the IRP is annexed hereto and marked as **Annexure A-9**.
13. Soon thereafter, one of the directors of the Corporate Debtor preferred the present appeal before this Hon'ble Appellate Tribunal challenging the Impugned Order.
14. From a perusal of the order dated 17.10.2022 passed in the present appeal, it appears that the Corporate Debtor has sought to give an impression to this Hon'ble Appellate Tribunal that the Corporate Debtor is a solvent company, and it is in the process of handing over possession of flats to the respondent homebuyers and has also executed a settlement (OTS) with another financial creditor. It is respectfully submitted that save the submission in relation to executing an OTS with Punjab National Bank, of which the Applicant has no knowledge, the rest of the Corporate Debtor's submissions are absolutely false and misleading. It is respectfully submitted that the Corporate Debtor has not undertaken any construction whatsoever in relation to either Ajnara Ambrosia or Ajnara Panorama for the last several months and therefore its assertion that it will hand over possession in the next 6 to 9 months is an absolute hogwash. As stated



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hereinabove, the Corporate Debtor is unlawfully liquidating whatever assets that it has created till now and there is absolutely no real prospect of construction. In other words, no asset whatsoever is being created, and the Corporate Debtor is illegal diverting funds by unauthorized sale of already built flats.

15. In the above facts and circumstances, it is respectfully submitted that this Hon'ble Appellate Tribunal ought not to grant any reprieve whatsoever to the Corporate Debtor.
16. It is submitted that this Hon'ble Appellate Tribunal vide its order dated 17.10.2022 observed that the CIRP was currently confined only to Ajnara Ambrosia and directed the IRP to continue to supervise the construction of Project Ajnara Ambrosia with the assistance of the Corporate Debtor, its Officers and employees.
17. However, as demonstrated above, the Corporate Debtor's violations are above and beyond merely Project Ajnara Ambrosia (*as the Corporate Debtor would prefer this Hon'ble Appellate Tribunal to believe*). Given the abovementioned violations and breaches of the Corporate Debtor, it is respectfully submitted that this Hon'ble Appellate Tribunal may be pleased to extend the CIRP to Ajnara Panorama project as well. It is respectfully submitted that if this conduct of the Corporate Debtor remains unbridled, it would lead to further dissipation of assets in the Ajnara Panorama as well which would cause irretrievable loss to not only the Applicant but also to large number of homebuyers.



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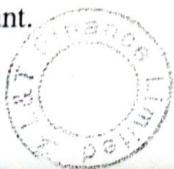
18. The Applicant herein submits that as the Corporate Debtor has been admitted into insolvency vide the Impugned Order, the Applicant herein is prevented in law from preferring an application before the Ld. Adjudicating Authority under Section 7 of the I&B Code, 2016 separately for Ajnara Panorama project. Further, as a necessary consequence of the Impugned Order and the declaration of moratorium under Section 14 of the I&B Code, 2016 by the Ld. Adjudicating Authority, there is a prohibition on the filing of any suits against the Corporate Debtor in any court of law. Accordingly, the Applicant is also prohibited to take any recourse available to it under the law, such as the SARFAESI Act, thereby protecting the defaulting Corporate Debtor from initiation and continuation of legal proceedings against itself. Resultantly, there is absolutely no respite for the Applicant who is owed over Rs. 625 Crores by the Corporate Debtor, inasmuch as it has no say or control over the construction/completion/operation of the projects mortgaged in favour of the Applicant. To the contrary, the management of the Corporate Debtor which ought to be suspended under Section 17(1)(b) of the I&B Code upon passing of the Impugned Order, continues to be in control of the operations of the Corporate Debtor and construction/completion of various projects. It is submitted that this goes against the very object of the I&B Code and Section 31 in particular, as the



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rights and interests of stakeholders of the Corporate Debtor (apart from the management itself) are not at all balanced.

19. It is further submitted that the Corporate Debtor having already been admitted into insolvency, the Applicant herein having a huge claim against the Corporate Debtor as a financial creditor, would in any event have been a part of the CoC of the Corporate Debtor and as such would have been treated as a major stakeholder in the CIRP of the Corporate Debtor, having a say and a valuable vote in the decision-making in the operations as well as the final resolution of the Corporate Debtor, under the provisions of the I&B Code, 2016.
20. Accordingly, the Applicant herein has no other alternative but to intervene in the present appeal to agitate its rights and pray before this Hon'ble Appellate Tribunal to continue CIRP against both Ajnara Ambrosia and seek this Hon'ble Appellate Tribunal's indulgence in seeking the constitution of a separate CIRP for the Ajnara Panorama project. It is submitted that any further delay and any reprieve granted by this Hon'ble Appellate Tribunal to the Corporate Debtor, such as allowing it to settle with the homebuyers, will only lead to irretrievable loss not only to the Applicant, but to the homebuyers as well, as such alleged desire of the Corporate Debtor to settle is only a smokescreen to hide its real intentions, i.e., to siphon and squander the existing assets and divert funds that are legitimately secured to the Applicant.



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21. It is submitted that the final outcome of the present Appeal will have a direct bearing on the Applicant being the one of the largest Financial Creditors (apart from the Homebuyers) of the Corporate Debtor and hence, it is imperative and in the interest of justice that the Applicant be allowed to intervene in the present appeal.
22. It is respectfully submitted that the balance of convenience weighs heavily in favour of the Applicant. Furthermore, in case the prayers as sought for in this application are not allowed irreparable harm will be caused to the Applicant.
23. The application has been made *bona fide* and is in the interest of justice.

PRAYER

In light of the abovementioned facts and circumstances, it is humbly prayed that this Hon'ble Appellate Tribunal may be pleased to:

- (a) Permit the Applicant, L&T Finance Limited to intervene in the present appeal;
- (b) Pass an order extending the CIRP to project Ajnara Panorama as well along with Ajnara Ambrosia;
- (c) Vacate the stay granted on 17.10.2022 and direct the IRP to take all such and further steps for undertaking CIRP of project Ajnara Ambrosia and Ajnara Panorama in accordance with the I&B Code, 2016;



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Alternatively

- (c) pending the next date of hearing direct the IRP to manage all prospective transactions pertaining to both Projects (and Units therein) and collect any and all proceeds thereto in relation to the Units of both Projects or otherwise; and specifically clarify that the Corporate Debtor shall have no administrative authority in this regard; and
- (d) Pass any further order(s) as this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case.



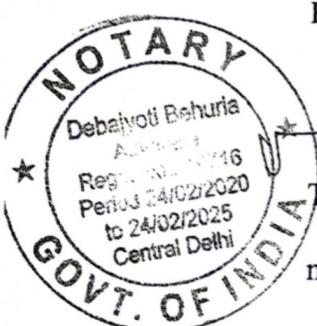
Ruchir Jauhar

APPLICANT
THROUGH:

Darshat Singh
Kochhar & Co

Advocates for the Applicant
Suite No. 1120, Tower A
DLF Towers Jasola
Jasola District Center,
New Delhi - 110025
Phone: 011 41115222
M: 8447865633

Dated: 17.11.2022
Place: New Delhi

**DECLARATION**

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

Verified at New Delhi dated 17 November 2022.

Darshat Singh
COUNSEL FOR APPLICANT

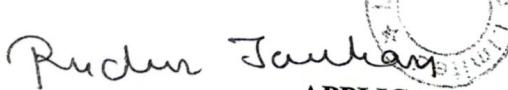
Ruchir Jauhar
APPLICANT



VERIFICATION

I, Ruchir Jauhari, aged about 45years, S/o Om Prakash Jauhari having my office at 15th Floor, P.S. Srijan Tech Park, Plot No 52 Block DN, Sector-V, Salt Lake City, District Parganas (North), Kolkata – 700 091, West Bengal, presently at New Delhi do hereby verify and confirm the contents of paragraph nos. 1 to 14 the above Application are true and correct to the best of my knowledge and derived from official records and para 15 to 23 are believed to be true on legal advice. No part of it is false and nothing material has been concealed therefrom.

Verified at New Delhi on 17 November 2022.



Ruchir Jauhari
APPLICANT

DATED: 17.11.2022

PLACE: New Delhi



BEFORE THE NATIONAL COMPANY LAW
APPELLATE TRIBUNAL, NEW DELHI

APPELLATE JURISDICTION

I.A. NO. _____ OF 2022

IN
COMPANY APPEAL (AT) (Insolvency) No. 1243 of 2022

IN THE MATTER OF:

APPEAL UNDER SECTION 61 OF THE INSOLVENCY AND
BANKRUPTCY CODE, 2016

AND

IN THE MATTER OF:

L&T FINANCE LIMITED ...APPLICANT

AND

IN THE MATTER OF:

Ashok Gupta ...APPELLANT
Suspended Director of Ajnara India Limited

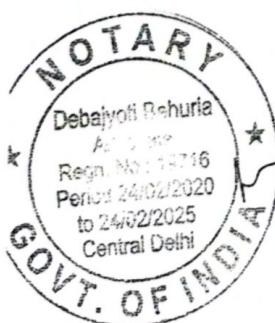
VERSUS

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

AFFIDAVIT

I, Ruchir Jauhari, aged about 45 years, son of Shri Om Prakash Jauhari, Zonal Head, North, Real Estate Finance having my office at 15th Floor, P.S. Srijan Tech Park, Plot No. 52 Block DN, Sector-V, Salt Lake City, District Parganas (North), Kolkata – 700 091, presently at New Delhi, do hereby solemnly state and affirm as under:

1. I am the Authorized Representative of the Applicant in the above-mentioned matter, duly authorized vide Authority Letter dated October 04, 2022. I am well conversant with the facts and the



Ruchir Jauhari.



circumstances of the present case and hence competent to depose the present Affidavit.

2. That the contents of the accompanying application are true and correct to the best of my knowledge which is derived from the official records maintained by the Applicant and the legal submissions made are based on legal advice received by me which is believed to be correct. Nothing material has been concealed therefrom.
3. That the annexures filed with the accompanying application are true copies of their respective originals.

Ruchir Jauhar

DEPONENT

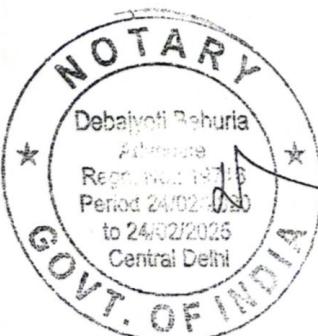
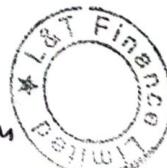


VERIFICATION:

Verified at New Delhi on this the 17th day of November 2022, that the contents of the above affidavit are true and correct to the best of my knowledge and nothing material has been concealed therefrom.

Ruchir Jauhar

DEPONENT



CERTIFIED THAT THE DEPONENT

Mr/Smt/Rm..... Ruchir Jauhar

No, W/o, D/o.....

R/o.....

Identified by Smt/Rm.....

has Solemnly.....

New Delhi on.....

..... As St. No. 187

That the contents of the affidavit which have

been read & explained to him are true and

Correct to this knowledge.

NOV 2022

Notary Public