



**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT VI, NEW DELHI
IA 293/2024, 2497/2024
IN IB-682/PB/2021**

*Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule
4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority),
Rules, 2016.*

IN THE MATTER OF:

Nitin Batra & Ors.

...Financial Creditors

VERSUS

M/s. Anand Infoedge Pvt. Ltd.

...Corporate Debtor No 1

M/s. Mist Avenue Pvt. Ltd.

...Corporate Debtor No 2

M/s. Mist Direct Sales Pvt. Ltd.

...Corporate Debtor No 3

AND IN THE MATTER OF IA 293/2024

M/s Mist Direct Sales Pvt Ltd

...Applicants



VERSUS

Mr. Nitin Batra

... Respondent No 1

Mr. Gaurav Bharadwaj

... Respondent No 2

Col. Gulshan Juneja

... Respondent No 3

AND IN THE MATTER OF IA 2497/2024

M/s Mist Direct Sales Pvt Ltd

...Applicants

VERSUS

Mr. Nitin Batra

... Respondent No 1

Mr. Gaurav Bharadwaj

... Respondent No 2

Col. Gulshan Juneja

... Respondent No 3



CORAM:

SHRI. MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

SHRI. RAHUL BHATNAGAR, MEMBER (TECHNICAL)

For the Petitioner/Financial Creditor: Mr. Sahil Sethi, Mr. Samriddh Bindal, Mr. Vikash Kumar, Advs.

For the Applicant: Mr. Vijay Agarwal, Ld. Sr. Adv., Mr. NPS Chawla, Ms. Veera Mathai, Mr. Jasjeet Singh, Mr. Praney Sharma and Mr. Puneet, Advs. in IA/2497/2024.

For the Respondent/Corporate Debtor: Mr. Arvind Nayyar, Sr. Adv., Mr. V.D'Costa, Ms. Astha Ojha, Mr. Akshay Joshi, Ms. Mehreen Goel, Mr. Himanshu Sharma, Ms. Gauri Goel, Advs. for R-1. Adv. Ravinder Singh & Adv. Raveesha Gupta for R-2, Mr. P Nagesh, Sr. Adv., Mr. NPS Chawla, Ms. Veera Mathai, Mr. Jasjeet Singh, Advs. Mr. Lokesh Bhola, Ms. Manisha Arora, Mr. Praney Sharma. Advs. for R-3.

ORDER

PER- RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Order Pronounced on: 19.07.2024

1. The present petition has been filed by Mr. Nitin Batra and others, i.e., the allottees who have been allotted units in a commercial project namely Festival City ("Project") to initiate Corporate Insolvency Resolution Process ("CIRP") against Corporate Debtor No. 1 (M/s Anand Infoedge Pvt. Ltd.), Corporate Debtor No. 2, (M/s Mist Avenue Pvt. Ltd.) and Corporate Debtor No. 3 (M/s Mist Direct Sales Pvt. Ltd.) ('Respondents') on the ground that the Corporate Debtors committed a default in payment of Rs. 51,64,74,251/-.



2. The Corporate Debtor has filed two Interlocutory Applications bearing 293/2024 and 2497/2024. Since both the applications are filed in connection with the main matter hence it is appropriate to adjudicate both the Applications together with the main matter.

FACTS OF THE CASE

CP 682/2021

3. The submissions of the Financial Creditors are as under: -

- I. That the Financial Creditors are allottees of IT Office/Retail Space having purchased the same in the real-estate project 'Festival City' (hereinafter referred as "the project"), being co-jointly developed by the Corporate Debtor No. 1 (M/s Anand Infoedge Pvt. Ltd.), the Corporate Debtor No. 2, (M/s Mist Avenue Pvt. Ltd.) and Corporate Debtor No. 3 (M/s Mist Direct Sales Pvt. Ltd.).
- II. That the Corporate Debtors collaborated and formed an independent corporate unit for developing the project and selling units in the project to allottees and hence the instant petition is being jointly preferred against the corporate Debtors.
- III. That vide lease deed 21st August, 2008, the Corporate Debtor No. 1, M/s Anand Infoedge, was allotted land admeasuring 100,980 sq, mtrs. Bearing Plot No. 1, Sector 143, Noida by the New Okhla Industrial Area Development Authority (hereinafter referred to as "NOIDA"), under the Industrial Land Service Investment Policy 2004 of the State Government of Uttar Pradesh, for the purpose of setting up an



Information Technology (I.T.) Park. The lease premium of the land was fixed at a certain amount out of which 30% was paid by M/s Anand Infoedge to NOIDA and the balance was to be paid in 16 half yearly equal instalments along with interest at 11% per annum compounded half yearly.

- IV. That the lease which was for a period of 90 years commencing from the date of execution of lease deed was granted to M/s Anand Infoedge after receiving benefit of exemption from stamp duty and registration charges in respect of execution of lease deed. In return, M/s Anand Infoedge was to set up an IT Park on the land by constructing a building at its own cost on the leased plot in accordance with building regulations and bye laws of the Authority. The possession of the land was also handed over to M/s Anand Infoedge vide possession memo dated 28th August, 2008 and even a correction deed dated 18th November 2013 was given to M/s Anand Infoedge for change of address of the land from Sector 143 to Sector 143 B.
- V. That M/s. Anand Infoedge entered into a collaboration agreement with effect from 26th October, 2002 with the Corporate Debtor No. 2, M/s Mist Avenue Pvt. Ltd. (hereinafter referred to as "First Collaboration Agreement"), for development of the project land and the possession of the land was handed over to M/s Mist Avenue for the said purpose. The collaboration agreement states that M/s Anand Infoedge had some financial constraints and accordingly approached M/s Mist Avenue



with a proposal of collaboration, wherein M/s Mist Avenue was to obtain development/license permission for the project, and clear all fee, charges as may be applicable at the time of making application.

- VI. That the First Collaboration Agreement also provided that M/s Mist Avenue shall bear all development charges, scrutiny fee, conversion charges and other charges as applicable thereof for obtaining the said development license and permission for building plans in accordance with letter of intent, building plan, sanction letter by NOIDA. In lieu of M/s Mist Avenue's investment and efforts, M/s Mist Avenue is to be entitled to ownership of 85% of total maximum FSI available on the said plot of land, including proportionate share of land. That in the First Collaboration Agreement, M/s Mist Avenue was to construct and develop the maximum available FSI on the said plot. Further to complete the project in all respects, together with appurtenant spaces and comprising of various buildings, parking spaces and other utilities and landscaping. M/s Mist Avenue was further given a right to even sell the balance 15% of units belonging to M/s Anand Infoedge on its behalf.
- VII. Pertinently, the First Collaboration Agreement clearly stated that all sales, transaction including advances collected by M/s Mist Avenue for any portion of the project will be binding on M/s Anand Infoedge and both the parties shall be jointly and severally responsible to deliver as



per contracts entered by M/s Mist Avenue with buyers/customers/investors.

- VIII. The First Collaboration Agreement further clearly provides that all necessary permissions required to develop the property shall be at the cost and responsibility of M/s Mist Avenue but will be in the name of M/s Anand Infoedge and on its behalf.
- IX. That as per the First Collaboration Agreement between M/s Anand Infoedge and M/s Mist Avenue, M/s Anand Infoedge has a right to terminate the collaboration agreement in the event that M/s Mist Avenue becomes insolvent or bankrupt and therefore it is imperative that the present application seeking that a group corporate insolvency resolution process be initiated against all the corporate debtors is allowed to avoid any cancellation of collaboration agreement by M/s Anand Infoedge, leave the hundreds of investors who have paid their hard-earned money in the name of Mist Avenue Pvt. Ltd. and without any asset to enable a reasonable resolution plan.
- X. That vide a subsequent collaboration agreement dated 27th July, 2017, entered between M/s Anand Infoedge, M/s Mist Avenue Pvt. Ltd, and M/s Mist Direct Sales Pvt. Ltd. (hereinafter referred to as “Second Collaboration Agreement”), M/s Anand Infoedge transferred all the development and construction right in the project land to M/s Mist Direct Sales.



XI. That vide the Second Collaboration Agreement, M/s Mist Direct Sales was authorized to take all appropriate actions as well as was made obliged to incur costs in relation to the project. The Second Collaboration Agreement provides that the strategy of marketing and all decisions regarding the marketing, branding, pricing, sales and all other decisions shall be made as well as are stated to be decided with mutual consent. The Second Collaboration Agreement further provides for execution of a general power attorney (GPA) in favour of M/s Mist Direct Sales so that it can perform its obligations under the agreement. However, M/s Mist Direct Sales has not been given any power to sell units under the project to any third party without the consent of M/s Anand Infoedge. Even in a case where additional benefits are available on account of change of any land use/additional FSI, such additional benefits are stated to be shared equally between the parties and the expenses required or incurred towards the same have also been agreed to be shared in equal proportion by the parties. The gross sales revenue of the project has been decided to be shared between the parties with M/s Direct Sales' share being 85% and M/s Anand Infoedge share being 15%. The Second Collaboration Agreement provides for opening of a jointly operated designated account for receipt of all amounts relating to the project. The agreement provides that in event of cancellation/termination of bookings of units forming part of the saleable area in the project, any amount to be refunded to the



purchasers shall be refunded by the owner and developer both in terms of their revenue sharing ratio.

- XII. Pursuant to entering into the Second Collaboration Agreement, a letter was addressed to the allottees on the letterhead of M/s Mist Direct, wherein M/s Mist Direct Sales informed that the earlier arrangement between M/s Anand Infoedge and M/s Mist Avenue stands cancelled and a new arrangement has been entered wherein M/s Mist Direct Sales has now taken charge of the project for early implementation
- XIII. That no substantial construction has taken place at the project site even after this change, which is nothing but the three Respondent related parties passing the buck from one entity to another, so as to give a false impression to the creditors that the Respondent parties are serious about rectifying their default and discharging their obligation to the allottees.
- XIV. That the project was subsequently de-registered as is visible from the project summary of the project 'Festival City Phase-I', on the website of UP-RERA.
- XV. That M/s Mist Direct Sales is a wholly owned subsidiary of M/s Anand Infoedge, as is visible from a copy of a list of shareholders (as on 28th July, 2018) uploaded by the Respondents on the website of UP-RERA. That 99.99% shareholding of M/s Mist Direct Sales are held by M/s Anand Infoedge and the remaining 0.01% shareholding being held by one, Mr. Kanwarjit Singh as nominee of M/s Anand Infoedge



- XVI. That Applicants herein are allottees in the real-estate project 'Festival City', promoted co-jointly by the corporate debtors on the project land and as per the explanation attached to clause (f) of Section 5(8) of the Code and the light of observations of the Hon'ble Supreme Court in the case of Pioneer Urban Land & Infrastructure Ltd. (Supra), the amount collected from them by the Corporate Debtor is a 'Financial Debt' and the Applicants are Financial Creditors.
- XVII. That the instant application meets the criteria under the proviso of the amended Section 7(1) of the Code, pertaining to the minimum threshold requirements of at least 100 allottees to support the application or 10 per cent of the total allottees whichever is less, belonging to the same real-estate project
- XVIII. That in terms of the respective Allotment Letters and IT Buyer/Retail space Agreements (hereinafter referred to as "the agreement"), the Corporate Debtor NO. 2 received substantial amounts from the Applicant Allottees towards sale consideration and in turn failed to repay the debt by handing over possession of complete units. That as per the clauses of the Agreement, the possession of the units was to be delivered within 36 months (plus 12 months grace period) from the execution of the Agreement. However, till date not even a single unit has been delivered by the corporate debtor in the project.
4. The submissions of the Corporate Debtor No 1 i.e., M/s Anand Infoedge Pvt. Ltd are as under: -



- I. That the Corporate Debtor No 1 was allotted land admeasuring 100,980 sq.mtrs. bearing Plot No. 1, Sector 143, Noida ("said Plot") by the New Okhla Industrial Area Development Authority ("NOIDA") vide lease deed dated 21.08.2008, under the Industrial Land Service Investment Policy 2004 of the State Government of Uttar Pradesh, for the purpose of setting up an Information Technology (IT) Park with the lease premium of the land fixed at Rs. 49,98,00,000 (Rs. Forty-Nine Crores Ninety-Eight Lakhs) out of which 30%, 14,99,40,00 (Rupees Fourteen Crores Ninety-Nine Lakh Forty Thousand) was paid by the Appellant-Company to NOIDA and the balance having to be paid off in 16 half yearly equal instalments along with interest at 11% per annum compounded half yearly.
- II. That the Respondents were to set up IT Park on the land by construction of building at its own cost and the possession was also handed over to Anand Infoedge vide possession memo dated 28.08.2008. However, the possession was not complete as there was land dispute with the NOIDA and Greater Noida Industrial Development Authority ("GNIDA") regarding possession of the land by the Answering Respondent and even the land acquired and in possession was filled with encumbrances and encroachments.
- III. The Respondent No. I had never signed or executed any agreement/ BBA with the Financial Creditors. The entire dispute before this



Tribunal is with regard to non-compliance of the terms of the contract, which the Respondent No. I was never privy to.

- IV. That the Respondent No. 1 has no privity of contract with the Financial Creditors, as such Financial Creditors cannot be said to be the creditors qua Respondent No. 1.
- V. It is submitted that even in the second Collaboration Agreement entered between Respondent No. 1 and Respondent No.3, the Respondent No. 3 had agreed to develop the said Project. As such the privity of contract existed between Respondent No. 2 or 3 and the Financial Creditors, and the Respondent no. 1, being only the landowner is a stranger to the BBAs entered between them. Therefore, the entire liability, if any to pay any financial debt to the Financial Creditors shall be upon the Respondent No.2 or 3.
- VI. Furthermore, it is submitted that Respondent No. 1 never marketed the said project, being only the Landowner, its sole responsibility was to provide the land free of encumbrance. Additionally, there has been no misrepresentation on part of Respondent No. 1, as has been wrongly alleged by the Financial Creditors.
- VII. In light of the above it can be easily deciphered that in the present case, Respondent No. 1 being only the landowner, did not receive any disbursements/amount from the Financial Creditors nor as per the BBA, the Respondent No. I was liable to refund the amount received by Respondent No. I from the Financial Creditors and hence the



Respondent No. 1 cannot be considered as a Corporate Debtor to the Financial Creditors herein and hence no CIRP cannot be maintainable against it.

- VIII. Without prejudice to the above, the Respondents could not give the possession of the said commercial space, due to fact that the land allotted to the Respondent No. 1, was found to have a defective title due to an issue of acquisition between NO IDA and Greater NOIDA. In this regard Respondent No. 1 has already filed Writ Petition before the Hon'ble Allahabad High Court, which is pending adjudication, a fact well within the knowledge of the Financial Creditors.
- IX. Even otherwise, no other person/ Authority, if appointed by this Tribunal will be able to complete the project, due to the inherent defect in the title. That out of the entire area of 1,00,980 square meters, allotted by NOIDA to the Respondent No. 1. certain areas of land totaling about 3.7590 hectare in Khasra No.563 (which falls right in the centre of the property) was never acquired by NOIDA. As soon as the construction started, the local farmers as well as the Samiti members obstructed the construction. As such on further investigation, it became clear that the land allotted by NOIDA had a defective title, which was the main reason that the construction could not be completed,
- X. This itself shows that Respondent No. 1 is a victim of fraud and cheating, which resulted into the culmination of proceedings against



Noida i.e. Civil Suit bearing no. 662/2017 before the Ld. Noida District Court, wherein in its written statement, NOIDA itself has admitted that Khasra nos. 877, 888, 882, and 886 were not in its name, at the time when the physical possession of the whole land was provided to Respondent No. 1.

- XI. That the Collaborator i.e. Respondent No. 3, has settled the debt of around 150 allottees/ Unit buyers, including some of the Financial Creditors herein and is further willing to settle the debts of all others as well. Alternatively, Respondent no. 1 had also offered ready to move in space to the Financial Creditors in other completed projects in exchange of the money.
- XII. Furthermore, as stated above the Financial Creditors herein are only 115-unit holders of the said project and do not represent the wishes of approx 1580-unit holders of the said project. It is submitted that the rest of approx. 1400 Unit holders, who too have invested their hard-earned money, in the said project never provided any authority to the Financial Creditors herein to file the present Petition and neither the consent of all the unit's holders was ever obtained by the Financial Creditors.

5. The submissions of the Corporate Debtor No 2 are as under: -

- I. The present application is liable to be dismissed as neither the respondent no 2 falls under the definition of "Financial Creditor" as there is no default qua the Financial Creditor nor the Applicant has



established the essential ingredient/requirements of Section 7 of the Insolvency & Bankruptcy Code, 2016 to claim any relief. Hence, the present petition shall not be entertained and liable to be dismissed as the same is not maintainable either in law or on facts.

- II. That the application is barred by limitation. Hence, liable to be dismissed at the threshold.
- III. It is an admitted fact on record of the present case that the present proceedings have been initiated in relation to a project which was supposed to be constructed on the land owned by CD No 1. The arrangement between the CD No.- 1 and CD No. 2 has been terminated and the same has been produced before this Tribunal by the FCs themselves. It is submitted that the FCs cannot be allowed to approbate and reprobate at the same time. The agreement which is subsisting in relation to the project in question is between CD 1 and CD3 and therefore the CD2 cannot be held liable.
- IV. In the year 2017, CD1 had expressed his dissatisfaction regarding the speed of construction of the project and for the same was persuading the CD2 to raise more funds. However, CD2 had already suffered huge losses and expressed its inability to arrange more funds or to meet the CD 1 's desired pace for construction. Hence, it was mutually agreed by both the parties i.e., CD1 & CD2 to cancel Collaboration Agreement dated 26.10.2012 (hereinafter "Collaboration Agreement") executed between the said parties.



- V. In pursuance of the aforesaid, a Cancellation Deed dated 27.07.2017 (hereinafter "Cancellation Deed") pursuant to MOU dated 10.04 2017 was executed between the parties, whereby, the CD2 handed over the possession of the project land back to the CD 1.
- VI. That CD2 & CD 1 are two separate legal corporate entities and the Project is not a Joint Venture of any of the aforesaid entities.
- VII. It is an admitted fact that the Project was to be finally constructed and developed by the CD3 in its individual capacity and without any involvement of the CD2 whatsoever.
- VIII. The CD2 and the other corporate debtors are separate companies, having distinct legal personalities and thus group CIRP cannot be initiated against them.
- 6.** The submissions of the Corporate Debtor No 3 are as under: -
- I. That the present Petition is not maintainable as there exists no provision in the IBC for seeking to initiate Insolvency against more than one entity through one joint Petition.
- II. That the present application has been filed beyond the limitation period as prescribed by law for filing the Applications under the IBC and hence, the same is liable to be dismissed at the outset.
- III. That the Applicants have instituted the present Application with mala-fide intentions that there exists no default in the matter in terms of the provisions of the Insolvency & Bankruptcy Code.



- IV. That the Applicant has erroneously filed a single petition for the joint insolvency of three separate legal entities namely (i) Anand Infoedge Private Limited (ii) Mist Avenue Private Limited and (iii) Mist Direct Sales Private Limited and as there exists no provision in the IBC that provides for filing of a joint application for initiation of Corporate Insolvency against separate entities, the present application is not only legally untenable but also technically defected and therefore, liable to be dismissed at the outset
- V. That there are several allottees whose alleged date of possession/default is much later than the date of filing of the Application, in fact, many of such alleged default dates are yet to occur
- VI. That the Respondent No 3 is the Developer in the project who had stepped into the shoes of the erstwhile Developer/Respondent no.2 vide a fresh Collaboration Agreement dated: 27.07.2017. Needless to say, as the construction of the project began way back and the answering Respondent was brought in as a Developer in 2017, the same could have not been a "joint entity" or "co-development project" as falsely stated by the Applicants. That vide the said collaboration agreement, the duties and responsibilities of each party were clearly bifurcated (as mentioned in detail in para-wise reply), which further goes to show the separate independent nature of the companies. It is also pertinent to mention that the bringing in of a new developer was duly informed to



each and every allottee, however, no objection was ever received from any allottee.

- VII. That upon entering into the abovementioned collaboration agreement, it was assured to the answering Respondent by the Respondent no. 1/owner that the land is free from encumbrances and the reason for replacing the Developer was to expedite the completion of the project.
- VIII. That soon after the execution of the Collaboration Agreement, without any further ado, the answering Respondent started the construction project in full swing and that the answering Respondent was able to undertake substantial construction within a very short span of time
- IX. That as the construction of the project was as per the completion projections and in compliance with the laws, the answering Respondent also got the registration approved from RERA.
- X. That thereafter, to avail further finance, the answering Respondent approached a Financial Institution to request to grant credit facilities. That the aforesaid . Institution upon doing its due diligence rejected the grant of loan on the ground that the land had certain encumbrances and did not have a clear title. It was this juncture that the answering Respondent got to know about the fact that the land . transferred to the Respondent no. 1 vide lease deed and thereafter, provided to the answering Respondent for Development had a disputed title and ownership.



- XI. It is also important to highlight here that despite the encumbrances and rejection of the loan facility, the answering Respondent being a bona-fide Developer continued with the construction of the project.
- XII. That the answering Respondent for the sake of the allottees also prayed before RERA to intervene and resolve the issue with the NOIDA authority so as to provide timely possession of the project.
- XIII. That despite making several requests, providing every requisite information and presenting reasons beyond the control of the Developer, RERA went onto pass an erroneous order dated: 07.12.2019 for de-registration of the project without caring about the future of the thousands of allottees or their hard-earned money
- XIV. That the Applicants in the present case were already aware that . the Registration of the project was cancelled and subsequently, the project had . been taken over by RERA after freezing of the accounts.
- XV. However, the Applicants chose to willfully conceal this information from the Hon'ble Tribunal so as to falsely initiate CIRP proceedings against the answering Respondent's company.
- XVI. That upon the revocation of registration by RERA, the Respondent no. I/owner of the land unilaterally terminated the Collaboration Agreement. It is pertinent to mention herein that the unilateral termination of the Agreement was a violation of the provisions of the Collaboration Agreement and hence, the answering Respondent controverted the termination of the Collaboration Agreement by



Respondent no. 1. The answering Respondent is in the process of availing its legal remedies against aforesaid unilateral termination by the Respondent no. 1.

XVII. Keeping in mind the above-mentioned facts and circumstances, it is clearly pointed out that as delay in construction was covered under the "Force Majeure" clause as stipulated under clause 9 of the Builder-Buyer Agreement, the answering Respondent cannot be held liable for the said delay as it was beyond the control of the answering Respondent and thus, cannot be termed as a default. In the absence, of there being any default, the present petition is liable to be dismissed at the outset as it is a pre-requisite for an Application u/s 7 IBC that there should exist not only a 'debt' but also a 'default' in payment of that debt upon demand.

XVIII. That the present case involves several disputed questions of facts and law, in relation to jurisdiction, validity and admissibility of the present application, let alone the existence of debt and default arising from the said deed. It is submitted that answering Respondent has raised a dispute with regard to the alleged claim amount, the number of allottees and also with regard to the interest amount as the same has been including by the Allottees without any basis or merit and the same is liable to be dismissed.



XIX. That it is further submitted that the present dispute between the parties involves . mixed questions of law and facts and therefore proper adjudication on merits of the case are required.

XX. That such adjudication cannot be done by this Ld. Adjudicating Authority as the IB Code, 2016 provides for summary adjudication as the Ld. Adjudicating Authority are only required to see whether . default has been committed or not and therefore such detailed adjudication like . in the present case cannot be done by this Adjudicating Authority.

IA 293/2024 & IA 2497/2024

7. These Interlocutory Applications bearing No 293/2024 & 2497/2024 have been filed by M/s Mist Direct Sales Pvt. Ltd., Corporate Debtor No 3 in the main petition under Section 7 of the Insolvency and Bankruptcy Code, 2016.
8. The applicants in the application No 293/2024 have prayed for the following reliefs:

- (a) Allow the present application and pass an order directing the Petitioners in CP (IB) No. 682 of 2021 to consider the offer made on 20.07.2020 or any improved offer after mutual discussion between the parties and further consequently direct the parties to endeavour to take steps for amicable settlement of the disputes;*
- (b) Pass such orders or further orders as it may deem fit and proper in the facts and circumstances of the case*



- 9.** The applicants in the application No 2497/2024 have prayed for the following reliefs:

(a) Permit the Applicant herein to submit a Demand Draft, with this Hon'ble Adjudicating Authority, for a total sum of Rs. Rs 22, 10,43,64 7/- Twenty Two Crores Ten Lakhs Fourty Three Thousand Six Hundred Fourty Seven only (Rs. 19,60,43,879/- towards principal and Rs 2,49,99,768/- towards delay charges calculated at Rs. 9 per sq. ft, towards discharge of all claims made by the Financial Creditors in Company Petition (IB) No. 682 of 2021, within 30 days from the present application being allowed and consequently, dismiss the said Company Petition (18) 682 of 2021.;

(b) Pass such orders or further orders as it may deem fit and proper in the facts and circumstances of the case

- 10.** The Applicant in both the applications have proposed a revised offer to the Financial Creditors. It is pertinent to mention here that multiple applications have been filed in the past in this matter praying to direct the parties to consider the offer for settlement. The Financial Creditor has filed its reply and submitted that the instant Application is only filed to further delay the final adjudication of the Section 7 Application. Be that as it may, this Adjudicating Authority, in the interest of justice, on request of both the parties adjourned the matter for a date so that they can hold a meeting to arrive at an amicable resolution in the matter. The same was duly recorded in the order dated 15.05.2024. The relevant extract is reproduced as under:



“Ld. Sr. Counsel on behalf of the R3 is present and submitted that they have moved an application offering certain amounts to be paid to the Financial Creditor which is an improved offer over the earlier offer given by them. Ld. Sr. Counsel further submitted that they are willing to consider improvement of their above offer in order to settle the matter with the Financial Creditor. For this purpose, they wish to hold a meeting between the parties along with their counsels. In view of the above, list the matter on 28.05.2024”

11. The Parties appeared before this Tribunal on 28.05.2024 and submitted that they have not come to any settlement in this regard. The Financial Creditors submitted that the offer was too low as the applicant was only offering to refund the principal amount which had been deposited by the financial creditors in the year 2012 and later through a so-called improved offer in which they were seeking to invoke Clause 2 of the Buyer Builder Agreement (BBA) which provides that in case the possession is not granted within 48 months (including 12 months of grace period) then the company shall pay Rs. 9 per sq. ft. per month delay charges for delayed period along with the possession of the said unit. However, this provision of the BBA does not apply in the instant case, since no possession has been given. M/s Mist Direct Sales has therefore only offered the principal amount and the Rs. 9 per sq. ft. per month as delay charges, which approximately works out to only 1-2% interest P.A.



ANALYSIS AND FINDINGS

- 12.** We have heard the submissions made by the Financial Creditors and Corporate Debtors.
- 13.** For a proper adjudication of the issues, it is necessary to consider the orders already passed by this Tribunal, the Hon'ble NCLAT, and the Hon'ble Supreme Court in the present case
- 14.** The first issue raised by the Corporate Debtors was on the issue of maintainability, which was decided by this Adjudicating Authority vide detailed order dated 21.10.2022 and the order of this Adjudicating Authority was subsequently upheld by the Hon'ble NCLAT vide order dated 17.11.2023 and the Hon'ble Supreme Court vide order dated 11.12.2023. It is pertinent to note that the Hon'ble Supreme Court, while dismissing the appeal filed by the CD against the order of the Hon'ble NCLAT, has held as under: -

“After the application under Section 7 is heard and disposed of on merits, should it become necessary to do so, the parties would be at liberty to take recourse to all appropriate proceedings in accordance with law. At that stage, should it become so necessary, this Court will enquire into both the merits and maintainability. However, we also clarify that the issue of maintainability shall stand concluded by the impugned order dated 17 November 2023 insofar as the National Company Law Tribunal and NCLAT is concerned. Since the application under Section 7 is pending for over two years, we request the NCLT to take up the application at the earliest possible date and to endeavour an expeditious disposal within two months.”



15.It is pertinent to note here that as far as maintainability against group insolvency against all the three Corporate Debtors is concerned, The Hon'ble NCLAT in appeal against the order of this Adjudicating Authority on maintainability expressly held in the order dated 17.11.2023 that consolidated Insolvency Resolution Process can be initiated against one or more Corporate Debtors who have come together to develop the project. Relevant extract of the aforesaid judgement is reproduced below

25. We are in agreement with the view expressed by the Adjudicating Authority that Section 7 Application filed against all the three appellants together is maintainable. The three appellants being part of one Common Real Estate Project and the Applicants of Section 7 Application being part of the said project they had every right to initiate Section 7 Application against all the three appellants together. We thus uphold the decision of the Adjudicating Authority holding that application under Section 7 is maintainable.

As far as issue of limitation is concerned, it has already been raised at the time of challenging the maintainability of the Company Petition and has been decided by this Adjudicating Authority and was subsequently upheld by the Hon'ble NCLAT and Hon'ble Supreme Court. Therefore, there is no need to delve into this issue again

16.Then an Application bearing No. IA 3875/2023 was filed by some applicants seeking dismissal of the main Company Petition on the ground that the



outcome of the present petition shall have a direct bearing on their interests and that the Section 7 Petition shall result in the corporate death of the Corporate Debtor. This Adjudicating Authority dismissed the application vide order dated 25.07.2023. While dismissing the application, the Adjudicating Authority made the following observations: -

The Section 7 Petition is originally a petition moved by individual Unit Buyers. Present application is jointly filed by (1) M/s Disire Retail Pvt. Ltd. holding 69 units in the Festival City Project (2) M/s Ramble Markets Pvt. Ltd. holding 60 units in the Project, (3) M/s Swift Buildwell Pvt. Ltd. holding 4 units in the Project and (4) M/s Veena Gases and Chemicals Pvt. Ltd. holding 9 units in the Project. The Counsel for the Applicants has submitted that the Applicants are necessary and proper party to the present proceedings, as the outcome of the present petition shall have direct bearing on the interest of the Applicants. The Ld. Counsel for the Applicants have submitted that all the Applicants together have invested an amount, in excess of 21.5 crore in the project of the Corporate Debtor. It is clear from the submissions of the Counsel that the Applicants are strategic investors in the project, who will ultimately sell the units to interested buyers. The Section 7 Petitioners are allottees of the units. The Applicants in their application has sought for dismissal of the present Section 7 application and also such other and further reliefs. We have also considered the submissions made by the Ld. Counsel appearing on behalf of the Applicants. Having considered the stage of the matter and keeping the objects of IBC in view and as the preamble clearly says that timely resolution of CIRP process is one of the prime objects of the Code, the present application by the strategic investors seeking intervention in the matter and the relief of



dismissal of Section 7 application cannot be entertained at this stage of the matter. The apprehension of the Petitioner's Counsel that if CIRP is initiated the Applicants interest will be defeated, is neither true nor correct. According to this Adjudicating Authority CIRP is a process whereby the project will be taken up by a Successful Resolution Applicant who will be financially & managerially competent to run the project and will continue to do the work of the Corporate Debtor. Only that the Corporate Debtor will be replaced. The CIRP envisages the organization to work as a going concern. Therefore, the objection/apprehension raised by the Ld. Counsel for the Applicant is not sustainable in the eye of law.

Ld. Counsel for the Applicant has also raised another argument that after filing of present Section 7 application approximately 10 Petitioners have opted for settlement with the Corporate Debtor and walked out of the array of Petitioners. In terms of "Manish Kumar Vs. Union of India" judgment passed by the Hon'ble Supreme Court of India, the criteria that should be looked into by Adjudicating Authority is whether as on date of filing of the Section 7 petition, the Petitioners are able to muster the support of minimum number of Applicants or not. Therefore, the argument advanced by the Counsel for the Applicants is not sustainable. At the outset it is clarified that few of the Petitioners at their own wisdom walked out of the array of the Petitioners, does not create an impression to this Adjudicating Authority that Petitioners are treating this proceeding as recovery proceeding. In fact, at the stage of the matter, the very presence of the Petitioner's counsel and on the other dates of hearing undoubtedly leads to an impression that Petitioners are interested to have their own units through initiation of CIRP. In view of the above, this Adjudicating



Authority dismisses the present application, without costs. This order is dictated in the open Court. Dasti Allowed.

17. Subsequently, the Corporate Debtors (CDs) filed three separate applications to dismiss the main Company Petition, alleging that the Financial Creditor had committed fraud/forgery. This Adjudicating Authority dismissed all three applications vide order dated 05.01.2024. The order was subsequently upheld by the Hon'ble NCLAT vide order dated 29.01.2024. The parties went to the Hon'ble Supreme Court and thereafter withdrew their appeal on 29.04.2024.

18. Subsequently, two Intervention Petitions were filed wherein some unit holders have approached this Adjudicating Authority praying for giving an opportunity to all the allottees to consider the scheme of Compromise and Arrangement filed under Section 230 of the Companies Act, 2013 proposed by the CD. This Adjudicating Authority after hearing the submissions of all the parties dismissed the Petitions vide order dated 27.02.2024 and observed as under: -

14. The present application also appears to be similarly motivated, filed with the intention of delaying the proceedings which this Adjudicating Authority cannot entertain, especially in light of the order of the Hon'ble Supreme Court dated 25.07.2023. In this order, the Hon'ble Apex Court expressly directed this Adjudicating Authority to dispose of the main Company Petition expeditiously at the earliest possible date



15. In view of above facts and circumstances, Ivn. P/11/2024, Ivn. P/12/2024 are **dismissed in limine**.

19. The abovementioned order dated 27.02.2024 was appealed before the Hon'ble NCLAT and the Hon'ble NCLAT upheld the order of this Adjudicating Authority and while dismissing the appeal the Hon'ble NCLAT observed as under: -

15. In the facts of the above case, this Tribunal held that the order of the Adjudicating Authority granting time to the corporate debtor to file reply to the objection cannot be faulted. The facts of the present case depict the entirely different story. As noted above, in Section 7 application which has been filed by 115 homebuyers, several attempts have been made by the corporate debtor and other applicants to get the petition dismissed and the order passed by the Adjudicating Authority rejecting such objection have been upheld upto the Supreme Court and the Hon'ble Supreme Court on 11.12.2023 while dismissing the appeals challenging the order of this Tribunal noticed the fact that Section 7 application is pending for the last two years and requested the NCLT to take up the application at the earliest possible date and to endeavour an expeditious disposal within two months. Time allowed by the Hon'ble Supreme Court on 11.12.2023 has long expired and by one or other objections on application, proceedings are sought to be thwarted. Noticing all earlier proceedings Adjudicating Authority rejected intervention petition no. 12 of 2024 in which we do not find any fault and the judgment of this Tribunal in "Krrish Realtech Private Limited" does not help the Appellant in the facts of the present case.



16. The Company Petition which has been filed in the year 2024 by Respondent No.6- M/s. Mist Direct Sales Pvt. Ltd., Counsel for the Respondent No.2 has produced the order dated 05.04.2024 of the Adjudicating Authority where petitioners have been asked to clarify various aspects. The petition under Section 230 for scheme by the corporate debtor is independent proceeding but filing of the said petition cannot be a ground to not permit the proceeding under Section 7 which are being halted and obstructed by one or other attempts by corporate debtor and other applicants as noted above. It is further noticed that the case of the corporate debtor as noticed from the record, it is clear that the RERA registration of the project has already cancelled and there is a dispute of title as claimed by the corporate debtor regarding the land. We, thus, do not find any substance in the submission of the counsel appearing for Respondent No.6 to accept the submission that Section 7 application be further not proceeded with till application under Section 230 of the Companies Act filed by Respondent No.6 be finalised.

17. From sequence of the events as noted above and especially the order of the Hon'ble Supreme Court dated 11.12.2023, it is clear that Section 7 application has to be proceeded and decided in accordance with law and in the facts of the present case, Adjudicating Authority did not commit any error in rejecting the Intervention Petition No.12 of 2024. We, thus, do not find any error in the impugned order. The appeal is dismissed.

20. Thereafter one more application IA 1808/2024 was filed by 30 other allottees jointly wherein prayer was made to direct the resolution of the entire



dispute between the allottees and Corporate Debtors with not only the original Petitioners alone under the aegis of this Tribunal or by way of Mediation or any other manner. This Adjudicating Authority dismissed the same and made the following observations: -

*18. Mere plain reading of the provision under section 7 of the Code shows that in a section 7 Petition, the Adjudicating Authority is only required to consider the question whether the 'debt' and 'default' is proved or not. Further, the Hon'ble Supreme Court in the matter of E.S. Krishnamurthy and Ors. vs. Bharath Hi Tech Builders Pvt. Ltd. (14.12.2021 - SC): MANU/SC/1249/2021 observed that under Section 7(5) of the IBC, the Adjudicating Authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the Adjudicating Authority must then either admit or reject an application respectively. These are the only two courses of action which are open to the Adjudicating Authority in accordance with Section 7(5). **The Adjudicating Authority cannot compel a party to the proceedings before it to settle a dispute.***

21. The present application also appears to be similarly driven, like other applications filed merely to delay proceedings, despite the express directions of the Hon'ble Supreme Court to expeditiously dispose of the matter.

22. In view of the above, IA 1808/2024 stands dismissed in limine. Let a copy of this order be served to the parties concerned.



21. Further one more application IA 1860/2024 was filed by M/s Anand Infoedge Pvt. Ltd wherein prayer was made to dismiss the main Company Petition on the ground of playing fraud on this Tribunal. This Adjudicating Authority dismissed the same and made the following observations: -

20. it is observed that the facts contained within it have already been thoroughly examined and adjudicated upon on their merits, and the decision of this Adjudicating Authority was subsequently affirmed by the Hon'ble NCLAT. The only new development is the registration of a First Information Report (FIR) against the Financial Creditors. It is important to highlight that an FIR is essentially an initial report lodged with the police concerning the alleged commission of a cognizable offense. This report can be provided orally or in writing to the officer in charge of a police station. FIR is merely an information, not a substantive piece of evidence. In the matter of Dharma Rama Bhagare v. State of Maharashtra, (1973) 1 SCC in para 7 of the aforesaid judgement it was held that an FIR is not even considered to be a substantive piece of evidence and can be only used to corroborate or contradict the informant's evidence in the court. Essentially, an FIR serves as the starting point for an investigation. Admittedly, investigation is underway and not completed and no charge sheet under section 173 of Code of Criminal Procedure, 1973 has been filed. Therefore, we find no merit in the applicant's assertion that the main petition should be dismissed.

22. Multiple attempts were made by the Corporate Debtors to delay the matter.

It is pertinent to highlight one more instance. One of the Financial Creditors in the Section 7 Petition, namely Ajay Khajuria (Applicant No.106 as per the



memo of parties in the company petition), filed an application bearing number IA/3755/2022 under Rule 8 of the IBBI (Application to Adjudicating Authority) Rules, 2016, seeking withdrawal of his claim. This application was allowed by the Adjudicating Authority vide order dated 12.08.2022. The relevant part of the order is reproduced below:

“The Applicant has submitted that during the pendency of the present matter the entire claim and outstanding debt of the Applicant against the Corporate Debtor have been settled, satisfied and extinguished by an out of Court settlement dated 21.03.2022 and thus as on date there exists no remaining or subsisting claim of the Applicant against the Corporate Debtor. Therefore, the Applicant is desirous of withdrawing the claim filed against the Corporate Debtor under Section 7 of the Code. Accordingly, the Applicant has also submitted that he revokes the Authority granted to Mr. Nitin Batra, Col Gulshan Singh Joneja and Mr. Gaurav Bhardwaj.”

Subsequently, he joined with the Corporate Debtors and filed IA 5400/2023, wherein he provided a declaration stating that the affidavit filed before the Adjudicating Authority in the present matter had not been signed by him, and there was a visible difference in signatures. Therefore, it is clear that Mr. Ajay Khajuria had initially given his consent to the Applicants in the Section 7 Petition to proceed against the Corporate Debtors under Section 7 of the IBC, 2016. After the settlement of his debt, he withdrew his claim and then joined with the Corporate Debtors. Quite obviously there is a contradiction in what he had stated while withdrawing his claim (since



withdrawal can only be effected after the claim has been filed and thereafter declaring that the affidavit for filing the claim had not been signed by him). It has been alleged by the Financial Creditors (Respondents in the IA) that this IA filed by Mr. Ajay Kathuria has been done at the instance of the Corporate Debtors. This application was dismissed by the Adjudicating Authority vide order dated 05.01.2024, and the dismissal was subsequently upheld by the Hon'ble NCLAT vide order dated 29.01.2024.

23. Now coming to the present case, as far as the two applications are concerned, the Parties appeared before this Tribunal on 28.05.2024 and submitted that they have not come to any settlement. The relevant extract is reproduced as under: -

Ld. Counsels for both the parties have appeared. As per order dated 15.05.2024 Ld. Sr. Counsel for the R3 has submitted that they were willing to consider improvement of their offer to the Financial Creditors for settlement of the matter and for this purpose they wish to hold the meeting between the parties and their Counsels. In view of the above, this Tribunal had granted time to the parties and fixed the matter for 28.05.2024.

We have heard Ld. Counsels for both the parties. It transpires that the parties have not come to any settlement in this regard.

The Financial Creditors have submitted that the offer was too low, as it was marginally over the principal amount (1%-2% interest p.a.). From the records, it appears that most of the bookings were made in the year 2012, and



approximately 12 years have passed without any possession being offered to any of the allottees. Furthermore, this Adjudicating Authority cannot direct the parties to settle. The offer has already been rejected. Therefore, in view of the same, the applications IA/1808/2024 & IA/1860/2024 are **dismissed**.

24. Now coming to the main matter. From the documents placed on record it transpires that the Financial Creditors entered into agreements with the Corporate Debtors around the year 2012 and deposited money with the builder around that time. As per the agreement entered with Financial Creditors, possession of the units was to be handed over within a period of 36 months (plus grace period of 12 months) from the execution of the Agreement. Thus, possession should have been handed over in or around the year 2016. The possession has not been handed over to the applicant allottees till date nor the Principal Amount with interest returned to the allottees. Admittedly, the UPRERA vide Order dated 07.12.2019 revoked registration of the project 'Festival City' as the promoter made 'default' in complying with the directions of the Authority.

25. Upon perusal of the reply filed by all the Corporate Debtors, it also appears that the Respondents are trying to pass the buck to each other.

26. The Corporate Debtors have taken the following defences with respect to initiation of CIRP against them in their averments and during the course of the arguments. For the sake of completeness, they are listed below: -

1. The Petition is not maintainable and barred by limitation.
2. CIRP cannot be instituted against more than one Corporate Debtor.



3. The CIRP has been initiated fraudulently and should therefore, be dismissed.
4. CIRP should not be instituted against them as they are ready to settle with the allottees.
5. That the land was defective and there was a dispute with the Noida Authority.
6. The CDs failed to deliver the project and possession to the allottees on account of Force Majeure reasons.
7. Initiation of CIRP will not serve any purpose since if the CDs cannot complete the project no Resolution Applicant will be able to do so.

27.In respect of the defences taken at 26(1), (2) and (3) above these have already been adjudicated as presented in paras 14, 15 & 17 of this order.

28.In respect of 26(4) as already discussed in para 23 of this order. The Corporate Debtors have made several attempts to settle the dues with the Financial Creditors but the same have failed since the CDs were offering to refund only the Principal Amount deposited by the FCs in the year 2012 i.e. about 12 years ago, and later marginally increased it with addition of 1-2% interest.

29.With regard to 26(5) the land being defective and dispute with Noida Authority it is noteworthy that the dispute is not in respect of the entire land but only a portion of it. The CD has itself admitted that they got to know about the defective title much after the date the CD was supposed to hand over the possession to the allottees. It was in the year 2012 that most of the



allottees booked their units, and CD should have given them possession by the year 2016. The CD No. 2 has further admitted that in the year 2017 CD No. 1 had expressed dissatisfaction with the pace of work by CD No. 2 and consequently cancelled the Collaboration Agreement between them. Thereafter, a fresh Collaboration Agreement with CD No. 3 was executed and CD No. 3 in his reply has stated that despite encumbrances and rejection of loan facility, CD No. 3 continued with the construction of the Project. Hence the defence of defective land and dispute is not tenable at this stage since by their own admissions they were carrying on with the construction on the project.

30. The Counsels for the Corporate Debtors have argued that due to Force Majeure project could not be completed. Force Majeure reasons cited are defective land title and cancellation of registration of the project by UPRERA. Hon'ble Supreme Court in the matter of *Energy Watchdog v. CERC*, (2017) 14 SCC 80 has held that a party can rely on a force majeure clause only if it shows that reasonable steps have been taken to avoid the effect of the force majeure event. In this context it would be worthwhile to peruse the relevant portion of the order of UPRERA dated 07.12.2019 by which the registration of the project was cancelled. (This was filed vide Additional Affidavit dated 07.07.2022 by the Financial Creditors):-

In proportion to the targeted completion date of the project, the progress of works of project is disappointing and at present work is stopped.



The date of initiation of project has been given as 26.10.2012, this position of work in almost 7 years is very disappointing. The action of Promoter is a clear proof of misappropriation of hard earned money of allottees and violation of commitment of Promoter to complete the project within time and to provide them possession within the time limit decided in the contract executed with the allottees.

Further the reasons for the cancellation given in the UP RERA order dated 07.12.2019 are as under: -

After careful consideration of the complete factual position in the meeting, the Authority has concluded the following :

1) Promoter has not complied to any of the instructions out of the total 06 instructions mentioned in Authority's Order dated 11.07.2019. This act of him is a violation of Sections 4, 7 and 11 of the Act along with other relevant provisions of the Act and Manual.

2) As per Authority's Order dated 11.07.2019, Promoter M/s Mist Direct Sales Pvt Ltd was given time of 4 months under provisions of Section 7(3) of Rera Act to bring progress in the works of project but the Promoter himself is now saying that he is not able to complete the development works of the project. His actions are a violation of his responsibilities under the Act and amounts to breach of trust with the allottees as it is against the agreement and resolution done with the allottees.

3) Project was started 7 years back and the progress structure of the project is around 50 percent. Due to this attitude of Promoter the possibility of completion of project is almost nil. Therefore, for protection of allottees, for ensuring compliance of provisions of Rera Act and U.P. Rera and to complete the remaining



development works of the project there is no other option than to cancel the registration of project under the provisions of Section 7 of the Rera Act.

From the above it is clear that the cancellation of the project, cited by the CD as a 'force majeure' reason was not a 'bolt from the blue' rather it was on account of CDs own mismanagement, misappropriation and failure to comply with directions of the NOIDA. The reason in respect of defective land has already been dealt with earlier. Thus, the defence related to 'force majeure' is only an afterthought and not tenable.

31. Besides, even if the CD was of the view that the project could not be completed for reasons beyond their control, they should have communicated this to the allottees and refunded their deposited amounts. On the contrary, M/s Mist Direct Sales (CD No. 3) itself sent a letter in December 2017 to the allottees/ Financial Creditors, which mentioned that M/s Mist Direct Sales has been monitoring the progress of the Project closely with an intention to expedite the construction to ensure delivery of the unit(s). Further it mentions that a new and efficient management, has been appointed for delivering the said project and accordingly, the earlier arrangement with Mist Avenue is terminated and a new management has entered with effect from 2017. The letter also mentions that M/s. Mist Direct Sales has also taken charge of the inventories already sold by the earlier company including the



documents and the money paid by the allottees. The said letter does not anywhere mention that the delay in completing the project is because of the force majeure reasons, although it is the submission of the Corporate Debtors that the disputes with farmers arose in the year 2016. Instead, the Corporate Debtors sought a vote of confidence from the allottees, asking them to trust in their ability to complete the project.

32. It is also notable that on the one hand CD No. 1 submitted that the Project cannot be completed due to reasons of 'force majeure', while on the other hand CD No. 3 has filed a petition u/s 230 of the Companies Act, 2013 seeking approval of a 'Scheme of Arrangement and Compromise' with the allottees to complete the project.

33. The Corporate Debtor No. 1, M/s Anand Infoedge, placed reliance on the judgment passed by the Hon'ble NCLAT in the matter of Navin Raheja vs. Shilpi Jain & Ors. [Company Appeal (AT) (Insolvency) No. 864 of 2019], wherein relief was given to the Corporate Debtor and the CIRP was set aside by the Hon'ble NCLAT. However, the same is distinguishable from the present facts and circumstances. In Navin Raheja (supra), the project was complete in all respects, possession was offered to the allottees, and the Corporate Debtor requested the allottees to comply with formalities regarding the possession of the unit. The only issue was that the Occupancy Certificate was not provided on time, which was applied for in time, and the delay was on the part of the Competent Authority. Despite receiving the notice of possession from



the Corporate Debtor, the allottees chose to file a petition under Section 7 of the I&B Code, and the allotment letter was issued on 03.08.2012. In contrast, the current project appears far from completion. Furthermore, the delay in completion is not due to any Government Authority but due to gross mismanagement on the part of the Corporate Debtor, as highlighted by the UP RERA in their order mentioned in Para 30 of this Order. Therefore, we are of the view that the judgment of the Hon'ble NCLAT in Navin Raheja does not render any help to the Respondent in the present case.

34. From the above discussion, it is clear that the argument of the Corporate Debtor related to 'force majeure' is specious and unsustainable, and therefore, worthy of rejection

35. With regard to Para 26(7) the Corporate Debtors have argued strongly that initiation of CIRP will not serve any purpose, since if the CDs cannot complete the project no Resolution Applicant will be able to do so. In this regard the Financial Creditors have placed reliance on the order of UPRERA dated 07.12.2019 by which registration of project was cancelled. The same has been presented in paragraph 30 above. In this regard further the Financial Creditors have rebutted the contention of the CDs while placing on record the copy of the Performance Audit Report of the Comptroller and Auditor General of India (CAG) on 'Land Acquisition and Allotment of Properties' in NOIDA (CAG) dated



17.12.2021 in which the following observations relevant to the contention of the CD are as below:-

M/s Mist Avenue Private Limited, incorporated in October 2012, who was appointed as marketing/developing agent of the allottee after change in shareholding, started collecting money from the public on the premise of providing villas and commercial spaces on the plot. From a perusal of the Balance Sheets of Mist Avenue Private Limited, it was observed that Rs. 401.36 crore (approx.) was collected as booking amount from the prospective buyers for villas/commercial spaces etc. during the period 2012-13 to 2016-17.

Further, Rs. 322.22 crore was subsequently transferred to other companies of the Director viz. Bhasin Infotech and Infrastructure Private Limited, Grand Venice Developers Private Limited, Capital Scooters Private Limited, Grand Express Developers Private Limited, Bansidhar Ganga Prasad Private Limited, Bhasin Motors Limited, Bhasin Scooters Private Limited, Bhasin Cars Private Limited, Mist Homes Private Limited, Dhoomketu Builders And Developers Private Limited etc as loans to related parties. Thus, the intention of the allottee was very clear since the beginning as it never intended to establish IT/ITES business.

Money was being routed through sister concerns under the same management. Many litigations are pending in courts against the promoter, Shri Satinder Singh Bhasin, for non-refund of money which has also been widely reported in the media.



- 36.** In this regard the FCs have also referred to the report of the Statutory Auditors of the Company wherein it has been stated that: -

Reference is drawn to point No 13. The Company has 6 bank accounts with different Scheduled Banks. Out of these, 3 bank accounts have been frozen by Banks on the basis of order dated 30-01-2019 received from Sub Divisional Magistrate (SDM - Gautam Budh Nagar) against nonpayment of dues. The bank statement in respect of Axis Bank (3 accounts) have been taken as the same as previous year due to unavailability of closing balance amounting to Rs. 62,307 /-. Further 2 bank accounts also have been frozen by Banks on 19.09.2019 on order of SDM (Gautam Budh Nagar)

Material Uncertainty Related to Going Concern: We draw attention to Note 3 in the financial statements, which indicates that the company has accumulated losses as at March, 2023 amounting to Rs. 102,60. 73 lac and have fully eroded the net worth of the company. These events or conditions indicate that a material uncertainty exists that may cast significant doubt on the Company's ability to continue as a going concern.

- 37.** From the above it is clear that CDs have consistently failed to fulfil their obligations to complete the project. The report of the CAG and the Statutory Auditors further underscores the CD's financial instability, having substantial accumulated losses and frozen bank accounts. These factors collectively indicate mismanagement and incompetence in



managing the project along with severe breach of trust leading to the project's failure. The FC's contention that with such poor financials and low credibility the companies of the CDs would not be in a position to proceed with the project and be able to gain the requisite approvals from the concerned authorities. Rather they have contended that any other entity or Resolution Applicant would be in a position to have the project re-started and completed and not at all the CDs in this case.

38. We are inclined to agree with the contention of the Financial Creditors that companies of the CDs in the light of the severe and adverse comments on their management and functioning raised by constitutional/statutory authorities would themselves not be in a position to successfully complete this project and emergence of Resolution Applicant would be in the interest of the project and its allottees since he would provide a fresh outlook to the scheme and would have sound credentials and financial capacity.

39. The Corporate Debtors have extensively argued on the defenses as provided in paragraph 26 of this order. Having dealt with the defenses as above, we would now look into the requirement of Section 7, which pertains to debt and default. In this regard, it is pertinent to refer to the judgment of the Hon'ble NCLAT in the matter of Noil Christuraj v. SBI, 2024 SCC OnLine NCLAT 485 (decided on April 18, 2024), which held as under: -



55. It is relevantly pointed out that an 'Adjudicating Authority'/'Tribunal'. is having a limited/restricted role, to determine, whether the 'Application', is 'complete' and whether, there is 'any Debt' or 'Default'

57. The 'proceedings', under the I & B Code, 2016 are 'summary in character'. In fact, the said proceedings, are not like 'Civil Litigation', to be determined by a 'Competent Court of Law'. Ofcourse, the 'Corporate Debtor', is entitled to point out in a 'CIRP' proceedings, before the 'Adjudicating Authority'/'Tribunal', that the 'Default', has not occurred. A 'Debt', may not be due, if it is 'not payable in Law' or 'on facts'

59. It is vital that the 'Stakeholders'/'Parties', in IBC Proceedings, are not permitted, to abuse, the legal process, by indulging in dilatory tactics. No wonder, the 'Speed', is the essence of I & B Code, 2016. For an 'Admission' of an 'Application/Petition', in a given 'Legal Proceedings', initiated by the 'Petitioner'/'Financial Creditor' (u/n 7 of the 'Code'), the two qualifications are required to be seen by the 'Adjudicating Authority'/'Tribunal' (1) 'Existence of Debt' and (2) 'Date of Default'

40. Further the Hon'ble Supreme Court in the matter of *M. Suresh Kumar Reddy v. Canara Bank*, (2023) 8 SCC 387 held that once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application under Section 7. The relevant extract of the aforesaid judgement is reproduced below:-

11. Thus, once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of



the application under Section 7. “Default” is defined under subsection (12) of Section 3 IBC which reads thus:

3. Definitions.—In this Code, unless the context otherwise requires—

(12) “default” means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not [paid] by the debtor or the corporate debtor, as the case may be;”

Thus, even the non-payment of a part of debt when it becomes due and payable will amount to default on the part of a corporate debtor. In such a case, an order of admission under Section 7 IBC must follow. If NCLT finds that there is a debt, but it has not become due and payable, the application under Section 7 can be rejected. Otherwise, there is no ground available to reject the application.”

41. In light of the above, we are satisfied that the present application is complete in all respects, and the Applicant Financial Creditors have an outstanding financial debt from the Corporate Debtors, with a default in payment of the financial debt duly admitted by the Corporate Debtor. Therefore, and in terms of the acceptance of the existence of debt and its default by the Corporate Debtors in their reply to the present application, this Adjudicating Authority admits this petition and initiates CIRP on the Corporate Debtors with immediate effect.



42. Sub-section (3) (b) of Section 7 of the Code mandates the Financial Creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicants have proposed the name of Mr. Narender Kumar Sharma for appointment as Interim Resolution Professional having registration number IBBI/IPA-002/IP-N00125/2017-2018/10294. The proposed IRP is directed to file a compliance affidavit pertaining to the valid AFA and an undertaking that there are no investigations pending against him. The needful shall be done within 5 days from the pronouncement of this order, failing which the applicants shall propose the name of an alternative IRP. Accordingly, this Adjudicating Authority, appoints, Mr. Narender Kumar Sharma having registration number IBBI/IPA-002/IP-N00125/2017-2018/10294 (Email – nksharma.fcs@gmail.com), (Mobile- 9818782268) to act as Interim Resolution professional in the matter. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code.

43. We direct the Applicants to deposit a sum of Rs. 2 lakhs with the Interim Resolution Professional, to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Financial Creditors.



44. Given the fact that there are three Corporate Debtors in this case and a very large number of allottees awaiting possession since 2016 having deposited their hard-earned savings in the project and that coordination with NOIDA, Greater NOIDA and other Government Agencies may be required at the highest levels, we deem it fit to appoint an experienced professional with proven administrative skills to ensure an efficient and time bound implementation of the CIRP as **Monitor**.

45. The Monitor will provide managerial and administrative support to the IRP/RP as well as supervise his work. The Monitor will ensure that the assets of the Corporate Debtors and operations of the Corporate Debtors are managed efficiently through the IRP/RP.

46. Shri J.K Dadoo, IAS (Retd), email: jkdadoo@gmail.com, Mob- 9871143262, is hereby appointed as Monitor for a period of 6 months. The professional fees of the Monitor shall be Rs. 2,00,000/- (Two Lakhs) per month, apart from meeting his incidental expenses and travel costs whenever required. These will initially be paid by the Financial Creditors to be subsequently reimbursed as part of the CIRP cost. After 6 months the Committee of Creditors (CoC) will assess the need to continue or discontinue with his services depending upon the stage of the project.

47. The IRP/RP will report the progress regarding the CIRP to the Monitor regularly. The Monitor is also required to endeavor that the CIRP is completed



within the prescribed time limit for the benefit of the allottees and other stakeholders. To this end, the Monitor may call meetings of the Petitioners, IRP/RP, other stakeholders and if necessary, the Suspended Management and provide guidance to the IRP/RP. The suspended Directors of the Corporate Debtors and its management are directed to extend full cooperation in accordance with section 19(1) of the IBC, 2016 to the RP as well as the Monitor. The Monitor will submit independently regular reports to this Adjudicating Authority.

48. It is clarified that appointment of the monitor will in no way dilute, curtail or circumvent the role, responsibilities and powers of the IRP/RP or the CoC as provided for in the Code.

49. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

50. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:



“(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtors including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtors any of their assets or any legal rights or beneficial interests therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtors in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtors.”

51. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of essential goods or services to the Corporate Debtors as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtors in terms of Section 14 (3) (b) of the Code.



52. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtors, its promoters or any other person associated with the management of the Corporate Debtors are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any preferential/ undervalued/ tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional shall make an application to this Adjudicating Authority (Tribunal) with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the Corporate Debtors as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

53. The office is directed to communicate a copy of the order to the Financial Creditors, the Corporate Debtors, the Interim Resolution Professional, the Monitor and the Registrar of Companies, NCT of Delhi & Haryana at the



earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of Corporate Debtors and specific mention regarding admission of this petition must be notified to the public at large.

54. Let a copy of this order be served to the parties concerned.

SD/-
(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

SD/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)