

# Flat Buyers Association Winter ... vs Umang Realtech Private Limited on 24 March, 2023

NATIONAL COMPANY LAW APPELLATE TRIBUNAL  
PRINCIPAL BENCH

I.A. No. 1987 of 2020, 2187, 2513 of 2021 & 3239 of 2022  
IN  
Company Appeal (AT) (Ins.) No. 926 of 2019

[Arising out of Order dated 04.02.2020 passed by the Adjudicating Authority/National Company Law Appellate Tribunal, New Delhi Bench in CP (AT) (Ins.) No. 926 of 2019]

IN THE MATTER OF:

Mr. Vijay Kumar Pasricha  
R/o 1008, Ward No. 7, Mehrauli,  
New Delhi - 110030.

...Appellant

Versus

Mr. Manish Kumar Gupta  
Interim Resolution Professional  
In the matter of one project "Winter-Hills"  
Of the corporate debtor  
Umang Realtech Pvt. Ltd.  
Regd. Office D- 64, Second Floor,  
Defence Colony, New Delhi - 110024.

...Respondent

Present:

For Appellant : Mr. Manoj Kumar, Advocate in I.A. No. 2187 of 2021

For Respondent : None for Respondent.

## J U D G M E N T

(24.03.2023) NARESH SALECHA, MEMBER (TECHNICAL) The Present Interlocutory Application bearing I.A. No. 2187 of 2021 has been filed by the Applicant seeking clarification/ direction arising out of this 'Appellate Tribunal' order dated 04.02.2020 passed in CA (AT) (Ins.) No. 926 I.A. No. 1987 of 2020, 2187, 2513 of 2021 & 3239 of 2022 IN Company Appeal (AT) (Ins.) No. 926 of 2019 1 of 37 of 2019 in the matter of 'Flat Buyers Association Winter Hills- 77, Gurgaon' vs. Umang Realtech Pvt. Ltd. Through IRP & Ors.'.

2. An application under Section 7 of the I & B Code, 2016 was filed by Mrs. Rachna Singh and Mr. Ajay Singh, who were Homebuyers/ Allottees in the project being developed under name "Winter Hills 77 Gurgaon" by M/s.

Umang Realtech Pvt. Ltd. (Corporate debtor), for initiation of the 'Corporate Insolvency Resolution Process' (in short 'CIRP'). The Application was admitted in terms of Section 7(5) (a) of the I & B Code, 2016 by the 'Adjudicating Authority' (National Company Law Tribunal, New Delhi, Principal Bench) in the matter of 'Rachna Singh & Anr. Vs. Umang Realtech Pvt. Ltd.' in CP (IB) 1564 (PB)/2018 dated 20.08.2019. By the same order, the 'Adjudicating Authority' declared moratorium in terms of Section 14 of the I & B Code, 2016.

3. Subsequently, an appeal was filed before this 'Appellate Tribunal' in CA (AT) (Insolvency) No. 926 of 2019 which was disposed off vide order dated 04.02.2020 with suitable observations and directions regarding 'Reverse CIRP'.

4. The 'Appellant' has, sought clarification arising out of this 'Appellate Tribunal' order dated 04.02.2020 with the following prayers :-

"(i) pass an appropriate order clarifying that the original order dated 04.02.2020 (Annexure A-1) passed by this Hon'ble Appellate Tribunal in Company Appeal (AT) (Ins.) No. 926 of 2019, be limited to the one real estate I.A. No. 1987 of 2020, 2187, 2513 of 2021 & 3239 of 2022 IN Company Appeal (AT) (Ins.) No. 926 of 2019 2 of 37 project namely "Winter Hills" of the Corporate Debtor Umang Realtech Pvt. Ltd. ("Corporate Debtor"), and accordingly the effect of the moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 (the Code) should be limited to the same project i.e Winter Hills only;

(ii) pass appropriate direction to the Ld. IRP/ Respondent to effect the moratorium limited to the real estate project Winter Hills only and not to enlarge the effect of the moratorium against the other assets of the Corporate Debtor or against the entire company of the Corporate Debtor; and

(iii) pass any other or further order/s as this Hon'ble Appellate Tribunal may deem fit and proper in the facts and circumstances of the case."

5. The 'Appellant' has sought clarification on above two issues and as such are being dealt herewith.

6. Heard Learned Counsel and perused the records made available including Reply of the IRP/Respondent.

7. It is the case of 'Appellant' that he is an allottee of the apartment bearing no. T-301, 3rd Floor in the real estate project "Monsoon Breeze II", Sector - 78, Gurugram, Haryana, which is also been developed by the same 'Corporate Debtor' i.e 'Umang Realtech Pvt. Ltd.'. The 'Applicant' brings out that this 'Appellate Tribunal' gave directions holding inter-alia that the 'CIRP' is limited to a particular project i.e. "Winter Hills-77" as per approved plan and not to other projects having different approved plans and therefore as per the 'Applicant', the role of IRP/ Respondent should be confined only with I.A. No. 1987 of 2020, 2187, 2513 of 2021 & 3239 of 2022 IN Company Appeal (AT) (Ins.) No. 926 of 2019 3 of 37 respect to project "Winter Hills-77" instead of whole company of

the 'Corporate Debtor'.

8. The 'Appellant' brought out that he entered into "Builder Buyer's Agreement" on 26.09.2014 with the 'Corporate Debtor' for completion and handing over his booked apartment on or before 29.06.2018. However, on failure to handover the said apartment, the 'Applicant' filed a complaint bearing Complaint No. 274 of 2018 before Haryana Real Estate Regulatory Authority, Gurgaon "(HARERA)". The "HARERA" vide its order dated 10.01.2019 directed the 'Corporate debtor' to refund entire amount of Rs.

49,47,725/- along with interest @10.75% per annum. It is the case of 'Applicant' that despite "HARERA" order the 'Corporate Debtor' did not refund the amount against which the 'Applicant' filed an Execution Application bearing No. 3171-2020 and "HARERA" passed order dated 12.02.2021 for attachment of three bank account of the 'Corporate debtor' for recovery of decretal amount of Rs. 76,68,788/-.

9. The 'Corporate Debtor' through the 'IRP' filed an 'Appeal', bearing No. 134 of 2021 (RERA Appeal) before "RERA Appellate Tribunal" which is pending. While hearing the 'Appeal', the "RERA Appellate Tribunal" vide order dated 27.07.2021, directed the IRP/ Respondent to file an 'Affidavit' to clarify whether the 'CIRP' also cover the project "Monsoon Breeze-II". The 'Appellant' states that IRP/Respondent filed his 'Affidavit' dated 28.08.2021 before 'RERA Appellate Tribunal' stating that the 'CIRP' is applicable only to "Winter Hills" but the moratorium is imposed against the 'Corporate Debtor'.

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10. The 'Appellant' has alleged that despite specific directions contained in this 'Appellate Tribunal' order dated 04.02.2022, the IRP/ Respondent enlarged the scope of 'CIRP' to the other projects of the 'Corporate Debtor'.

The 'Appellant' has further alleged that IRP/Respondent has misinterpreted the order of this 'Appellate Tribunal' contained in para 21 which confine 'CIRP' only to a particular project.

11. Admittedly, the 'Appellant' therein in CA (AT) (Ins.) No. 926 of 2019 challenged the order dated 20.08.2019 of the 'Adjudicating Authority' on the issue of admission of 'CIRP' as well as moratorium on the 'Corporate Debtor' in the original appeal under caption "Flat Buyers Association Winter Hills- 77, Gurgaon vs. Umang Realtech Pvt. Ltd. through IRP & Ors."

which was disposed by the 'Appellate Tribunal' vide order dated 04.02.2020.

The 'Appellant' in the present appeal has stated that he has invested his money in project "Monsoon Breeze-II" and the same is unrelated with the present project under 'Reverse CIRP' and therefore project "Monsoon Breeze-

II" should be delinked with the outcome of 'Reverse CIRP' of project "Winter Hills-77".

The 'Appellant' pleaded strongly that this 'Appellate Tribunal' has disposed off the 'Appeal' passed in CA (AT) (Ins.) No. 926 of 2019, wherein an innovative mechanism was developed in form of 'Reverse CIRP' to one specific project "Winter Hills-77" and made it clear that other projects will not be covered under 'Reverse CIRP'. The Appellant further submits that in the I.A. No. 1987 of 2020, 2187, 2513 of 2021 & 3239 of 2022 IN Company Appeal (AT) (Ins.) No. 926 of 2019 5 of 37 same order while disposing off the 'Appeal', this 'Appellate Tribunal' did not mention anything about moratorium on the 'Corporate Debtor' and as such the intent of the order is to restrict the moratorium to the project "Winter Hills-77".

12. It is further case of the 'Appellant' that since introduction of 'Reverse CIRP', the role of IRP/ Respondent has been truncated and restricted only to oversee completion of the project "Winter Hills-77" of the 'Corporate Debtor'.

The 'Appellant' also submits that the role of the 'IRP' is not to take over the affairs of the management of the 'Corporate Debtor' and therefore the IRP/ Respondent needs to be confined to only project "Winter Hills-77" as contained in the order of this 'Appellate Tribunal' dated 04.02.2022. The 'Appellant' has alleged that the IRP/ Respondent illegally and with wrong interpretation of the law is holding on the other projects and not allowing the legal rights of the 'Appellant'.

13. It is the also the case of the 'Appellant' that the intent of I & B Code, 2016 is "Resolution" and to put back the 'Corporate debtor' on the wheels in order to protect the interest of all stakeholders. The 'Appellant' pleaded that in case the other projects including the project "Monsoon Breeze-II" are not de-linked with the existing proceedings, their right will be adversely affected which is not the intent of I & B Code, 2016 and also not intended by this 'Appellate Tribunal' in its order dated 04.02.2020.

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14. The 'Appellant' also took pains to explain the rational for the present application on the premise that once the CIRP/ Reverse CIRP is restricted only for one project i.e. "Winter Hills-77", there is no question of continuing CIRP and consequently moratorium on other projects of the 'Corporate Debtor'. As per the 'Appellant', this 'Appellate Tribunal' in its order dated 04.02.2020 had in fact clarified the same aspect by suitable illustration. The 'Appellant' therefore requested that his prayers may be allowed and it may be clarified that the 'Reverse CIRP' shall be limited to only "Winter Hills-77"

and not to any project and therefore other projects of the 'Corporate Debtor' are free from the moratorium and consequently the 'Corporate Debtor' should be allowed to go on to complete the projects. The 'Appellant' pleaded that this will be just, fair and based on equity, taking care of all the stakeholders of the 'Corporate Debtor' as per intent of I & B Code, 2016 and not restrict merely to Homebuyers and allottees of the

"Winter Hills-77". The 'Appellant' also submitted that the 'Flat Buyers Association' (in short 'FBA'), in fact, had already moved the main appeal bearing CA (AT) (Ins.) No. 926 of 2019, wherein they have asked to set aside the 'Adjudicating Authority' order dated 20.08.2019 and the same appeal was disposed off by this 'Appellate Tribunal' vide order dated 04.02.2020. As per 'Appellant', it is therefore clear that none of the stakeholders i.e. Homebuyers/ allottees of the projects including project "Winter Hills-77" as well as "Monsoon Breeze-II" wants 'CIRP' against the 'Corporate Debtor'. The 'Appellant' further submitted that even the original 'Applicant'- M/s Rachna Singh and Mr. Ajay Singh have I.A. No. 1987 of 2020, 2187, 2513 of 2021 & 3239 of 2022 IN Company Appeal (AT) (Ins.) No. 926 of 2019 7 of 37 also come out in support of Flat Buyers Association as clearly mentioned in the order of this 'Appellate Tribunal' dated 04.02.2020. The 'Appellant' summarised that it is not interest of any party whether Homebuyers/Allottees or the 'Corporate Debtor' to continue the CIRP against the 'Corporate Debtor'.

15. It is the case of the 'Appellant' that 'CIRP' and moratorium are two different concepts and the 'Appellate Tribunal' gave its order only for the 'CIRP' and not on aspect of moratorium of the 'Corporate Debtor'. The 'Appellant' brought out that the moratorium declared under Section 14 of the I & B Code, 2016 is consequent to commencement of 'CIRP' and is declared after admission of application for 'CIRP'. Therefore, under I & B Code, 2016, there is no provision to place the 'Corporate Debtor' under moratorium without 'CIRP' of the projects. The 'Appellant' also submitted that once resolution/ liquidation take place arising out of 'CIRP', the moratorium gets lifted following due process of law.

16. It is contention of the 'Appellant' that the agreement between the 'FBA' of "Winter Hills- 77" (Allottees/ Homebuyers/Association of Financial Creditors) and one of the Promoter 'Uppal Housing Pvt. Ltd.', the status of Uppal Housing Pvt. Ltd. is more of a 'Resolution Applicant'. The 'Appellant' further submitted that undertaking by the 'Uppal Housing Pvt. Ltd.' to clear dues of 'JM Financial Credit Solutions Ltd.' and others with regard to "Winter Hill-77" project, further confirm the status of 'Uppal Housing Pvt. Ltd.' was I.A. No. 1987 of 2020, 2187, 2513 of 2021 & 3239 of 2022 IN Company Appeal (AT) (Ins.) No. 926 of 2019 8 of 37 in nature of 'Resolution Applicant' and its plan should be treated as 'Resolution Plan'.

The 'Appellant' emphasised that since this 'Appellate Tribunal' order dated 04.02.2022 contained all details regarding who will invest, how and when distribution will be made, time frame within which project will be completed and possession will be handed over, payments to the 'Financial Creditors', 'Operational Creditors', etc., thus, truly speaking this tantamount to approval of the 'Resolution Plan', accordingly in a manner CIRP ended. The 'Appellant' urged that his prayers may be allowed.

17. Per-contra IRP/Respondent has denied all the averments made by the 'Appellant' labelling these averments as false, misleading and mischievous and termed the present I.A. No. 2187 of 2021 as gross misuse and abuse of process of law, which is liable to be dismissed devoid of any merits with cost.

18. The IRP/ Respondent submitted that by present I.A No. 2187 of 2021 seeking clarification, the 'Appellant' is trying to obtain reliefs which is otherwise not entitled under law. The IRP/ Respondent further submits that the 'Adjudicating Authority' vide its order dated 20.08.2019 admitted Section 7 application against the 'Corporate Debtor' and initiated 'CIRP' and also declared moratorium in Para-24 of its order, against the 'Corporate Debtor' in terms of Section 14 of I & B Code, 2016. The IRP/ Respondent brought out that since date of admission of Section 7 application resulted into the 'CIRP', the 'IRP' has been managing the affairs of the 'Corporate Debtor' in I.A. No. 1987 of 2020, 2187, 2513 of 2021 & 3239 of 2022 IN Company Appeal (AT) (Ins.) No. 926 of 2019 9 of 37 accordance with I & B Code, 2016 and has been managing all the asset and the liability of the 'Corporate Debtor'.

19. The IRP/ Respondent submits that in subsequent development the Flat Buyers Association of "Winter Hills-77", challenged the 'Adjudicating Authority' order dated 20.08.2019 with the plea that the Homebuyers are interested in taking possession of the flat rather than the 'CIRP' through third party. According to the IRP/ Respondent, this 'Appellate Tribunal' evolved and prescribed an innovative mechanism by way of which liberty was granted to the 'Corporate Debtor' to arrange for funds without involving third party and complete the project as per time frame given by the Promoters to this 'Appellate Tribunal' under overall supervision of the 'IRP'. The IRP/ Respondent emphasised that in the order dated 04.02.2020, this 'Appellate Tribunal' clearly restricted the scope of 'CIRP' only to project "Winter Hills- 77" of the 'Corporate Debtor' and stated that the 'CIRP' shall not be applicable on other projects of the 'Corporate Debtor'. The IRP/ Respondent further emphasised that this 'Appellate Tribunal' gave its order very carefully and did not alter mechanism already in place regarding moratorium of the 'Corporate Debtor'.

20. The IRP/ Respondent clarified that plain reading of Section 14 of the I & B Code, 2016 makes it clear that all 'assets & liabilities' of the 'Corporate Debtor' are covered under moratorium and not 'assets & liabilities' of the specific project as claimed by the 'Appellant'.

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21. The IRP/ Respondent argued that the conjoint reading of two concerned orders i.e. this 'Appellate Tribunal' order dated 04.02.2020 along with the 'Adjudicating Authority' order dated 20.08.2019, clearly establishes that the 'CIRP' has been restricted to only "Winter Hills-77" project, however, moratorium will be against the

'Corporate Debtor' as a whole. The IRP/ Respondent mentioned that the intent of this 'Appellate Tribunal' order dated 04.02.2020 was only to get project "Winter Hills-77" completed in time bound manner, in order to enable the Homebuyers to get possession of their flats and not to set aside the 'Adjudicating Authority' order dated 20.08.2019 or terminate/ suspend other provisions of order of the 'Adjudicating Authority'.

22. The IRP/ Respondent submits that intent of this 'Appellate Tribunal' in order dated 04.02.2020 again becomes clear where it has been held that in case the 'Promoter' failed to comply with the undertaking to invest funds or it fails to co-operate with the 'IRP', then the process of the 'CIRP' under I & B Code, 2016 would continue, which makes it clear that in case of failure of 'Reverse CIRP', the 'CIRP' of the 'Corporate Debtor' will automatically get assumed. Thus, moratorium of the Section 14 of the 'Corporate Debtor' as a whole has to be continued.

23. As per IRP/ Respondent, the 'Adjudicating Authority' in its order dated 20.08.2019, in Para-26 has authorised him to perform all functions as stipulated in Section 15, 17, 18, 19, 20 & 21 of the I & B Code, 2016. The IRP/ Respondent submitted that in terms of Section 17 of the I & B Code, I.A. No. 1987 of 2020, 2187, 2513 of 2021 & 3239 of 2022 IN Company Appeal (AT) (Ins.) No. 926 of 2019 11 of 37 2016, the management of the 'Corporate Debtor' stands suspended and the 'IRP' has taken over day to day affairs of the 'Corporate Debtor'. The IRP/ Respondent also mentioned that even in this innovative mechanism of 'Reverse CIRP', it is only the 'IRP' who has been authorised and engaged in supervision of the project.

24. The IRP/ Respondent submitted that this 'Appellate Tribunal' in one other matter of Ram Kishor Arora Suspended Director of M/s. Supertech Ltd. vs. Union Bank of India & Anr. bearing CA (AT) (Ins.) No. 406 of 2022, which involved the 'CIRP' of Supertech Limited vide order dated 10.06.2022, has initiated 'Reverse CIRP' akin to the present case. The IRP/ Respondent stated that after initiation of 'Reverse CIRP' against Supertech Limited, this 'Appellate Tribunal' vide order dated 12.09.2022 in the matter of Ram Kishor Arora (Supra) clarified that even though 'Reverse CIRP' is project specific, the moratorium is applicable on the 'Corporate Debtor' as a whole. The IRP/ Respondent stated that this can be inferred by reading Para-7 of order dated 12.09.2022 passed in CA (AT) (Ins.) No. 406 of 2022, which state clearly that the 'CIRP' order has not been stayed and the moratorium is continuing.

25. The IRP/ Respondent emphasised that there is no scope for any amendments or modifications or clarifications on this 'Appellant Tribunal' order dated 04.02.2020 which is crystal clear. The IRP/ Respondent submitted that following spirit of the order dated 04.02.2020 of this I.A. No. 1987 of 2020, 2187, 2513 of 2021 & 3239 of 2022 IN Company Appeal (AT) (Ins.) No. 926 of 2019 12 of 37 'Appellate Tribunal' the IRP/ Respondent, has given all opportunities for completion of project "Winter Hills-77" and he has been overseen receivables, disbursements and progress of the

project as per timelines agreed between the 'Corporate Debtor' and the 'Appellant'. The IRP/Respondent submitted that in its order, this 'Appellate Tribunal' did not give any direction to the contrary as contained in the 'Adjudicating Authority' dated 20.08.2019 with reference to aspects of moratorium. The IRP/ Respondent submitted that in the wisdom of this 'Appellate Tribunal', an experimentation was allowed for 'Reverse CIRP' only for one project without touching other projects of the 'Corporate Debtor' and without altering impact of moratorium on the 'Corporate Debtor' and therefore by no way, any intent exist, based on this 'Appellate Tribunal' order dated 04.02.2020 to restrict the scope functioning of the IRP/ Respondent.

26. The IRP/ Respondent clarified that the he has taken all the required steps to protect the rights of all stakeholders and has followed the concept of CIRP only in the project "Winter Hills-77" and not on other projects which are continued on going concern basis. The IRP/ Respondent claimed that no adverse impact on the rights of home allottees of Monsoon Breeze-II has been caused due to 'Reverse CIRP' in terms of this 'Appellate Tribunal' order dated 04.02.2020. The IRP/ Respondent emphasised that any modification on the order of this 'Appellate Tribunal' dated 04.02.2020 based on 'Appellant's claim on lifting of CIRP/ moratorium on other projects and assets of the 'Corporate Debtor' may impact chances of putting the I.A. No. 1987 of 2020, 2187, 2513 of 2021 & 3239 of 2022 IN Company Appeal (AT) (Ins.) No. 926 of 2019 13 of 37 'Corporate Debtor' back on the rails. The IRP/ Respondent amplified that for argument sake, if moratorium is lifted on other projects of the 'Corporate Debtor' and in case the present 'Reverse CIRP' fails for want of adequate finances by the 'Corporate Debtor' or due to non-cooperation of the 'Corporate Debtor' or due to any other reason, there will be no remedies available to the IRP/ Respondent to carry out its obligations as stipulated under I & B Code, 2016 read with the order of the 'Adjudicating Authority' dated 20.08.219 and this 'Appellate Tribunal' order dated 04.02.2020.

27. Summarising, the IRP/ Respondent made out case that this 'Appellate Tribunal' should deny the prayers of the 'Appellant'.

28. This 'Appellate Tribunal' has carefully visited the legal provision of the I & B Code, 2016 to understand intent of the legislature and also considered and cited judgments of the Hon'ble Supreme Court of India as well as earlier order of this 'Appellate Tribunal' in the present case along with similar cases of 'Revere CIRP'.

29. In order to assess merits of the above prayer, it would be desirable to look into the relevant provisions of the I & B Code, 2016, namely, Section 7 as well as Section 14 of the I & B Code, 2016 which reads as under :-

"7. Initiation of corporate insolvency resolution process by financial creditor.



(1) A financial creditor either by itself or jointly with 2 [other financial creditors, or any other person on behalf of the I.A. No. 1987 of 2020, 2187, 2513 of 2021 & 3239 of 2022 IN Company Appeal (AT) (Ins.) No. 926 of 2019 14 of 37 financial creditor, as may be notified by the Central Government] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

[Provided that for the financial creditors, referred to in clauses (a) and (b) of subsection (6A) of section 21, an application for initiation corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first or second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second provisos as the case may be within thirty days of the commencement of the said Act, I.A. No. 1987 of 2020, 2187, 2513 of 2021 & 3239 of 2022 IN Company Appeal (AT) (Ins.) No. 926 of 2019 15 of 37 failing which the application shall be deemed to be withdrawn before its admission.] Explanation. - For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish -

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3):

[Provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same.] I.A. No. 1987 of 2020, 2187, 2513 of 2021 & 3239 of 2022 IN Company Appeal (AT) (Ins.) No. 926 of 2019 16 of 37 (5) Where the Adjudicating Authority is satisfied that -

(a) a default has occurred and the application under sub- section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub- section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate-

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;

(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be."

I.A. No. 1987 of 2020, 2187, 2513 of 2021 & 3239 of 2022 IN Company Appeal (AT) (Ins.) No. 926 of 2019 17 of 37 "14. Moratorium. -

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -

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

(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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 debtor.

[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, I.A. No. 1987 of 2020, 2187, 2513 of 2021 & 3239 of 2022 IN Company Appeal (AT) (Ins.) No. 926 of 2019 18 of 37 shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;] (2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

[(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.] [(3) The provisions of sub-section (1) shall not apply to --

[(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;]

(b) a surety in a contract of guarantee to a corporate debtor.] (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

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19 of 37 Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."

(emphasis supplied)

30. This 'Appellate Tribunal' has also carefully gone through the order dated 20.08.2019 passed by the 'Adjudicating Authority' and relevant paras read as under:-

"21. Accordingly, in terms of Section 7(5) (a) of the Code, the present application is admitted.

24. We also declare moratorium in terms of Section 14 of the Code. A necessary consequence of the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) and thus the following prohibitions are imposed which must be followed by all and sundry:

"(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor 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 debtor any of its assets or any legal right or beneficial interest therein;

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

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

26. The Interim Resolution Professional shall perform all his functions religiously and strictly which are contemplated, interalia, by Sections 15, 17, 18, 19, 20 & 21 of the Code. He must follow best practices and principles of fairness which are to apply at various stages of Corporate Insolvency Resolution Process. His conduct should be above board & independent; and he should work with utmost integrity and honesty. It is further made clear that all the personnel connected with the Corporate Debtor, erstwhile directors, promoters or any other person associated with the Management of the Corporate Debtor 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 affairs of the Corporate Debtor. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex- directors or anyone else the Interim Resolution Professional/ Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional/ Resolution Professional shall be under a duty to protect and preserve the value of the I.A. No. 1987 of 2020, 2187, 2513 of 2021 & 3239 of 2022 IN Company Appeal (AT) (Ins.) No. 926 of

2019 21 of 37 property of the 'Corporate Debtor 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."

(emphasis supplied)

31. This 'Appellate Tribunal' has also examined in detail its earlier order dated 04.02.2020 and the relevant paragraphs which have been referred by both the parties and these read as under:-

"13. One of the Promoter - 'Uppal Housing Pvt. Ltd.'/ Intervenor agreed to remain outside the Corporate Insolvency Resolution Process but intended to play role of a Lender (Financial Creditor) to ensure that the Corporate Insolvency Resolution Process reaches success and the allottees take possession of their flats/apartments during the Corporate Insolvency Resolution Process without any third party intervention. The Flat Buyers Association of Winter Hill - 77 Gurgaon also accepted the aforesaid proposal. It is informed that 'JM Financial Credit Solutions Ltd' one of the financial institution has also agreed to cooperate in terms of agreement with the condition that they will get 30% of the amount paid by the allottees at the time of the registration of the flat/apartment.

15. Uppal Housing Pvt. Ltd.' invested certain amount as an outsider Financial Creditor and as Promoter cooperating with the Interim Resolution Professional, having expertise of real estate project, so we asked it to give time frame for completion of the flats/apartments of the project and time frame for providing common area facilities like I.A. No. 1987 of 2020, 2187, 2513 of 2021 & 3239 of 2022 IN Company Appeal (AT) (Ins.) No. 926 of 2019 22 of 37 Swimming Pool, Club House etc. as per the agreement. They were directed to provide a chart showing the amount as due from different allottees and default, if any, committed by allottee(s). The progress report has also been taken on record.

Following facts have been highlighted by Uppal Housing Pvt. Ltd., which is also accepted and endorsed by Mr. Manish Kr. Gupta, Interim Resolution Professional, who is present and always remain present in person.

(i) There are 706 number of flats/apartments in Winter Hills -77, Gurgaon project. Out of 706 flats/apartments, 624 flats/apartments have been booked/agreed to be sold which includes 3 bookings done during CIRP. The Corporate Debtor offered possession to all 624 allottees through the Interim Resolution Professional and asked them to pay their respective outstanding dues.

(ii) There are 453 number of allottees who have paid their respective consideration amount in full and have taken possession. The list of 453 Allottees who have taken the possession after making payment as per the demand notice issued has been annexed and marked as Annexure -1.

There are 26 allottees who have paid the consideration amount in full, but have not taken possession of their respective apartment/flat from the Corporate Debtor through IRP. The list of these 26 Allottees who have paid the amount as per the demand notice issued has been annexed and marked as Annexure-2.

(iii) There are 142 allottees who have defaulted in making payment of their instalments due to the Corporate Debtor. The IRP has issued demand notices to make the I.A. No. 1987 of 2020, 2187, 2513 of 2021 & 3239 of 2022 IN Company Appeal (AT) (Ins.) No. 926 of 2019 23 of 37 payment of the outstanding amount. However, they have neither paid the outstanding amount nor have come to take possession. The list/ details of the defaulter-allottees along with date of default, amount in default and percentage of default has been annexed and marked as Annexure-3.

(iv) As on 16.01.2020, the Corporate Debtor has received NOC in respect 123 number of allottees for execution of the sale deeds from JM Financial Credit Solutions Ltd. Further, 92 number of sale deeds have been registered in favour of the allottees as on 16.01.2020. The list of 92 allottees in whose favour the sale deeds have been registered has been annexed as Annexure-4.

(v) Uppal Housing Pvt. Ltd. in the additional affidavit dated 03.01.2020 had sought 5 months' more time for completion of Winter Hills - 77 Gurgaon Project in all respects including necessary amenities and common services. This Appellate Tribunal directed Uppal Housing Pvt. Ltd. to state the time frame for completing the facilities like Club House and Swimming Pool etc. and completing the project.

(vi) Uppal Housing Pvt. Ltd. after discussing with the Contractor(s) involved in the execution of the work at Winter Hills - 77 Gurgaon Project and the Interim Resolution Professional reasonably believes that the construction work and essential services like electricity, water fit-outs would be completed within a period of 3 more months. Swimming Pool and playgrounds are structurally ready and will be functional once enough allottees start actually residing in their respective flats. Further, Club House would be completed within a period of 4 months.

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(vii) The Corporate Debtor has already applied for water connection and are in process of applying electricity connection. The Corporate Debtor is following up with the statutory authority(ies) so that water and electricity connections provided expeditiously.

(viii) The Corporate Debtor has already installed two lifts each in every tower. Lifts would be functional as per the requirement of the allottees.

(ix) It is submitted that Air condition, Kitchen, Wardrobes, fans, Chimney, Geyser would be installed in the respective flats before the allottees actually starts residing in their respective flats. Approximately 40-42% allottees have taken possession without the fit-outs and they will do necessary fit-outs on their own. Such allottees have made payment to the Corporate Debtor after

deducting the cost of the fit-outs. The Corporate Debtor would provide necessary fit-outs in rest of the flats expeditiously and the entire work would be completed within 4-5 months depending upon fund follow and delivery of necessary material from the suppliers, subject to final payment by each of the allottees. Uppal Housing Pvt. Ltd. has requested to stay all the recovery proceedings and the Corporate Debtor and/or Uppal Housing Private Limited may not be burdened with additional amount in satisfying the order passed by the Court/Consumer Forum/ RERA Authority till the works mentioned are complete. Further, necessary directions is required so that the amount deposited by the allottees is utilized exclusively for the purpose of providing amenities, facilities and Completion of work in the respective projects. It is stated that some of the allottees are adopting arm twisting tactics against Uppal Housing for recovery of the I.A. No. 1987 of 2020, 2187, 2513 of 2021 & 3239 of 2022 IN Company Appeal (AT) (Ins.) No. 926 of 2019 25 of 37 amount as they are not willing to take possession of their flats/apartments.

20. We have already noticed that the Financial Creditors like 'JM Financial Credit Solutions Ltd.', their claim is also satisfied at the time of final registration of the flats. Mr. Manoj Kr. Singh, learned counsel appearing on behalf of 'Uppal Housing Pvt. Ltd.', on instructions from Mr. Sanjeev Jain, Director Finance of Uppal Housing Pvt. Ltd., assured that the dues of the 'Financial Institutions' such as 'JM Financial Credit Solutions Ltd.' and others, if any, with regard to the present project i.e. Winter Hills - 77, Gurgaon will be also satisfied within six months.

21. In Corporate Insolvency Resolution Process against a real estate, if allottees (Financial Creditors) or Financial Institutions/Banks (Other Financial Creditors) or Operational Creditors of one project initiated Corporate Insolvency Resolution Process against the Corporate Debtor (real estate company), it is confined to the particular project, it cannot affect any other project(s) of the same real estate company (Corporate Debtor) in other places where separate plan(s) are approved by different authorities, land and its owner may be different and mainly the allottees (financial creditors), financial institutions (financial creditors, operational creditors are different for such separate project. Therefore, all the asset of the company (Corporate Debtor) are not to be maximized. The asset of the company (Corporate Debtor - real estate) of that particular project is to be maximized for balancing the creditors such as allottees, financial institutions and operational creditors of that particular project. Corporate Insolvency Resolution I.A. No. 1987 of 2020, 2187, 2513 of 2021 & 3239 of 2022 IN Company Appeal (AT) (Ins.) No. 926 of 2019 26 of 37 Process should be project basis, as per approved plan by the Competent Authority. Any other allottees (financial creditors) or financial institutions/ banks (other financial creditors) or operational creditors of other project cannot file a claim before the Interim Resolution Professional of other project and such claim cannot be entertained.

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

25. In the light of aforesaid discussion, as we find it is very difficult to follow the process as in normal course is followed in a Corporate Insolvency Resolution Process, we are of the view, that a 'Reverse Corporate Insolvency Resolution Process' can be followed in the cases of real estate infrastructure companies in the interest of the allottees and survival of the real estate companies and to ensure completion of projects which provides employment to large number of unorganized workmen.

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26. The 'Uppal Housing Pvt. Ltd.' - Intervenor (One of the Promoter) is directed to cooperate with the Interim Resolution Professional and disburse amount (apart from the amount already disbursed) from outside as Lender (financial creditor) not as Promoter to ensure that the project is completed with the time frame given by it. The disbursement of amount which has been made by 'Uppal Housing Pvt. Ltd.' and the amount as will be generated from dues of the Allottees (Financial Creditors) during the Corporate Insolvency Resolution should be deposited in the account of the Company (Corporate Debtor) to keep the Company a going concern. The amount can be utilized only by issuance of cheque signed by the authorised person of the Company (Corporate Debtor) with counter signature by the Interim Resolution Professional. The Bank in which the Corporate Debtor (Company) has account the amount should be deposited only for the purpose of completion of the Winter Hill - 77 Gurgaon Project. Banks will allow the cheques for encashment only with the counter signature of the Interim Resolution Professional.

29. All these processes should be completed by 30th August, 2020. If it completed, the Corporate Insolvency Resolution Process be closed after intimating it to the Adjudicating Authority (National Company Law Tribunal). The resolution cost including fee of the Interim Resolution Professional will be borne by the Promoter. Only after getting the certificate of completion from the Interim Resolution Professional/ Resolution Professional and approval of the Adjudicating Authority (National Company I.A. No. 1987 of 2020, 2187, 2513 of 2021 & 3239 of 2022 IN Company Appeal (AT) (Ins.) No. 926 of 2019 28 of 37 Law Tribunal) unsold flats/ apartments etc. be handed over to the Promoter/ Uppal Housing Pvt. Ltd.

30. It is made clear that even during the Corporate Insolvency Resolution Process, the Interim Resolution Professional can also sell the unsold flats/apartments, by way of a Tripartite Agreement between the Purchaser, Interim Resolution Professional/ Resolution Professional and Promoter (Uppal Housing Pvt. Ltd.). The proceeds as may be generated from such sale should be utilized for completion of the project and payment to Financial Institutions/Banks and Operational Creditors. Once the project is completed, the Interim Resolution Professional will mover application before the Adjudicating Authority (National Company Law Tribunal) with the report of completion and ask for disposal of application under Section 7, 'Rachna Singh' and 'Ajay Singh' (Allottees - Financial Creditors) having already occupied their flats.

31. However, if the 'Promoter' fail to comply with the undertaking and fails to invest as financial creditor or do not cooperate with the Interim Resolution Professional/ Resolution Professional, the



Adjudicating Authority (National Company Law Tribunal) will complete the Insolvency Resolution Process. The appeal stands disposed of with aforesaid observations and directions."

(emphasis supplied)

32. The intent of Section 7 of the I & Code, 2016 is pretty clear and the role of 'Adjudicating Authority' has been clearly defined to examine the existence of debt and subsequent default on payment on due date by the I.A. No. 1987 of 2020, 2187, 2513 of 2021 & 3239 of 2022 IN Company Appeal (AT) (Ins.) No. 926 of 2019 29 of 37 'Corporate Debtor' and also meeting the threshold criteria. Admittedly, in the present case no error was found in the order of the 'Appellate Tribunal' contained in order dated 04.02.2020, thereby there was no case of the 'Appellant' therein to set aside the order dated 20.08.2019. This 'Appellate Tribunal' also notes that accordingly while disposing the appeal against the order dated 20.08.2019 in CP (AT) (Ins.) No. 926 of 2019, the order of 'Adjudicating Authority' did not set aside and similarly no error was found therein in the 'impugned order' 20.08.2019 passed by the 'Adjudicating Authority'. This 'Appellate Tribunal', taking the support of the ratio as laid down by the Hon'ble Supreme Court of India in the case of Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors.

[(2020) 8 SCC 531], regarding economic experimentation, took on challenge for finding new dynamic solution and laid down for the first time the concept of 'Reverse CIRP' along with other aspect related to the case in Para Nos. 13, 15, 20, 21, 25, 26, 29, 30 & 31 of (04.02.2020) as discussed in preceding paragraphs.

33. Similarly, Section 14 of the I & B Code, 2016, is explicit and without any ambiguity which prescribes that once CIRP has been admitted, the entire 'Corporate Debtor' is placed under management of the 'IRP' who shall conduct day to day affairs of the 'Corporate Debtor' and moratorium automatically find its place. The balance has been placed on the rights and obligations of various stakeholder during this 'calm period' as per Section 14 of the I & B Code, 2016 and this has been primarily done to protect the assets I.A. No. 1987 of 2020, 2187, 2513 of 2021 & 3239 of 2022 IN Company Appeal (AT) (Ins.) No. 926 of 2019 30 of 37 of the 'Corporate Debtor' so that by suitable 'Resolution Plan' of 'Resolution Applicant' the 'Corporate Debtor' can be continued on going concern basis and not push the 'Corporate Debtor' towards Insolvency/ Liquidation.

34. This 'Adjudicating Authority' vide its order dated 04.02.2020 has crafted an alternative solution for the resolution of the 'Corporate Debtor' whereby for the first time the concept of 'Reverse CIRP' was introduced, which laid down that an opportunity should be granted in case the project is on verge of completion and wherein the 'Promoters' can be allowed to bring in or arrange the finances to complete such projects without involving the third party i.e. 'Resolution Applicant', albeit, under supervision of the 'IRP'.

35. As observed in preceding paragraphs that, one of the Promoter i.e. Uppal Housing Pvt. Ltd./ Intervenor' agreed in bringing finance but remaining outside the 'CIRP' and perform the role of Financial Creditor/ Lender in order to assist that the 'Reverse CIRP' become successful and allottees get the possession of the flat of "Winter Hills-77". It was also made clear that no third party

intervention would take place during 'CIRP' which amplify that no 'Prospective Resolution Applicant' were to be invited and involved and freedom was given to the 'Corporate Debtor' to complete the project by bringing suitable finances under overall supervision and control of the 'IRP'. This 'Appellate Tribunal' in its order dated 04.02.2020 also factored into the development that the original applicants moving Section 7 application before the 'Adjudicating Authority' which resulted into 'CIRP' of I.A. No. 1987 of 2020, 2187, 2513 of 2021 & 3239 of 2022 IN Company Appeal (AT) (Ins.) No. 926 of 2019 31 of 37 the 'Corporate Debtor', joined hands with the 'Appellants' therein- 'FBA' and became its member and have taken possession of their flats and sale deeds which have also been registered in their favour. This clearly demonstrated the efficacy of the concept of 'Reverse CIRP' which has started giving desired results.

36. This 'Appellate Tribunal' notes carefully that in Para 21, of its earlier order, it has been clearly stipulated that the 'Reverse CIRP' shall be confined to only one project for which 'CIRP' was initiated against the 'Corporate Debtor' and cannot affect other projects of the same 'Corporate Debtor'.

37. This 'Appellate Tribunal' also notice that even the Hon'ble Supreme Court of India in the Civil Appeal titled as Narendra Singh vs. M/s Umang Realtech Pvt. Ltd. bearing Civil Appeal No. 2942 of 2020 vide Diary No. 13889 of 2020, dismissed the Appeal filed by Mr. Narendra Singh challenging order dated 04.02.2020 passed by this 'Appellate Tribunal' holding that there is no ground to interfere with the 'impugned orders' passed thereby acknowledging the concept of 'Reverse CIRP' to be Project Specific.

38. This 'Appellate Tribunal' also amplified that for balancing the rights and obligations of all the stakeholders, endeavour need to be made to maximise the assets of the particular project rather than all the assets of the 'Corporate Debtor' involving different projects. This order also laid down the concept of 'Reverse CIRP' on a project basis given in particular context and based on relevant parameters in contrast to other project of the 'Corporate I.A. No. 1987 of 2020, 2187, 2513 of 2021 & 3239 of 2022 IN Company Appeal (AT) (Ins.) No. 926 of 2019 32 of 37 Debtor' involving different stakeholder as well as different approval obtained from different authorities. Even further, this 'Appellate Tribunal' clarified that the other Creditors of the other projects will not be allowed to file claims before the 'IRP' and such claims will not be entertained.

39. This 'Appellate Tribunal' in its earlier order dated 04.02.2020 also gave clear directions including how the money will be deposited by one of his Promoters- M/s Uppal Housing Pvt. Ltd., how such money will be utilised with dual signature of Representative of 'Corporate Debtor' as well as the 'IRP', times frame within which flats will be completed including common area etc. This order further clarified that only after getting the certificate of completion from the 'IRP' and approval of the 'Adjudicating Authority' (NCLT, New Delhi), unsold flats/ apartments will be handed over to the Promoters/ Uppal Housing Pvt. Ltd. The said order dated 04.02.2020 also obligated the IRP to move an application before the 'Adjudicating Authority' (NCLT) with the report of completion and asking for disposal of application under Section 7 of the I & B Code, 2016. The appeal was disposed off accordingly with observations and directions discussed earlier.

40. The intent of order of this 'Appellate Tribunal' dated 04.02.2020, therefore, seems to restrict the scope of the 'Reverse CIRP' to only project "Winter Hills-77", whose two allottees, namely, 'Rachna Singh' and 'Ajay Singh', filed an application asking for the 'CIRP' of the 'Corporate Debtor' and who not only got the possession of their flats but also received sale deeds I.A. No. 1987 of 2020, 2187, 2513 of 2021 & 3239 of 2022 IN Company Appeal (AT) (Ins.) No. 926 of 2019 33 of 37 and were able to get these registered in their favour. Thus, technically the grievances of the Original Applicants/ Movers of Section 7 application have been satisfied. It is also noted that in the 'Appeal' filed before this 'Appellate Tribunal' by the 'FBA' in CA (AT) (Ins.) No. 926 of 2019, the request was made to set aside the order of the 'Adjudicating Authority' revoking the 'CIRP' and resultant moratorium on the 'Corporate Debtor'. We have already noted and examined in details that the said 'Appeal' CA (AT) (Ins.) No. 926 of 2019 was disposed off vide its order dated 04.02.2020 and significantly no mention regarding moratorium on the other projects of the 'Corporate Debtor' was mentioned. To reiterate, we have already noted that this 'Appellate Tribunal' made its position clear that the present 'CIRP' (Reverse CIRP) is restricted to only project "Winter Hills-77" and do not affect other projects, thereby it can be inferred that other projects are out of bound of its order dated 04.02.2020.

Although, the aspects of moratorium and impact of 'Reverse CIRP'/ moratorium has not been discussed, amplified or elaborated in the above discussed order dated 04.02.2020, the intent becomes more clear where it has been stipulated that once the project is completed, the 'IRP' was put under obligation to move an application before the 'Adjudicating Authority' (NCLT, New Delhi) with the report of completion and asking for disposal of application under Section 7 filed by 'Rachna Singh' and 'Ajay Singh'. The order took prudent caveat only in case of failure on the part of the 'Promoter/Uppal Finance Limited' in bringing finance, non-compliance of the undertaking given by the Promoters' or non-cooperation with the 'IRP', the I.A. No. 1987 of 2020, 2187, 2513 of 2021 & 3239 of 2022 IN Company Appeal (AT) (Ins.) No. 926 of 2019 34 of 37 IRP/ Respondent was authorised to take the 'CIRP' toward logical conclusion as per provision of the I & B Code, 2016.

41. This 'Appellate Tribunal' consciously notes that Section 14 of the I & B Code, 2016 recognise moratorium of the 'Corporate Debtor' implying that under such moratorium all assets and liabilities are covered by provision of moratorium and protected from any detrimental action against the 'Corporate Debtor' by way of any fresh/continuation of any suit or litigation etc., to protect the 'Corporate Debtor' in the difficult times and give temporary respite to overcome difficulties and revive itself by other means including by the 'Successful Resolution Plan' of third party. However, we need to take into consideration the fact that there is no concept or even mention of the concept of 'Reverse CIRP' in the I & B Code, 2016. In a way it was well thought of concept of 'Reverse CIRP' giving another opportunity to 'Financial Creditor/Allottees/ Homebuyers' herein and the 'Corporate Debtor'/ 'Promoter' to settle the issues and the grievances without involving third party intervention in order to preserve and protect the integrity of the 'Corporate Debtor'. It is pertinent to note that the concept of 'Reverse CIRP' was also allowed to the specific project and without touching or commenting on other projects and assets of the 'Corporate Debtor' and without any specific direction/observation regarding continuation of moratorium on other projects for the 'Corporate Debtor'.

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42. As regard the contention of the IRP/Respondent regarding adverse impact on other projects or even on "Winter Hills-77", in case of failure of the 'Reverse CIRP', this 'Appellate Tribunal' notes that this aspect was suitably addressed in its earlier order dated 04.02.2020 in Para Nos. - 21, 29 & 31, which have been discussed in the preceding paragraphs.

Similarly, issue of ratio held by this 'Appellate Tribunal' in one other similar case of Supertech Limited (Supra), about the 'CIRP' and 'Moratorium', this 'Appellate Tribunal' notes that the 'Reverse CIRP' is rather an exception to normal rules and has to be decided carefully on specific and relevant facts of each case. In Supertech Limited case, the 'Promoter' agreed to complete all projects under overall supervision of the IRP unlike in present case.

43. After careful perusal of this Appellate Tribunal's order dated 04.02.2020, it becomes evident that the order is confined to only Winter Hills-77 and not to other projects of the 'Corporate Debtor' and consequently and logically the moratorium in the present case can be deemed to have been confined to only project- "Winter Hills-77" and not to other projects of 'Corporate Debtor'. This clarification is being given looking to peculiar and extraordinary circumstance of the case and detailed rational along with elaborate directions contained in its order dated 04.02.2020. This 'Appellate Tribunal' also takes into account an important fact that in its earlier order I.A. No. 1987 of 2020, 2187, 2513 of 2021 & 3239 of 2022 IN Company Appeal (AT) (Ins.) No. 926 of 2019 36 of 37 dated 04.02.2020, for the first time, the concept of 'Reverse CIRP' was introduced and as such this is evolving process needing such clarification.

44. This 'Appellate Tribunal' will like to amplify that above clarification is on specific request of the 'Appellant' in present appeal and cannot be treated as general guidance or interpretation regarding moratorium on the 'Corporate Debtor'. To reiterate, moratorium on 'Corporate Debtor' as a whole is a normal, basic and fundamental law as laid down in Section 14 of the I & B Code, 2016 and need to be read accordingly.

45. I.A No. 2187 of 2021 in CA (AT) (Ins.) No. 926 of 2019 stand disposed off accordingly. No costs.

[Justice Rakesh Kumar Jain] Member (Judicial) [Naresh Salecha] Member (Technical) Simran I.A. No. 1987 of 2020, 2187, 2513 of 2021 & 3239 of 2022 IN Company Appeal (AT) (Ins.) No. 926 of 2019 37 of 37