

Edelweiss Asset Reconstruction ... vs Jamvant Estates Pvt. Ltd on 20 September, 2019

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 377 of 2019

(Arising out of Order dated 7th March, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Special Bench, New Delhi in C.P. No. IB-172(PB)/ 2019)

IN THE MATTER OF:

Edelweiss Asset Reconstruction Company Limited ...Appellant

Vs.

Sachet Infrastructure Pvt. Ltd. ...Respondent

Company Appeal (AT) (Insolvency) No. 378 of 2019

(Arising out of Order dated 7th March, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Special Bench, New Delhi in C.P. No. IB-172(PB)/ 2019)

IN THE MATTER OF:

Edelweiss Asset Reconstruction Company Limited ...Appellant

Vs.

Superlative Infrastructure Pvt. Ltd. ...Respondent

Company Appeal (AT) (Insolvency) No. 379 of 2019

(Arising out of Order dated 7th March, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Special Bench, New Delhi in C.P. No. IB-172(PB)/ 2019)

IN THE MATTER OF:

Edelweiss Asset Reconstruction Company Limited ...Appellant

Vs.

Magad Realtors Pvt. Ltd.

...Respondent

Company Appeal (AT) (Insolvency) No. 380 of 2019

(Arising out of Order dated 7th March, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Special Bench, New Delhi in C.P. No. IB-172(PB)/ 2019)

IN THE MATTER OF:

Edelweiss Asset Reconstruction Company Limited

...Appellant

Vs.

Mehak Realtech Pvt. Ltd.

...Respondent

Company Appeal (AT) (Insolvency) No. 381 of 2019

(Arising out of Order dated 7th March, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Special Bench, New Delhi in C.P. No. IB-172(PB)/ 2019)

IN THE MATTER OF:

Edelweiss Asset Reconstruction Company Limited

...Appellant

Vs.

Sameeksha Estate Pvt. Ltd.

...Respondent

Company Appeal (AT) (Insolvency) No. 382 of 2019

(Arising out of Order dated 7th March, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Special Bench, New Delhi in C.P. No. IB-172(PB)/ 2019)

IN THE MATTER OF:

Edelweiss Asset Reconstruction Company Limited

...Appellant

Company Appeal (AT) (Insolvency) Nos. 377 to 385 of 2019

Vs.

Manogayan Estates Pvt. Ltd.

...Respondent

Company Appeal (AT) (Insolvency) No. 383 of 2019

(Arising out of Order dated 7th March, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Special Bench, New Delhi in C.P. No. IB-172(PB)/ 2019)

IN THE MATTER OF:

Edelweiss Asset Reconstruction Company Limited

...Appellant

Vs.

Bhisham Infrastructure Pvt. Ltd.

...Respondent

Company Appeal (AT) (Insolvency) No. 384 of 2019

(Arising out of Order dated 7th March, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Special Bench, New Delhi in C.P. No. IB-172(PB)/ 2019)

IN THE MATTER OF:

Edelweiss Asset Reconstruction Company Limited

...Appellant

Vs.

Neeleshwar Mines & Minerals (India) Pvt. Ltd.

...Respondent

Company Appeal (AT) (Insolvency) No. 385 of 2019

(Arising out of Order dated 7th March, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Special Bench, New Delhi in C.P. No. IB-172(PB)/ 2019)

Company Appeal (AT) (Insolvency) Nos. 377 to 385 of 2019

IN THE MATTER OF:

Edelweiss Asset Reconstruction Company Limited

...Appellan

Vs.

Jamvant Estates Pvt. Ltd.

...Respondent

Present: For Appellant: - Mr. Arun Kathpalia, Senior Advocate with Mr. Vaijayant Paliwal, Ms. Misha and Mr. Nikhil Mathur, Advocates.

For Respondents:- Ms. Manisha Chaudhary, Ms. Deepti Bhardwaj, Mr. Himanshu Handa, Mr. Mansumyer Singh, Advocates.

Mr. Sumant Batra, Advocate.

Mr. Sanjay Bhatt and Ms. Kiran Sharma, Advocates for R.P.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

In these appeals as common order dated 7th March, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Special Bench, New Delhi, is under challenge and common question of law is involved, they were heard together and are disposed of by this common judgment.

2. Against the 'Principal Borrower'- 'Adel Landmarks Limited' (formerly known as 'Era Landmarks Limited'), a petition for initiation of 'Corporate Insolvency Resolution Process' was admitted by the Company Appeal (AT) (Insolvency) Nos. 377 to 385 of 2019 Adjudicating Authority by order dated 5th December, 2018 in C.P. No. 1083(PB)/2018.

3. During the pendency of the 'Corporate Insolvency Resolution Process' against the 'Principal Borrower'- 'Adel Landmarks Limited', the Appellant- 'Edelweiss Asset Reconstruction Company Limited', in whose favour 'Corporate Guarantee' were given by other 'Corporate Guarantors' for securing the loan disbursed to the 'Adel Landmarks Limited' ('Principal Borrower'), filed separate applications under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) for initiation of the 'Corporate Insolvency Resolution Process', as detailed below:

Sr. No.	Corporate Debtors	Appeal No.
1.	Sachet Infrastructure Pvt. Ltd. Company	Appeal
2.	Superlative Infrastructure Pvt. Company	Appeal

3.	Magad Realtors Pvt. Ltd.	Company	Appeal
4.	Mehak Realtech Pvt. Ltd.	Company	Appeal
5.	Sameeksha Estate Pvt. Ltd.	Company	Appeal
6.	Manogayan Estates Pvt. Ltd.	Company	Appeal
7.	Bhisham Infrastructure Pvt. Ltd.	Company	Appeal
8.	Neeleshwar Mines & Minerals (India) Pvt. Ltd.	Company (Insol.) No.	Appeal 384 of 2019
9.	Jamvant Estates Pvt. Ltd.	Company	Appeal

4. As common questions of law and facts involving pertain to the 'Corporate Guarantor' for securing the loan disbursed to 'Adel Company Appeal (AT) (Insolvency) Nos. 377 to 385 of 2019 Landmarks Limited'- ('Principal Borrower') being common, the Adjudicating Authority mainly dealing with the case of 'Manogayan Estates Pvt. Ltd.' held that the Appellant- 'Edelweiss Asset Reconstruction Company Limited' being holder of the Corporate Guarantee from the aforesaid 'Corporate Debtors' and the 'Corporate Insolvency Resolution Process' having triggered against the 'Principal Borrower'- ('Adel Landmarks Limited'), for same set of claim against other 'Corporate Debtors' ('Corporate Guarantors') are not maintainable in view of the decision of this Appellate Tribunal in "Dr. Vishnu Kumar Agarwal v. M/s. Piramal Enterprises Ltd.□Company Appeal (AT) (Insolvency) No. 346 of 2018 etc." decided on 8th January, 2019, wherein this Appellate Tribunal held:

".....However, once for same set of claim application under Section 7 filed by the 'Financial Creditor' is admitted against one of the 'Corporate Debtor' ('Principal Borrower' or 'Corporate Guarantor(s)'), second application by the same 'Financial Creditor' for same set of claim and default cannot be admitted against the other 'Corporate Debtor' (the 'Corporate Guarantor(s)' or the 'Principal Borrower')....."

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5. The Appellant has been given liberty to file its claim before the 'Interim Resolution Professional' of 'Adel Landmarks Limited'- ('Principal Borrower') in IB- 1083(PB)/2018 as the same amount cannot be claimed in separate petitions. All the applications under Section 7 preferred by the Appellant against the aforesaid nine 'Corporate Debtors' have been dismissed by the common impugned order.

6. Learned counsel appearing on behalf of the Appellant- 'Edelweiss Asset Reconstruction Company Limited' submitted that the case of the Appellant is not at par with the case of 'M/s. Piramal

Enterprise Limited' (Supra) as referred to by the Adjudicating Authority.

7. According to learned counsel for the Appellant, the 'Corporate Insolvency Resolution Process' cannot proceed only against one of the 'Corporate Debtor', namely-- 'Adel Landmarks Limited'-'(Principal Borrower') as the said 'Adel Landmarks Limited' in consortium with nine 'Corporate Debtors' herein decided to develop the area by constructing flats/ shops for allottees.

8. It was submitted that 'Resolution Process' will not be complete if the total area comprising of lands belonging to all the 'Corporate Debtors' are not developed for the allottees. According to him, lands of all the nine 'Corporate Debtors', in question, have been consolidated for the purpose of construction of the housing projects. Company Appeal (AT) (Insolvency) Nos. 377 to 385 of 2019

9. According to the Appellant, the nine 'Corporate Debtors', as referred to above, are the landholders who in concert with 'Adel Landmarks Limited' ('Principal Borrower') decided to develop the total area by constructing Infrastructure for the allottees. The Agreements were signed between 'Adel Landmarks Limited' and nine 'Corporate Debtors' aforesaid for such development and for the said reason, 'Principal Borrower' had availed term loan of Rs. 170 Crores from 'ECL Finance Limited' (original 'Financial Creditor') in whose favour nine 'Corporate Debtors' had executed guarantee to repay the debt. Copies of the 'Loan Agreement' and the 'Corporate Guarantee Agreement(s)' dated 7th October, 2013 and the 'Assignment Agreement' of 'ECL Finance Limited' dated 23rd March, 2017 whereby debt has been assigned in favour of the Appellant- 'Edelweiss Asset Reconstruction Company Limited' have been enclosed.

10. On notice the Respondents, including the 'Resolution Professional' of 'Adel Landmarks Limited' ('Principal Borrower') and all the nine 'Corporate Debtors' have appeared. Curiously, all of them on appearance supported the stand taken by the Appellant.

11. Learned counsel appearing on behalf of the 'Resolution Professional of 'Adel Landmarks Limited' ('Principal Borrower') against which the 'Corporate Insolvency Resolution Process' has been initiated, submitted that the 'Resolution Process' will not succeed if the whole Company Appeal (AT) (Insolvency) Nos. 377 to 385 of 2019 project is not taken over by the 'Resolution Professional' for consolidated 'Resolution Plan' as also to keep the project as a going concern.

12. It was submitted that the two projects are based on different sets of lands of which nine 'Corporate Debtors' are landholders. Therefore, according to the 'Resolution Professional', the landholders may be guarantor, but lands have been consolidated for completion of the projects.

13. Similar plea has been taken by the counsel for all the nine 'Corporate Debtors', namely-- 'Sachet Infrastructure Pvt. Ltd.', 'Superlative Infrastructure Pvt. Ltd.', 'Magad Realtors Pvt. Ltd.', 'Mehak Realtech Pvt. Ltd.', 'Sameeksha Estate Pvt. Ltd.', 'Manogayan Estates Pvt. Ltd.', 'Bhisham Infrastructure Pvt. Ltd.', 'Neeleshwar Mines & Minerals (India) Pvt. Ltd.' and 'Jamvant Estates Pvt. Ltd.'. They also want that the 'Corporate Insolvency Resolution Process' should be initiated against them for completion of all the projects. It was also submitted that the same 'Resolution Professional' should take care of all the projects.

14. Learned counsel for the Appellant while submitted that the case of 'M/s. Piramal Enterprises Limited' (Supra) is not applicable in the facts and circumstances of the case, he relied on the decision of this Appellate Tribunal in "Mrs. Mamatha v. AMB Infrabuild Pvt. Ltd. & Company Appeal (AT) (Insolvency) Nos. 377 to 385 of 2019 Ors.□Company Appeal (AT) (Insolvency) No. 155 of 2018" disposed of on 30th November, 2018. In the said case, the Adjudicating Authority rejected the application under Section 7 for initiating the 'Corporate Insolvency Resolution Process' jointly against two 'Corporate Debtors' on the ground that the application under Section 7 cannot be filed jointly against two 'Corporate Debtors'. This Appellate Tribunal noticed that 'M/s. AMB Infrabuild Pvt. Ltd.' one of the 'Corporate Debtor' and another Company, namely-- 'M/s. Earth Galleria Pvt. Ltd.' entered into 'Collaboration Agreement' dated 3rd May, 2013 for development of a land. Taking into consideration the fact that without the collaboration of the land owner and the builder, the Infrastructure Project cannot be developed, this Appellate Tribunal held that the application under Section 7 is maintainable jointly against both the 'Corporate Debtors', and disposed of the case with following observations:

"14. If the two 'Corporate Debtors' collaborate and form an independent corporate unit entity for developing the land and allotting the premises to its allottee, the application under Section 7 will be maintainable against both of them jointly and not individually against one or other.

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15. In such case, both the 'Developer' and the 'Land Owner', if they are corporate should be jointly treated to be one for the purpose of initiation of 'Corporate Insolvency Resolution Process' against them."

15. The Appellant has enclosed different Agreements and other records from which the following facts emerge.

16. M/s. 'Era Landmarks (India) Limited' now known as 'Adel Landmarks Limited' reached different 'Collaboration Development Agreements' with the following 'Corporate Debtors', as detailed below:

Sr. Agreement Date Corporate Debtor Land Detail No.

1. 20th May, 2008 Magadh Realtors Pvt. Ltd. Sector 8, Palwal, Haryana measuring 17.5375 acres (total 2806 Kanal)

2. 20th May, 2008 Mehak Realtech Pvt. Ltd. Sector 8, Palwal, Haryana measuring 17.31 acres (total 2769 Kanal)

3. 20th May, 2008 Sachet Infrastructure Pvt. Sector 8, Palwal, Haryana Ltd. measuring 14.18125 acres (total 2269 Kanal)

4. 20th May, 2008 Sameeksha Estate Pvt. Sector 8, Palwal, Haryana Ltd. measuring 14.5875 acres (total 2334 Kanal)

5. 30th April, 2008 Jamvant Estates Pvt. Ltd. Sector 5B, Palwal, Haryana measuring 14.528125 acres (total 2324.5 Marla)

6. 15th December, 2009 SRC Buildcon Pvt. Ltd. Sector 8, Palwal, Haryana measuring 5.85 acres (total 936 Marla) The other 'Corporate Debtors' namely-- 'Manogayan Estates Pvt.

Ltd.', 'Superlative Infrastructure Pvt. Ltd.', 'Bhisham Infrastructure Pvt. Ltd.' and 'Neeleshwar Mines & Minerals (India) Pvt. Ltd.' have also Company Appeal (AT) (Insolvency) Nos. 377 to 385 of 2019 claimed that separate agreement reached between them with M/s. 'Era Landmarks (India) Limited' now known as 'Adel Landmarks Limited'. However, copy of the agreement(s) have not been enclosed.

17. A License No. 46 of 2009 was issued on 21st August, 2009 by the Director, Town and Country Planning, Haryana, Chandigarh, Haryana Government under Rule-12 granting license in favour of 'M/s. Mehak Realtech Private Limited' ('Corporate Debtor' herein); 'M/s. Sameeksha Estates Private Limited' ('Corporate Debtor' herein); 'M/s. Magad Realtors Private Limited' ('Corporate Debtor' herein); 'M/s. Sachet Infrastructure Private Limited' ('Corporate Debtor' herein) and 'M/s. SRC Buildcon Private Limited' ('Corporate Debtor' herein). All having their Registered Office situated at 153, Okhla Industrial Estate, Phase- III, New Delhi- 110020, Sh. Yogesh, son of Sh. Kiranpal, Smt. Sangeeta D/o Shri Kiranpal, Sh. Amit Kumar, Sh. Lalit Kumar both sons of Sh. Kishan Pal, residents of Village Palwal, District Palwal, C/o M/s. Era Landmarks (India) Limited (formally known as M/s. Era Infrastructure (India) Limited) (now known as 'Adel Landmarks Limited') having its registered office at 153, Okhla, Industrial Estate, Phase-III, New Delhi- 110020 for setting up of a Residential Plotted Colony at Village Palwal in Sector-8 & 9, District Palwal as extracted below:

Company Appeal (AT) (Insolvency) Nos. 377 to 385 of 2019 Company Appeal (AT) (Insolvency) Nos. 377 to 385 of 2019 Company Appeal (AT) (Insolvency) Nos. 377 to 385 of 2019 Company Appeal (AT) (Insolvency) Nos. 377 to 385 of 2019

18. Subsequently, renewal of License No. 46 of 2009 has been given in favour of the aforesaid persons by the Directorate of Town & Country Planning, Haryana vide Memo No. LC-1012 Vol. II/2013/62179 dated 31st December, 2013 as extracted below:

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19. It followed by a formal order dated 31st December, 2013 issued in favour of all the aforesaid 'Corporate Debtors' by the Directorate of Town & Country Planning, Haryana, prescribing therein the Company Appeal (AT) (Insolvency) Nos. 377 to 385 of 2019 composition rates and the composition fee worked out, which the licensee had deposited by 11th December, 2013, as verified

by Accounts Section, as under:

20. A License No. 53 of 2009 was issued on 28th August, 2009 by the Director, Town and Country Planning, Haryana, Chandigarh, Haryana Government under Rule-12 granting license in favour of 'M/s. Magad Realtors Private Limited' ('Corporate Debtor' herein); 'M/s. Sachet Infrastructure Private Limited' ('Corporate Debtor' herein), 'M/s. Sameeksha Estates Private Limited' ('Corporate Debtor' herein); 'M/s. Company Appeal (AT) (Insolvency) Nos. 377 to 385 of 2019 SRC Buildcon Private Limited' ('Corporate Debtor' herein) and 'M/s. Mehak Realtech Private Limited' ('Corporate Debtor' herein) and all having their Registered Office situated at 153, Okhla Industrial Estate, Phase-III, New Delhi- 110020, Sh. Lala Ram S/o Sh. Muradi, Sh. Lekh Raj Dagar S/o Sh. Jodha Ram residents of Village Palwal, District Palwal, C/o M/s. Era Landmarks (India) Limited (formally known as M/s. Era Infrastructure (India) Limited) (now known as 'Adel Landmarks Limited') having its registered office at 153, Okhla, Industrial Estate, Phase-III, New Delhi- 110020 for setting up of a Residential Plotted Colony at Village Palwal, District Palwal as extracted below:

Company Appeal (AT) (Insolvency) Nos. 377 to 385 of 2019 Company Appeal (AT) (Insolvency) Nos. 377 to 385 of 2019 Company Appeal (AT) (Insolvency) Nos. 377 to 385 of 2019

21. Subsequently, renewal of License No. 53 of 2009 has been given in favour of the aforesaid persons by the Directorate of Town & Country Planning, Haryana vide Memo No. LC-1012 Vol. III/2014/1931 dated 22nd January, 2014 as extracted below:

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22. It is followed by a formal order dated 22nd January, 2014 issued in favour of all the aforesaid 'Corporate Debtors' by the Directorate of Town & Country Planning, Haryana, prescribing therein the composition rates and the composition fee worked out, which the Company Appeal (AT) (Insolvency) Nos. 377 to 385 of 2019 licensee had deposited by 11th December, 2013 as verified by Accounts Section, as under:

23. A revised layout plan of 'Palwal Sector-8 and 9' on land belong to 'M/s. Magad Realtors Private Limited'; 'M/s. Mehak Realtech Private Company Appeal (AT) (Insolvency) Nos. 377 to 385 of 2019 Limited'; 'M/s. Sachet Infrastructure Private Limited'; 'M/s. Sameeksha Estates Private Limited' and 'M/s. SRC Buildcon Private Limited', measuring total area 71.302 acres has been enclosed, which are the subject matter of license granted by the Directorate of Town & Country Planning, Haryana by License No. 53 of 2009, as extracted below:

24. 'Era Landmarks Limited', now known as 'Adel Landmarks Limited' (Developer) thereafter reached a loan agreement with 'ECL Finance Limited', a Non-Banking Finance Company, by registered Loan Agreement dated 7th October, 2013 for disbursement of loan amount of Rs.170 Crores showing mortgaged properties of 'Sector-5 Palwal'; Company Appeal (AT) (Insolvency) Nos. 377 to 385 of 2019 'Sector 3, Bahadurgarh'; 'Sector-8 Palwal'; 'Sector-3 B, Bahadurgarh'; 'Block-D, Sector 8, Noida'; 'Bahadurgarh, Jhajjar, Haryana' and 'Palwal, Faridabad, Haryana'.

25. The names of the Guarantors, including the 'Corporate Debtors' aforesaid have been shown therein, as apparent from Schedule-1 and Annexure 1 thereto, as extracted below:

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26. The resolution of the 'Corporate Debtors' for their respective meeting(s) have also been enclosed. Simultaneously 'Guarantee Agreement(s)' were executed in favour of 'ECL Finance Limited' on 7th October, 2013, 12th October, 2013 etc.

27. 'ECL Finance Limited', the original 'Financial Creditor' subsequently by Assignment Agreement dated 23rd March, 2017 assigned the total debt in favour of the Appellant- 'Edelweiss Asset Reconstruction Company Limited' (Assignee) under Section 3 of the 'Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002'.

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28. The details of the 'Financing Documents' have been shown at Schedule-1 therein, including the guarantor/ co- borrower, as extracted below:

29. From the aforesaid facts, we find that the 'Corporate Debtors' are 'Corporate Guarantor', and also shown as 'Co-Borrowers'. In Annexure- II therein, the statement showing details of the loan and security documents have been mentioned which includes 'guarantee agreements' given by the aforesaid 'Corporate Debtors'. The descriptions of secured assets have been shown at Annexure-III of the Assignment Agreement, as extracted below:

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30. Giving reference to the aforesaid documents, the plea has been taken by all the parties, including the Appellant and the 'Corporate Debtors' that projects/township relates to lands of different landholders, including 'Sachet Infrastructure Pvt. Ltd.'; 'Magad Realtors Pvt. Ltd.'; 'Mehak Realtech Pvt. Ltd.'; 'Sameeksha Estate Pvt. Ltd.' and 'Jamvant Estates Pvt. Ltd.'.

31. For the said reason, we find that the 'Resolution Professional' has rightly taken the plea that the 'Resolution Process' will not be successful if the total township is not developed.

32. As the project will be developed on the land of five 'Corporate Debtors', as referred to above as per the township plan, they have rightly taken plea that simultaneous 'Corporate Insolvency Resolution Processes' should continue against them under the guidance of same 'Resolution Professional'.

33. We find that it is a case of joint consortium of different 'Corporate Debtors' and thereby a group insolvency is required to develop the township on the land of 'Sachet Infrastructure Pvt. Ltd.'; 'Magad Realtors Pvt. Ltd.'; 'Mehak Realtech Pvt. Ltd.'; 'Sameeksha Estate Pvt. Ltd.' and 'Jamvant Estates Pvt. Ltd.' and others along with 'Corporate Insolvency Resolution Process' as initiated against 'Adel Landmarks Limited' who is the sole Developer.

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34. For the said reasons, we hold that group 'Corporate Insolvency Resolution Process' proceeding is required to be initiated against five 'Corporate Debtors' namely-- 'Sachet Infrastructure Pvt. Ltd.'; 'Magad Realtors Pvt. Ltd.'; 'Mehak Realtech Pvt. Ltd.'; 'Sameeksha Estate Pvt. Ltd.' and 'Jamvant Estates Pvt. Ltd.' apart from the 'Corporate Insolvency Resolution Process' which has already been initiated against 'Adel Landmarks Limited'- ('Principal Borrower').

35. In so far as rest of the four 'Corporate Debtors' are concerned namely-- 'Superlative Infrastructure Pvt. Ltd.', 'Bhisham Infrastructure Pvt. Ltd.', 'Neeleshwar Mines & Minerals (India) Pvt. Ltd.' and 'Manogayan Estates Pvt. Ltd.', license No. 53 of 2009 do not reflect the name of 'Superlative Infrastructure Pvt. Ltd.'. Similarly, 'Bhisham Infrastructure Pvt. Ltd.', owner of land measuring 9.81 acres at Village Kasar and 1.8 acres at Village Khedka Musalman, Tehsil Bhadurgarh, District Jhajjar, Haryana its land or name has not been reflected in the town planning License Nos. 46 & 53 of 2009.

36. 'Neeleshwar Mines & Minerals (India) Pvt. Ltd.'s' land admeasuring 4095 sq. mtrs. is located at Industrial Plot No.8, Block-D, Sector-8, Noida, Gautam Budh Nagar, Uttar Pradesh which is in a State of U.P. and such lands have not been shown in the town planning of Haryana Government.

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37. Counsel for the Appellant- 'Edelweiss Asset Reconstruction Company Limited' or other four 'Corporate Debtors' or 'Resolution Professional' have not brought on record any evidence to suggest as to how 'Superlative Infrastructure Pvt. Ltd.' (Appellant of Company Appeal (AT) (Insolvency) No. 378 of 2019); 'Bhisham Infrastructure Pvt. Ltd.' (Appellant of Company Appeal (AT) (Insolvency) No. 383 of 2019); 'Neeleshwar Mines & Minerals (India) Pvt. Ltd.' (Appellant of Company Appeal (AT) (Insolvency) No. 384 of 2019) and 'Manogayan Estates Pvt. Ltd.' (Appellant of Company Appeal (AT) (Insolvency) No. 382 of 2019) can be clubbed together for group insolvency.

38. However, if the Developer of the land of 'Superlative Infrastructure Pvt. Ltd.', 'Bhisham Infrastructure Pvt. Ltd.', 'Neeleshwar Mines & Minerals (India) Pvt. Ltd.' and 'Manogayan Estates Pvt. Ltd.' is common i.e. 'Adel Landmarks Limited'- ('Corporate Debtor') in such case, the 'Corporate Insolvency Resolution Process' having issued against common developer, 'Corporate Insolvency Resolution Process' to be initiated against them, otherwise the allottees whose flats or shops are to be constructed by common Developer will suffer.

39. To ensure that the allottees of 'Adel Landmarks Limited' who jointly with 'Superlative Infrastructure Pvt. Ltd.' or with 'Bhisham Infrastructure Pvt. Ltd.' or with 'Neeleshwar Mines & Minerals (India) Pvt. Ltd.' or with 'Manogayan Estates Pvt. Ltd.' have agreed to develop Company Appeal (AT) (Insolvency) Nos. 377 to 385 of 2019 their respective lands, though it may not be part of the same project (Residential Plotted Colony), in such case also simultaneous 'Corporate Insolvency Resolution Process' can be initiated.

40. However, in absence of any record relating to such development, if any, reached between 'Adel Landmarks Limited'- ('Principal Borrower') and 'Superlative Infrastructure Pvt. Ltd.'; 'Adel Landmarks Limited'- ('Principal Borrower') with 'Bhisham Infrastructure Pvt. Ltd.'; 'Adel Landmarks Limited'- ('Principal Borrower') with 'Neeleshwar Mines & Minerals (India) Pvt. Ltd.' and 'Adel Landmarks Limited'- ('Principal Borrower') with 'Manogayan Estate Pvt. Ltd.', no specific finding is given at this stage in these appeals.

41. In view of our findings and as the Adjudicating Authority has failed to appreciate the relevant fact that in the facts and circumstances, a group insolvency is to be initiated and in absence of simultaneous 'Corporate Insolvency Resolution Process' against five 'Corporate Debtors' namely-- 'Sachet Infrastructure Pvt. Ltd.'; 'Magad Realtors Pvt. Ltd.'; 'Mehak Realtech Pvt. Ltd.'; 'Sameeksha Estate Pvt. Ltd.' and 'Jamvant Estates Pvt. Ltd.', the township project of Town and Country Planning, Haryana, will not be complete, we set aside the impugned order dated 7th March, 2019 and remit the case to the Adjudicating Authority with following directions. Company Appeal (AT) (Insolvency) Nos. 377 to 385 of 2019

42. The Adjudicating Authority will admit the applications under Section 7 filed by 'Edelweiss Asset Reconstruction Company Limited' against 'Sachet Infrastructure Pvt. Ltd.'; 'Magad Realtors Pvt. Ltd.'; 'Mehak Realtech Pvt. Ltd.'; 'Sameeksha Estate Pvt. Ltd.' and 'Jamvant Estates Pvt. Ltd.' and appoint the 'Resolution Professional' of 'Adel Landmarks Limited'- (Developer) ('Principal Borrower') as common 'Resolution Professional' to ensure that the 'Corporate Insolvency Resolution Process' against 'Adel Landmarks Limited'- ('Corporate Debtor') proceed jointly and 'Information Memorandum' is prepared in a manner that the 'Residential Plotted Colony' at village Palwal at Sectors 8 & 9 in terms of the License No. 46 of 2009 and License No. 53 of 2009, is completed in one go by initiating a consolidated 'Resolution Plan(s)' for total development.

43. In so far the case of 'Superlative Infrastructure Pvt. Ltd.', 'Bhisham Infrastructure Pvt. Ltd.', 'Neeleshwar Mines & Minerals (India) Pvt. Ltd.' and 'Manogayan Estates Pvt. Ltd.' are concerned, their matter are remitted back to the Adjudicating Authority. The Appellant and the 'Corporate Debtors' may produce relevant Agreements to show that the 'Adel Landmarks Limited'- ('Principal Borrower') against which the 'Corporate Insolvency Resolution Process' has been initiated is common Developer. In such case, one or other 'Corporate Debtor' if show the same, the Adjudicating Authority on hearing the parties will admit their Company Appeal (AT) (Insolvency) Nos. 377 to 385 of 2019 applications so as to enable the other projects are also completed of which 'Adel Landmarks Limited'- ('Principal Borrower') is the Developer.

44. In the result, Company Appeal (AT) (Insolvency) Nos. 377, 379, 380, 381 & 385 of 2019 are allowed with directions as given above. Company Appeal (AT) (Insolvency) Nos. 378, 383, 382 and 384 of 2019 are remitted back to the Adjudicating Authority with observations and directions, as recorded above.

(Justice S.J. Mukhopadhaya) Chairperson (Justice A.I.S. Cheema) Member(Judicial) (Kanthi Narahari) Member(Technical) NEW DELHI 20th September, 2019 AR Company Appeal (AT) (Insolvency) Nos. 377 to 385 of 2019