

Subject: Ram Kishor Arora Suspended Director of M/s. Supertech Ltd vs. Union Bank of India & Anr.

Reference: Supertech Insolvency matter: Company Appeal (AT) (Insolvency) No. 406 of 2022

It is to bring into your kind notice that Hon'ble NCLAT (National Company Law Appellate Tribunal, Principal Bench, New Delhi) after due consideration has modified the interim order dated 12th April 2022 to the extent that IRP may constitute the CoC with regard to the Project Eco Village II only.

With regard to the Eco Village II Project, the IRP shall proceed with the completion of the project, Resolution and shall be free to prepare Information Memorandum, issue Form -G, invite Resolution Plan however no Resolution Plan be put for voting without the leave of the Court.

The Construction of all other projects shall continue with overall supervision of the IRP with the assistance of the ex-management and its employees and workmen. This means that projects of Supertech Ltd., excluding Eco Village II, are not under insolvency process.

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**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 406 of 2022

IN THE MATTER OF:

**Ram Kishor Arora Suspended Director of M/s.
Supertech Ltd.**

...Appellant

Versus

Union Bank of India & Anr.

...Respondents

Present:

For Appellant: Mr. Arun Kathpalia, Sr. Advocate along with Mr. Siddharth Bhatli, Mr. Abhijeet Sinha, Ms. Lashita Dhingra & Mr. Kshitij Wadhwa, Advocates.

For Respondent: Mr. Alok Kumar, Ms. Somya Yadava, Mr. Manan Gambhir, Mr. Nikhil Malhotra, Ms. Garima Soni & Ms. Nandita Jha, for R-1.

Mr. Bishwajity Dubey, Ms. Srideepa Bhattacharyya & Ms. Neha Shivhare, for R-2/RP.

Mr. Arvind Nayar, Sr. Advocate along with Mr. Siddhant Kumar, for Intervenor.

Mr. Ajay Bhargaa, Ms. Wamika Trehan & Ms. Maithli Moondra, Intervenor for L&T Finance.

Mr. P. Nagesh & Mr. K. Datta, Sr. Advocates along with Ms. Kanika Sachdeva, Mr. Piyush Singh, Mr. Aditya Parolia & Ms. Aditi Sinha, for Homebuyers.

Mr. Sidhartha Barua & Mr. Danish Abbasi, Intervenor for IDBI Bank, IA 1509 of 2022

ORDER

Ashok Bhushan, J:

1. This Appeal has been filed against the Order dated 25th March, 2022 passed by the Adjudicating Authority (National Company Law Tribunal, New

Delhi, Court –VI) admitting the Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as ‘The Code’) filed by Union Bank of India praying for initiation of the ‘Corporate Insolvency Resolution Process’ (hereinafter referred to as ‘CIRP’) against M/s. Supertech Limited-Corporate Debtor.

2. The Corporate Debtor is a ‘Real Estate Company’ engaged in construction of various projects in the National Capital Region (NCR). Union Bank of India vide its Sanction Letter dated 19.10.2013/16.12.2013 granted credit facilities of Rs. 150 Crores for the development of ‘Eco Village II Project’. The Union Bank of India and Bank of Baroda agreed to extend second credit facilities of Rs. 200 Crores where total exposure of Union Bank of India was Rs. 100 Crores which was sanctioned by Letter dated 21.11.2015. Credit Facilities was secured by execution of mortgage and with corporate guarantees and personal guarantees. There being default on the part of the Corporate Debtor in repaying the loan, the Account was declared as ‘Non-Performing Assets’ (NPA) on 20th June, 2018. An application under Section 7 was filed by the Union Bank of India on 20th March, 2021 claiming total amount of Rs. 431,92,53,302/- as on 31st January, 2021 and interest thereon. The Adjudicating Authority vide the Impugned Order dated 25th March, 2022 admitted the Section 7 Application directing for initiation of ‘CIRP’. Mr. Hitesh Goel was appointed as ‘Interim Resolution Professional’ (hereinafter referred to as ‘IRP’). The Appellant, the suspended director of the Corporate Debtor has filed this Appeal challenging the Impugned Order. The Appeal was entertained on 12th April, 2022, the

Appellant requested time to enable the Appellant to approach the Bank and the Appeal was adjourned and direction was issued to the IRP not to constitute the 'Committee of Creditors' (CoC in short). The Appeal was taken up thereafter on several dates. On 17th May, 2022, it was submitted by Learned Counsel for the Appellant that Appellant has approached the Bank and has offered to make upfront payment of Rs. 10 Crores with 10 Crores on acceptance of OTS and 55 Crores for exclusive security however the Bank has asked to deposit Rs. 75 Crores as upfront to consider the OTS. Additional Affidavit was filed by the Bank as well as Appellant. This Court vide Order dated 25.05.2022 directed the IRP to file Status Report. Status Report has been filed by the IRP.

3. Various Intervention Applications have been filed by home buyers, the Association of Home Buyers and IDBI Bank. The Appellant has also filed an I.A. No. 1468 of 2022 by which Resolution cum Settlement Proposal from the management of 'M/s. Supertech Limited' has been submitted.

4. We have heard Mr. Arun Kathpalia, Sr. Advocate along with Mr. Abhijeet Sinha, appearing for the Appellant and Mr. Alok Kumar, Learned Counsel appearing for the Union Bank of India. We have also heard Learned Counsel appearing for the Interveners. Submissions have been advanced by Learned Counsel for the Parties only on the prayer for Interim Relief.

5. Learned Counsel for the Appellant submits that the Appellant has approached the Respondent and presented their offer for payment of 100% of ledger balance along with 20 Crores upfront payment and rest within 24 months but the Bank has not accepted the offer and Union Bank of India

insisted that upfront payment of Rs. 75 Crores be made. It is submitted that the Appellant-Union Bank of India has extended the credit facilities only for the projects - Eco Village II Phase -I & Phase - II, Eco Village III and Romano Project. The Appellant has already paid an amount of Rs. 149.33 Corers. The Corporate Debtor have been running a large number of projects, substantial number of projects have already been completed, the existing promoters are willing to complete the projects in a time bound manner along with discharging the liabilities of all the Financial Creditors, Home Buyers and even Operational Creditors. Corporate Debtor had sufficient receivables with positive net worth and it requires only last mile funding for completing constructions which will result in generation of adequate cash-flows to meet out all obligations of the Corporate Debtor. The strategic partner 'M/s Star Realcon Pvt. Ltd.' has agreed 'in-principle' to induce 300 Crores to complete the stalled project of the Corporate Debtor. Further 'Varde' Partner a 'Grade A' fund has also shown inclination to infuse substantial fund. The Appellant vide I.A. No. 1468 of 2022 has submitted detailed Settlement cum Resolution Plan to execute the project completion.

6. Learned Counsel for the Appellant has also relied on the Judgement of this Tribunal where 'Reverse CIRP' was directed with regard to Real-Estate Projects. Learned Counsel for the Appellant submits that the present case is fit case where this Tribunal may follow the Judgment of this Tribunal in **Company Appeal (AT) Ins. No. 926 of 2019 in the matter of 'Flat Buyers Association Winter Hills-77, Gurgaon Vs. Umang Realtech Pvt. Ltd.**

through IRP &Ors.' dated 04.02.2020. It is submitted that the Promoters of the Corporate Debtor are ready to extend full cooperation to the IRP for carrying out the construction of all the projects of the Corporate Debtor and to complete the same. Detailed Settlement-cum-Resolution Plan has been submitted along with I.A. No. 1468 of 2022. In accordance with which the further steps be directed to be taken. It is submitted that corporate debtor has sufficient receiving and ex-management under the supervision of the IRP will undertake construction activities at site on all the projects. All the projects of the Corporate Debtor have their respective RERA Accounts where minimum 70% payment received for construction has to be held and the same shall be used for construction of the respective projects. 30% of the remaining amounts will be deposited in a separate account which will be to discharge all bank liabilities in a phase wise manner. Out of the total 30 projects, 12 are complete/delivered and 18 are under construction which are mostly complete. Home-Buyers will get their homes and 'No dues Certificates'. 90% approximately homebuyers of twin tower have been paid and remaining will also get their refunds as per the proposed settlement plan.

7. Mr. Alok Kumar, Learned Counsel appearing for the Union Bank of India refuting the submissions of Learned Counsel for the Appellant submits that 'Status Report' of the IRP dated 31st May, 2022 has brought glaring default and non-compliance of the ex-management. It is submitted that their being debt and default, the Application under Section 7 has rightly been admitted and 'CIRP' be allowed to proceed by constitution of 'CoC'. Certain Intervention

Applications filed by Home-Buyers are just a delaying tactics. The proposal submitted by the Appellant in an Affidavit are mis-leading. The Corporate Debtor is in fragile financial condition. The Corporate Debtor does not have enough fund to cater its home-buyers. It is submitted that Hon'ble Supreme Court has time and again emphasized need for minimal judicial interference by the NCLAT and NCLT in the framework of IBC. The Concept/Mechanism of 'Reverse Insolvency' as envisaged in the case of 'Flat Buyers Association Vs. Umang Realtech Pvt. Ltd.' (Supra) and other cases is an alien concept outside the scheme and against the provisions/objections of the IBC and the same does not have any legal basis as there is no provision/legislation enacted by the legislature, substantiating the concept. Appellant's argument that the normal mechanism as is followed in a 'CIRP' cannot be followed in cases of real estate infrastructure companies, is an attempt to circumvent the settled principles of law laid down in the Code. The Judgment relied by Learned Counsel for the Appellant on 'Reverse Insolvency' is not attracted in the facts of the present case. Learned Counsel for the Bank submitted that this Court may permit the 'CoC' be constituted and to enable the CIRP process to proceed in accordance with the law.

8. We have heard Mr. Bishwajit Dubey appearing for the IRP. He has submitted the 'Status Report' dated 31st May, 2022 giving details of various facts regarding the claim management, construction, cash flow and list of key issues, details of finances provided to 'M/s. Supertech Limited' by different Financial Creditors, Financial Creditors Claim as well as the details of various

projects, number of total units, sold units, registered units, near ready units and under construction units and unsold units. The IRP in his Status Report has submitted that IRP after the commencement of the CIRP intimated the Management and informed the Banks and Banks were requested to add the IRP as an authorized signatory in addition to the existing ones in all the bank accounts. IRP has sent communication to the Home Buyers. He has received claims of INR 15,175 Crores from 13,484 creditors of the Corporate Debtor. Learned Counsel for the IRP submits that he is prepared to undertake construction work. IRP has already managed to visit select project sites with the Project Director and others to understand the current stage of operation, scale of construction activities, site development plans, challenges and intricacies of each site etc. IRP has expressed requirement of third party needs to be appointed to estimate the balance cost to complete each project. In Report, IRP has also referred to litigation and investigation and other facts.

9. There are number of Intervention Applications which have been filed by the respective applicants. The Intervention Applications can be divided in two groups. Group one consists of I.As filed by the Home-Buyers with a prayer that 'CIRP' should not continue. In this group, there are several I.As where prayers have been made that 'CIRP' should be restricted to Eco Village II Project only. In I.A. No. 1731 of 2022, the prayer is that 'CIRP' should not continue. In I.A. No. 1730/2022, I.A. No. 1668 of 2022, I.A. No. 1617 of 2022, I.A. No. 1616 of 2022, I.A. No. 1615 of 2022, I.A. No. 1614 of 2022, I.A. No. 1116 of 2022, I.A. No. 1117 of 2022, prayers are made by the Home Buyers is that CIRP should

be restricted to Eco Village II Project only. In I.A. No. 1115 of 2022, the Applicant prays to keep the project out of 'CIRP'. In I.A. No. 1731 of 2022, the Intervener Home Buyer prays that CIRP should not be continued and the projects of the Corporate Debtor shall be kept out from the ambit of the CIRP of the Corporate Debtor so as to allottees may get their possession of their dwelling units. Banks should not come in the way of completion of projects. Group two consists of Intervention Applications where Home Buyers prays that 'CIRP' should continue in this Group I.A. Nos. 1612 of 2022, 1609 of 2022, 1610 of 2022, 1605 of 2022, 1604 of 2022, 1582 of 2022, the Interveners pray that CIRP should continue. An Application being I.A. No. 1509 of 2022 has been filed by IDBI Bank Limited which prays that IDBI who is Financial Creditor and member of consortium banking arrangement where Union Bank of India was the Lead Bank, has disbursed the loan for the development of Eco Village II Project and prays that it may be permitted to intervene in the proceeding, it being a Financial Creditor.

10. We have heard Learned Counsel for the parties as well as the Interveners and perused the record.

11. We have carefully gone into the status report submitted by the IRP dated 31st May, 2022. From the status report submitted by the IRP, it is clear that IRP in his Report has listed 20 projects of the Corporate Debtor which also included Eco Village II Project for which the finance was given by the Union Bank of India who has filed the Application under Section 7 of the Code for initiation of the CIRP. By the admission of the Application under Section 7 of

the Code by the Adjudicating Authority, CIRP has commenced against the Corporate Debtor and when CIRP has commenced against the Corporate Debtor, all projects which had been undertaken and under construction comes under CIRP. As per the IRP Status Report, IRP has taken a stock of situation by visiting the sites which are under construction. The IRP has held several meetings with the Project Director. Paragraph 1.7 of the Report details with the construction which is to the following effect:

“As apprised by the erstwhile promoters, the Corporate Debtor has ~20-25 active projects at various locations across country but mainly in Delhi-NCR. All the projects have a respective Project Director who is entrusted with the overall development of the project including but not limited to construction activities, vendor management, site management, etc, IRP had numerous meeting meetings, discussions, conferences with all the project directors to understand the current stage of operations, scale of construction activities, site development plans, challenges, and intricacies of each site. Though basic understanding of each project was provided but the consolidated view on overall constructions status, percentage completion of projects along with balance cost to complete has not been made available to the IRP. In the context, an independent third party needs to be appointed to estimate the balance cost to complete each project.”

12. At page 14 of the Report, the IRP has given the details of 20 projects of the Corporate Debtor which also included Eco Village II Project, Eco Village I project and III. The IRP has also given the details of Banks/Financial

Institutions who has provided loan to M/s. Supertech Limited as Annexure C which is to the following effect:

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Name of Bank/FIs	Doon Square	Eco City	EV- II	EV- III	EV- IV	Hues	Romano	Shopprix Mall Meerut	Multiple Projects	Amount Claimed
Union Bank of India	-	-	135	61	59	-	192	-	1	448
IFCI Limited	-	-	-	-	-	253	-	168	-	422
PNB Housing Finance	-	-	-	-	-	415	-	-	-	415
L & T Finance	-	-	-	-	-	-	-	-	411	411
Bank of Baroda	71	-	-	82	70	-	-	-	-	223
IDBI Bank	-	-	222	-	-	-	-	-	-	222
Punjab & Sind Bank	-	23	-	-	-	-	163	-	-	186
Bank of Maharashtra	-	-	-	128	-	-	-	-	-	128
Indiabulls Commercial Credit	-	-	-	-	-	-	-	-	29	29
Indiabulls ARC	-	-	-	-	-	-	-	-	-	0
Grand Total	71	23	356	271	129	668	354	168	441	2,483

13. Annexure E detailing the Operational Creditor Claim.

14. First we need to consider the submissions of Learned Counsel for the Appellant that in view of the fact that large number of projects of the Corporate Debtor are ongoing projects where substantial completion has been made and large number of units have also been handed over to the home buyers and rest units shall also be handed over, in event the construction of the projects are allowed to proceed as ongoing project, the promoters of the Corporate Debtor are willing to extend all cooperation to the IRP for carrying out the ongoing

projects. It is submitted that CIRP need not to be allowed to continue for all the 20 projects rather it may be undertaken on projects basis as has been held by this Tribunal in its Judgment of 'Flat Buyers Association Winter Hills' (supra). The Hon'ble Supreme Court in '**Swiss Ribbon Pvt. Ltd. Vs. Union of India**' [(2019) 4 SCC 17] has made weighty observations with regard to the Insolvency Code which deals with economic matter. In paragraph 120 of the Judgment, following has been observed:

“120. The Insolvency Code is a legislation which deals with economic matters and, in the larger sense, deals with the economy of the country as a whole. Earlier experiments, as we have seen, in terms of legislations having failed, trial having led to repeated errors, ultimately led to the enactment of the Code. The experiment contained in the Code, judged by the generality of its provisions and not by so-called crudities and inequities that have been pointed out by the petitioners, passes constitutional muster. To stay experimentation in things economic is a grave responsibility, and denial of the right to experiment is fraught with serious consequences to the nation. We have also seen that the working of the Code is being monitored by the Central Government by Expert Committees that have been set up in this behalf. Amendments have been made in the short period in which the Code has operated, both to the Code itself as well as to subordinate legislation made under it. This process is an ongoing process which involves all stakeholders, including the petitioners.”

15. The thought which was echoed by Hon'ble Supreme Court in 'Swiss Ribbons Pvt. Ltd.' (supra) has been reiterated in the Judgment of Hon'ble Supreme Court in '**Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta and Ors.**' [(2018) 8 SCC 531]. This Tribunal in the case of 'Flat Buyers Association Winter Hills' (supra) was faced with a case regarding Insolvency of a Real Estate Company. In the above Judgment, this Tribunal dealt with 'Reverse Corporate Insolvency Resolution Process' and in paragraph 21 made following observations:

“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 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.”

16. This Tribunal also made observations that ‘Secured Creditor’ such as ‘financial institutions/ banks’, cannot be provided with the asset (flat/apartment) by preference over the allottees (Unsecured Financial Creditors) for whom the project has been approved. This Tribunal directed for following ‘Reverse Corporate Insolvency Resolution Process in case of Real Estate Infrastructure Companies in the interest of allottees and survival of the Real Estate Infrastructure Companies and to ensure completion of projects. In paragraph 25, following observations have been made:

“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.”

17. In the above case, one of the promoters were directed to cooperate with the Interim Resolution Professional and to disburse the amount not as a promoter but as the outside Lender and direction for phase-wise completion of the project as well as direction for payment of financial institutions/banks simultaneously. In paragraph 26-27, following observations have been issued:

“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.

27. The flats/apartments should be completed in all aspect by 30th June, 2020. All internal fit outs for electricity, water connection should be completed by 30th July, 2020. The Financial Institutions/ Banks should be paid simultaneously. The allottees are directed to deposit their balance amount and pay 90% without penal interest, if not deposited, by 15th March, 2020. The Allottees in whose favour possession has been offered and clearance has been given by the competent authority are bound to pay the cost for registration and directed to deposit registration cost to get the flats/apartments registered after paying all the balance amount in terms of the agreement.”

18. An appeal was also filed before the Hon’ble Supreme Court of India vide Diary No. 13889-2020 in the matter of Narendra Singh Vs. M/s. Umang Realtech Pvt. Ltd. against the Order dated 04.02.2020 of this Tribunal in Company Appeal (AT) Ins. No. 926 of 2019 which was dismissed by an Order dated 11th August, 2020

19. From the facts, which has been brought on record especially the Status Report by the IRP it is clear that all 20 Projects which are of the Corporate Debtor are ongoing projects where substantial units of the total units have

been sold. Project-wise detail has been given in Page 14 of the Report which is to the following effect:

S.no	Project name	Total Units	Sold Units	Registry Units	NDC Issued Units	Possession Without OC Units	Near Ready Units (NDC Issued)	Under construction Units	Unsold Units
1	Eco Village - 1	8,012	7,685	1,473	6,657	3,171	2,013	1,355	327
2	Upcountry	5,876	3,248	19	744	469	256	5,132	2,628
3	Eco Village - 2	5,696	5,189	1,079	4,287	2,054	1,154	1,409	507
4	Capetown	5,054	4,983	3,321	4,644	1,010	313	410	71
5	Eco Village - 3	3,909	2,892	593	1,718	667	458	2,191	1,017
6	Hill Town	2,561	1,208	72	75	-61	64	2,486	1,353
7	Cape Town North Eyes	2,449	1,561	23	340	39	278	2,109	888
8	Green Village	2,204	1,400	891	1,047	29	127	1,157	804
9	Eco City	2,145	2,141	1,333	2,130	720	77	15	4
10	Meerut Sport City	2,124	1,103	385	477	17	75	1,647	1,021
11	Romano	2,105	1,491	-	514	172	342	1,591	614
12	Czar Suites	2,083	1,862	265	1,678	976	437	405	221
13	Crossing Livingston	1,318	1,318	1,255	1,309	31	23	9	-
14	River Crest	1,301	265	-	199	55	144	1,102	1,036
15	Araville	618	493	82	336	88	166	282	125
16	Doon Square	606	326	60	149	19	70	457	280
17	Palm Green Residence Meerut	562	562	562	562	-	-	-	-
18	Palm Green Moradabad	434	434	401	429	28	-	5	-
19	34 Pavilion	367	367	138	361	221	2	6	-
20	Micasa - Bangalore	130	75	1	17	-	16	113	55
Total		49,554	38,603	11,953	27,673	9,705	6,015	21,881	10,951

20. We further notice that the Union Bank of India who has initiated CIRP by filing Section 7 Application has stated in Section 7 Application that it had given finance for Eco Village II Project. In annexure C of the Status Report of the IRP, Union Bank of India has shown to have given finance for Eco Village II Project, Eco Village III Project, Eco Village IV and One Romano Project. With regard to the Eco Village II Project, there is another Financial Creditor i.e. IDBI Bank

who has filed Intervention Application as noted above. Large number of home buyers who has filed Intervention Application has prayed that CIRP be confined to Eco Village II Only. With regard to the other projects, the construction may be allowed to be completed so that home buyers may get their flats.

21. We are conscious of the fact that 'CIRP' has been initiated against the Corporate Debtor. 'CIRP' has commenced against all the projects of the Corporate Debtor. 'CIRP' encompasses all the assets of the Corporate Debtor including all Bank Accounts. The IRP has already been appointed and has taken steps by informing all concerned including Banks to add the name of IRP for operation of the Account. The Learned Counsel for the Appellant made submissions and also filed an I.A. No. 1468 of 2022 by which Resolution cum Settlement Proposal has been submitted by the Management with an object to carry out the construction of all the projects.

22. As noted above, the consequence of 'CIRP' is that all assets of the Corporate Debtor come in the control and management of the IRP. All bank accounts are to be operated with the counter signature of the IRP. No amount from any account can be withdrawn without the counter signature and permission of the IRP. IRP under the IBC has responsibility to run the Corporate Debtor as a going concern. Further when Promoters are ready to extend all cooperation with all its staffs and employees to the IRP, we see no reason for not to direct the IRP to proceed with construction of all the projects under the overall supervision and control of the IRP. We by an Interim Order

dated 12th April, 2022 directed not to constitute the 'CoC' which Interim Order is continuing as on date.

23. In the facts of the present case and keeping in view the submissions raised by the Learned Counsel for the parties, we are of the view that in 'CIRP' Process, Project-Wise Resolution to be started as a test to find out the success of such Resolution. Keeping an eye regarding construction and completion of the projects, we at present, are of the view that Interim Order dated 12th April, 2022 staying the constitution of CoC be modified to the extent that CoC be constituted for the Eco Village II Project only with all Financial Creditors including Financial Creditors/Banks/Home Buyers. The Committee of Creditors of Eco Village II Project shall start process for Resolution of Eco Village II Project. The IRP shall separate the claims received with regard to the Eco Village II Project and prepare an 'Information Memorandum' accordingly and proceed for meeting of the CoC as per the Code. It is further directed that even for Eco Village II Project, the IRP shall carry the Project and continue the project as ongoing project by taking all assistance from the ex-management, employees, workmen etc. We however make it clear that other projects apart from the Eco Village II Project shall proceed as ongoing project basis under the overall supervision of the IRP. IRP in his report stated that with regard to the projects, there are separate accounts as per 'RERA' Guidelines. Detail account of all the inflow and outflow with regard to each project shall be separately maintained as per the 'RERA' Guidelines. 70% of the amount received with regard to the project shall be utilized for construction purpose only with regard

to the disbursement of rest 30 % amount, we shall issue appropriate direction after receiving further Status Report and after hearing all concern subsequently.

24. The Promoters of the Corporate Debtor has submitted that they shall arrange for Interim Finance to support the ongoing construction of the different projects by arranging finances as submitted in their Settlement cum Resolution Plan. Annexure 3 to the I.A. No. 1468 of 2022, with an object to complete the projects and clear the outstanding of all Financial Institutions including the Financial Creditors on the basis of 100% ledger balance and also payment to the Operational Creditor. The pendency of this proceeding shall in no manner hinder the Appellant to approach the Financial Creditors for entering into Settlement with the Financial Creditors. With regard to the disbursement to the Financial Creditors, out of 30% of the amount, we shall issue necessary direction after receiving the status report and receiving the progress of the projects.

25. In view of the foregoing discussions, we issue following Interim Directions:

- i. The Interim Order dated 12th April, 2022 continuing as on date is modified to the extent that IRP may constitute the CoC with regard to the Project Eco Village II only.
- ii. After constitution of CoC of Eco Village II Project, the IRP shall proceed to complete the construction of the project with the assistance of the ex-management, its employees and workmen.

- iii. With regard to the Eco Village II Project, the IRP shall proceed with the completion of the project, Resolution and shall be free to prepare Information Memorandum, issue Form -G, invite Resolution Plan however no Resolution Plan be put for voting without the leave of the Court.
- iv. All receivables with regard to the Eco Village II Project, shall be kept in the separate account, earmarked account and detail accounts of inflow and outflow shall be maintained by the IRP.
- v. That all other projects of the Corporate Debtor apart from Eco Village II Project shall be kept as ongoing project. The Construction of all other projects shall continue with overall supervision of the IRP with the assistance of the ex-management and its employees and workmen.
- vi. The promoter shall infuse the funds as arranged by it in different projects which shall be treated as Interim Finance regarding which detail account shall be maintained by the IRP.
- vii. No account of Corporate Debtor shall be operated without the counter signature of the IRP. All expenses and payments in different projects, shall be only with the approval of the IRP. All receivables in different projects shall be deposited in the account as per 'RERA' Guidelines and 70% of the amount shall be utilized for the construction purpose only. With regard to the disbursement of rest of the 30 %, appropriate direction shall be issued subsequently after receiving the status report and after hearing all concerns.

- viii. The IRP shall obtain approval of the CoC which is directed to be constituted for Eco Village II Project and incur all the expenses regarding the said projects and further incur the expenses accordingly.
- ix. With regard to the expenses to other projects for which no CoC has been constituted, IRP is at liberty to submit a proposal for payment of various expenses including 'CIRP' expenses to this Tribunal.
- x. The Promoters of the Corporate Debtor shall be at liberty to bear any expenses as requested by the IRP without in any manner utilizing any of the funds of the Corporate Debtor.
- xi. Let the IRP submit a further Status Report within six weeks from today regarding Eco Village II Project and all other projects.
- xii. The Parties are at liberty to file an I.A. for any direction/clarification in the above regard.
- xiii. List this Appeal on **27th July, 2022.**

[Justice Ashok Bhushan]
Chairperson

[Mr. Naresh Salecha]
Member (Technical)

New Delhi
10.06.2022
Basant