



**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V, NEW DELHI BENCH**

COMPANY PETITION IB (IBC) NO. 646/PB/2021

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

COL. GAUTAM MULLICK & ORS.

...Applicants/Financial Creditors

Versus

1. M/s GRAND VENEZIA COMMERCIAL TOWERS PRIVATE LIMITED

...Corporate Debtor 1

2. M/s BHASIN INFOTECH AND INFRASTRUCTURE PRIVATE LIMITED

...Corporate Debtor 2

Order Delivered on: 04.12.2023

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

MEMO OF PARTIES:

1. Col Gautam Mullick
B-1/327, Janakpuri,
New Delhi-110058

2. Shilpa Mullick
B-1/327, Janakpuri,
New Delhi-110058

3. Vimal Mehra
C-79, First Floor, Gali Num 4, Mahendru Enclave,
Delhi-110033



Awadesh Chandra Ojha
D 402 True Friends Aptt, Plot 29, Sector 6,
Dwarka, New Delhi -75

5. Mamta Gupta
C-356a, Ground Floor, Sushant Lok Phase-1,
Gurgaon, Haryana-122009
6. Prabhat Kumar Gupta
C-356A, Ground Floor, Sushant Lok Phase-1,
Gurgaon, Haryana-122009
7. Sasmita Choudhury
1064, ATS Green Village,
Sec-93A, Noida -201304
8. Sushil Kumar Mangal
C 6B/ 83, Janakpuri,
New Delhi-110058
9. Sandhya Mangal
C 6B/ 83, Janakpuri,
New Delhi-110058
10. Vikas Jain
Flat No. 104/105, Ivory Court 2, Essel Towers,
M. G. Road, Gurgaon – 122004
11. Archana Jain
Flat No. 104/105,
Ivory Court 2, Essel Towers,
M. G. Road, Gurgaon – 122004
12. Sanjib Kumar
C 205; Nirala, Eden Park, Opp. Rail Bihar, Ahinsa Khand 2,
Indira Puram, Ghaziabad-201014
13. Nilam Singh
C 205; Nirala, Eden Park Opp Rail Bihar, Ahinsa Khand 2,
Indira Puram, Ghaziabad-201014
14. Ashok Kumar Gupta
43/7, East Patel Nagar,
New Delhi-110008
15. Veena Gupta
43/7, East Patel Nagar,
New Delhi-110008



Charanjeet Singh
F 94, 2nd Floor, Kirti Nagar,
New Delhi-110015

17. Arihant Infracity Pvt. Ltd.
A-901, Saya Zenith Apartments, Ahinsa Khand 2,
Indirapuram, Ghaziabad-201014
18. Bhushan Kumar Jain
K M 52, Kavinagar,
Ghaziabad-201002
19. Gautam Dehadrai
4704 Cloudcroft, Norman,
Oklahoma, Usa-73072
20. Sunil Mullick
B-1/327, Janakpuri,
New Delhi-110058
21. Sumir Mullick
B-1/327, Janakpuri,
New Delhi-110058
22. Crescent Amour Buildwell Pvt Ltd
A-82, 2nd Floor Parwana Apartment,
Mayur Vihar Phase-1 Extn. Delhi 110091
23. CMM Services India Pvt. Ltd.
C-305, Sec 10,
Noida-201301
24. Jagmohan Lal Malhotra
B-325, Sigma-1,
Greater Noida-201306
25. Richa Verma Alexandra
B 903, Grand Omaxe,
Sector 93B, Noida-201304
26. Dr. Mukul Bikash Mishra
Matri Mandir, Kalibari B-2,
Safdarjung Enclave, New Delhi-110029
27. Amit Yadav,
B-3/81, 1st Floor,
Paschim Vihar, New Delhi-110063



Khushi Yadav,
B-3/81, 1st Floor,
Paschim Vihar, New Delhi-110063

29. Naresh Kumar Yadav
B-3/81, 1st Floor,
Paschim Vihar, New Delhi-110063
30. Kailash Devi
B-3/81, 1st Floor
Paschim Vihar, New Delhi-110063
31. Anil Bhalla
419, Starlite Apartment, Sector 14,
Rohini Extension, Delhi-110088
32. Kavita Bhalla,
419, Starlite Apartment, Sector 14,
Rohini Extension, Delhi-110088
33. Ranju Mehrotra
L65, 2nd Floor,
Kalkaji, New Delhi-110019
34. Sushma Tehlan
C-207, Shakti Apartment, Plot No. 18, Sec-5,
Dwarka, New Delhi-110075
35. Narinder Kaur
W/o Sh. Daljeet Singh,
House No. 59, Sector 21D,
Faridabad, Haryana-121001
36. Mahesh Chand Tyagi
15-D, Highway Apartment,
Gazipur, Delhi-110096
37. Rajni Shankar
W/o Gowri Shankar,
A702 Gayatri Apts., Plot 27, Sector 10,
Dwarka, New Delhi-110075
38. Harrysons Consultants Pvt. Ltd,
B-45, Sector-39, Noida
39. Yashpal Verma
E-30, Lajpat Nagar-1,
New Delhi-110024



Ajay Verma
E-30, Lajpat Nagar-1,
New Delhi-110024

41. Rajeev Sharma
B-379, G.F. Greenfield Colony,
Faridabad, Haryana- 121001
42. Anil Kumar Atree
Flat No. 10, Tower-A, 461, Masjid Moth,
New Delhi-110049
43. Dhruv
9, Civil Lines, Attached R.P.K School,
Pili Kothi, Moradabad
44. Alok
9, Civil Lines, Attached R.P.K School,
Pili Kothi, Moradabad
45. Kanupriya
9, Civil Lines, Attached R.P.K School,
Pili Kothi, Moradabad
46. Kartikeye
9, Civil Lines, Attached R.P.K School,
Pili Kothi, Moradabad
47. Akriti Agarwal
9, Civil Lines, Attached R.P.K School,
Pili Kothi, Moradabad
48. Atul Kumar
9, Civil Lines, Attached R.P.K School,
Pili Kothi, Moradabad
49. Twarit
9, Civil Lines, Attached R.P.K School,
Pili Kothi, Moradabad
50. Vandana Agarwal
9, Civil Lines, Attached R.P.K School,
Pili Kothi, Moradabad
51. Ms. Lianhmingthangi
YB1, Chaltlang Bethel,
Aizawl, Mizoram



Esther Zorini
YB1, Chaltlang Bethel,
Aizawl, Mizoram

53. Lianmawii
YB1, Chaltlang Bethel,
Aizawl, Mizoram
54. Lallawmpuii
YB1, Chaltlang Bethel,
Aizawl, Mizoram
55. Sanjay Rawal
A-24, 3rd Floor,
South Ex, New Delhi-49
56. Neelam Rawal
A-24, 3rd Floor,
South Ex; New Delhi-49
57. Vinay Kapil Anand
A2/201, Satyam Apts,
Vasundhra Enclave, Nd-110096
58. Sharbashish Palit
G 1294, Chittaranjan Park,
New Delhi-110019
59. Randeep Singh Baweja
2871/1, Gurdev Nagar,
Ludhiana Punjab-141001
60. Surjeet Kaur
P-69, Sham Nagar Extn,
New Delhi- 110018
61. Mukesh Kumar
P-69, Sham Nagar Extn,
New Delhi-110018
62. Shalini Prem
E-11, Brahma Apartments,
Plot No.7, Sector-7,
Dwarka, New Delhi-110075
63. Tigilal Roy Sukumaran Poomangalathu
Flat 705, Coral Heights, Ramaprashta Greens,
Vaishali, Ghaziabad, UP



Parveen Kumar
2228, Shora Kothi, Subzi Mandi,
Ghantaghar, Delhi-110007

65. Ajay Kumar Verma
D-13/4, Model Town 2nd,
Delhi-110009
66. Saroj Rajora
C-206, Gandharwa Housing Society, Omega 1,
Greater Noida, UP-201310
67. Komal Kapoor
276 A, Top Floor, Masjid Modh, NDSE Part 2
New Delhi-110049
68. Mangesh Tyagi
276 A, Top Floor, Masjid Modh, NDSE Part 2.
New Delhi-110049
69. Preeti Arora
276 A, Top Floor, Masjid Modh, NDSE Part 2
New Delhi-110049
70. Col RK Kochhar
252, Sumeru Hills, Near Kelod Village,
Mhow (MP)-453441
71. Rajni Kochhar
252, Sumeru Hills, Near Kelod Village,
Mhow (MP)-453441
72. Kanwaljeet Singh
170, Jheel Khuranja, Krishna Nagar,
Trans Yamuna, Delhi-110051
73. Charanjeet Singh
170, Jheel Khuranja, Krishna Nagar,
Trans Yamuna, Delhi-110051
74. Brig Raman Mahna
11/1, Mandleshwar Marg,
Mhow (MP) – 453441
75. Charu Saxena
A 1406, Krishna Apra Sapphire,
Indirapuram, Ghaziabad-201014



- Munish Malhautra
A-162, Sector-31, Noida
77. Mahesh Malhautra
A-162, Sector-31, Noida
78. Ranjaliee Siingh
18/6, Chinar Drive, DLF Chattarpur Farms,
New Delhi -110074
79. Rajveer Singh
D-169, Sector XU-1,
Greater Noida, UP
80. Vikram Bansal
69-C, Sainik Farms, Eastern Avenue,
Defence Services Enclave, New Delhi 110062
81. Neeraj Kapoor
W-126, Greater Kailash-1; E-56 ,2nd Floor,
Greater Kailash-1, New Delhi-110048
82. Rajesh Gupta
W-126, Greater Kailash-1; E-56 ,2nd Floor,
Greater Kailash-1, New Delhi-110048
83. Rakesh Pal Singh
1127, Verona Tower, Mahagun Mascot,
Crossings Republik, Ghaziabad
84. Rajesh
1127, Verona Tower, Mahagun Mascot,
Crossings Republik, Ghaziabad
85. Manvendra Singh
1127, Verona Tower, Mahagun Mascot,
Crossings Republik, Ghaziabad
86. Suman Singh
A- 15, Chandrapuri,
Mathura (UP)- 281001
87. Ritu Singh
A- 15, Chandrapuri,
Mathura (UP)-281001
88. S K Jain
5/14, Roop Nagar, Delhi-110007



Veena Jain
5/14, Roop Nagar,
Delhi-110007

90. Varsha Sondhi,
E-154, 1st Floor, Greater Kailash Part 1,
New Delhi-110048
91. Mala Sood
45, Babar Road, Bengali Market,
New Delhi-110001
92. Sanjeev Prakash
Ma 1/7, 1d, Garden Estate, Mg Road,
Gurgaon, Haryana-122002
93. CDR Jatinder Pal Vohra
J-1244, Palam Vihar,
Gurgaon-122017
94. Abhishek Gupta
B-74, Vasant Apartments,
C-58/2, Sector-62, Noida- 201301
95. Neeraj Gupta
B-74, Vasant Apartments,
C-58/2, Sector-62, Noida- 201301
96. Brij Mohan Singh Bakshi
J5 52 K, Rajouri Garden,
New Delhi-110027
97. Dharwinder Kaur Bakshi
J5 52 K, Rajouri Garden,
New Delhi-110027
98. Pankajpreet Singh Bakshi
11 Mawarra Crescent, Chadstone,
Victoria-3148, Australia
99. Mrs. Shobha Dixit
1602, Angre Block, Mazagon Docks, Dockyard Road,
Mazagaon, Mumbai-400010
100. Mandeep Singh
H.No. 1/142, New Vijay Nagar, Mahavir Marg,
Jalandhar City-144001



Suresh Chand Gupta
3rd Floor, Plot No.180, A Block,
Dwarka, Sec 8, New Delhi-110077

102. Ankit Gupta
3rd Floor, Plot No.180, A Block,
Dwarka, Sec 8, New Delhi-110077
103. Aakash Gupta
3rd Floor, Plot No.180, A Block,
Dwarka Sec 8, New Delhi-110077
104. Sheetal Badhwar
C-70/40, Noida-201301
105. Megha Badhwar
C-70/40, Noida-201301
106. Harminder Sandhu,
538. Sector -29,
Noida (UP)-201303
107. Baldev Singh Sandhu
538. Sector -29,
Noida (UP)-201303
108. Deepak Kumar Jain
P-5, Green Park Extn.
New Delhi-110016
109. Arvind Srivastava
78, Gf Ashiana Greens, Ahinsa Khand 2,
Indirapuram, Ghaziabad, UP 201014
110. Bajrang Lal Agrawal
78, Gf Ashiana Greens, Ahinsa Khand 2,
Indirapuram, Ghaziabad, UP 201014
111. Juhi Gupta
56, C-4 Lane, Central Avenue, Sainik Farms.
New Delhi – 110063
112. Meena Seth
Flat No. 1101, Tower 9, Unitech Horizon,
Sector P12, Greater Noida-201310
113. Davinder Singh Sant
F112, Sector 21, Noida, UP-201301



Neelu Sant
F112, Sector-21,
Noida, UP-201301

115. Col Narendra Singh Sahrawat
F 504, Alakhnanada Society,
Sector 56, Gurgaon
116. Vidya Sahrawat
F 504, Alakhnanada Society,
Sector 56, Gurgaon
117. Prabha Rani Kochar
770, Sector A, Pocket B & C,
Vasant Kunj, New Delhi-110070
118. Monica Kochar
770, Sector A, Pocket B & C,
Vasant Kunj, New Delhi-110070
119. Amit Kochar
770, Sector A, Pocket B & C,
Vasant Kunj, New Delhi-110070
120. Indra Yadav
House No. 214/12, Street No.6,
Krishna Colony, Gurgaon, Haryana-122001
Wz - 52; Jwala Heri, Paschim Vihar, New Delhi-63
121. Meenam Yadav
House No. 214/12, Street No.6,
Krishna Colony, Gurgaon, Haryana-122001
Wz - 52; Jwala Heri, Paschim Vihar, New Delhi-63
122. Kriti Buildtech Pvt. Ltd.
109, Sadar Apartments,
Mayur Vihar-1 Extn. Delhi
123. Suman Lata Kud
706, The Divyalok Cghs Ltd, Opposite Shopping Centre Sector 21-D,
Faridabad – 121012
124. Prita Singh
H, No -14, Pocket 2c, Huda,
Palam Vihar, Gurgaon, 122017



Ajit Singh
H. No -14, Pocket 2C, Huda,
Palam Vihar, Gurgaon, 122017

126. Surinder Mahindru
H. No -14, Pocket 2c,
Palam Vihar, Gurgaon, 122017
127. Amrita Sethi
H. No -14, Pocket 2c,
Palam Vihar, Gurgaon, 122017
128. Sanjib Kumar Dey
B7 Extension/115, Gf, Safdarjung Enclave,
New Delhi-110029
129. Bandana Pandey
F-17, Kaka Nagar,
New Delhi-110003
130. Mehul Arora
J5/151 Sf, Rajouri Garden,
New Delhi-57
131. Ankur Gupta
A-3/ 4 & 5, Third Floor, Sector – 11,
Rohini, Delhi-110085
132. Rajnish Gupta
A-3/ 4 & 5, Third Floor, Sector – 11,
Rohini, Delhi-110085
133. Kamlesh Chandra,
C-449 Block C, Yojna Vihar,
Delhi-110092
134. Abdul Moyeed Siddiqui
272, Jamia Nagar, Teacher's College Road,
New Delhi-110025
135. Abdul Moyeez Siddiqui
272, Jamia Nagar, Teacher's College Road,
New Delhi-110025
136. Talat Fatima
272, Jamia Nagar, Teacher's College Road,
New Delhi, 110025



Mohammad Talib
272, Jamia Nagar, Teacher's College Road,
New Delhi-110025

138. Anil Puri
23, Anand Avenue, Maqbool Road,
Amritsar-143001
139. Anupam Puri
23, Anand Avenue, Maqbool Road,
Amritsar-143001
140. Mr. Mukesh Kumar
128, 3rd Floor, Pocket – 9, Sector – 24,
Rohini, Delhi–110085,
248, Village Khera, Khurd, Delhi
141. Mr. Jasbir Singh
128, 3rd Floor, Pocket – 9, Sector – 24,
Rohini, Delhi–110085,
248, Village Khera, Khurd, Delhi

.... Financial Creditors

Versus

1. M/s Grand Venezia Commercial Towers Private Limited

Registered Office at: 13A, Mohan Cooperative,
Industrial Estate, Mathura Road, New Delhi-110044

.... Respondent/Corporate Debtor 1

2. M/s Bhasin Infotech and Infrastructure Private Limited

Registered Office at: 13A, Mohan Cooperative,
Industrial Estate, Mathura Road, New Delhi-110044

.... Respondent/Corporate Debtor 2

APPEARANCES:

For the Financial Creditor: Mr. M.P. Sahay, Ms. Awanitika, Mr. Sachin
Kharb, Mr. Tushar, Advs.

For the Respondent : Mr. Apoorv Agarwal for R1
:Adv. Riya Thomas, Adv. Vaishnavi Prakash
for R2



ORDER

PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)

1. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity “the Code”) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by Col. Gautam Mullick & Ors. (hereinafter referred to as ‘Financial Creditor’), represented by Col. Gautam Mullick, who is also one of the Financial Creditors, authorized through a letter of authorization dated 08.10.2021, seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against M/s Grand Venezia Commercial Towers Private Limited [CIN: U70102DL2009PTC196389] (“Corporate Debtor 1”) and M/s Bhasin Infotech and Infrastructure Private Limited [CIN: U72300DL2006PTC149113] (“Corporate Debtor 2”).
2. The Corporate Debtor 1 was incorporated on 26.11.2009, having CIN: U70102DL2009PTC196389, under the Companies Act, 1956. Its registered office is at 13A, Mohan Cooperative Industrial Estate, Mathura Road, New Delhi-110044. Therefore, this Bench has jurisdiction to deal with this petition.
3. The Corporate Debtor 2 was incorporated on 23.05.2006, having CIN: U72300DL2006PTC149113, under the Companies Act, 1956. Its registered office is at 13A, Mohan Cooperative Industrial Estate, Mathura Road, New Delhi-110044. Therefore, this Bench has jurisdiction to deal with this petition.
4. The present petition was filed on 03.06.2021 before this Adjudicating Authority on the ground that the Corporate Debtor 1 & 2 has defaulted to make a payment of a sum of Rs. 30,70,68,335/- (Rupees Thirty Crore Seventy Lacs Sixty-Eight Thousand Three Hundred and Thirty-Five).
5. **Submission of learned Counsel appearing for the Financial Creditor**
 - a) That the Section 7 petition was originally filed by 103 allottees under a real estate project to initiate CIRP against the Corporate Debtor 1 and Corporate



- Debtor 2. However, subsequently certain allottees/Petitioners withdrew their names from the present petition who got settled by the Corporate Debtor(s).
- b) That the Corporate Debtor 1 in its affidavit dated 06.05.2023 has stated on oath that there is a stay order operating passed by the Hon'ble Supreme Court of India which in effect permit the builder to execute bipartite with the allottees rather than a tripartite lease deed along with (Uttar Pradesh State Industrial Development Authority) UPSIDA which is the Lessor of the land. However, as per Clause No. 10A & 10B of Allotment letter No. 4733-37 dated 05.08.2006 as per Clause No.3 (I&J) of lease deed dated 23.08.2006, possession cannot be offered without making tripartite sublease i.e., possession cannot be given without execution of tripartite sub-lease deed.
- c) That 'The Grand Venice' is one, composite and integrated project launched by the Corporate Debtor 2 in the year 2005, which consists of 3 sections namely (i) a luxury 5-star hotel including integrated office spaces, (ii) a section of the mall having food courts, gaming zone, Gondola rides, etc. and (iii) the Cineplex for movies.
- d) That the petitioners have invested in the abovementioned section (i) i.e., the luxury 5-star hotel and as such has no relevance to sections (ii) and (iii).
- e) That the initial allotment by the concerned authority i.e., UPSIDA was made in respect of this composite project. Further, the Corporate Debtor had to handover the possession of the units to the allottees by May 2013.
- f) That the Corporate Debtors had committed defaults with respect to MoU, Lease Deed and Allotment Letter of the Authority i.e., UPSIDA.
- g) That till date, the units of the investors are still not ready, are in a dilapidated state and are absolutely unfit for occupation/ possession. The petitioners have further enclosed the snaps depicting the incomplete status of the entrance of the project, the staircases, the lobbies, and also the condition of the units on 6th, 7th and the top floor (12th) including unit no. 609, 704, 743, 744,745 (A) and complete 8th to 12th floor.
- h) That there is no completion certificate provided by the UPSIDA in favour of the investors' portion of the project viz. office spaces, virtual office spaces and luxury shops integrated with the hotel portion. That the part completion has



been issued only for the Showrooms, Food Court, Gaming zone and cinema hall of the Project which is not relevant to the petitioners at all.

- i) That in the RTI reply dated 24.03.2018, it has been made clear that the builder has not applied for final completion certificate. Further, till 24.03.2018 only a partial CC had been issued. Further, as per the rules stated by the UPSIDA, in the absence of completion certificate and without clearance from UPSIDA, any registry or conveyance deed or sublease deed cannot be executed nor any possession can be offered.
- j) That the property in Noida/Greater Noida is a “Lease Hold” type and not free hold and as per the statutory law, the sub-lease deeds of all properties in this region have to be with the concerned authority as the main party (UPSIDA in the instant case). Further, as per the Tripartite sub-lease deed executed between the Corporate Debtor 2 and UPSIDA, it is a condition precedent that the allottee of the developer shall be the lessee, UPSIDA shall be the lessor and the developer (i.e., the Corporate Debtor 2) shall be the confirming party. Therefore, the Corporate Debtors had committed violations with respect to sub-lease deed execution and possession as committed in MoU.
- k) That the Corporate Debtor 2 is making contradictory statements by stating on one hand that the Tripartite Sub-lease deed is not required at all and on the other hand, stating that the sub lessee is required to adhere to the clauses of the mandatory Tripartite Sub lease deed.
- l) That as per Clause No. 10A & 10B of Allotment letter No. 4733-37 dated 05.08.2006 and as per Clause No.3 (I&J) of lease deed dated 23.08.2006, possession cannot be given without making and executing Tripartite Sub-lease Deed and any direct lease deed done with allottee is against the lease deed and allotment terms. Therefore, the Corporate Debtors has violated clauses of Lease Deed and Allotment Letter.
- m) That both the Corporate Debtors had failed to comply with the joint commitment made for Tripartite Sub-lease Deed vide its letter of Notional Possession No. CORP/91/2015 dated 13.10.2015 whereby, the Corporate Debtor 2 had submitted to one of the financial creditors that the possession by the Corporate



Debtor 1 shall be subject to Sub-lease Deed with the UPSIDA and that shall be executed as and when intimated.

- n) That the Corporate Debtor 2 had failed to comply with the order dated 24.04.2023 passed by this Adjudicating Authority, whereby the Corporate Debtor 2 had committed to submit the draft for Tripartite Agreement between UPSIDA (Lessor) and the allottees within 7 days' time, however, failed to do so till date because the Corporate Debtor does not have necessary clearances and approvals by the Development Authority.
- o) That the Corporate Debtor in violation of the agreements has also stopped payment of assured returns with effect from January 2014 which were to be given till the time final completion was to be issued and tripartite lease deed executed.
- p) That there have been various part settlement and mediation agreements executed by the Corporate Debtors with the allottees including the SPA holder, which have been violated repeatedly showing that the default is continuous and subsisting.
- q) That the Corporate Debtors had committed fraud and cheating upon the petitioners leading to stalling of project culminating to multiple FIRs lodged at the Economic Offences Wing (EOW) and police stations in the NCR.

6. The Financial Creditors have proposed the name of Mr. Mukesh Gupta, having registration number IBBI/IPA-001/IP-P01494/2018-19/12254, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration.

7. Submission of learned Counsels appearing for the Corporate Debtor 1 & Corporate Debtor 2

- a) That the Respondent No. 1 is a broker who had purchased the sale rights of an entire building to be sold as an asset and whereas Respondent No. 2 is a land owner and developer.



- b) That the Applicants are persons who have refused to take possession despite the Respondents attempting to make every effort, asking the allottees to clear their dues and take possession. Moreover, it is contended by the Corporate Debtors that 56 of the allottees have made complete payments of the principal amount, however, failed to pay the stamp duty. Further, 30 allottees have not paid the principal amount. Hence, they are allottees of commercial spaces portraying themselves as genuine homebuyers.
- c) That the construction of the hotel in 'The Grand Venice' project was undertaken by a separate party which was not completed for some unknown reason. Further, the construction of the "Grand Venice Mall" and "Grand Venezia Commercial Towers" respectively were completed by Respondent No. 2 in the year 2015. The Completion Certificate of the constructed project was issued by the Executive Engineer CD-2, USIDCL vide letter no. 41/SIDC/EE/SD-2/SITE-4 dated 16.04.2015, depicting that the units being sold by Respondent No.1 were completed and accordingly, Respondent No.1 started issuing possession letters for the constructed units to the respective allottees.
- d) That the possession has already been taken by some buyers, however, even then few of the allottees objected the occupancy certificate as it nowhere mentions that it allows occupation of the project. Accordingly, UPSIDA vide its clarification letter dated 03.03.2017 iterated that "part completion be treated as part occupancy certificate".
- e) That the Respondent No. 2 sent letters to all the allottees intimating the compliances so completed by the Respondent and requesting the allottees to initiate the process of registration of the sublease deed.
- f) That, on the issue of whether the registry of sold units between the Petitioners and Respondent No. 2 is to be bipartite or tripartite, the UPSIDA cited clauses 3(i) and (j) in the favour of the tripartite agreement. However, the said clauses are stayed by the Hon'ble District Court and the same is upheld by the Hon'ble Supreme Court.
- g) That the Respondents assert that not only the project is completed but the Respondents have made every effort to urge the allottees to complete their payments and get the registration and possession of the units, rather the petitioners being speculative investors are delaying the process.




Analysis and Findings

We have heard the Learned Counsel for the Financial Creditor and the Learned Counsels for the Corporate Debtors and perused the averments made in the petition, reply and rejoinder. Since the registered office of the Corporate Debtors is in Delhi, this Tribunal which has territorial jurisdiction over the Union Territory of Delhi, therefore, is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of the respondent Corporate Debtors under Section 7 of the Code.

9. In order to affirm that this petition falls within the ambit of Section 7, we need to see whether there is a debt owed to the Financial Creditor and whether there is a default with respect to such debt. Additionally, we also need to see whether the Financial Creditors being the allottees under a real estate project in the present case, fulfill the threshold limit provided under Section 7 of the IB Code, for maintaining this application.
10. Proviso to Section 7 which lays down the minimum threshold limit for the Financial Creditors who are allottees under a real estate project state that:

“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.”.

11. In the present case, the Applicants are the group of allottees who have booked their units in a project namely “The Grand Venice” of the Corporate Debtors, M/s Grand Venezia Commercial Towers Private Limited (Corporate Debtor 1) and M/s Bhasin Infotech and Infrastructure Private Limited (Corporate Debtor 2) and the Corporate Debtors are engaged in the business of real estate activities which includes developing, buying, selling, renting managing and appraising real estate amongst others. Further, it is envisaged under Section 5(8)(f)(ii) of the Code that the definition of ‘allottees’ for the

 purpose of IBC, shall have same meaning as defined under Section 2(d) of the Real Estate Regulation and Development) Act, 2016.

12. In the present case, the petition has been filed by 103 allottees. However, subsequently, settlement arose between certain allottees and the Corporate Debtor(s) and therefore, such allottees withdrew their names from the present petition. Further, it is the contention of the Corporate Debtor(s) that out of the total allottees, 56 allottees paid the principal amount in full, however, failed to pay the stamp duty. Further, the Corporate Debtor(s) contended that the principal amount is pending with respect to 30 allottees. However, it is pertinent to mention that the Corporate Debtor(s) had failed to enclose any supporting document in respect of the contentions made by the Corporate Debtor(s). We are of the view that mere averments, in the absence of substantiating document, cannot be acted upon. Therefore, the contention of the Corporate Debtor(s) in this regard is not sustainable.
13. Further, reference is taken from the judgment of the Hon'ble Supreme Court in the case of **Manish Kumar Vs Union of India (2021) 5 SCC 1**, wherein, it was held that the quorum of 100 is to be seen as "on the date of presentation of the petition" and not at the time of hearing or admission. The relevant extract of the judgment is reproduced hereunder:

"The point of time to comply with the threshold requirements

141. The question, then arises, as to the alleged lack of clarity about the point of time, at which the requirements of the impugned provisos, are to be met. Is it sufficient, if the required number of allottees join together and file an application under Section 7 and fulfil the requirements, at the time of presentation? Or, is it necessary that the application must conform the numerical strength, under the new proviso, even after filing of the application, and till the date, the application is admitted under Section 7(5)? There can be no doubt that the requirement of a threshold under the impugned proviso, in Section 7(1), must be fulfilled as on the date of the filing of the application. In this regard, we find support from an early judgment of this Court, which was rendered under Section 153-C of the Companies Act, 1913. Section 153-C is the predecessor to Sections 397 and 398 read with Section 399 of the Companies Act, 1956. Its most recent avatar is contained in Sections 241 and 242 of the Companies Act, 2013 read with Section 244. In fact, Section 399 (3) of the Companies Act, 1956, read as follows: "399(3) Where any members of a company are entitled to make an application in virtue of sub-section (1), any one or more of them having obtained the consent




in writing of the rest, may make the application on behalf and for the benefit of all of them.”

142. *In the decision of this Court in Rajahmundry Electric Supply Corporation Ltd. v. A. Nageshwara Rao and others⁵¹, the provision in question, viz., Section 153-C of Companies Act, 1913 dealt with the power of the Court to Act, when the Company acts in a prejudicial manner or oppresses any part of its members. It, inter alia, provided that no application could be made by any member, in the case of a company having a share capital unless the member has obtained consent, in writing, of not less than one hundred in number of the members of the company or not less than one-tenth in number of the members, whichever is less. There was also an alternate requirement, to which, resort could be made in regard to company, not having share capital. There was another mode of fulfilling the threshold requirement. In the facts of the said case, the number of the members of the company were 603. Sixty-five members consented to the application. The problem, however, arose as it was contended that 13 of the members who had consented, had, subsequent to the presentation of the application, withdrawn their consent. This Court went on to hold as follows:*


“5 xxx xxx xxx We have no hesitation in rejecting this contention. The validity of a petition must be judged on the facts as they were at the time of its presentation, and a petition which was valid when presented cannot, in the absence of a provision to that effect in the statute, cease to be maintainable by reason of events subsequent to its presentation. In our opinion, the withdrawal of consent by 13 of the members, even if true, cannot affect either the right of the applicant to proceed with the application or the jurisdiction of the court to dispose of it on its own merits.”

14. Therefore, in view of the Judgment of the Hon’ble Supreme Court in the **Manish Kumar (Supra)**, the number of allottees has to be seen on the date of the filing of the petition and subsequent withdrawal of certain allottees in view of the settlement arose between settled allottees and the Corporate Debtor(s) would not affect the maintainability of the present petition. Thus, this Adjudicating Authority is of the view that the total number of allottees being 103, at the date of the filing of the instant application, fulfills the threshold limit of minimum hundred allottees as envisaged under Section 7 of the IB Code, 2016
15. Further, in the present case, the Corporate Debtor 1 entered in the field of Real Estate Construction and Development in the year, 2005. The Corporate Debtor 2 launched one composite and integrated project by the name of “The Grand Venice”. The said project comprises of 3 sections i.e., a section of hotel having integrated office spaces and luxury



shops, a section of the mall and a cineplex for movies. The allottees in the present case made investments with respect to the first section. Annexure RA/2 and Annexure RA/3 enclosed in the Rejoinder filed by the petitioners depicts that office spaces and luxury shops integrated with 5-star hotel is considered as a one unit. Further, the concerned authority i.e., the UPSIDA made the very initial allotment in respect of the first section only. Additionally, on perusal of Annexure-2 filed with the main petition and the payment receipt issued by Corporate Debtor(s) enclosed as Annexure 4 in the main petition, it is evident that the petitioners had made payments in respect of the first section of the project and the same has also not been disputed by the Corporate Debtor(s). Therefore, this Adjudicating Authority is of the view that disbursals have been made by the Financial Creditors in the favour of the Corporate Debtor(s). Hence, first essential ingredient of application under Section 7 of the IB Code, 2016 i.e., there is a 'debt' stands substantiated.

16. Further, in the present case, the Corporate Debtor(s) had contended that not only the project is completed but the Respondents have made every effort to urge the allottees to complete their payments and get the registration and possession of the units but the Applicants failed to take the possession of the units. However, on the perusal of the documents placed on record vide I.A. No. 2178 of 2023 in Annexure A5 (Page 62 to 81), it can be seen that the units which need to be handed over by the Corporate Debtor(s) to the Financial Creditors are still under construction and not complete till date. It is also observed that such pictures depicting the incomplete construction of units are not disputed by the Corporate Debtors. Additionally, it is stated by the UPSIDA vide RTI reply dated 24.03.2018 in para 7 that without completion certificate, the builder cannot offer possession of "any part and parcel of this project". However, in RTI reply dated 24.03.2018 enclosed as Annexure-RA/9 in the rejoinder filed by the petitioners, it has been made clear that the builder has not applied for final Completion Certificate and that till 24.03.2018, only a partial completion certificate had been issued. Therefore, this Adjudicating Authority is of the view that the Corporate Debtor(s) had failed to handover the possession of the units to the Financial Creditors. Therefore, the second major essential ingredient of an application under Section 7 of the IB Code, 2016 i.e., there is a 'default' with respect to the debt, stands substantiated.



From the perusal of aforesaid facts, it is clear that the applicants are Financial Creditors and the debt owed to them by the Corporate Debtors is a Financial Debt, and there has been a default, as stipulated in Sections 3(12), 5(7) and Section 5(8) of the IBC which are as follows:

Section 3(12) of IBC defines Default. *“Default means non-payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be.”*

Section 5(7) of IBC defines Financial Creditor: *“Financial Creditor means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.”*

Section 5(8) of IBC defines Financial Debt. *“Financial Debt means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes-*

- (a) Money borrowed against the payment of interest;*
- (b) Any amount raised by acceptance under any acceptance credit facility or its dematerialised equivalent;*
- (c) Any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*
- (d) The amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as maybe prescribed;*
- (e) Receivables sold or discounted other than any receivables sold on non-recourse basis;*
- (f) Any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*
- (g) Any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;*



(h) Any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) The amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause.”

18. It is clear after examining the records, that there is a debt, and there has been a default by the Corporate Debtors for an amount of Rs. 30,70,68,335/- (Rupees Thirty Crore Seventy Lacs Sixty-Eight Thousand Three Hundred and Thirty-Five). The present petition made by the Financial Creditor is complete in all respects as required by law. The Petition establishes that the Corporate Debtors are in default of a ‘debt due and payable’ and that the ‘default’ is for an amount which is more than the minimum amount of pecuniary threshold stipulated under section 4 (1) of the Code.

19. Additionally, the Corporate Debtors had contended that the present petition is not maintainable on the ground that it seeks to initiate CIRP against two Corporate Debtors in one petition. Nevertheless, the Code is silent on conducting the CIRPs of related parties in a consolidated manner. However, the fact that the inter-linkages of the related Corporate Debtors would be beneficial for value maximisation and continuing all the concerned companies as going concerns after completing their respective CIRPs, cannot be ignored. Further, time and again, this Adjudicating Authority has been of the view that consolidating the CIRPs of the Corporate Debtors would ensure a higher possibility of revival, improved procedural coordination and better value realisation and the same was affirmed by the Hon’ble NCLAT vide its judgment in **Edelweiss Asset Reconstruction Company Limited Vs Superlative Infrastructure Private Limited, Company Appeal (AT) (Insolvency) No. 377 of 2019**. The relevant extract of the judgment is reproduced hereunder:

“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.”


Therefore, in the light of the aforesaid observations, the contention raised by the Corporate Debtors in this regard does not hold any ground.

20. In the light of the above facts and circumstances, and in terms of Section 7(5)(a) of the Code, the instant petition **COMPANY PETITION IB (IBC)/646/(PB)/2021** filed by Col. Gautam Mullick & Ors. the Financial Creditors, under section 7 of the Code read with Rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against M/s Grand Venezia Commercial Towers Private Limited (Corporate Debtor 1) and M/s Bhasin Infotech and Infrastructure Private Limited (Corporate Debtor 2) stands **admitted** and this Adjudicating Authority initiates consolidated CIRP against M/s Grand Venezia Commercial Towers Private Limited and M/s Bhasin Infotech and Infrastructure Private Limited.
21. The petitioner in part-III of the petition has proposed the name of Mr. Mukesh Gupta as the Interim Resolution Professional. Therefore, Mr. Mukesh Gupta, having registration number IBBI/IPA-001/IP-P01494/2018-19/12254 and email – id camukeship@rediffmail.com is hereby appointed as an Interim Resolution Professional (IRP) for both the Corporate Debtor 1 and Corporate Debtor 2. The consent of the proposed interim resolution professional in Form-2 is taken on record. It is pertinent to mention that IRP has a valid AFA.
22. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:
 - (a) *The institution of suits or continuation of pending suits or proceedings against the corporate 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;

- (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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
- (d) *The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.*
- (e) *The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances 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, 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, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.*
23. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of the essential goods or services to the Corporate Debtors as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor(s) in terms of Section 14 (3) (b) of the Code.
24. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (within 3 days) as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.



We direct the applicant Financial Creditor to deposit a sum of Rs. 4 Lakhs (Rupees Two Lakhs each in respect of the two companies against whom CIRP is being initiated) with the Interim Resolution Professional, namely, Mr. Mukesh Gupta to meet out the expenses to perform the initial functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount, however, is subject to adjustment towards Resolution Process cost as per applicable rules.

26. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.
27. It is further made clear that all the personnel connected with the Corporate Debtors, their promoters or any other person associated with the Management of the Corporate Debtors are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtors'. 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 would be at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing appropriate orders.
28. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtors' as a part of his obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
29. A copy of the order shall be communicated to the Applicant, Corporate Debtors and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

 Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **I.B./646 (PB)/2021 stands admitted.**

31. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
RAHUL BHATNAGAR
MEMBER (TECHNICAL)

Sd/-
MAHENDRA KHANDELWAL
MEMBER (JUDICIAL)