

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

Company Appeal (AT) (Insolvency) No. 1107 of 2025

(Arising out of Order dated 10.07.2025 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Court - IV in IA 438/2025 in CP: IB 284/ND/2021)

IN THE MATTER OF:

ISHAN SINGH

S/o Shri Lokendra Singh,
Aged about 54 years,
Resident at 298, Forest Lane, Sainik Farms,
New Delhi - 110 068

...Appellant

Versus

MR. NARENDER KUMAR SHARMA,

Resolution Professional of SP AZE Towers Pvt. Ltd.
D-1/2, Welcom Group
CGHS, Plot No.6, Sector-3, Dwarka,
New Delhi- 110078

...Respondent

Present:

For Appellant: Mr. Gaurav Mitra, Ms. Nattasha Garg, Mr. Anubhav Dubey, Ms. Liza Arora, Advocates.

For Respondents: Mr. Ritin Rai, Sr. Adv. with Mr. Karan Gandhi, Mr. S. Tiwari, Ms. Vidhika Kapur, Ms. Riya Jain, Mr. Mridul Godha, Advocates for R-1 (RP).

Mr. Sumesh Dhawan, Ms. Vatsala Kak, Advocates for Intervenor.

Mr. Pushpendra S. Bhadoriya, Advocate for Intervenor.

J U D G M E N T

ASHOK BHUSHAN, J.

This appeal has been filed challenging the order dated 10.07.2025 passed by the Adjudicating Authority (National Company Law Tribunal) New Delhi, Court – IV rejecting IA 438/2025 filed by the Appellant to exclude the

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unsold inventory in the project, Spaze Arrow and subject property from the valuation of the Corporate Debtor and the Information Memorandum. The Adjudicating Authority by the impugned order has rejected the application. Aggrieved by which order, this appeal has been filed. Brief background facts giving rise to this appeal are:

- (i) The Appellant entered into a Collaboration Agreement dated 19.06.2010 for development of a commercial complex "Spaze Arrow" in the land owned by the Appellant situated at Village Naurangpur, Dist. Gurugram which falls in Sector 78, Gurugram, Haryana.
- (ii) Appellant issued a General Power of Attorney and Special Power of Attorney in favour of the Corporate Debtor.
- (iii) There arose certain dispute between the Appellant and the Corporate Debtor. Appellant issued notice dated 13.12.2018 and 21.12.2018 cancelling the General Power of Attorney and Special Power of Attorney given in favour of the Corporate Debtor.
- (iv) The Corporate Debtor got the project registered with Haryana Real Estate Regulatory Authority (HARERA), Gurugram and also obtained approval of revised building plan. The Corporate Debtor allotted 147 units to different allottees.
- (v) Complaints were filed before HARERA, Gurugram by allottees seeking direction against the Promoter / Developer to carry on their obligation of completing the construction and handing over the possession.

- (vi) The Corporate Debtor initiated proceedings under Section 9 of the Arbitration and Conciliation Act, 1996 seeking protection of the project land and construction raised thereon. Learned Additional District Judge issued an interim injunction on 09.04.2019 restraining the Appellant – Ishaan Singh from cancelling the Collaboration Agreement dated 19.06.2010 and certain other directions.
- (vii) Under the Collaboration Agreement there was arbitration clause between the parties. Arbitration proceeding commenced between the parties, where the Corporate Debtor was Claimant and Ishaan Singh was arrayed as Respondent. Claimant filed its claim and Respondent filed its counter claim.
- (viii) Unitholders of the Corporate Debtor of project Spaze Arrow filed application under Section 7 against the Corporate Debtor on 19.05.2021.
- (ix) On a complaint filed by allottees before the RERA, RERA passed an order on 09.02.2022 issuing direction to land owner – Ishaan Singh and the Corporate Debtor to commence and complete the construction/ development of the project.
- (x) The Arbitration proceeding initiated by the Corporate Debtor culminated into award dated 14.09.2022 delivered by three retired Hon'ble Judges of the Supreme Court. The claim of the Corporate Debtor was rejected. The land owner was awarded compensation and cost. Counter claim filed by the land owner was partly rejected.

- (xi) Ishaan Singh filed petition under Section 9 of the Arbitration and Conciliation Act, 1996 before the Commercial Court at Gurugram in which an order was passed on 21.12.2022. Interim order was passed directing the Corporate Debtor not to carry out any work of construction in the land. An appeal was filed by the Corporate Debtor against the said order, which appeal was disposed of.
- (xii) Section 34 application was filed by the Corporate Debtor against the award dated 14.09.2022, which Section 34 application came to be dismissed on 30.01.2024 by learned Additional District Judge. Against the order passed under Section 34, an application under Section 37 of Arbitration and Conciliation Act was filed which is stated to be pending.
- (xiii) NCLT vide order dated 21.10.2024 admitted Section 7 application filed by the Allottees. An independent application under Section 7 was filed by the Appellant, which was disposed of on 21.10.2024 giving liberty to the Appellant to approach the Resolution Professional appointed in the order passed under Section 7 application filed by the Allottees.
- (xiv) An appeal was filed challenging the admission order dated 21.10.2024 by Suspended Director of the Corporate Debtor in which an interim order was passed by this Tribunal to constitute the CoC.
- (xv) In the 2nd CoC meeting agenda was circulated by the IRP to bifurcate the valuation process by making the valuation of the Project, Spaze Arrow and the unsold inventory.

- (xvi) There were certain other litigations initiated by Ex-management which are not relevant in the present case.
- (xvii) On 18.01.2025, the Appellant filed IA 438/2025 seeking direction to the Resolution Professional to exclude the unsold inventory in the project, Spaze Arrow from the valuation of the Corporate Debtor and Information Memorandum and seeking the Resolution Professional to exclude the subject property from the valuation of the assets of the Corporate Debtor and in the Information Memorandum. The Adjudicating Authority issued notice in the application. The Resolution Professional filed reply to the application. The Adjudicating Authority heard the parties and by the impugned order dated 10.07.2025 rejected the application. Aggrieved by the order dated 10.07.2025 this appeal has been filed.
- (xviii) Appeal was heard on 30.07.2025, learned counsel for the Appellant contended that the Adjudicating Authority has reserved the order on maintainability of IA 438/2025 but has entered into merits of the application and rejected the application. Learned counsel for the Appellant, however, submitted that the Appellant in the appeal has taken grounds on merit and is contesting the impugned order on merits. Notice was issued to the Resolution Professional. Reply was called for. Reply has been filed by the Resolution Professional to which rejoinder has also been filed by the Appellant.

2. We have heard Shri Gaurav Mitra, learned counsel appearing for the Appellant and Shri Ritin Rai, learned senior counsel appearing for the

Respondent - Resolution Professional. We have also heard Shri Sumesh Dhawan, learned counsel appearing for the Suspended Board of Directors.

3. Shri Gaurav Mitra, learned counsel for the Appellant challenging the order submits that the Collaboration Agreement dated 19.06.2010 is no more operative in favour of the Corporate Debtor due to which the unsold inventory cannot be part of the assets of the Corporate Debtor nor can be valued. Learned counsel for the Appellant submitted that there is binding arbitral award between the parties dated 14.09.2022 by three Hon'ble (Retd.) Judges of the Hon'ble Supreme Court in which award it was clearly held that the Collaboration Agreement in favour of the Corporate Debtor is inoperative and cannot be enforced. In view of the binding arbitral award, the Adjudicating Authority could not have taken a contrary decision directing the Resolution Professional to include the unsold inventory in the assets of the Corporate Debtor. It is submitted that the Appellant has made out a case for exclusion of the unsold inventory from the assets of the Corporate Debtor and from the Information Memorandum, which application has been incorrectly rejected by the Adjudicating Authority. The Resolution Professional has wrongly included the unsold inventory in the Information Memorandum which was sent along with Agenda in the notice of the 6th meeting of the CoC. As per the arbitral award, the Corporate Debtor has no right over the subject land. Shri Mitra submitted that the Adjudicating Authority could not have disregarded the binding arbitral award between the parties.

4. Shri Ritin Rai, learned senior counsel appearing for the Resolution Professional submit that the Collaboration Agreement has been treated to be in operation by the HARERA in the order dated 09.02.2022 where direction was given to the Corporate Debtor and the land owner to complete the project. It is submitted that the Appellant filed a counter claim in the arbitration proceeding seeking transfer of the project land in favour of the land owner which counter claim has been rejected. When the similar prayer seeking transfer of land in favour of the Appellant has been rejected by the Arbitral Tribunal, it is not open for the Appellant to contend that the project land to be not included in the Information Memorandum and the assets of the Corporate Debtor. It is submitted that the Corporate Debtor has commenced and completed significant construction prior to the arbitral award. It is submitted that the homebuyers' rights have to be protected in the CIRP and rights of the homebuyers cannot be defeated by act of the Appellant.

5. Shri Sumesh Dhawan, learned counsel for the Suspended Directors submits that project in question is 13th project of the Corporate Debtor. The brother of the Appellant has given resolution plan which has been approved by the CoC.

6. We have heard learned counsel for the parties and perused the record.

7. As noted above, the CIRP of the Corporate Debtor, who has acquired development rights on the land was commenced on 21.10.2024. Application has been filed by the Appellant. In IA 438/2025, the Appellant has prayed for following reliefs:

“PRAYER

In view of the submissions made hereinabove, the Hon'ble Tribunal may be pleased to:-

A. Direct the Respondent / Resolution Professional to exclude the unsold inventory in the Project, Spaze Arrow from the valuation of the Corporate Debtor and the Information Memorandum;

B. Direct the Respondent / Resolution Professional to exclude the Subject Property [as defined hereinabove] from the valuation of the Corporate Debtor and the Information Memorandum;

C. Pass any such other order(s) as it may deem fit and proper in the interests of justice.”

8. The prayer made by the Appellant in application is to exclude the unsold inventory in the project from the valuation of the Corporate Debtor and the Information Memorandum. Spaze Arrow project was undertaken under the Collaboration Agreement dated 19.06.2010 entered between the Appellant and the Corporate Debtor. Ground and 15 floors were sanctioned in the revised approved building plan. Allotment was made to 147 allottees. The allottees of the Corporate Debtor had filed a complaint before the HARERA Authority which was decided on 09.02.2022. Copy of the order passed by HARERA, Gurugram has been brought on record as Annexure A-4. The order passed by HARERA dated 09.02.2025 has noted that both the Corporate Debtor and the land owner are the promoters of the project. The Authority by the order has issued various directions to the land owner as well as the

Corporate Debtor to complete the construction/ development of the project. It is useful to notice the observations of the Authority contained in Para L (30) and (35):

“30. The Authority can never lose sight of the basic objective of framing and implementation of "Real Estate (Regulation and Development) Act, 2016". In fact, prior to the coming into force of aforesaid legislation, real estate developers were completely non-sensitive towards the interests of allottees. Therefore, the need for a legislation to regulate real estate Sector was felt for establishing an effective mechanism to enforce accountability and for providing expeditious adjudication machinery. Ensuring expeditious completion of incomplete real estate projects in respect of which the committed timelines indicated by the respective developers have expired is also considered by this Authority to be an objective of its constitution.

35. Taking a note of the plight of the allottees and the misery needlessly foisted upon them, this authority is of the view that the construction of the project deserves to be immediately commenced. In order to put an end to the suffering of the allottees the Authority directs the landowner/promoter (i.e., collaborator & the landowner/licensee) to forthwith commence and complete the construction/ development of the project.”

9. Directions have been issued to both, Corporate Debtor as well as the land owner (collaborator & landowner/licensee) in Para 40, 46 and 48 which is as follows:

“40. Both the promoter (s) (collaborator & landowner/licensee) i.e., M/s Spaze Towers Pvt. Ltd. and Sh. Ishaan Singh shall complete the remaining construction/ development works within a stipulated time period as per license/ registration certificate. However, both shall remain jointly and severally liable for the payment of delayed possession charges and refund of amount of their allotted respective share. The inter-se dispute between the landowner and the developer cannot be allowed to prejudice the statutory rights of the innocent allottees to get their real estate units on time.

46. That the Promoter(s) may be restrained from selling the unsold inventory and would be bound by the arbitral award passed by the arbitral tribunal.

48. Any non-compliance / violation of the directions passed will be viewed adversely and shall warrant initiation of penal proceedings.”

10. The above order of the RERA Authority clearly indicate that the Authority has passed order to implement the Collaboration Agreement entered between the parties. HARERA Authority has also noticed the interim order passed by the Arbitral Tribunal dated 02.12.2019 where the Arbitral Tribunal has directed to maintain status quo. Under orders of the RERA Authority dated 09.02.2022, both, the land owner and the Corporate Debtor were obliged to carry out and complete the construction. The Collaboration Agreement between the parties dated 19.06.2010 was stated to be continuing

in respect to which construction/ development was directed by the RERA Authority.

11. At this juncture, we need to notice that present is a case where 147 allotments have been made to various allottees out of which certain allottees have initiated proceeding under section 7 against the Corporate Debtor. When allotments are made in the project regulated by RERA and BBA is entered the allottees and the Developer, the allottees also acquire certain rights and promoters are also obliged to discharge their statutory obligation.

12. Allottees acquire certain rights which are statutorily protected and neither the land owner nor the developer can negate the rights of the allottees.

13. Learned counsel for the Appellant has placed much reliance on award of Arbitral Tribunal dated 14.09.2022 to contend that Tribunal held that Collaboration Agreement is inoperative, therefore, the Corporate Debtor cannot claim any right in the pursuance of the Collaboration Agreement, hence, the project's unsold inventory be excluded from the Information Memorandum and could not have been valued. Learned counsel for the Respondent has also relied on several part of same award dated 14.09.2022 to support his submission that similar prayer was made by the Appellant before the Arbitral Tribunal to restore the land to the Appellant, which was rejected. We need to notice the relevant portion of the Arbitral Award to consider respective submissions of the parties. The claim was filed before the Arbitral Tribunal by the Corporate Debtor. The Arbitral Tribunal has framed 14 issued for consideration, which are as follows:

“(i) Whether the Claimant is entitled to an award of specific performance directing Ishan Singh to perform its obligations under the Collaboration Agreement dated 19.06.2010, the 1st Addendum dated 15.06.2011, 2nd Addendum dated 16.01.2012, Supplementary Agreement dated 02.11.2012 and 3rd Addendum dated 16.01.2014, including bearing the cost of service floor?”

(ii) Whether the (i) deed of cancellation dated 21.12.2018 cancelling the General Power of Attorney dated 21.08.2008 (ii) deed of cancellation dated 21.12.2018 cancelling the Special Power of Attorney dated 06.01.2011; (iii) deed of cancellation dated 03.04.2019 cancelling the General Power of Attorney dated 16.01.2014; and (iv) any other instrument by way of which the Respondent has sought to revoke, cancel or rescind the GPA dated 19.06.2010 are valid in law?

(iii) Whether the Claimant has breached its obligations under the Collaboration Agreement dated 19.06.2010 and if so to what effect and consequences?

(iv) Whether the Claimant has breached its statutory obligations under the applicable laws and if so to what effect and consequences on the subject disputes?

(v) Whether the powers of attorney given by the Respondent to the Claimant have not been validly revoked?

(vi) Whether the Claimant is entitled to permanent injunctions as prayed for in the Statement of Claim?

(vii) Whether the Respondent is entitled to restoration of his land and if so on what conditions?

(viii) Whether the Respondent is entitled to be indemnified and to be held good against all claims, liabilities from third parties, allottees as well as the statutory authorities by the Claimant as a result of the violations in the Project as may be existing as on date or that may arise in future?

(ix) Whether the Claimant is entitled to an award of damages against the Respondent on account of allegedly maligning the image of the Claimant, hindering the execution of the Project and causing a loss in the value of the Project by portraying it as substandard?

(x) Whether the Respondent is entitled to penalty on account of alleged delay on the part of the Claimant in handing over the Respondent's area, if so, for what period and for what amount?

(xi) Whether the Respondent is entitled to damages towards reputational loss suffered due to the failure of the Claimant in completing the Project as per the agreed terms and consequent litigations that the Respondent has been embroiled in and continues to be so before various forums such as the NCLT, RERA, numerous FIRs registered against the Counter Claimant, etc. and if so for what amount?

(xii) Whether the Respondent is entitled to the reliefs claimed in the Counter Claim?

(xiii) Whether the parties are entitled to interest and if so for what period and at what rate?

(xiv) Costs and relief.”

14. The claim of the Claimant was not accepted and answers to the issues are contained from page 211 to 221 of the paper book. Ishaan Singh was held entitle to compensation of Rs.2 Crores from the Corporate Debtor. The Issue No. (xii) was with respect to relief which was claimed by Ishaan Singh, land owner. Relief was in the counter claim filed by Ishaan Singh. Tribunal has noticed that first set of prayers made by Ishaan Singh are declaratory relief to the effect that the Collaboration Agreement and subsequent addenda and supplementary agreement have been terminated lawfully by him. The said relief was noticed and the Arbitral Tribunal took the view that the said Collaboration Agreement and subsequent addenda are still alive. It is useful to notice following part of the ‘Discussion on Issue No. (xii)’:

“Discussion on Issue No. (xii)

(xii) Whether the Respondent is entitled to the reliefs claimed in the Counter Claim?

Ishan Singh has classified his counter claims in three parts. Part I concerns itself with a situation where (effectively) the Statement of Claims is not accepted. Part II is with respect to a situation where the Statement of Claims is accepted. This is not relevant now since this Tribunal has not accepted the contentions of Spaze Towers. Part III relates to interest

and costs. This will be dealt with at the appropriate stage.

In respect of Part I, Ishan Singh has made a first set of prayers for a declaratory relief to the effect that the Collaboration Agreement and subsequent addenda and supplementary agreement have been terminated lawfully by him. There is an inherent difficulty in granting this relief as the following facts will disclose, which came to the notice of this Tribunal during the course of final hearing.

A complaint bearing Diary No. 22546 was filed before the Haryana Real Estate Regulatory Authority, Gurugram on 25th August, 2021. This complaint was filed by one Jaspreet Singh on behalf of 10 allottees who were aggrieved by the failure of the parties to complete the project, subject matter of this arbitration as well as the proceedings before the Authority. The grievance of the allottees stems from the dispute between Spaze Towers and Ishan Singh as a result of which the construction of the project building had stopped since January 2009 with the result that the allottees are suffering. On this basis, the relief sought was to the following effect:

The applicant allottees have requested the authority to pass instructions against the developer to restart and complete the construction of the project as soon as possible and hand over the committed units to the allottees.

While dealing with the contentions advanced by the allottees and Spaze Towers as well as Ishan Singh, the Authority passed an order on 9th February, 2022.⁹⁸ In this order, it is observed as follows in paragraph 35:

Taking a note at the plight of the allottees and the misery needlessly foisted upon them, this authority is of the view that the construction of the project deserves to be immediately commenced. In order to put an end to the suffering of the allottees the Authority directs the landowner/ promoter (i.e. collaborator & the landowner/ licensee) to forthwith commence and complete the construction/ development of the project.

The Authority then proceeded to pass several directions and as far as this Tribunal is concerned, the direction given in paragraph 40 of the decision is relevant. This direction reads:

Both the promoter(s) (collaborator & landowner/ licensee) i.e. M/s Spaze Towers Pvt. Ltd. and Sh. Ishaan Singh shall complete the remaining construction/ development works within a stipulated time period as per license/ registration certificate. However, both shall remain jointly and severally liable for the payment of delayed possession charges and refund of amount of their allotted respective share. The inter-se dispute between the landowner and the developer cannot be allowed to prejudice the statutory rights of the

innocent allottees to get their real estate units on time.

It is quite apparent from the view expressed by the Authority and the direction given that the construction should be completed, it proceeded on the basis that the Collaboration Agreement between the parties and the subsequent addenda and supplementary agreement are still alive.”

15. The Arbitral Tribunal also took notice of the order of the HARERA Authority dated 09.02.2022. The Arbitral Tribunal, however, in ‘Discussion on Issue No. (xii)’ has observed that agreement cannot be operated and no direction can be issued by the Tribunal for specific performance of agreements, which observations are as follows:

“As far as this Tribunal is concerned, the Agreements cannot be operated and no direction can be given by this Tribunal for specific performance of the Agreements. That being so, the Agreements are paper agreements along with the Powers of Attorney and they have no real meaning as such.

Consequently, the Tribunal records that for all intents and purposes the various agreements between the parties are inoperable and consequently the various Powers of Attorney given by Ishan Singh have no effect.”

16. The Tribunal also recorded its conclusion that the Collaboration Agreement and the subsequent agreements cannot be specifically enforced and the Corporate Debtor and its Directors are restrained from acting upon

any of the Powers of Attorney granted by Ishan Singh in their favour. In second relief following has been directed:

“The second relief claimed by Ishan Singh in Part I is a permanent injunction restraining Spaze Towers from acting upon any of the Powers of Attorney given by Ishan Singh to its directors. In view of the conclusion of this Tribunal that the Collaboration Agreement and the subsequent Agreements cannot be specifically enforced, Spaze Towers and its Directors are restrained from acting upon any of the Powers of Attorney granted by Ishan Singh in their favour.”

17. The third relief which was claimed by Ishaan Singh is relevant for the present purpose. In the third relief Ishaan Singh claimed mandatory injunctions giving the project land to him, which relief was rejected by the Tribunal in following words:

“The third set of reliefs prayed for by Ishan Singh in Part I of the Counter Claim is for mandatory injunctions giving the project land and indeed the project to him and for transfer of the project and all related documents, licenses etc. in his favour. This relief cannot be granted to Ishan Singh for a variety of reasons. Firstly, proceedings instituted by some allottees are pending before the RERA authorities and the Punjab and Haryana High Court and any substantive order might adversely affect their interests and that cannot be done without hearing them. Secondly, since the revised building plans are under challenge in the Punjab and Haryana High Court in

CWP No. 18553 of 2020 handing over the project to Ishan Singh would be inappropriate during the pendency of the writ petition.”

18. From the above it is clear that one of the specific reliefs claimed by the Appellant was with respect to transfer of project land and all related documents, license in the name of Appellant, which was rejected noticing the proceeding of the RERA Authority and pendency of the writ petition in Punjab and Haryana High Court.

19. When we look into the issues framed and the consideration by the Arbitral Tribunal, it is clear that no issue was framed with regard to cancellation of Collaboration Agreement and the only issue was framed with regard to cancellation of power of attorney issued by the Appellant in favour of the Corporate Debtor. The Arbitral Tribunal has also noticed the interim injunction order passed by Additional District Judge in proceeding under Section 9 of the Arbitration and Conciliation Act, 1996, where Ishaan Singh was restraint from cancelling the Collaboration Agreement dated 19.06.2010 and Tribunal has noticed that said injunction continued. It is useful to notice following observation of the Tribunal (at page 150-151 of the paper book):

“Through the lawyer's notice, Ishan Singh was intimated by Spaze Towers that it had initiated proceedings under section 9 of the Arbitration and Conciliation Act, 1996 (the Act) seeking protection of the project land and construction raised thereon before the Additional District Judge, (Commercial Court), Gurugram. Ishan Singh was also intimated that, on its

part, Spaze Towers had nominated an arbitrator in terms of clause 55 of the Collaboration Agreement. [The learned arbitrator subsequently resigned.]

It may be mentioned that after hearing learned counsel for the parties, the learned Additional District Judge passed the following order by way of interim measures on 9th April, 2019.

a) Respondent is restrained from cancelling Collaboration Agreement dated 19.06.2010;

b) Respondent is restrained from acting on deed of cancellation dated 21.12.2018 and other instruments for cancelling the GPA executed in favour of the petitioner in pursuance of the Collaboration Agreement between the parties;

c) Respondent is restrained from creating third party interest and rights over the disputed property which is subject matter of the Collaboration Agreement dated 19.06.2010;

d) Respondent is restrained. from interfering in the completion of the commercial property as per clause of Collaboration Agreement dated 19.06.2010 and all the subsequent agreements entered into between the parties;

e) Respondent is restrained from communicating any information aimed to malign the Project in question in violation of the terms and conditions of the Collaboration

Agreement and all other agreements executed between the parties;

Feeling aggrieved, Ishan Singh preferred an appeal before the Punjab and Haryana High Court (since disposed of). The Tribunal has not been informed whether the proceedings before the learned Additional District Judge have concluded or not. The Tribunal, therefore, presumes that the proceedings are still pending and the interim order passed by the learned Additional District Judge is still subsisting.”

20. After execution of the Collaboration Agreement dated 19.06.2010, several addendums were also issued. By Second Addendum one of the clause was added that the Collaboration Agreement shall be irrevocable and no modification/ alteration etc. in the terms & conditions of such agreement can be undertaken, except after obtaining prior approval of the DG Town & Country Planning, Haryana. The above fact has been noticed in the arbitral award, which is as follows (page 147 of the paper book):

*“A **second addendum dated 16th January, 2012 (registered on 13th March, 2012)** was effected to the Collaboration Agreement as a result of clause 16 of the Letter of Intent. 8 This clause required the parties to enter into a fresh agreement in which one of the conditions is that the Collaboration Agreement shall be irrevocable and that no modification or alteration etc. would take place except after obtaining prior approval of the Director-General, Town & Country Planning, Haryana.”*

21. We have noticed above that HARERA Authority in its order passed on 09.02.2022 has treated the Collaboration Agreement is continuing and issued direction to both land owner and the Corporate Debtor to carry out construction and complete the project. The Arbitral Tribunal has also refused the prayer of the land owner to grant declaration that Collaboration Agreement and subsequent Addendums to the agreement are terminated lawfully by him, which relief was not granted. Although, the Arbitral Tribunal has held the Collaboration Agreement to be inoperative and cannot be specifically enforced. The order of the HARERA Authority as well as Arbitral Tribunal, thus, clearly support the submission of the Respondent that Collaboration Agreement was never terminated.

22. The prayer of the Appellant has been to exclude the unsold inventory from the Information Memorandum and from valuation. When the project was carried out and constructed by both the land owner and the Corporate Debtor who are promoters of the project, the assets being part of the project, the prayer of the Appellant to exclude the unsold inventory was rightly rejected.

23. Learned counsel for the Appellant has placed reliance on the judgment of Hon'ble Supreme Court in ***"A A Estates Pvt. Ltd. through its Resolutive Professional Harshad Shamkant Deshpande & Anr. vs. Kher Nagar Sukhsadan Co-operative Housing Society Ltd. & Ors, 2025 SCC OnLine 2579"***. Learned counsel for the Appellant submitted that when the development agreement was terminated prior to initiation of CIRP, the

Corporate Debtor could not be treated to be having any development rights. Learned counsel for the Appellant has relied on Para 16.11 of the judgment, which is to the following effect:

“16.11. It is well settled that the moratorium under Section 14 does not revive terminated contracts or protect rights that have ceased to exist prior to insolvency. The protection is intended to preserve the existing value of the corporate debtor's estate, not to resurrect lapsed or extinguished interests. Extending moratorium to such non-existent rights would defeat commercial certainty and the sanctity of lawful termination under general law.”

24. There can be no dispute to the proposition of law laid down by the Hon'ble Supreme Court in the above case. The judgment of the Hon'ble Supreme Court in **A A Estates Pvt. Ltd. (Supra)** is clearly distinguishable and is not attracted in the facts of the present case due to following reasons:

(i) The Corporate Debtor in the above case never obtained physical possession of the assets and nor carried out any construction, which fact is noted in Para 15.10 of the judgment, which is as follows:

“15.10. Reliance placed on Rajendra K. Bhutta (supra), is wholly misplaced. In that case, Section 14(1)(d) of the IBC applied because the corporate debtor was in actual occupation of the property under a subsisting joint development licence, and the termination sought to recover such occupied property during the moratorium. In the present case, as mentioned earlier,

Appellant No. 1 - AA Estates never obtained physical possession. The Society and its members remained in continuous occupation. Termination was effected before the CIRP and was not a recovery during moratorium.”

(ii) Above was a case where redevelopment of the land was to be taken, which was in possession of the members of the Society, which members never vacated the premises so as to carry out any development. Development Agreement was subject to fulfilment of the condition which were never complied in the above case.

25. As noted above, present is a case where the prayer of the Appellant to declare the development agreement terminated by Appellant was refused by the Arbitral Tribunal. Order of HARERA Authority has also noticed the Collaboration Agreement to be alive and both the land owner and the developer were required to discharge their obligation. Thus, present is not a case where termination of Collaboration Agreement was accepted by any of the Authority. The Arbitral Tribunal held that Collaboration Agreement cannot be specifically enforced due to breach of various conditions by the developer. It is further relevant to notice that against the order of the Arbitral Tribunal, proceedings are also pending under Section 37 before the Punjab and Haryana High Court.

26. Observation by the Adjudicating Authority in Para 11 that Collaboration Agreement was terminated and upheld by the Arbitral Tribunal, is not correct observation. The Arbitral Tribunal has refused the relief claimed by the

Appellant for declaration that Collaboration Agreement has been lawfully terminated by the Appellant, which we have already noticed above.

27. We, thus, are of the view that the Adjudicating Authority did not commit any error in rejecting the prayer made by the Appellant to exclude the unsold inventory in the project from valuation of the Corporate Debtor and Information Memorandum. The subject property being part of the project cannot be excluded from valuation or from Information Memorandum. We, thus, do not find any error in the order of the Adjudicating Authority rejecting IA 438/2025. There is no merit in the appeal. Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

NEW DELHI

11th May, 2026

Archana