



**NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, COURT-I, CHANDIGARH  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)**

**I.A. No. 907/2024 in  
CP (IB) No. 98/Chd/Hry/2022  
(Admitted)**

**Application under section 60(5)  
read with section 18(1)(f) of the  
Insolvency and Bankruptcy  
Code, 2016**

**IN THE MATTER OF:**

1. Sh. Rahul Jindal, Resolution Professional  
Samar Estates Private Limited  
IBB/IPA-001/IP-P-02649/2021-2022/14048  
(AFA valid up to 30.06.2026)  
Address: 109, Surya Kiran Building, KG Marg, New Delhi-110001.

**...Applicant/Resolution Professional**

**Versus**

1. M/s SVSJ Developers Private Limited,  
Having its registered office at A-2, Villa-1,  
Exotica, Gurugram, Haryana  
Through its Director, Shri Sachin Jain.

**...Respondent No. 1**

2. Virender Bagai, Suspended Director of  
M/s Samar Estates Private Limited,  
Resident of House No.87,



Sector-7, Panchkula-134109,  
Email ID: bagaivinod.svg@gmail.com.

**...Respondent No. 2**

3. Vinod Bagai, Suspended Director of  
Samar Estates Private Limited,  
Resident of House No.87, Sector-7,  
Panchkula-134109,  
Email ID: bagaivinod.svg@gmail.com.

**...Respondent No. 3**

**AND IN THE MATTER OF:**

Punjab & Sind Bank

**....Petitioner/Financial Creditor**

**Versus**

Samar Estates Pvt. Ltd.

**....Respondent/Corporate Debtor**

**Order delivered on: 22.04.2026**

**Coram: SH. KHETRABASI BISWAL, MEMBER (JUDICIAL)**

**SH. SHISHIR AGARWAL, MEMBER (TECHNICAL)**

**Present:**

For the Applicant/RP:

Mr. Aalok Jagga, Advocate  
Mr. APS Madaan, Advocate  
Mr. Sahil Lohan, Advocate  
Mr. Aryaman Jagga, Advocate  
Mr. Madhav Singhal, Advocate



For Respondent No. 1: Mr. Abhishek Anand, Advocate  
Mr. Raghav Dembla, Advocate

For the Suspended Board  
of Directors/Respondent  
No. 2 and 3: Mr. Aman Kashyap, Advocate  
Mr. Aarush Kashyap, Advocate  
Mr. Arora Vishwas Kumar, Advocate

### **ORDER**

1. The present Application has been filed by the Resolution Professional of Samar Estates Private Limited, hereinafter referred to as the *Corporate Debtor*, under Section 60(5) read with Section 18(1)(f) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as *the Code*) for, inter alia, seeking directions against M/s SVSJ Developers Private Limited, Respondent No.1, to hand over the physical possession of the asset of the Corporate Debtor to the extent occupied by it, including approximately 5,35,000 sq. ft. area of the project “Ess Vee Apartments” situated at Sector-20, Panchkula, Haryana, and for appropriate directions for violation of the provisions of the Code.

#### ***Brief Facts***

2. The brief facts of the case, as stated by the Applicant, are as follows:

(i) The Corporate Debtor was engaged in the development of a residential group housing project known as “Ess Vee Apartments”, situated at Sector-20, Panchkula, Haryana, being constructed on land



measuring approximately 14.95 acres. The said project was being developed under Licence Nos. 609–612 dated 27.03.2006, granted by the Director, Town and Country Planning, Haryana, under Section 3(3) of the Haryana Development and Regulation of Urban Areas Act, 1975, read with Rule 11 of the Haryana Development and Regulation of Urban Areas Rules, 1976, permitting the development of a residential group housing colony on the said land. The Corporate Debtor was undertaking construction and development activities in the said project prior to the initiation of insolvency proceedings.

(ii) It is submitted that during the course of development of the aforesaid project, delays occurred in the progress and completion of construction. To address the delay and facilitate the continuation of development of the project, discussions were held between the Corporate Debtor, M/s SVSJ Developers Private Limited (Respondent No.1) and M/s SRV Investments regarding participation in the development and funding of the project. These discussions led to an arrangement whereby Respondent No. 1 was proposed to participate in the development of the project by undertaking construction activities and the infusion of funds, in coordination with the Corporate Debtor and SRV Investments. The said arrangement between the parties took the form of a Term Sheet dated 02.03.2023, which was admittedly executed prior to the initiation of CIRP against the Corporate Debtor vide order dated 12.01.2024.

(iii) It is submitted that the Term Sheet dated 02.03.2023 came to be executed between the Corporate Debtor, Respondent No.1 and SRV



Investments. The said Term Sheet recorded the broad commercial arrangement between the parties relating to the development of the project and contemplated that Respondent No.1 would undertake investment and construction obligations in relation to the project. The said term sheet dated 02.03.2023 further envisaged that the arrangement would subsequently culminate in the execution of a Definitive Agreement, which was to be executed upon completion of documentation and fulfilment of certain obligations by the parties.

(iv) It is submitted that pursuant to the execution of the aforesaid Term Sheet dated 02.03.2023, possession of the project site was handed over to Respondent No.1 for the purpose of undertaking development activities relating to the project. It is also reflected that Respondent No.1 undertook to infuse funds for the development of the project and for meeting project-related liabilities. In particular, Respondent No.1 undertook to deposit an amount of ₹30 crores in a designated "Project Liability Account" which was to be utilised for meeting financial obligations associated with the development of the project.

(v) It is also submitted that the documents placed on record further show that after execution of the Term Sheet, discussions were held between the representatives of Respondent No.1 and Respondent No. 2 and 3, the promoters/suspended directors of the Corporate Debtor, namely Mr. Virender Bagai and Mr. Vinod Bagai, in relation to execution of the Definitive Agreement contemplated under the Term Sheet. In this regard, Respondent No.1 addressed communications to



the Corporate Debtor seeking completion of documentation and execution of the Definitive Agreement. The record reflects that letters dated 29.04.2023, 06.06.2023, and 23.11.2023 were addressed by Respondent No.1 to the Corporate Debtor, requesting progress towards finalisation of the Definitive Agreement and completion of necessary documentation.

(vi) It is further submitted that the Definitive Agreement contemplated under the Term Sheet was not executed prior to the initiation of insolvency proceedings against the Corporate Debtor. Subsequently, this Tribunal, vide order dated 12.01.2024, passed in CP (IB) No. 98/CHD/HRY/2022, admitted the petition and initiated the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor under the provisions of the Code. Consequent upon the said order, an Interim Resolution Professional (IRP) was appointed to take over the management of the affairs of the Corporate Debtor.

(vii) After commencement of CIRP, the Resolution Professional on 16.01.2024 proceeded to assume control and custody of the assets of the Corporate Debtor in accordance with the duties cast upon him under the Code. During the course of such exercise, the Resolution Professional called upon Respondent No.1 to hand over the possession of the project land forming part of the Ess Vee Apartments project, which according to the Resolution Professional, constituted an asset of the Corporate Debtor and was required to be taken under the control and custody of the Resolution Professional for the purposes of the insolvency resolution process.



(viii) In response to the developments following initiation of CIRP, Respondent No.1 addressed a communication dated 02.02.2024 to the Resolution Professional informing him of the arrangement previously entered into between the Corporate Debtor, Respondent No.1 and SRV Investments in terms of the Term Sheet dated 02.03.2023. In the said communication, Respondent No.1 requested the Resolution Professional to permit continuation of development activities in the project by allowing Respondent No.1 to remain involved in the development of the project and to coordinate with the Resolution Professional so that the project could continue to progress.

(ix) Thereafter, the Resolution Professional issued a communication dated 05.03.2024 calling upon Respondent No.1 to hand over possession of the project site. Subsequently, Respondent No.1 addressed an email dated 14.03.2024 reiterating the existence of the arrangement recorded in the Term Sheet and requesting that it be permitted to continue with development of the project. The record further indicates that Respondent No.1 also caused a public notice dated 16.03.2024 to be published in newspapers, namely Financial Express and Jansatta, informing the public regarding the existence of the Term Sheet and the arrangement relating to the development of the project.

(x) In the above factual background, the present Application is filed by the Resolution Professional.



3. Before advertizing to the submissions, we take note of the fact that despite being granted repeated opportunities, Respondent No.1 failed to file its reply to the present application. Vide order dated 10.03.2025, a last opportunity was granted by this Tribunal that the right to reply of Respondent no. 1 would be struck off in the event of default. No reply was thereafter filed, and accordingly, the right of Respondent No.1 to file its reply was struck off by this Tribunal vide Order dated 14.05.2025. Vide order dated 10.07.2025, learned counsel for Respondent No.1 submitted to advance oral arguments on legal aspects alone.

### ***Submissions***

4. The submissions made by the Learned Counsel for the Respondent No.1 are summarised as under:

(i) Ld. counsel for the Respondent No.1 has submitted that the present application has been filed without proper appreciation of the contractual arrangement and investments made by Respondent No.1 in relation to the project of the Corporate Debtor. It is submitted that after executing the Term Sheet dated 02.03.2023, the possession of the project site was handed over to Respondent No.1, which thereafter undertook preparatory work and committed substantial financial investment towards the project. In consideration thereof, Respondent No.1 has claimed the entitlement to 5,35,000 sq. ft. of saleable area forming part of the share allocated under the Term Sheet.

(iii) It is submitted that the Term Sheet constitutes a binding commercial arrangement, and the Resolution Professional cannot



disregard the rights arising thereunder merely by invoking powers under Section 18 of the Code, particularly when the Applicant has not sought any declaration regarding the invalidity of the said arrangement.

(iv) It is further submitted that upon commencement of CIRP, the Respondent No. 1 apprised the Interim Resolution Professional of the pre-existing arrangement and expressed its willingness to cooperate and continue development of the project in coordination with the Resolution Professional so that the Corporate Debtor may remain a going concern and the interests of homebuyers and other stakeholders are safeguarded.

(v) It is also submitted that Respondent No.1 has already undertaken substantial financial commitments and developmental responsibilities in relation to the project, and its dispossession at this stage would not only prejudice its contractual rights but also adversely affect the progress of the project and the interests of stakeholders associated with the development.

(vi) It is further also submitted that the public notice dated 16.03.2024 was issued merely to inform prospective resolution applicants about the existence of the Term Sheet so that any resolution plan submitted during the CIRP would take into account the contractual framework governing the project.

(vii) On the question of jurisdiction, it is contended that the relief sought by the Applicant effectively amounts to eviction and dispossession, which falls within the jurisdiction of civil courts. Reliance is placed upon the judgments of the Hon'ble Supreme Court in



***Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta, (2021) 7 SCC 209***

and ***Tata Consultancy Services Ltd. v. Vishal Goyal, Civil Appeal***

***No. 3045 of 2020***, to submit that the residuary jurisdiction under

Section 60(5) of the Code should not be exercised in a manner that encroaches upon the jurisdiction of other competent forums.

(viii) Reliance is also placed on the decision of the NCLAT in ***Deepak Sakharam Kulkarni v. Manoj Kumar Aggarwal, Company Appeal***

***(AT) (Ins.) No. 63 of 2024***, to contend that disputes arising out of

contractual possession and development rights cannot be summarily determined within insolvency proceedings.

5. The Learned Counsel for the Applicant has advanced the following arguments on merits in support of his present application:

(i) The Learned Counsel submitted that the sole basis of the Respondent's claim is the Term Sheet dated 02.03.2023, which itself records that the Corporate Debtor is the absolute owner of the project land. The said Term Sheet merely records a preliminary commercial understanding whereby Respondent No.1 was proposed to undertake construction in consideration of a share in the saleable area of the project. Crucially, the Term Sheet expressly contemplated execution of a Definitive Agreement within two months, subject to completion of due diligence and obtaining approvals from RERA, banks, DTCP and other authorities. **Since no such approvals were obtained and no definitive agreement was executed, the Applicant vehemently contends that no enforceable contractual relationship ever came into existence.**



(ii) It is also submitted that the alleged arrangement was expressly contingent upon obtaining approval from the existing secured creditor bank, which held an equitable mortgage over the project land. The “effective date” of the arrangement was to arise only after such approval. Admittedly, neither any such approval was obtained nor was any definitive agreement executed thereafter. Consequently, the Applicant contends that the very foundation of the Respondent’s claim has failed, and the possession claimed by Respondent No.1 cannot be sustained in law.

(iii) It is further submitted that the alleged arrangement also fails on the ground that no lawful consideration was paid to the Corporate Debtor. As per the Term Sheet itself, an amount of ₹5 Crores was paid to M/s SRV Investments, which is a proprietorship concern of a suspended director of the Corporate Debtor, and not to the Corporate Debtor itself. Relying on the judgment of the Hon’ble Supreme Court in ***Placido Francisco Pinto (D) by LRs v. Jose Francisco Pinto (2021 SCC OnLine SC 842)*** and the provisions of Sections 10 and 25 of the Indian Contract Act, 1872, it is contended that an agreement without lawful consideration is void and unenforceable in law.

(iv) It is further submitted that even the limited possession contemplated under the Term Sheet was only for preparatory activities such as surveys and mobilisation prior to commencement of construction, which itself was to begin only after the effective date of the agreement. Since the contingencies necessary for commencement of the project never materialised, the very purpose for which possession



was allegedly granted stands frustrated, and Respondent No.1 cannot claim any independent right to remain in possession of the project site.

(v) The Ld. Counsel also submitted that the conduct of Respondent No.1 demonstrates a deliberate attempt to interfere with the CIRP. It is contended that Respondent No.1 issued a public notice dated 16.03.2024 stating that any Expression of Interest or resolution plan submitted in the CIRP would be subject to the alleged Term Sheet, thereby attempting to mislead prospective resolution applicants and overreach the insolvency process being conducted under the supervision of this Tribunal.

(vi) Learned Counsel has placed reliance upon several judgments of the Hon'ble NCLAT to buttress that the Resolution Professional is entitled to take possession of assets owned by the Corporate Debtor without resorting to separate civil proceedings. Reliance is placed on ***Jhanvi Rajpal Automotive Pvt. Ltd. v. RP of Rajpal Abhikaran Pvt. Ltd. CA (AT) (Insolvency) No. 1417 of 2022*** and ***Harish Raghavji Patel v. Ajit Gyanchand Jain CA (AT) (Insolvency) No. 682 of 2025***, wherein it has been held that once ownership of the premises vests with the Corporate Debtor, the Resolution Professional is entitled to take control and custody of such asset.

(viii) Ld. Counsel has also vehemently submitted that the judgments relied upon by Respondent No.1 are distinguishable. The decision in ***Deepak Sakharam Kulkarni v. Manoj Kumar Aggarwal CA (AT) (INS) No. 63 of 2024*** is stated to be inapplicable as the present case involves a contingent and incomplete arrangement without



consideration or approval of the secured creditor, and therefore no contractual rights ever crystallised in favour of Respondent No.1. Similarly, reliance placed on **Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd. (2022) 1 SCC 401** is misplaced as the present dispute does not concern third-party assets but rather property admittedly owned by the Corporate Debtor. It is further submitted that the decision in **Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta (2021) 7 SCC 209** does not bar the jurisdiction of this Tribunal, holding that the Adjudicating Authority is empowered to direct restoration of possession of the assets of the Corporate Debtor to the Resolution Professional.

6. The Ld. counsel for the Respondent No.1, in its short written submissions, has further made the following additional submissions:

(i) The Ld counsel submitted that the Term Sheet dated 02.03.2023 constitutes a binding and non-terminable contractual arrangement entered into between the Corporate Debtor, Respondent No.1 and M/s SRV Investments, which continues to subsist, and its validity has not been questioned or avoided by the Resolution Professional. According to Respondent No.1, the arrangement was executed prior to commencement of CIRP and does not fall within any of the avoidable transactions contemplated under the Code, such as preferential transactions under Section 43, undervalued transactions under Section 45, transactions defrauding creditors under Section 48, or extortionate credit transactions under Section 50. It is therefore



submitted that the rights created under the Term Sheet cannot be disregarded merely on account of the initiation of CIRP.

(ii) The Ld. Counsel has further raised a jurisdictional objection, contending that the present dispute essentially relates to enforcement or alleged breach of contractual rights arising out of the Term Sheet and therefore falls outside the limited jurisdiction of this Adjudicating Authority under Section 60(5) of the Code, which is confined to matters arising out of or in relation to the insolvency resolution process. In support of this submission, reliance is placed upon the decision of the Hon'ble NCLAT in **SICOM Ltd. v. Kitply Industries Ltd., Company Appeal (AT) (Ins.) No. 849 of 2021**, wherein it was held that disputes pertaining to breach of contractual arrangements, such as term sheets, are not amenable to adjudication within insolvency proceedings.

(iii) Reliance is also placed upon the judgments of the Hon'ble Supreme Court in **Tata Consultancy Services Ltd. v. SK Wheels Pvt. Ltd., (2022) 2 SCC 583** and **Embassy Property Developments Pvt. Ltd. v. State of Karnataka, (2020) 13 SCC 308** to contend that the NCLT does not exercise general civil jurisdiction and cannot adjudicate every dispute concerning the corporate debtor.

7. The Learned counsel for Respondent Nos. 2 and 3 have made the following submissions and argued as under:

(i) The Ld Counsel appearing for Respondent Nos. 2 and 3, who are the suspended directors of the Corporate Debtor, submitted that they have been wrongly impleaded in the present application, as neither the



Corporate Debtor nor the suspended directors presently hold any right or possession over the area measuring approximately 5,35,000 sq. ft. forming part of the Ess Vee Apartments project.

(ii) It is submitted that the area in question forms part of the licensed group housing project at Sector-20, Panchkula, developed under licences granted under the Haryana Development and Regulation of Urban Areas Act, 1975 and the Haryana Development and Regulation of Urban Areas Rules, 1976, originally in favour of the landowners in collaboration with the Corporate Debtor and subsequently transferred to the Corporate Debtor, which further transferred the development rights over the larger 8,05,000 sq. ft. saleable area in favour of M/s SRV Investments by way of proper documents, conferring upon it full and exclusive rights to control, manage and sell the said area. The rights of SRV Investments over the said area are already the subject matter of I.A. No. 1172 of 2024 pending adjudication before this Tribunal, and consequently, the Corporate Debtor no longer retains any enforceable rights over the said portion of the project.

(iii) It is further submitted that Respondent No.1 cannot claim any legal rights over the said area, as the alleged reliance on the Term Sheet dated 02.03.2023 does not create or transfer any enforceable rights in immovable property. It is contended that no definitive agreement or transfer document was ever executed between SRV Investments and Respondent No.1, nor was any consent obtained from



the mortgagee bank, and therefore, the said Term Sheet cannot confer any proprietary or possessory rights upon Respondent No.1.

(iv) It is also submitted that Respondent No.1 does not fall within any category of stakeholder recognised under the Code, such as financial creditor, operational creditor, homebuyer or allottee, and therefore has no locus to assert any claim over the project land.

(v) On the basis of the above submissions, Respondent Nos. 2 and 3 contend that neither Respondent No.1 nor the Resolution Professional can claim possession of the said area, and that the lawful rights and possession of the 5,35,000 sq. ft. area lie exclusively with SRV Investments, to whom the Corporate Debtor had earlier transferred the corresponding development rights and saleable area prior to initiation of the CIRP.

***Analysis and Findings:***

8. We have heard the learned counsel for all the parties at length and have carefully perused the material placed on record.

9. The issue that falls for our consideration is ***“Whether the Term Sheet dated 02.03.2023 creates any enforceable right in favour of Respondent No.1 so as to defeat the statutory entitlement of the Resolution Professional to take control and custody of the assets of the Corporate Debtor under Section 18(1)(f) of the Code?”***

10. Before addressing the merits, we address the jurisdictional objection raised by Respondent No.1. The contention of the Respondent No. 1 is that the relief sought amounts to eviction triable only by a civil court proceeds on



a fundamental misreading of the statutory scheme underlying the Code. Section 18(1)(f) of the Code imposes an unqualified duty upon the Resolution Professional to take control and custody of all assets over which the Corporate Debtor has ownership rights, and Section 60(5) vests in this Tribunal the plenary jurisdiction necessary to give effect to that statutory duty. Section 25(1) and Section 25(2)(a) of the Code further reinforce this position by casting an obligation upon the Resolution Professional to preserve and protect the assets of the Corporate Debtor and to take immediate custody and control of all such assets. The conjoint reading of Sections 18(1)(f), 25(1), 25(2)(a) and 60(5) of the Code, it makes abundantly clear that where the ownership of the subject asset indisputably vests in the Corporate Debtor, the Resolution Professional is not only empowered but statutorily obligated to take steps for recovery of possession thereof, and this Tribunal is fully competent to issue appropriate directions in that behalf.

11. This position has been settled very recently by the Hon'ble National Company Law Appellate Tribunal in ***Classic Marble Company Pvt. Ltd. v. Truvisory Insolvency Professionals Pvt. Ltd. and Anr., (2026) ibclaw.in 382 NCLAT***, wherein an identical jurisdictional objection was raised by a party in occupation of the Corporate Debtor's premises. Negating this contention, the Hon'ble NCLAT held as under in paragraph 10:

*“10. The IBC thus, cast a duty and obligation on the IRP and the Resolution Professional to take control of assets of the Corporate Debtor. When the Corporate Debtor is admittedly owner of the assets which according to the Corporate Debtor is in unlawful possession of the*



*Appellant, we are of the view that Resolution Professional had every jurisdiction to file an application before the Adjudicating Authority for taking possession of the assets."*

12. On the question of nexus with the insolvency process and the maintainability of such an application, the Hon'ble NCLAT further held as under in paragraph 22:

*"22. We thus, are of the view that Resolution Professional was fully entitled to file an application and the application filed by Resolution Professional is fully maintainable and is within jurisdiction. The nexus with regard to application is fully proved since the assets admittedly is owned by the Corporate Debtor and the Resolution Professional is statutory obliged to take steps to take possession and control of the assets. Thus, we do not find any substance in the submission of the Appellant that Resolution Professional has not proved any nexus. We thus, hold that application filed by the Resolution Professional is fully maintainable before the Adjudicating Authority and the submissions raised by the Appellant regarding lack of jurisdiction of the Adjudicating Authority have no substance and are rejected."*

13. On the submission that the Resolution Professional was obliged to resort to civil proceedings for eviction rather than approaching the Adjudicating Authority, the Hon'ble NCLAT in Classic Marble placed reliance in paragraphs 15 and 16 upon its earlier judgment in ***M/s. Jhanvi Rajpal Automotive Pvt. Ltd. v. R.P. of Rajpal Abhikaran Pvt. Ltd., Company Appeal (AT) (Ins.) No. 1417 of 2022***, decided on 05.01.2023, wherein it had been held in paragraphs 20 and 21 as under:

*"20. Accepting the contention of the Learned Counsel for the Appellant that RP is obliged to file a suit for eviction of the Appellant under MP Accommodation Control Act, 1961 even though lease in favour of the*



*Appellant has expired shall be unduly prolonging the insolvency process which is a time bound process. When the Corporate Debtor has the ownership rights over the premises which premises can be taken in control by IRP/RP, we are of the view that for eviction of the Appellant especially in event when lease in favour of the Appellant has come to an end, filing a suit is not contemplated in the statutory scheme contained in IBC.*

*“21. Thus, the contention of the Appellant that RP has to file a suit for eviction of the Appellant under the MP Accommodation Control Act, 1961 can not be accepted. We thus, in view of the foregoing discussions are of the considered opinion that Adjudicating Authority has rightly allowed the Application filed by the RP directing the Appellant to vacate from the premises so that Resolution Plan which has been approved can be implemented. We thus do not find any merit in the Appeal, the Appeal is dismissed.”*

14. As noted by the Hon'ble NCLAT in paragraph 17 of Classic Marble (supra), the aforesaid judgment in Jhanvi Rajpal Automotive was subsequently affirmed by the Hon'ble Supreme Court vide order dated 10.02.2023 in **Jhanvi Rajpal Automotive P. Ltd. v. R.P. of Rajpal Abhikaran P. Ltd. & Anr., 2023 SCC OnLine SC 1535**, thereby confirming that under the statutory scheme of the IBC, the Resolution Professional need not approach a civil court for eviction and the Adjudicating Authority is fully empowered to grant such relief.

15. The Hon'ble NCLAT in the said decision also placed reliance upon the judgment of the Hon'ble Supreme Court in **Victory Iron Works Limited v. Jitendra Lohia and Anr., (2023) 7 SCC 227**, wherein the Hon'ble Supreme Court had conclusively upheld the jurisdiction of the NCLT to entertain and allow an application filed by the Resolution Professional to



protect and recover possession of the Corporate Debtor's assets, and had held that the judgments in ***Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta, (2021) 7 SCC 209, Tata Consultancy Services Ltd. v. SK Wheels Pvt. Ltd., (2022) 2 SCC 583*** and ***Embassy Property Developments Pvt. Ltd. v. State of Karnataka, (2020) 13 SCC 308***, were not attracted in such circumstances. It is further relevant to note that Section 63 of the Code expressly bars the jurisdiction of any civil court in respect of any matter over which this Tribunal exercises jurisdiction under the Code, thereby leaving no room for the argument that the present relief ought to have been sought before a civil forum.

16. We now turn to examine the term sheet dated 02.03.2023 on its own terms. Before advertent to the specific clauses, it is necessary to briefly note the constitution of the parties to the Term Sheet. The Term Sheet was executed between the "***First Party***" comprising of:

- a) M/s SRV Investments, a proprietorship concern of Sh. Vinod Bagai,
- b) Samar Estates Private Limited (the Corporate Debtor in the present CP),
- c) Sh. Vinod Bagai and Sh. Virender Bagai in their individual capacities as Confirming Parties

and the "***Second Party***", being

- a) M/s SVSJ Developers Private Limited, i.e., Respondent No.1 herein.



The suspended directors of the Corporate Debtor, i.e., Respondent Nos. 2 and 3 herein, were thus themselves parties to the very arrangement under which Respondent No.1 now seeks to assert rights against the Resolution Professional, a fact that assumes significance when the conduct of the parties during the CIRP falls for consideration.

17. It is also relevant to note at this stage that SRV Investments, a concern controlled by the very same suspended directors of the Corporate Debtor, was not merely a co-signatory to the Term Sheet alongside Respondent No.1 but was also the entity to whom the entire consideration of ₹5 Crores was paid by Respondent No.1; this amount never reached the Corporate Debtor.

18. The Term Sheet, on a bare and careful reading, defeats Respondent No.1's claim. At the outset, the Term Sheet itself, in Clause 3(i), expressly records that:

*"SEPL is the absolute owner of the Project Land i.e., land measuring 14.95 acres situated Sector 20, Panchkula, Haryana. SEPL is the exclusive License Holder of the License No. 609-612/2006 dated 27/03/2006 for development of the Project on the Project Land"*

thereby unequivocally acknowledging the Corporate Debtor as the absolute owner and exclusive licence holder of the project land. No ownership rights have been transferred to Respondent No.1 under the Term Sheet.

19. The purpose for which Respondent No.1 was proposed to be engaged is recorded in Clause 1, which states that:

*"The Second Party will complete the remaining construction of the residential towers, club, commercial shops, EWS Apartments and*



*Services" and that "in consideration of undertaking the construction and investing the amount, the Second Party shall be entitled to the following saleable built-up area...535000 sq ft."*

20. However, this proposed engagement was expressly made contingent upon execution of a Definitive Agreement. Clause 2 of the Term Sheet records in unambiguous terms that:

*"A detailed agreement ('Definitive Agreement') will be executed between the parties within two months from the signing of this term sheet. In this 2 months time, due diligence will be done by the 2nd Party and approvals as required from RERA/Banks/RWA/DTCP/office of deputy commissioner (DC) to this arrangement will be sought/obtained by the First Party."*

21. Admittedly, no such Definitive Agreement was ever executed, no approvals were ever sought or obtained from RERA, DTCP or the secured creditor bank, and the two-month period contemplated under Clause 2 elapsed without any of these preconditions having been fulfilled.

22. The significance of the bank's approval as a condition precedent is further underscored by Clause 3 of the Term Sheet, which expressly defines the "Effective Date" in the following terms:

*"The First Party after execution of the Definitive Agreement shall also seek approval/clearance of the project by the existing Bank for issuing no objection for obtaining sanction/disbursement of home loans to the prospective buyers/allottees of the Project. The date of obtaining such approval/clearance is hereinafter referred to as the 'Effective Date'."*



23. All construction timelines, obligations and entitlements under the Term Sheet were expressly made to run from this Effective Date. Clause 4 records as follows:

*"The first party will make its best endeavour to complete the construction of the 1st Phase towers of the Project within 6 months from the Effective Date"*

And all subsequent construction milestones were similarly anchored to the Effective Date. Since the bank's approval was never obtained, the Effective Date never arrived, and consequently, every right, obligation and entitlement under the Term Sheet remained stillborn. It is relevant to note that the project land is admittedly under equitable mortgage with Punjab & Sind Bank, the Financial Creditor in the present CIRP, and the consent of the mortgagee bank was a precondition before any third-party rights could be created over the mortgaged property.

24. The limited nature of possession handed over under the Term Sheet further fortifies this conclusion. Clause 16 reads as follows:

*"Upon signing of the present Term Sheet, possession of the site of the project shall be shared by both the parties and the 2nd party shall have absolute control of the site and shall be entitled to enter the site, do all surveys and initiate all preparatory work required to be done before re-commencement of construction; to mobilize the site, to engage contractors/architects/other agencies; to deploy at site labour, workforce, security personals etc; to collect construction material at site etc."*

25. A plain reading of this clause 16, it reveals that the possession contemplated thereunder was restricted exclusively to preparatory and



mobilisation activities preceding commencement of construction activities that were themselves to fructify only upon arrival of the Effective Date.

26. Since the Effective Date never arrived, the very purpose for which this limited possession was granted never materialised, and Respondent No.1's continued occupation of the project site is therefore without any legal basis whatsoever. We further note that the development licence for the project, being Licence Nos. 609-612/2006, stands exclusively in the name of the Corporate Debtor under the Haryana Development and Regulation of Urban Areas Act, 1975. Under Section 3 of the said Act, only the licence holder is entitled to carry out development work on the licensed land. No development licence has ever been granted to Respondent No.1, nor does it hold any such licence. It therefore follows that Respondent No.1 has no independent legal authority to develop, construct upon or occupy the project land either under the Term Sheet or under the applicable statutory framework.

27. The Term Sheet dated 02.03.2023 thus never graduated into an enforceable contract and remained, at all times, an incomplete arrangement incapable of conferring upon Respondent No.1 any right, whether proprietary, possessory or contractual. Clause 15 of the Term Sheet, which describes the arrangement as '**non-terminable and binding**', does not, in our considered view, assist Respondent No.1. A document may be non-terminable, but if it is contingent upon conditions precedent that never materialised and if no Definitive Agreement was ever executed in furtherance thereof, it cannot be a source of any enforceable legal right.

28. The contractual infirmity of the Term Sheet is further and independently compounded by the total absence of lawful consideration



flowing to the Corporate Debtor. The sum of ₹5 Crores stated to have been paid thereunder was admittedly paid not to the Corporate Debtor but to M/s SRV Investments, a proprietorship concern of the suspended directors of the Corporate Debtor, which was itself a co-signatory to the very same Term Sheet along with Respondent No.1. Payment diverted to a promoter-controlled entity cannot, by any stretch, constitute valid consideration for a transaction with the Corporate Debtor. Under Sections 10 and 25 of the Indian Contract Act, 1872, an agreement devoid of lawful consideration is void from its very inception, a legal infirmity that no subsequent investment, conduct or performance, however substantial, is capable of curing.

29. With respect to the submissions made by Respondents No. 2 and 3 regarding the alleged transfer of development rights over 8,05,000 sq. ft. of saleable area in favour of M/s SRV Investments conferring upon it full and exclusive rights to control, manage and sell the said area, it is noted that this Tribunal has considered and dealt with this aspect in I.A. No. 1172 of 2024 arising out of the same CIRP proceedings, wherein the claim of M/s SRV Investments founded upon the Memorandum of Understanding dated 05.04.2003 was examined and rejected.

30. In light of the foregoing, we hold that the Term Sheet dated 02.03.2023 is an incomplete, contingent and an arrangement entered into without consideration being void ab initio, conferring no enforceable right of any nature upon Respondent No.1; the approximately 5,35,000 sq. ft. of the Ess Vee Apartments project, Sector-20, Panchkula, held by Respondent No.1, constitutes an asset of the Corporate Debtor within the meaning of



Section 18(1)(f) of the Code; and the Resolution Professional is entitled as a matter of statutory right to take immediate control and possession thereof.

31. In the event of the facts and circumstances of the case and the settled principles of law on this issue, we accordingly direct Respondent No.1 to hand over complete and peaceful possession of approximately 5,35,000 sq. ft. of the Ess Vee Apartments project, Sector-20, Panchkula, to the Resolution Professional forthwith from the date of this Order. The public notice dated 16.03.2024 published by Respondent No.1 is hereby declared null, void and of no legal effect whatsoever, and shall not bind the CIRP or any prospective resolution applicant in any manner. Respondent No.1 is further directed to publish prominently within one week from the date of this Order, a fresh public notice in the same editions of the same newspaper(s) as the original public notice, notifying that its earlier notice dated 16.03.2024 is of no legal effect by virtue of this Order. Proof of such publication shall be filed by the Respondent No.1 before the Registry of this Tribunal, within one week thereafter.

32. Accordingly, **I.A. No. 907/2024** is **allowed** and **disposed of**.

**Sd/-**

**(SHISHIR AGARWAL)**  
**Member (Technical)**

Yuvraj

**Sd/-**

**(KHETRABASI BISWAL)**  
**Member (Judicial)**