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

IA No. 279/2022
In
CP (IB) No.167/Chd/Hry/2020
And
CP (IB) No.86/Chd/Hry/2022

Under Section 7 & 60(5) of the IBC 2016

In the matter of CP(IB) No. 167/Chd/Hry/2020:

LIC Housing Finance Limited
having its registered office at
2nd Floor, Jeewan Deep Building,
10 Sansad Marg, New Delhi-110001

….Petitioner-Financial Creditor

Vs.

SRS Real Estate Limited
having its Regd. Office at
SRS Tower, 730-732,
7th Floor, Near Metro Station,
Melwa, Maharajpur, G.T. Road,
Faridabad, Haryana-121003

….Respondent-Corporate Debtor

And in the matter of IA No. 279/2022:

LIC Housing Finance Limited
having its registered office at
Bombay Life Building,
2nd Floor, 45/47, Veer Nariman Road,
Mumbai- 400001

….Applicant-Financial Creditor

Vs.

1. **SRS Real Estate Limited**
having its Regd. Office at
SRS Tower, 730-732,
3rd Floor, Near Metro Station,

Melwa, Maharajpur, G.T. Road,
Faridabad, Haryana-121003

….Corporate Debtor/Respondent No. 1

2. **SRS Retreat Services Limited**
having its Regd. Office at
SRS Multiplex, Mezannine Floor,
City Center, Sector-12,
Faridabad, Haryana-121007

….Corporate Debtor/Respondent No. 2

<u>And in the matter of CP(IB) No. 86/Chd/Hry/2022:</u>

LIC Housing Finance Limited
having its registered office at
2nd Floor, Jeewan Vihar Building,
03 Sansad Marg, New Delhi-110001

….Petitioner-Financial Creditor

Vs.

SRS Retreat Services Limited
having its Regd. Office at
SRS Multiplex, Mezannine Floor,
City Center, Sector-12,
Faridabad, Haryana-121007

….Respondent-Corporate Debtor

Judgment delivered on: 22.12.2022

Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

<u>Present:</u>

For the Petitioner/Financial Creditor
in CP(IB) No. 167/Chd/Hry/2020&
CP(IB) No. 86/Chd/Hry/2022 : Mr. Sharad Tyagi, Advocate

For the Respondent/Corporate Debtor in
CP(IB) No. 167/Chd/Hry/2020 : Mr. G.S. Sarin, Practising Company Secretary

For the respondent in
CP(IB) No. 86/Chd/Hry/2022 : Proceeded ex-parte vide order dated

14.09.2022.

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

The present petitions i.e, CP(IB) No. 167/Chd/Hry/2020 & CP(IB) No. 86/Chd/Hry/2022 have been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by LIC Housing Finance Limited (hereinafter referred to as 'Petitioner/Financial Creditor') to initiate the Corporate Insolvency Resolution Process ('CIRP') against M/s SRS Real Estate Limited and M/s. SRS Retreat Services Limited (hereinafter referred to as 'Respondents/Corporate Debtors'). The petition in CP(IB) No. 167/Chd/Hry/2020 is signed by S. Sayee Lakshmi, Chief Manager (Project Finance) and by Mr Vimal Kumar Seedhar, Deputy Regional Manager (Recovery) in CP(IB) No. 86/Chd/Hry/2022. The authority letter is attached as Annexure A-1 of the respective petitions.

2. The M/s SRS Real Estate Limited, having (CIN: U45201HR2005PLC041051) is incorporated under the provisions of the Companies Act, 1956, having its registered office at SRS Multiplex, Mezannine Floor City Centre, Sector-12 Faridabad - 121007, Haryana, India. The authorized share capital of the company is Rs 17,50,00,000 (Rupees Seventeen Crores Fifty Lakhs Only), and paid up capital is Rs 16,76,33,120 (Rupees Sixteen Crores Seventy-Six Thousand Thirty-Three Thousand One Hundred and Twenty Only) as

per the information available on the Portal of the Ministry of Corporate Affairs. The registered office is in Faridabad, Haryana. Therefore, the matter falls within the territorial jurisdiction of this Adjudicating Authority. A copy of the master data of M/s SRS Real Estate Limited reflected on the website of the Ministry of Corporate Affairs (MCA) is attached as Annexure A-2.

3. M/s. SRS Retreat Services Limited (CIN: U55101HR2005PLC042465) is a private limited company, incorporated under the provision of the Companies Act, 1956, having its registered offices at SRS Multiplex, Mezannine Floor, City Centre, Sector-12 Faridabad - 121007, Haryana, India. The authorized share capital of the company is Rs. 17,00,00,000/- (Rupees Seventeen Crores Only), and the paid-up capital is Rs. 16,73,58,680 /- (Rupees Sixteen Crores Seventy-Three Lakhs Fifty-Eight Thousand Six Hundred and Eighty Only) as per the information available at the Portal of Ministry of Corporate Affairs. The registered office of M/s. SRS Retreat Services Limited in Faridabad, Haryana. Therefore, the matter falls within the territorial jurisdiction of this Adjudicating Authority. A copy of the master data of M/s. SRS Retreat Services Limited reflecting on the website of the Ministry of Corporate Affairs (MCA), is attached as Annexure - 3.

4. Brief facts as stated in CP (IB) No.167/Chd/Hry/2020 raising to the present Company Petitions which are necessary for the disposal of the same are narrated hereunder:

4.1 M/s SRS Real Estate Limited had approached the Applicant-Financial Creditor for availing loan of Rs. 140,00,00,000/- ("Loan") for construction of the residential project 'SRS Royal Hills Phase - II' located at village Baselwa, Sector - 87, Faridabad, Haryana. The said

Loan was sanctioned for a term of 37 (Thirty-Seven) months (including a moratorium period of 22 (Twenty-Two) months from the first disbursement) to be repaid through 14 (Fourteen) equated monthly instalments of Rs. 9,33,00,000/- each (loan sanction letter and revised repayment schedule attached at Annexure - 8 of the petition). The petitioner disbursed an amount of Rs. 73,00,00,000/- out of the entire Loan amount on March 31, 2016 (disbursement request letter Annexure - 16). The amount disbursed was utilised to satisfy the amount due by the Respondents towards the Central Bank of India and Oriental Bank of Commerce. On April 13, 2016, a no-dues certificate was received from the above-said banks (Annexure - 17). Upon request dated May 05, 2016, made by the Respondents, an amount of Rs. 25,00,00,000/- was released to it by the Petitioner-Financial Creditor (Annexure - 18). The repayment of the principal amount of the Loan was to start after the moratorium ended i.e., from February 01, 2018. The Respondents irregularly paid the monthly interest instalments accrued till December 2016 after following up multiple times. The Respondents were in default on monthly interest instalments since January 1, 2017. The petitioner sent various reminders to the Respondent (Annexure - 19 to Annexure - 30). During the period of January 1, 2017, till March 25, 2017, the Respondent made some payments towards the outstanding dues till December 31, 2016. After March 25, 2017, the Respondent submitted 3 (Three) cheques towards part payment of the January instalment of the Loan, which was dishonoured (letter to Respondent regarding the same is Annexure - 31).

4.2 The Respondent, admitting the debt owed to the Applicant, issued a letter dated April 18, 2022, to request for substitution of part collateral and corporate guarantee (Annexure-33). The Respondent sought the monthly-wise detail of overdue interest of Rs. 4,15,61,317/- and an additional interest of Rs. 14,55,256/- (Annexure - 34). A letter dated April 22, 2017, was sent by the Respondent stating that they are facing a liquidity crunch. Therefore, it could not honour its claims, and the same is regretted. Further admitting to the debt owed, the Respondent also requested the Applicant to permit them some time to resolve the crisis (Annexure - 35).

4.3 The Petitioner-Financial Creditor refused the request for substitution of part collateral as the securities in the loan agreement were unconditional and irrevocable and as the Respondent was already in default. The petitioner had no other option but to declare the Respondent's account as NPA on April 01, 2017. Subsequently, various communications were sent thereafter, seeking payment of the default amount from the Respondent since January 2017 (Annexure - 36 to Annexure- 40). Thereafter, due to continued default of payment despite admission, a demand notice dated December 09, 2017, was sent by the Applicant-Financial Creditor (Annexure - 41). Following the above, a legal notice was sent on December 29, 2017 (Annexure - 42), and a notice under Section 13 (2) of the SARFAESI Act was sent on February 16, 2018 (Annexure - 43).

5. In CP(IB) No. 167/Chd/Hry/2020, Part-III of Form No.1, Mr Aishwarya Mohan Gahrana, has been proposed as an IRP. The said consent has been withdrawn vide letter dated 01.03.2022. A copy of his withdrawal is attached as Annexure-6 of IA No. 279 of 2022. In his place, Mr Shyam Arora (in CP(IB) No. 86/Chd/Hry/2022 as well), having Registration NoIBBI/IPA-002/IP-N00546/2017-2018/11703, has been proposed as a common Interim Resolution Professional (IRP). The consent has been attached to both petitions.

6. It is stated in Part IV of Form I in CP (IB) No. 167/Chd/Hry/2020 that the total amount in default due to the financial creditor by the M/s SRS Real Estate Limited and M/s SRS Retreat Services Limited is Rs. 163,65,80,799/- (Rupees One Hundred Sixty-Three Crore Sixty-Five Lakhs Eighty Thousand Seven Hundred and Ninety-Nine Only) as on December 31, 2019, as per the quotation for payment dated December 31, 2019. The first date of default on the part of the SRS Real Estate Limited and SRS Retreat Services Limited occurred on January 1, 2017. The loan account of the SRS Real Estate Limited and SRS Retreat Services Limited has been declared Non-Performing Asset on April 1, 2017. A copy of the Loan Sanction Letter dated 29.03.2016 is attached as Annexure-8. A copy of the Loan Agreement dated 31.03.2016, executed between the petitioner, SRS Real Estate Limited and SRS Retreat Services Private Limited, is attached as Annexure-9. A copy of the notice under Section 13 (2) of the SARFAESI Act dated 16.02.2018 is attached as Annexure-43.

7. The notice of this petition was issued to -SRS Real Estate Limited & SRS Retreat Services Private Limited on 11.03.2020 & 13.04.2022, respectively, as to

why this petition be not admitted. A reply on behalf of the M/s SRS Real Estate Limited is filed vide Diary No.00312/01 Dated 06.04.2021 by Mr Anil Jindal, Director of the respondent-corporate debtor, affidavit authorizing him on behalf of the respondent, is attached on Page No.11-13 of the reply. At the same time, M/s SRS Retreat Services Private Limited was served multiple times. Despite repeated service, none appeared on behalf of it. Therefore, the corporate debtor-SRS Retreat Services Private Limited, proceeded ex-parte vide order dated 14.09.2022

8. The corporate debtor-SRS Real Estate Limited, through its reply, has denied the averments made by the petitioner. It is submitted that the petitioner-Financial Creditor did not re-structure the loan accounts of the corporate debtor, even if there was any difficulty in the loan account. Further, it is alleged that the Financial Creditor has not submitted the details of the evidence of default. The petitioner has filed a rejoinder vide Diary No. 00312/03 dated 24.08.2021 whereby, rebutting the contention of the corporate debtor-SRS Real Estate Limited.

9. We have heard the learned counsels for the petitioner and the respondent-corporate debtor and have also perused the written submissions and records available carefully.

10. The issue for consideration is whether the present petitioner is filed within limitation. It can be seen from the records that the initial default occurred on 01.04.2017 when the loan account of the corporate debtors was classified as a Non-Performing Asset. Further, the corporate debtor i.e., SRS Real Estate Limited requested the petitioner-financial through a letter dated 22.04.2017 in reference to loan account bearing No. 300000000031, that the company is facing an acute

liquidity crunch and sought some time to resolve the crisis and oblige in this regard.

11. We are conscious of the decision in ***B. Prashanth Hegde vs State Bank of India on 14th October, 2020;*** *Company Appeal (AT) (Insolvency) No. 68 of 2019**,*** where Hon'ble NCLAT held that:

> *"21. Thus, it is clear that the Application filed by the Respondents under Section 7 of the Code in the present case is an effort to revive a dead debt. The date of defualt is crucial to determine the date when the cause of action accrued. In this case, the Respondent has not mentioned the date of default. In the case of Gaurav Hargovindbhai Dave (supra), Hon'ble Supreme Court has considered that the date of default to be the date of NPA. Therefore, the date of default, in this case, is 31st January 2010.*
>
> *The right to sue under IBC occurs when default occurs. If the default has occurred over three years period prior to the date of filing the Application, the Application would be time-barred given the law laid down by Hon'ble Supreme Court in B K Educational (supra). Company Appeal (AT) (Insolvency) No. 68 of 2019 9 of 11".*
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> *22. Admittedly, in this case the Corporate Debtor was declared to be Non -performing Asset on 28th May 2014. The date was later changed to 31st January 2010. Therefore, if the position taken by the Financial Creditor Bank is taken as correct, 'Default' occurred on or before 31st January 2010. The period of Limitation for the same would expire on 30th January 2013. The Application for initiation is filed on 23rd July 2018. The contention of the Respondent that their right accrued only on 01st December 2016 is not consonant to the ratio of judgement in B K Educational Services (supra) wherein the Hon'ble Supreme Court has held that "It is thus clear that since the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. "The right to sue", therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the Application, the Application would be barred under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such Application".*

12. Since in the present matter, the company petition i.e, CP(IB) No. 167/Chd/Hry/2020, is filed vide diary No. 06 dated 01.01.2020, whereas the date of NPA is 01.04.2017, as stated by the financial creditor in its petition. Further, the corporate debtor-M/s. SRS Real Estate Limited, through its letter dated 22.04.2017, admitted its liability towards the loan account bearing No. 300000000031. Which shows the acknowledgement of the debt by the corporate debtor-M/s. SRS Real Estate Limited. Hence, the present matter is covered within the limitation period and fulfills the conditions as stated in the above-mentioned authority.

13. Another issue for consideration is whether there is a debt and default in payment or not. As per Section 7 of IBC, which is reproduced below:-

> *"Section 7 Initiation of corporate insolvency resolution process by financial creditor.*
>
> *(3) The financial creditor shall, along with the application furnish—*
> *(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;*
> *(b) the name of the resolution professional proposed to act as an interim resolution professional; and*
> *(c) any other information as may be specified by the Board.*
>
> *(5) Where the Adjudicating Authority is satisfied that—*
> *(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or*

14. In this context, it may be noted that the decision of the Hon'ble Supreme Court in ***Innoventive Industries Ltd. v. ICICI Bank (2008) 1 SCC 407,*** wherein it has been held that:

> *"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5(21) means a claim in respect of provision of goods or services.*
>
> *28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor - it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the*

corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence a of such a dispute, the operational creditor gets out of the clutches of the Code.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."

15. It is observed from the record that the total outstanding amount of debt, as mentioned in Part IV of Form I in CP (IB) No. 167/Chd/Hry/2020, due to the financial creditor by the M/s SRS Real Estate Limited and M/s SRS Retreat Services Limited is Rs. 163,65,80,799/- (Rupees One Hundred Sixty-Three Crore Sixty-Five Lakhs Eighty Thousand Seven Hundred and Ninety-Nine Only) as on December 31, 2019, as per the quotation for payment dated December 31, 2019. The initial occurrence of default is evidenced by a copy of the Loan Sanction Letter dated 29.03.2016 and a copy of the Loan Agreement dated 31.03.2016, executed between the applicant, SRS Real Estate Limited and SRS Retreat Services Private Limited and above-said letter dated 22.04.2017 of corporate debtor-M/s. SRS Real Estate Limited and a copy of the notice under Section 13 (2) of the SARFAESI Act dated 16.02.2018 and, which clearly shows there is a default in the payment of debt.

16. Before proceeding further, the issue of common and combined CIRP against the borrower M/s. SRS Real Estate Limited and the co-borrower M/s. SRS Retreat Services Private Limited is to be determined simultaneously. Therefore, IA No. 279/2022 is discussed below.

IA 279/2022

17. In the instant application, the applicant is seeking initiation of a combined Corporate Insolvency Resolution Process against M/s SRS Real Estate Limited as well as M/s SRS Retreat Services Limited. The present application is filed through Mr. Vimal Kumar Seedhar, Deputy Regional Manager (Recovery) of LIC Housing Finance Limited. Authority Letter dated 26.07.2021 passed in exercise of the

powers conferred to the applicants-Managing Director and CEO vide the General Power of Attorney dated 03.02.2021 is attached as Annexure-2 of the application.

18. It is submitted that M/s SRS Real Estate Limited ("Borrower" / " Developer") and M/s SRS Retreat Services Limited ("co-borrower" / "landowner") have jointly borrowed a total amount of Rs. 98.00 Crores out of the sanctioned loan facility of Rs. 140.00 Crores from LIC Housing Finance Limited ("applicant") in relation to project namely 'SRS Royal Hills-Phase II' situated at Village Baselwa, Sector 87, Faridabad, Haryana. Further, the aforesaid project was to be constructed and completed by the borrower as the developer on the project land admeasuring 24.968 acres located at Village Baselwa, Sector 87, Faridabad, owned by the co-borrower. The above-said project was to be constructed and completed by the borrower on the land owned by the co-borrower, and both of them had jointly availed the loan from the applicant in relation to the project only.

19. It is further submitted that a sanctioned letter dated 29.03.2016 for the loan availed for Rs. 140 Crores was issued by the applicant to the respondents for the construction of the residential project. Under the loan documents, both companies, namely SRS Real Estate Limited and SRS Retreat Services Limited, are treated as borrowers. Further, the borrower and the co-borrower are liable under the same loan account bearing Account No. 300000000031. It is stated that the borrower and co-borrower companies have some personnel as directors having tenure at different times. A copy of the list of directors of both companies and supporting forms are attached as Annexure-4 of the application. The common directors of the borrower and the co-borrower companies are listed below:

Sr. No.	Name	SRS Real Estate Limited	SRS Retreat Services Limited
1.	Nanak Chand Tayal	20.01.2006 till 02.04.2018	01.10.2006 till 02.04.2018
2.	Anil Jindal	06.01.2007 till 22.03.2007 and 03.12.2007 till 01.10.2012	01.10.2006 till 22.04.2009
3.	Rajesh Mangla	29.09.2006 till 16.06.2007	01.10.2006 till 28.11.2007
4.	Praveen Sharma	09.02.2010 till 10.01.2012	02.02.2015 till 30.04.2018
5.	Vinod Jindal	07.08.2006 till date	06.03.2017 till 10.03.2017
6.	Rajesh Singla	20.01.2006 till 24.03.2018	18.10.2006 till 01.05.2014

20. It is further submitted that the borrower and co-borrower have had many related party transactions over the years, as evident from the documents available in the public domain. During the financial year of 2016 - 2017, the co-borrower i.e. SRS Retreat Services Limited, had provided a loan of Rs. 2,99,39,400 /-(Rupees Two Crore Ninety-Nine Lakh Thirty-Nine Thousand Four Hundred) to the borrower i.e. SRS Real Estate Limited for the purpose of working capital requirement and further in the financial year of 2015 - 2016 the co-borrower had given a corporate guarantee to the borrower company to the tune of Rs. 18,01,00,000/- (Rupees Eighteen Crore One Lakh) in favour of Union Bank of India.

21. In the year 2009 - 2010, the borrower received a repayment from the co-borrower for the advance given to the co-borrower to the tune of Rs 6,06,00,000/- (Rupees Six Crore Six Lakh). Further, in the financial statement of 2011 - 2012, it is revealed that the borrower provided funding to the co-borrower to the tune of Rs. 10,35,00,000/- (Rupees Ten Crore Thirty-Five Lakh) for the

purpose of purchase of land / immovable property. In the financial statement of the year 2016 - 2017, the co-borrower has shown the borrower as a fellow subsidiary company under the related party transactions. Further, in the financial year of 2011 to 2012, the borrower disclosed the co-borrower as a fellow subsidiary and, therefore, a related party. A copy of the various related party transactions between the borrower and the co-borrower disclosed in the financial statements is attached as Annexure-5.

22. Notice of this application has been given to respondents. Pursuant to notices, the reply of only respondent No. 1 i.e., SRS Real Estate Services Limited, is filed vide Diary No. 00537/01 dated 02.11.2022, wherein it is stated that the respondents-corporate debtors have availed the financial services from the consortium of banks and have repaid the major chunk of the loan/financial facilities so availed, but despite having the know-how of the other proceedings against respondent No. 1 by the Canara Bank, the financial creditor in another Company Petition i.e., CP(IB) 256/Chd/Hry/2019 before this Adjudicating Authority, which is pending adjudication, hence, for this reason, seeks dismissal of the present application on this ground. Further, it is stated that the respondents do not satisfy any of the criteria taken into consideration in the matter of ***State Bank of India Vs. Videocon Industries Ltd***. (MA 1306/2018 in CP No. 02/2018) by NCLT Mumbai. The applicant has filed a rejoinder vide Diary No. 00537/2 dated 31.10.2022, wherein the averments as made in the application have been reiterated.

23. The applicant has relied on the matter of ***Flat Buyers Association Winter Hills - 77, Gurgaon Vs. Umang Realtech Pvt. Ltd through IRP & Ors.***

[Company Appeal (AT) (Insolvency) No. 926 of 2019], wherein the Hon'ble National Company Law Appellate Tribunal insisted upon maximization of value of assets inter alia, held

> *"9. In terms of the 18B Code' and the decisions of the Hon'ble Supreme Court, the 'Resolution Plan' must maximise the assets of the Corporate Debtor and balance the stakeholders (secured and unsecured creditors- Financial Creditors/Operational Creditors)."*
>
> *"21. In Corporate Insolvency Resolution Process against a real estate, if allottees (Financial Creditors) or Financial Institutions/Banks (Other Financial Creditors) or Operational Creditors of one project initiated Corporate Insolvency Resolution Process against the Corporate Debtor (real estate company), it is confined to the particular project, it cannot affect any other project(s) of the same real estate company (Corporate Debtor) in other places where separate plan(s) are approved by different authorities, land and its owner may be different and mainly the allottees (financial creditors), financial institutions (financial creditors, operational creditors are different for such separate project. Therefore, all the asset of the company (Corporate Debtor) are not to be maximized. The asset of the company (Corporate Debtor - real estate) of that particular project is to be maximized for balancing the creditors such as allottees, financial institutions and operational creditors of that particular project. Corporate Insolvency Resolution Process should be project basis, as per approved plan by the Competent Authority. Any other allottees (financial creditors) or financial institutions/ banks (other financial creditors) or operational creditors of other project cannot file a claim before the Interim Resolution Professional of other project and such claim cannot be entertained.*
>
> *So, we hold that Corporate Insolvency Resolution Process against a real estate company (Corporate Debtor) is limited to a project as per approved plan by the Competent Authority and not other projects which are separate at other places for which separate plans approved. For example - in this case the Winter Hill - 77 Gurgaon Project of the 'Corporate Debtor has been place of Corporate Insolvency Resolution Process. If the same real estate company (Corporate Debtor herein) has any other project in another town such as Delhi or Kerala or Mumbai, they cannot be clubbed together nor the asset of the Corporate Debtor (Company) for such other projects can be maximised."*
>
> *"25. In the light of aforesaid discussion, as we find it is very difficult to follow the process as in normal course is followed in a Corporate Insolvency Resolution Process, we are of the view, that a 'Reverse Corporate Insolvency Resolution Process' can be followed in the cases of real estate infrastructure companies in the interest of the allottees and*

survival of the real estate companies and to ensure completion of projects which provides employment to large number of unorganized workmen."

24. The applicant has further relied on the doctrine of substantial consolidation, which has been accepted and applied in the matter of ***State Bank of India Vs. Videocon Industries Limited*** (MA 1306/ 2018 in CP No. 02/2018). Wherein it is held that :

> *"77. A preliminary question arises that under what circumstances an order of 'Consolidation' can be demanded or suo-moto be passed by a court / tribunal. Answer is that when the promoters/ directors of a company diversify the business in various field by creating several independent entities, call it subsidiaries, having cross share-holding with the constitution of common directors and at some point of time the Group gets financially stressed due to default in repayment of debt, at that juncture a right recourse is required to be adopted. That is why, in my humble opinion, the right recourse shall be to examine the necessity of 'Consolidation'.*
>
> *78. Before arriving at any conclusion on ' Consolidation', the existence of certain ingredients are necessary to be examined, viz; (1) Common control, (2) Common directors, (3) Common assets, (4) Common liabilities, (5) Inter-dependence, (6) Inter-lacing of finance, (7) Pooling of resources, (8) Coexistence for survival, (9) intricate link of subsidiaries 10) inter-twined of accounts, 11) inter-looping of debts, 12) singleness of economics of units, 13) cross shareholding, 14) Inter dependence due to intertwined consolidated accounts, 15) Common pooling of resources, etc. This is not an exhaustive list and cannot be. These are the elementary governing factors, prima-facie to activate the process of 'consolidation'. At first glance the existence of these rudimentary points are required to be seen to examine whether in a particular case the question of 'consolidation' is worth consideration or not? It is also necessary to put it on record at this juncture when entering to start the investigation that it is a cumbersome exercise which require time and patience. Whether the case in hand can fit into these basic criterion is to be scrutinised in the following paragraphs".*

25. We have heard the learned counsels for the applicant and the respondent. After careful perusal of the record available and written submissions of both the parties, it may be noted that M/s. SRS Real Estate Limited (“Borrower”/“Developer”) and M/s. SRS Retreat Services Limited (“co-borrower” / “landowner”) have jointly utilised a total amount of Rs. 98 Crores out of the sanctioned loan facility of Rs. 140 Crores from LIC Housing Finance Limited (“applicant”). Further, under the loan documents, both the borrower and co-borrower are treated as the borrower. It is relevant to note that both the borrower and co-borrower are liable under the same loan account bearing Account No. 300000000031 and have same personnel as directors having tenure at different times, the same is stated above in the chart in para 20.

26. After perusal of the financial statements attached as Annexure-5 of the application, it is noted that in the financial year 2015-16, the co-borrower had given a corporate guarantee to the borrower company to the tune of Rs. 18,01,00,000/-. Further, during the financial year 2017-18, the co-borrower i.e., M/s. SRS Retreat Services Limited had provided a loan of Rs. 2,99,39,400/- to the borrower i.e., M/s. SRS Real Estate Limited for the purpose of working capital requirement.

27. It is seen that in the financial statement of the year 2016-17, the co-borrower has shown the borrower as a fellow subsidiary company under the head ‘related party transactions’. Further, in the year 2009-10, the borrower received re-payment from the co-borrower for the advance given to the co-borrower to the tune of Rs. 6,06,00,000/-. In the financial statement of 2011-12,

it is revealed that the borrower provided funding to the co-borrower to the tune of Rs. 10,35,00,000/- for the purpose of purchase of land/ immovable property.

28. In the instant matter, M/s. SRS Real Estate Limited ("borrower"/ "developer") and M/s. SRS Retreat Services Limited ("co-borrower"/ "land owner") have agreed to develop and construct a group housing project known as "SRS Royal Hills Phase-II" at Village Baselwa, Sector 87, Faridabad, Haryana along with the structure thereon owned by the borrowers. The same is inferred from the copies of the Memorandum of Entry regarding properties at Annexure-10 to 12. Keeping in view of the above facts, we are conscious of the decision in the matter of ***Edelweiss Asset Reconstruction Company Limited Vs. Sachet Infrastructure Private Limited*** [CA (AT) (Insolv.) 377 of 2019] wherein, Hon'ble NCLAT held that:

> *"Taking into consideration the fact that without the collaboration of the land owner and the builder, the infrastructure project cannot be developed, this Appellate Tribunal held that the application under Section 7 is maintainable jointly against both the corporate debtors".*

29. Further, in the instant matter before arriving at any conclusion "consolidation" the existence of certain ingredients are necessary to be examined as followed in the ***State Bank of India Vs. Videocon Industries Limited (supra)*** such as (1) Common control, (2) Common directors, (3) Common assets, (4) Common liabilities, (5) Inter-dependence, (6) Inter-lacing of finance, (7) Pooling of resources, (8) Coexistence for survival, (9) intricate link of subsidiaries 10) inter-twined of accounts, 11) inter-looping of debts, 12) singleness of economics of

units, 13) cross-shareholding, 14) Interdependence due to intertwined consolidated accounts, 15) Common pooling of resources, etc.

30. In order to maximize the value of the assets of the borrower and the co-borrower in equity and fairness ought to be a yardstick by lifting the corporate veil. Consolidation is to be utilized as a mechanism to maximize the value of a financially stressed group of companies. Also, there is no single yardstick or measurement on the basis of which a motion of consolidation can or cannot be approved. In the present matter, the areas of inquisition and our finding on the facts related to this case are:

a) Common control: The present companies are fellow subsidiaries of a holding company i.e., SRS Real Infrastructure Limited, where the control exists.

b) Common directors: Both the borrower and co-borrower companies had common directors. The same can be inferred from the above mentioned paragraph No.20.

c) Common assets: In the instant matter the project i.e.,"SRS Royal Hills Phase-II" at Village Baselwa is developed by pooling of resources of the developer and the land owner, without which the project cannot be completed.

d) Common liabilities : As per the copy of loan sanctioned letter dated 29.03.2016 and loan agreement dated 31.03.2016 executed between the applicant and respondents i.e., M/s. SRS Real Estate Limited and M/s. SRS Retreat Services Private Limited, deed of personal guarantee of the following has been given:

a) Mr. Anil Jindal

b) Mr. Bishan Bansal

c) Mr. Rajesh Singla

d) Mr. Vinod Jindal

e) Mr. Nanak Chand Tayal

Apart, Corporate Guarantee of M/s. SRS Real Infrastructure Limited has been provided.

e) Inter-dependence: The borrower/developer is engaged in the business of purchasing, acquiring, take on lease any land building and structures and to build townships, markets, and all sorts of consultancy services related to architecture, landscaping and other real estate-related work while the co-borrower is involved in hotels, campaigning sites and other provisions of accommodation such as restaurant facilities etc.

f) Inter-lacing of finance: The borrower and co-borrower have jointly borrowed a total amount of Rs. 98.00 Crores out of sanctioned loan facility of Rs. 140.00 Crores. Under the loan documents, M/s. SRS Real Estate Limited and M/s. SRS Retreat Services Limited both are treated as the borrowers. Further, the borrower and co-borrower are liable under the same loan account bearing Account No. 300000000031.

g) Pooling of resources: As discussed above, the facts demonstrate that there was common pooling of resources. The same can be inferred from the mortgaged properties described in the Schedule of the Memorandum of Entry and equitable mortgage between the parties.

h) <u>Co-existence for survival</u>: There is an interlinked chain of business operations, which is evident from the financial statements pertaining to the year 2009-10, 2011-12, 2015-16 and 2016-17, whereby it is observed that the borrower received a re-payment of loan provided to co-borrower and the co-borrower had given corporate guarantee to the borrower company in favour of Union Bank of India.

i) <u>Intricate links of subsidiaries:</u> The joint loan account, pooling of resources, and commingling of assets and business functions are examples of intricate links among fellow subsidiaries.

j) <u>Common Financial Creditor:</u> The applicant i.e., LIC Housing Finance Limited, provided a loan to the respondents under the same loan agreement and same loan account.

k) <u>Common Group of corporate debtors</u>: As per the loan agreement, the debtors are combined together for the purpose of availing of the loan facility. Therefore, this is a case where all the debtors are independently as well as jointly liable for the repayment of loan facilities availed.

31. As pointed out by the applicant that the above said project is almost nearing completion (almost 90% of construction is over), and only 10% of the project is remaining on the construction side. A separate CIRP for both entities would only prolong the process and would create confusion among various

creditors of the project and home buyers. Since there are common factors of interdependence and interlacing of finance, then it can be safely deduced that there is an inter-twined of accounts, inter-looping of debts, singleness of economics of units and cross-shareholding. Thus, the present case is fit for initiating a combined Corporate Insolvency Resolution Process against the Developer (Borrower), namely M/s. SRS Real Estate Limited, as well as the landowner (co-borrower), namely M/s. SRS Retreat Services Limited.

32. Taking into consideration the facts of the present case that without the collaboration of the developer and land owner, the infrastructure project cannot be developed as observed in ***Edelweiss Asset Reconstruction Company Limited (supra).*** Therefore, the application under Section 7 is maintainable jointly against both corporate debtors. The group Corporate Insolvency Resolution Process is against corporate debtors is limited to the project i.e., SRS Royal Hills Phase - II' located at village Baselwa, Sector - 87, Faridabad, and not other projects which are separate at other places for which separate plans approved.

33. In the given facts and circumstances, the present petitions are complete and having established the default in payment of the Financial Debt for the default amount being above the threshold limit, the petitions are admitted in terms of Section 7(5) of the IBC and accordingly, also direct moratorium in terms of sub-section (1) of Section 14 of the code to take effect as below:

a) the institution of suits or continuation of pending suits or proceedings against the corporate debtors including the 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 debtors 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 Operational Assets and Enforcement of Security Interest Act, 2002; and

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) It is further directed that the supply of essential goods or services to the corporate debtors, as may be specified, shall not be terminated or suspended or interrupted during the moratorium period. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

f) The order of moratorium shall have effect from the date of this order till completion of the common Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.

34. The Law Research Associate of this Tribunal has checked the credentials of Mr. Shyam Arora, and there is nothing adverse against him. In view of the above, we appoint Mr. Shyam Arora, Registration

No.IBBI/IPA-002/IP-N00546/2017-2018/11703, Email: arora.shyaam@yahoo.com, Mobile No.,9654102759 as the Common Interim Resolution Professional with the following directions: -

i.) The term of appointment of Mr. Shyam Arora shall be in accordance with the provisions of Section 16(5) of the Code;

ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended, and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor, etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of the inventory of assets of the Corporate Debtor;

iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government, and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and morals;

iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

v.) It is hereby directed that the Corporate Debtor, its Directors, personnel, and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

vii.) The Interim Resolution Professional/ Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with a request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Interim Resolution Professional/Resolution Professional to enable him to conduct the CIR Proceedings as per law.

viii.) The Interim Resolution Professional shall, after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtors, constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of the constitution of the Committee; and

ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

35. We direct the Petitioner-Financial Creditor to deposit a sum of ₹2,00,000/- (Rupees One Lakh Only) with the Interim Resolution Professional to meet the expense to perform the 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 amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

36. What is adjudicated here is the consolidation of the CIRPs of both the corporate debtors and not the consolidation/merger of these group companies. Therefore, the petitions i.e., CP (IB) No.167/Chd/Hry/2020 & CP (IB) No.86/Chd/Hry/2022 stand admitted accordingly.

37. The application i.e., IA 279/2022, is allowed and disposed of accordingly.

38. A copy of the order shall be communicated to both parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

Sd/- Sd/-

(Subrata Kumar Dash) **(Harnam Singh Thakur)**

Member (Technical) **Member (Judicial)**

December 22, 2022

PB/ ASH