

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH**

IA No.2553/23

and

CP (IB) No. 98/Chd/Hry/2022

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

In the matter of:

Punjab and Sind Bank

....Petitioner/Financial Creditor

Versus

Samar Estates Pvt. Ltd.

....Respondent/Corporate Debtor

In the matter of C.P. (IB) No. 98/Chd/Hry/2022

Punjab and Sind Bank
With its Head Office at
21, Rajindra place, New Delhi
And branch at SCF No. 251,
Sector 16, Panchkula

...Petitioner/Financial Creditor

Versus

Samar Estates Pvt. Ltd.
Site Office: Ess Vee Apartments,
Sector 20, Panchkula- 134116 &
Registered Office at #87, Sector-7
Panchkula- 134109

....Respondent/Corporate Debtor

And in the matter of IA No. 2553/2023

Ess Vee Apartments Home Buyers Association Panchkula
Having registered office at
290, GH-1, Mansa Devi Complex
Sector 5, Panchkula
Haryana

...Applicant

IA No. 2553/2023
and
CP No.98/Chd/Hry/2022

Vs.

1. Punjab and Sind Bank
Having head office at
21, Rajindera Place,
New Delhi
And branch at SCF No. 251
Sector 16, Panchkula

...Respondent No. 1

and

2. M/s Samar Estates Pvt. Ltd.
Having registered office at
Ess Vee Apartments, Sector 20,
Panchkula- 134109

...Respondent No. 2

Order delivered on:12.01.2024

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

Present :

For Petitioner in CP (IB) No. 98/Chd/Hry/2022
and for respondent in IA No. 2553/2023 :

- 1). Mrs. Kamal Naini Sharma, Adv.
- 2). Mr. Devpreet Singh, Chief Manager
- 3). Mr. Vinay Kumar, Senior Manager

:
For respondent in
CP (IB) No. 98/Chd/Hry/2022 :

- 1). Mr. Vishav Bharti Gupta, Adv.
- 2). Ms. Mamta Gupta, Advocates

For the Applicant in IA No. 2553/2023

- 1). Mr. Anand Chhibar, Senior Advocate
- 2). Mr. Vaibhav Sahni, Advocate

IA No. 2553/2023
and
CP No.98/Chd/Hry/2022

Per: Harnam Singh Thakur, Member (Judicial)

Subrata Kumar Dash, Member (Technical)

ORDER

The present Petition has been filed by Punjab and Sind Bank (**Financial Creditor/Petitioner**), through its constituted Attorney, Sh. Nafe Singh, Chief Manager against M/s Samar Estates Pvt. Ltd.,(Corporate Debtor), under Section 7 of the Insolvency and Bankruptcy Code, 2016, seeking initiation of Corporate Insolvency Resolution Process against the Corporate Debtor and calling for submission of claims under Section 15, and declaration of moratorium under Section 14 in terms of Section 13 of the Code claiming a default above the threshold limit, by the Corporate Debtor.

2. The brief facts mentioned in the petition are:

2.1. The Corporate Debtor is a private limited company duly registered with the Registrar of Companies and is engaged in the business of purchase, sale, letting, and operating of Real Estate, residential, and non-residential buildings, having its registered office at Panchkula, within the jurisdiction of this Bench.

2.2. The corporate debtor had availed the following financial facilities from the Financial Creditor against the equitable mortgage of immovable properties/hypothecation of vehicles :

Sr. No.	Loan Type	Date of disbursement	Amount in Cr.	Amount due as on 31.08.2021
1.	Term Loan	04.01.2013	60,00,00,000	Rs. 73,59,13,059

2.	Overdraft Limit	04.01.2013	30,00,00,000	Rs. 73,14,80,858
3.	Vehicle Loan	09.06.2014	10,00,000	Rs. 11,584,74
4.	Vehicle Loan	01.08.2014	10,00,000	Rs. 11,83,910
5.	Bank Guarantees	25.06.2015	1,20,00,000 1,20,00,000 1,20,00,000 1,20,00,000 1,20,83,000 <hr/> 6,00,83,000	
	Total (Max)		90,20,00,000 /-	Rs. 146,97,36,301

The requisite loan documents were executed by the Corporate Debtor in favor of the Financial Creditor.

2.3. The account of the Respondent/Corporate Debtor became irregular and was classified as a non-performing asset on 30.09.2016, and proceedings under Section 13(2) of SARFAESI Act were initiated on 23.05.2018.

2.4. The Respondent/Corporate Debtor failed to repay the amount in pursuance to the demand notice dated 23.05.2018, and symbolic possession of the secured assets of the Corporate Debtor was taken by the Financial Creditor on 20.07.2019, under Section 13(4) of the Securitization Act.

2.5. OA No. 1589/2019 titled as Punjab & Sind Bank v. M/s Samar Estates Pvt. Ltd. for recovery of Rs. 95,88,45,678.09 is also pending adjudication before Debt Recovery Tribunal-II, Chandigarh.

3. The Respondent/Corporate Debtor filed its reply vide diary no. 1240/11 dated 24.11.2023, after being given one last opportunity, despite several opportunities being given, contending that the petition is not maintainable in law as no proof of defaults has been attached by the Financial Creditor.

3.1. The Respondent/Corporate Debtor submitted that the Petitioner had issued notices under Section 13(2) dated 13.10.2016, under Section 13(4) dated 23.02.2017 and under Section 14 of the SARFAESI Act, 2002 of April, 2017 for taking over possession before the District Magistrate, Panchkula and later on, had withdrawn the above said notices on 24.10.2017, thus, rendering entire action initiated under SARFAESI Act, 2002, infructuous.

3.2. It is stated by the Respondent/Corporate Debtor that the Petitioner/Financial Creditor reinitiated recovery action proceedings u/s 13(2) of the SARFAESI ACT, 2002, vide Notice dated 23.05.2018, and reached to Corporate Debtor on 13.06.2018, which was duly objected by the Corporate Debtor vide its letter dated 19.07.2018. However, the Petitioner/Financial Creditor extended the Bank Guarantee/s at various occasions vide extension letters dated 18.09.2017, 29.03.2019, 29.06.2021, and 30.09.2023 during the proceedings of SARFAESI Act, 2002, w.r.t. the Bank Guarantees of Rs. 6.01 Crores, valid upto 30.09.2025, which were originally valid upto 18.07.2017 /31.03 2019/ 30.06.2021/ 30.09.2023, in favour of the Director General, Town & Country Planning, Haryana, Chandigarh, on account of internal development works of both pockets of the Group Housing Colony on 21.75 acre land, pertaining to License No.609-612 dated 27.03.2006 in Sector-20, Panchkula, being promoted & developed by the Corporate Debtor.

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3.3. The Respondent/Corporate Debtor submitted that on one hand, it was combating the situation of reduction of term loan resulting into disruption of cash flow, and on the other hand, instead of taking cognizance of the bonafides of the Corporate Debtor, the Ld. HRERA, Panchkula has restrained the Corporate Debtor vide its orders dated 30.04.2019 from selling the inventories as well as disposing of its moveable/ immovable assets of the said Project, on the complaints of a few allottees, when the Corporate Debtor as on 31.03.2019 had already incurred about Rs.221.93 Crores against receipts of about Rs.92.75 Crores from the allottees and Rs.58 Crores as credit facilities from the Petitioner/Financial Creditor. After the restraint orders of 30.04.2019, in-flow of overdue receivables stopped and the Ld. HRERA, Panchkula, had issued various refund orders, and thereafter, recovery certificates.

3.4. The Respondent/Corporate Debtor further submitted that the above said issues created undue pressure on Mr. Vinod Bagai, the Managing Director of the Corporate Debtor, who has been suffering from Acute Brain Haemorrhagic Stroke-Bleeding since 12.12.2020 and right side of his body has been paralyzed, and declared 50% disabled and a Disability Certificate has been issued by Civil Surgeon, Panchkula, Haryana.

3.5. It is stated by the Respondent/Corporate Debtor that in January 2021, the Ld. HRERA, Panchkula issued directions to the District Collector; Panchkula to recover the amounts payable to the allottees as arrears of land revenue through the sale of unsold inventories of the said Project.

It is alleged by the Respondent/Corporate Debtor that some of the Government Officials in connivance with some builder/politician, have been harassing to a catch a hold over the Project. Instead of auctioning just the unsold inventories, the concerned Authority was in the process of illegal auction of the complete Project at throw away prices of Rs.248 crore, whereas the present market value of the Project would have been minimum of Rs.626 Crores, having land cost of Rs.404 Crores, (Project land 14.95 acres at Rs.27 Crores per acre as per the reserve price of HSVP/ HUDA for Group Housing Colony sites in Sector-20, Panchkula) plus already incurred development/ construction costs of about Rs.222 Crore. Consequently, the Petitioner was successful in getting a stay from the Hon'ble Supreme Court against the illegal auction of the Project being done by the concerned Authority.

3.6. The Respondent/Corporate Debtor stated that it has been trying for the completion of the Project and requests coordination between the Ld. HRERA, Panchkula, Revenue Authorities, Panchkula Administration, Ld. Members of the District/State/National Consumer Disputes Redressal Commissions, Ld. NCLT/DRT, Chandigarh, to keep the complaints/executions/cases pending for a reasonable time and to avoid coercive actions against the Corporate Debtor and its Directors. The Respondent/Corporate Debtor has requested the Ld. HRERA, Panchkula to restore the suspended registration of the Project and to further grant permissions to the Corporate Debtor, for sale of inventories and phase-wise completion of the said Project.

3.7. It is submitted by the Corporate Debtor that the petition filed by the Financial

Creditor, is not properly attested as the petition and the affidavit in support have been signed and executed by Mr. Nafe Singh, Chief Manager, Punjab & Sind Bank Branch Office Sector 16, Panchkula, and General Power of Attorney Joint is appended along with the present petition. In the General Power of Attorney Joint, it is mentioned that Mr. Nafe Singh is posted at Babarpur, Delhi which is completely in violation of Rules under the Code. The Corporate Debtor further stated that the Affidavit is signed on 31.03.2022, and Petition is filed by the Financial Creditor on 05.10.2021, rendering the petition defective and liable to be dismissed on this ground only.

3.8. The Respondent/Corporate Debtor also submitted that the Financial Creditor has failed to append the record of information utility (NeSL Certificate) in relation to the Corporate Debtor as per the circular dated 10.04.2023, which is mandatory, and in absence of the same, the present application is not maintainable and is liable to be set aside. The Respondent/Corporate Debtor contested that the current application is subject to dismissal under Section 7(4) of the IBC, 2016, due to the debtor's failure to provide authentication in violation of Regulation 21(2)(b) and the financial creditor's failure to submit Form-D, which is required to document the record of default as per Regulation 21(4) of the IBBI (Information Utilities) Regulations (2017), on the grounds that no record exists with the information utility.

3.9. It is submitted by the Respondent/Corporate Debtor that the statement of accounts had not been filed in accordance with the provisions of Section 4 of the Bankers' Book Evidence Act, 1891, which has been held to be a prima facie evidence in accordance with Section 2(A), by the Hon'ble High Court.

3.10. It is further submitted by the Respondent/Corporate Debtor that the Petitioner/Financial Creditor has been charging excessive interest from the Respondent/Corporate Debtor, whereas nothing has been mentioned in sanctions letters about charging of interest in the case of devolvement of ILCs/FLCs. Further, the Petitioner has charged exorbitant interest on monthly compounding basis, since the inception of granting of the credit facilities to the Respondent/Corporate Debtor, and even after the classification of accounts of the Respondent/Corporate Debtor as NPA, which is against the principal of natural justice. As such, the statement of accounts as alleged by the Petitioner/Financial Creditor is not sustainable in the eyes of law and therefore, liable to be rejected on this ground only.

It is also stated that the Petitioner/Financial Creditor has not filed the required interest chart or certificate of rate of interest which shows the different rates of interest charged on the loan account(s), as required by RBI directives and guidelines issued from time to time.

3.11. It is submitted by the Respondent/Corporate Debtor that the Petitioner/Financial Creditor had failed to file along with the application the mandatory certificate of rate of interest, therefore the Respondent/Corporate Debtor is not and possibly cannot be in a position to effectively reply to the issue/ground of charging interest by the Petitioner from time to time. The Respondent/Corporate Debtor reserves its right to amend the written statement, as and when the interest chart/certificate of rate of interest is placed on record.

3.12. The Ld. Counsel for the Respondent/Corporate Debtor has placed reliance upon Hon'ble NCLAT's judgment in the matter of ***Jagdish Prasad Sarada (Suspended Managing Director of the Company) vs. Allahabad Bank, Company Appeal (AT) (Insolvency) No. 183 of 2020***, wherein it was held that the determining factor is the three years period from the date of default/NPA, and on the basis of the same, contends that the limitation period of 3 years shall be computed from 2016, which ended in 2019, and the petition shall be dismissed on this sole ground.

3.13. The Respondent/Corporate Debtor has made the following submissions for settlement :

- (a) To resolve the matters of all the Allottees and the Petitioner, and the phase-wise completion of the said Project, the Respondent/Corporate Debtor will execute a MoU with the new construction agency for completion of the balance construction works amounting to Rs.150 Crores approximately.
- (b) The Respondent/Corporate Debtor intends to complete the said project and proposes to incur 70% of the receipt amount towards phase-wise completion of balance construction works as per HRERA Act & Rules, 20 % towards repayment of the Petitioner's credit facilities amounting to Rs.58 Crores plus genuine interest and 10% towards settling grievances of the Allottees, if any, out of all the amounts received either from the overdue trade receivables of Rs.180 Crores (after adjusting delay possession compensation/ discounts in delay payment interest) from the existing 342 allottees and/or from the sale of inventories allotted to SRV Investments having market value of Rs.651 Crores, thus total receipts being Rs.831 Crores. The complainant-allottee/s,

who have either complained to the Ld. HRERA, Panchkula and obtained Recovery Certificates or whose complaint/ execution are pending in the Ld. Consumer Commissions, or even if any allottee out of existing 342 allottees withdraws, the allotted flat can be resold in the market.

(c) The Corporate Debtor would compensate SRV Investments from the balance receipts and will deposit a demand draft containing upfront money with the Petitioner/Financial Creditor towards settlement.

(d) The Petitioner/Financial Creditor be requested for giving NOC for home loans immediately on receipt of above said Demand Draft, thus, arriving at a mechanism of successful settlement for the fruitful closing of the relationship with the Petitioner/Financial Creditor.

4. The Petitioner/Financial Creditor filed its written submissions vide diary no. 1240/0 dated 22.07.2022, with regards to date of default, in compliance of order dated 08.07.2022 and additional documents were also placed on record vide I.A. No. 693/2022.

4.1. It is pleaded by the Petitioner/Financial Creditor that the Respondent/Corporate Debtor submitted objections dated 19.07.2018 to the demand notice dated 23.05.2028, on 20.07.2018, wherein it acknowledged its liability towards the bank, and the same are annexed and attached as Annexure A-1/99 along with I.A. No. 693/2022. The Respondent/Corporate Debtor submitted further representations dated 15.03.2019, 05.04.2019, 16.07.2019 and admitted/acknowledged the liability towards the bank and the same are annexed and marked as Annexure A-1/100 to 1/102 along with I.A. No. 693/2022.

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4.2. The Petitioner/Financial Creditor further submitted that the date of default may be treated as 19.07.2018, whereby the Respondent/Corporate Debtor has admitted/acknowledged the debt/liability towards the Bank.

4.3. Reliance has been placed by the Ld. Counsel for Petitioner/Financial Creditor upon the Hon'ble Supreme Court's order dated 10.01.2022 in **MA No. 21 of 2022 in MA No. 665 of 2021 in Suo Moto Writ Petition No. 3 of 2020**, wherein it has been stated by the Apex Court that the cases where the period of limitation would have expired between 15.03.2020 till 28.02.22 notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. The Petitioner/Financial Creditor submitted that the period of 3 years from the date of objections dated 19.07.2018 expires on 18.07.2021 and the present case has been filed within the period of limitation from the date of default/objections dated 19.07.2018.

5. Additional written submissions have been filed by the Petitioner/Financial Creditor vide diary no. 1240/7 dated 22.08.2023, in compliance of order dated 04.07.2023, to place on record copy of the order passed by the Hon'ble Supreme Court in an appeal against the writ petition filed by the home-buyers, wherein the Apex Court allowed Punjab and Sind Bank to be impleaded as a party in the petition filed by the Home Buyers Association before it and ordered the stay of further proceedings before the Hon'ble High Court of Punjab and Haryana.

6. Ld. Counsel for the Financial Creditor further filed the written submission vide diary no. 1240/8 dated 20.09.2023, in compliance of order dated 20.09.2023, wherein

it is mentioned that a defective caveat dated 15.03.2023, filed by the Ess Vee Apartments Home Buyers Association, was served upon the Financial Creditor, which became time barred on 15.06.2023 and is annexed as Annexure- A/2 to the written submissions.

6.1. The Financial Creditor placed reliance upon the Hon'ble Supreme Court's judgment in ***Civil Appeal No. 7121 of 2022 in the matter of M. Suresh Kumar Reddy Vs Canara Bank & Ors. decided on 11.05.2023***, wherein the Apex Court observed that :

“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”.

7. The Ld. Counsel for the Financial Creditor further filed final written submissions vide diary no. 1240/11 dated 05.12.2023, in compliance with directions of this Tribunal dated 24.11.2023, wherein it is submitted by the financial creditor that the Hon'ble Supreme Court vide order dated 04.05.2023 in SLP No. 9711/2023 file vide diary no. 14538/2023 (arising out of impugned final judgment and order passed by the High Court of Punjab and Haryana at Chandigarh dated 19.01.2023 in CWP No. 26539/2021 filed by the Home Buyers Association), stayed the auction of the properties of the respondent/corporate debtor in the proceedings before the High Court of Punjab and Haryana, as the security of the same had been created in favour of the petitioner/financial creditor, prior to RERA Act. It is also submitted by

the Ld. Counsel for the Financial Creditor that the respondent/corporate debtor failed to file their counter affidavit to the SLP filed by the Petitioner Bank within the time granted by the Apex Court on two occasions and their right to file reply was struck off vide order dated 21.08.2023 by the Hon'ble Supreme Court.

7.1. Reliance is placed by the Ld. Counsel for the Financial Creditor on the operative part/conclusion of the reportable Judgment of the Hon'ble Supreme Court of India in ***Writ Petition (Civil) No. 43 of 209 in Pioneer Urban Land and Infrastructure Ltd. & Anr. Vs. Union of India & Ors. at page 184/186; point no. (ii)*** : *“The RERA is to be read harmoniously with the Code, as amended by the Amendment Act. it is only in the event of conflict that the Code will prevail over RERA”*. The said judgment is annexed and attached as Annexure-A/4 to the written submissions.

IA No. 2553/2023

The present application is filed under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of the National Company Law Tribunal Rules, 2016 by Ess Vee Apartments Home-Buyers Association Panchkula (Regd.), through Sh. Gurcharan Singh Baidwan, Vice President, duly authorised by the Society, seeking impleadment in the Company Petition filed under Section 7 bearing CP(IB) No.98/Chd/Hry/2021 and further seeking directions to implead the Applicant Association as a necessary and proper party to the above tilted Company Petition filed by Respondent No. 1 Bank and dismissal of the Company Petition CP(IB) 98/Chd/Hry/2022 filed by the Financial Creditor on grounds of relinquishment of their

right by issuing NOC to the Deputy Commissioner, Panchkula, for auction of the assets of the Corporate Debtor.

8. Brief facts as stated in the application are as follows:

8.1. The 142 members of the Applicant Society are the allottees in the abandoned housing project **Ess Vee Apartments (“Project”)**, Sector 20, Panchkula, and are financial creditors in the class of creditors of **Samar Estates Pvt. Ltd. (“Corporate Debtor/Respondent No. 2”)**. A copy of the registration certificate of the Applicant Society, along with the list of members, is annexed and marked as Annexure A-2.

8.2. The Respondent No. 1, Punjab & Sind Bank, is a Financial Creditor of the Corporate Debtor and had filed the main petition against the Corporate Debtor under Section 7 of the Code, seeking initiation of the Corporate Insolvency Resolution Process of Respondent No. 2, i.e., the Corporate Debtor.

8.3. The Respondent No. 2, is M/s Samar Estate Pvt. Ltd (Corporate Debtor), a company duly incorporated in the year 2003 under the provisions of the Companies Act, 1956, with its registered office at Ess Vee Apartments in front of GHS-105, Sector-20 Panchkula, Haryana-134112.

8.4. The members of the Applicant Society booked flats in the Project in the year 2005-06 and paid a maximum amount (85% to 100%) for the flats to the builders, with further interest on delayed payments @18% p.a. for each day.

8.5. The Corporate Debtor had availed various financial facilities from Respondent No.1 in the form of a Term Loan, Overdraft limit and Vehicle loan,

which were secured by personal guarantees and equitable mortgage of the immovable properties of the Corporate Debtor.

8.6. As per the data in the public records, the term loan sanctioned to Respondent No.2 by Respondent No.1 was to the tune of Rs. 60 crores, however, Respondent No.1 released only a sum of Rs. 40 crores, which resulted in a shortage of funds with Respondent No.2, besides huge diversion of funds by its management, which eventually led to non-completion of the project of which the members of the Applicant Society are the allottees.

8.7. Details of the loans as available in the public domain, granted to Respondent No.2 by Respondent No.1 Bank on 05.12.2012 and lastly on 01.08.2014, are reproduced hereunder:

Loan Type	Amount in Crore
Term Loan	60,00,00,000
Overdraft Limit	30,00,00,000
Vehicle Loan	10,00,000
Vehicle Loan	10,00,000
Total (Max)	90,20,00,000

8.8. The Respondent No.2/Corporate Debtor defaulted in repayment of the loan and the account of the Corporate Debtor was declared NPA in the year 2016. Respondent No.1/Financial Creditor charged interest and penal interest on the defaulted amount by the Corporate Debtor and has claimed an exorbitant amount of Rs. 146 crores in the petition filed under Section 7 of the Code as the

defaulted amount, whereas the Homebuyers who spent their hard earned money and paid 100% of the amount are being prejudiced by such acts of the Respondent No. 1 Bank.

8.9. It is also submitted by the Applicant Association that various members of the applicant society had initiated litigation against Respondent No.2/Corporate Debtor, before HRERA, Panchkula, wherein orders directing Respondent No.2/Corporate Debtor to refund the payments made by Members of the Association with the applicable interest were passed by HRERA. Owing to the non-compliance of the above mentioned orders, the members of the applicant association filed execution petitions in the year 2019 before HRERA Panchkuka, which were clubbed by HRERA and issued recovery certificates for the recovery of arrears from builders/directors as arrears of land revenue. The copy of the said order dated 06.01.2021 is attached as Annexure A-4 to the application.

8.10. The Applicant Association filed a Civil Writ Petition bearing **CWP No. 26539 of 2021, titled Ess Vee Apartments Home Buyers Association Vs. State of Haryana and Others**, before the Hon'ble Punjab and Haryana High Court, after no response was received from the office of the Deputy Commissioner Panchkula to the orders passed by HRERA, Panchkula.

8.11. It was informed to the Hon'ble High Court by the State Counsel on 06.01.2023, that the properties of the builder have been attached and the process for auctioning of the same is awaited as the competent authority is yet to pass orders. The Hon'ble High Court while allowing the request of the State Counsel

for further time to file affidavit of the Deputy Commissioner, Panchkula observed as under:

“It goes without saying that in case the liability of the petitioner association is discharged prior to the auction, the process of auction may not be proceeded with.”

8.12. A miscellaneous application was moved by the Respondent No. 1 Bank seeking impleadment in the above mentioned writ petition bearing CM No. 5559 of 2023, which was withdrawn later with the liberty to avail the remedy in accordance with law, and filed a Special Leave to Appeal (C) No(s). 9711/2023 challenging the Hon’ble High Court’s order dated 19.01.2023 and obtained a stay order from the Hon’ble Supreme Court.

8.13. It is alleged by the Applicant Association that the conduct of Respondent No. 1 Bank/Financial Creditor is prejudicial to the interests of Applicant Association as on one hand, Respondent No. 1 Bank/Financial Creditor initiated the proceedings against Respondent No.2/Corporate Debtor under SARFAESI Act, 2002 and also filed the present petition under Section 7 before this Adjudicating Authority seeking initiation of Corporate Insolvency Resolution Process of Respondent No.2/Corporate Debtor and on the other hand, issued No Objection Certificate vide letter dated 18.03.2023, to the Deputy Commissioner, Panchkula, for initiating the auction proceedings in respect of the project of the Respondent No. 2/Corporate Debtor. The Applicant Association also alleged that the Respondent No. 1 Bank/Financial

Creditor in collusion with Respondent No. 2. Corporate Debtor obtained a stay on the auction from the Hon'ble Supreme Court of India.

8.14. It is contended by the Applicant Association that the petition filed by Respondent No. 1 Bank/Financial Creditor is barred by limitation as the account of the Corporate Debtor/Respondent No. 2 was declared Non-Performing Asset ("NPA") on 29.07.2016 and, further demand notice under Section 13(2) of SARFAESI Act, 2002 was issued on 23.05.2018, whereas the Section 7 petition has been filed by the Financial Creditor in the month of October 2021. It is mentioned by the Applicant Association that the date of default mentioned in the petition was 31.08.2021, which was later changed to 19.07.2018 by the Respondent No. 1 Bank/Financial Creditor, after a clarification was sought by this Tribunal.

8.15. Ld. Counsel for the Applicant Association has referred to the judgment of the Hon'ble NCLAT in the matter of ***Jagdish Prasad Sarada (Suspended Managing Director of the Company vs. Allahabad Bank, Company Appeal (AT) (Insolvency) No. 183 of 2020***, wherein it was held by the Hon'ble NCLAT that the determining factor is the three years period from the date of default/NPA.

8.16. It is alleged by the Applicant Association that a Forensic Audit was also carried out by M/s Parm and Associated (P) Ltd. on behalf of Respondent No.1 Bank/Financial Creditor, after involvement of their own officials was observed by it. The following irregularities committed by the Respondent No.1

Bank/Financial Creditor in sanctioning/disbursing loan to Respondent No.2/Corporate Debtor were highlighted in the report:

- (a) Transfer Rs. 40 crores by thh Bank, from term loan to Overdraft Protection (ODP) account of promoter builder, meaning long term borrowings were used for short term financing.
- (b) Withdrawal of huge cash to the tune of Rs. 13,67,62,500/- from ODP account between 03.06.2013 and 27.05.2016.
- (c) Transfer of large amounts to related (associate) parties, i.e., SRV Investments.
- (d) Loans sanctioned with special conditions to maintain an escrow account with the petitioner bank, which was not maintained, and later, the condition was waived off.
- (e) CA firm SP Babuta & Associates was the auditor of the promoter builder for the Financial Year 2011-12, 2012-13, 2013-14 and 2014-15. SP Babuta, the signing partner for the audit of the promoter builder, was also the director of the petitioner bank and was in a capacity to influence the bank to take decision in favour of his client, i.e., Samar Estates (P) Ltd.
- (f) An audit fee of Rs. 22472 was payable by the promoter builder to SP Babuta & Associates. In addition, gratification of Rs. 30.33 lacs was given to Mr. Babuta through ODP account, for which no documents were found and neither the petitioner bank nor the promoter builder could explain the reasons for release of such payments.

8.17. It is submitted by the Applicant Association that an RTI was filed by them with the Respondent No. 1 Bank, seeking certain information w.r.t. involvement of their officials in disbursing loan without following SOP/guidelines but no information was shared by Respondent No. 1 Bank. A second appeal was also filed with the State Information Commission for the same, which is pending for hearing.

8.18. It is further submitted by the Applicant Association that another forensic audit was conducted by Economic Offence Wing of Police Department on the basis of several FIRs registered against the promoters of Respondent No.2 and the forensic audit conducted by Respondent No. 1 Bank, which also revealed huge financial irregularities committed by the respondent builder.

9. Ld. Counsel for Respondent No.1/Financial Creditor has stated that no reply is to be filed on its behalf to the present application, and would argue this application directly.

10. After considering the facts and materials on record, we are of the considered view that, so far as the petition under Section 7 is concerned, the objections taken by the Ld. Counsel for the Respondent/Corporate Debtor are not tenable.

11. The first contention of the Ld. Counsel for the Respondent/Corporate Debtor is that the Petitioner/Financial Creditor has approached different Fora, such as recovery action proceedings under SARFAESI Act, 2002, Debt Recovery Tribunal as well as HRERA, Panchkula, apart from this Tribunal. However, this contention of opposite counsel is not much convincing because

proceedings under Section 7 of the Code are independent proceedings and have no effect on other pending proceedings before authorities/forums/tribunals/courts. As per Section 238 of the Code, the proceedings before NCLT have precedence over other proceedings.

11.1. The next contention of the Ld. Counsel for the Respondent/Corporate Debtor is that the claim is time barred, as the date of default is 30.09.2016, when the account of the Corporate Debtor was declared as NPA.

No doubt, the date of default is meant for the calculation of period of limitation of 3 years, but in the case in hand, the Respondent/Corporate Debtor has admitted its liability of Rs. 115 Crores, towards the Petitioner/Financial Creditor, sanctioned vide letter dated 05.12.2012, in the letter dated 19.07.2018, which is annexed and marked as A-1/99 along with I.A. No. 693/2022.

Secondly, the acknowledgment is within 3 years, if computed from the date of declaration of the account of the Respondent/Corporate Debtor as NPA. As per Section 18 of the Limitation Act of 1963, the limitation period would commence w.e.f. 19.07.2018. For ready reference, Section 18 of the Limitation Act of 1963, is reproduced hereunder:

18. Effect of acknowledgment in writing.—(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh

period of limitation shall be computed from the time when the acknowledgment was so signed.

The present petition has been filed on 15.12.2021, and re-filed on 13.04.2022. Therefore, taking into consideration the exclusion of the period of Covid-19, as held by the Hon'ble Supreme Court in MA No. 21 of 2022 in MA No. 665 of 2021 in Suo Moto Writ Petition No. 3 of 2020, the present petition is within the period of limitation, even if the date of refiling of the petition is taken into consideration.

11.2. The other contention on behalf of the Ld. Counsel for the Respondent/Corporate Debtor is that no record of Information Utility (NeSI Certificate) has been placed on record as per the circular dated 10.04.2023, vide which it was made compulsory to annex the record of the Information Utility as per Regulation 20(1A) and notification no. IBBI/2022-23/GN/REG085, dated 14.06.2022. Thus, it is contended by the Ld. Counsel for the Respondent/Corporate Debtor that the present petition under Section 7 is not maintainable and is liable to be dismissed under Section 7 due to the failure to provide authentication under Regulation 21(2)(b) of the IBBI (Information Utilities) Regulations (2017).

However, this contention of the Ld. Counsel for the Respondent/Corporate Debtor is not much plausible because the IBBI notification dated 14.06.2022 and the circular to that effect was issued on 10.04.2023 by the Principal Bench, New Delhi, whereas the petition under Section 7 was filed much before the notification/circular came into effect. More so, Section 7(4) of the Code provides

that the Adjudicating Authority shall, within fourteen days of the receipt of the application, ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor. Section 7(4) of the Code is reproduced here under:

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

Thus, Section 7(4) not only relies upon the record of Information Utility for the purpose of proving default, but even on the basis of other evidence, the Financial Creditor can establish the default under Section 7(3).

11.3. In the case in hand, the admission of loan on the part of Corporate Debtor in the Statement of Accounts placed on record by the Financial Creditor proves the default on the part of Respondent/Corporate Debtor, which is within the threshold limit of Rs. 1 Crore.

11.4. The authority relied upon by the Respondent/Corporate Debtor **Jagdish Prasad Sarada (Suspended Managing Director of the Company) vs. Allahabad Bank** (supra) is not applicable to the facts and circumstances of the present case.

11.5. Lastly, the argument by the Ld. Counsel for the Respondent/Corporate Debtor that the present petition under Section 7 is not signed by the authorised person, is not tenable because as per the Authorisation Letter annexed as

Annexure A-I/1 to the petition, Mr. Nafe Singh, Chief Manager has been authorised to file the application in NCLT, Chandigarh in account of M/s Samar Estate Pvt. Ltd.

11.6. Similarly, if the Respondent/Corporate Debtor could not sell the flats and the money flow was prevented due to the intervention of the home buyers and RERA Authority, the Respondent/Corporate Debtor listed some measures to resolve the deadlock and completion of the project. However, these suggestions and measures are of no use because as per the decision of the Hon'ble Supreme Court in the case of ***M. Suresh Kumar Reddy vs Canara Bank & Ors. (supra)***, relied upon by the Ld. Counsel for the Respondent/Corporate Debtor, it is held that the moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete.

11.7. In the case in hand, the application filed in the prescribed Form No.1 is found to be complete. Another condition is that there are no disciplinary proceedings pending against the proposed Resolution Professional. In the present case, through I.A. No. 2749/2023 filed by the erstwhile proposed Interim Resolution Professional, Mr. Ashish Kumar Jain, wherein the erstwhile proposed Interim Resolution Professional has admitted his inability to undertake the said appointment, the Petitioner Bank has accepted his withdrawal of consent, and Mr. Rahul Jindal, Registration No.IBBI/IPA-001/IP-P-02649/2021-2022/14048 has been proposed as Interim Resolution Professional (IRP). The written communication and Form-B (Authorisation for assignment) had been filed vide Diary No. 03786/6 dated

21.11.2023. The Law Research Associate of this Tribunal checked the credentials of Mr. Rahul Jindal, and no disciplinary proceedings are pending against him. In view of the above, we appoint Mr. Rahul Jindal, Registration No.IBBI/IPA-001/IP-P-02649/2021-2022/14048,Email:jindalrahul60@gmail.com, Mobile No.9811305334, the Interim Resolution Professional with the following directions:-

- i.) The term of appointment of Mr. Rahul Jindal, 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 Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with requests 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 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 Debtor 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.

11.8. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above the threshold limit of Rs. 1 crore, the petition is 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 debtor including execution of any judgment, decree, or order in any court of law, tribunal, arbitration panel, or other authority;
- b) transferring, encumbering, alienating, or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of 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 debtor 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 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.

12. We direct the Financial Creditor to deposit a sum of ₹2,00,000/- (Rupees Two Lakhs Only) with the Interim Resolution Professional, to meet out 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.

13. 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 email address forthwith.

14. The petition is admitted accordingly.

15. So far as I.A. No.2553/2023 is concerned, this application has been filed by 142 home buyers as an Association, through Sh. Gurcharan Singh Baidwan, Vice President, seeking impleadment in the Company Petition as a necessary and proper party.

15.1. It is argued by the Ld. Counsel for the Applicant Association that after due service, no reply has been filed by the Financial Creditor, therefore, this application should be allowed, and the 142 home buyers through their Association should be impleaded as a necessary party.

However, this contention is not much convincing because the application under Section 7 has been filed in the year 2021 by the Financial Creditor Bank, which has been admitted for CIRP by the above order of even date. Thus, the present application is dismissed being infructuous. However, the interest of the home buyers is protected and are liberty to file their claim before the Resolution Professional, and the same can be put in the CoC for redressal of their grievances.

15.2. It is pertinent to mention that vide order dated 04.05.2023 passed by the Hon'ble Supreme Court, the further proceedings before the Hon'ble High Court of Punjab and Haryana, in the Writ petition filed by the Home Buyers Association and others, have been stayed for further proceedings.

15.3. In these circumstances, the present application is not maintainable as the Home Buyers Association is neither a necessary party nor a proper party for the just and proper adjudication of the application under Section 7 of the Code filed

by the Petitioner Bank, which is otherwise admitted today vide separate order, as discussed above.

16. Thus, CP (IB) No. 98/Chd/Hry/2022 is admitted for CIRP and I.A. No.2553/2023 stands dismissed and is disposed of accordingly.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

January 12, 2024
ASG