

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 266 of 2026

[Arising out of Order dated 03.02.2026 passed by the Adjudicating Authority (National Company Law Tribunal, Chandigarh Bench, Court – I, Chandigarh), in C.P. (IB) No. 45/Chd/Hry/2024]

IN THE MATTER OF:

Surender Singh
Suspended Director of Vatika Limited **...Appellant**

Versus

IDBI Trusteeship Services Ltd. & Anr. **...Respondents**

Present:

For Appellant : **Mr. Kapil Sibbal, Mr. Virender Ganda & Mr. Arun Kathpalia, Sr. Advocates with Mr. Vishal Ganda, Mr. Ayandeb Mitra, Ms. Manisha Singh, Ms. Diksha and Ms. Riya Palnitkar, Advocates.**

For Respondent : **Mr. Gopal Jain, Mr. Nalin Kohli & Mr. Abhijeet Sinha, Sr. Advocates with Ms. Meghna Mishra, Mr. Nikhil Ratti Kapoor, Yashodhara Gupta, Mr. Kevin Chadha and Mr. Saikat Sarkar, Advocates for R-1.**

Mr. Gaurav Mitra and Mr. Adhish Srivastava, Advocates for RP.

Mr. Rudreshwar Singh Sr. Advocate with Mr. Eklavya Dwivedi, Advocates for Omkara Assets.

Mr. Akshay Srivastava, Mr. Vivek Kumar and Ms. Raveena Paniker, Advocates for Interveners.

Mr. Aditya Rathi, Advocate.

Mr. Sumesh Dhawan, Mr. Kartik Nayar and Mr. Divyansh Rai, Advocates for Intervener.

J U D G M E N T

ASHOK BHUSHAN, J.

This appeal has been filed by a suspended director of the corporate debtor, Vatika Limited challenging the order dated 03.02.2026 passed by the adjudicating authority (National Company Law Tribunal, Chandigarh Bench, Court I, Chandigarh) admitting a Section 7 application filed by the IDBI Trusteeship Services Limited, respondent No. 1 herein. Aggrieved by the order of the adjudicating authority initiating Corporate Insolvency Resolution Process (CIRP) against the corporate debtor appointing an Interim Resolution Professional (IRP) and imposing moratorium, this appeal has been filed.

2. Brief background facts of the case necessary to be noticed for deciding the appeal are:

- i. The corporate debtor, Vatika Limited is a company engaged in the business of Real Estate Development. The corporate debtor is developing multiple residential and commercial projects across the state of Haryana and National Capital Territory Region.
- ii. On 30.06.2017, corporate debtor entered into Debenture Trust Deed (DTD) with IDBI Trusteeship Limited (Debenture Trustee) acting as a Debenture Trustee on behalf of the Indiabulls India Opportunities Fund and Indiabulls High Yield Fund for the issuance of 1,460 fully secured renewable and Non-Convertible Debentures having a value aggregating to total of ₹146 crore.

- iii. The issuance of debenture was protected by various securities provided by the corporate debtor, including mortgage over the project land, assignment of receivables, Escrow Account for project, revenue and other securities. Term of the debenture was for 48 months from the investment date until 30.06.2021.
- iv. By first Amendment of DTD dated 28.06.2021 term of the debenture was extended till 30.06.2022. On corporate debtor's last request being on 26.06.2023, respondent vide letter dated 27.06.2023, granted extension of redemption date till 30.06.2024.
- v. On 01.09.2023, IDBI Trusteeship issued a notice seeking payment of ₹24,26,61,821/- along with an additional coupon @ 5% per annum within 15 days from the receipt of the notice.
- vi. On 09.10.2023, the corporate debtor prayed for No-Objection Certificate (NoC) for sale of various units in the 'Project Aspirations'. The IDBI Trusteeship vide letter dated 30.10.2023, granted no objection to sale of various plots in 'Project Aspirations', Gurgaon.
- vii. On 29.12.2023, another notice was issued by Debenture Trustee seeking payment of ₹29,72,29,959/- along with the additional coupon @ 5% per annum within 15 days from the receipt of the said notice. No payment having been received from the corporate debtor that Debenture Trustee filed an application on 24.01.2024 under Section 7, claiming amount of default of ₹274,13,45,241/-.

- viii. Date of default was mentioned as 15.06.2022. Notice was issued under Section 7 application. Reply was filed by the corporate debtor raising various objections to the Section 7 application. It was pleaded that by consent extension for repayment of debenture was on 30.06.2024, whereas application under Section 7 has been filed on 24.01.2024, which is prior to date of redemption to debentures.
- ix. It was pleaded that request for 57 NoC was made on 22.05.2024, but not a single NoC was received which resulted in loss of revenue. After filing of Section 7 application and up to the date of filing of reply an amount of ₹37.2 crore have been paid. The claim of alleged amount ₹274 crore in Section 7 application is denied which amount is not due.
- x. It was pleaded that proceedings initiated by IDBI Trusteeship is a recovery proceeding.
- xi. Adjudicating authority heard the parties and by impugned order dated 03.02.2026 has admitted Section 7 application.
- xii. Adjudicating authority in the impugned order held that default has been committed by the corporate debtor. Non-issuance of NoC by financial creditor cannot dilute or extinguish the statutory consequences flowing from the default. It was held that failure to pay interest due from 15.06.2022 onwards constitute a contractually recognised event of default under Clause 19 of the Trust Deed and extension of final maturity date for the principal does not *ipso facto* grant a moratorium on accrued and future interest obligations.

xiii. The pleas raised by the corporate debtor to confine the CIRP project-wise was rejected, holding that Insolvency & Bankruptcy Code recognises insolvency of the corporate debtor and not of an individual project. It was held that Code provides for project-wise resolution and not for project-wise insolvency. Adjudicating authority admitted Section 7 application, imposed moratorium and appointed IRP.

3. We have heard, learned Sr. counsels Mr. Kapil Sibbal, Mr. Virender Ganda and Mr. Arun Kathpalia appearing for the appellants and learned Sr. counsels, Mr. Gopal Jain, Mr. Nalin Kohli and Mr. Abhijeet Sinha appearing for the R-1. Learned counsel, Mr. Gaurav Mitra has appeared for the Resolution Professional (RP). We have also heard learned Sr. counsel. Mr Sanjeev Sen appearing for the respondent/homebuyers as well as learned counsel for the interveners.

4. Learned counsel for the appellant in support of the appeal submitted that alleged default of ₹29.72 crore which amount was claimed in the notice dated 29.12.2023 was cured during pendency of Section 7 application. The corporate debtor has made a payment of ₹37.70 crore to the financial creditor, hence it effectively cleared all dues. The adjudicating authority ought not to have admitted Section 7 application. It is submitted that the payment of debentures was due only on 30.06.2024, by virtue of extension granted by R-1 vide letter dated 27.06.2023. Thus, principal amount on debenture was not due. In the notice issued by R-1 amount claimed was only ₹29,72,29,957/- and no other amount was claimed in the notice, even if event of default was committed in not making payment within 15 days as per notice dated *Comp. App. (AT) (Ins.) Nos. 266 of 2026*

29.12.2029. Only amount due on date when Section 7 application was filed was the amount of ₹29,72,29,959/-. The principal amount under the debentures was no due, it being payable only on 30.06.2024 and no notice within meaning of Clause 19.2 of the Debenture Trust Deed was issued recalling the payment under debentures. The amount claimed in default under Part IV of Section 7 application i.e., amount of ₹274,13,45,241/- was wholly incorrect and baseless. Amount claimed in Part IV being not due, the application under Section 7 deserves to be rejected on this ground alone. It is submitted by learned counsel for the appellant that DTD dated 30.06.2017, by which amount of ₹146 crore was raised by the corporate debtor was with respect to specified project and identified property, which are detailed in the DTD. Debenture security under the DTD were pertained to the project and the property. Sale proceeds from the project were to be deposited in the Escrow Account. DTD specified that prior to sale of any unit in the project, the no objection from the Debenture Trustee were required. Under DTD, the Debenture Holder had right to appoint the Project Management Consultant as well as an internal auditor. Various clauses of DTD clearly provided that amount disbursed was in relation to the project and the property. In event CIRP, if initiated ought to have been confined to the project in question, which project was subsequently registered with RERA as aspirations in 2022. At the time when amount was raised by debentures, property was specified, project was neither registered nor named which project came to be registered as aspirations, all details of registration project, issuance of license by Department of Town and Country Planning (DTCP) of Haryana were shared

with the financial creditor. Financial creditor has issued NoC for sale of units in 'Project Aspirations' thus was also well aware it is of 'Project Aspirations' which is subject matter of the debentures. Adjudicating authority committed error in holding that IBC does not contemplate project-wise insolvency. Judgement of the Hon'ble Supreme Court in '**Mansi Brar Fernandes' Vs. 'Shubha Sharma & Anr.'**' reported in [2025 SCC OnLine SC 1972], and 2 judgements of this Tribunal in '**Flat Buyers Association Winter Hills – 77, Gurgaon' Vs. 'Umang Realtech P. Ltd. & Ors.'**' reported in [2020 SCC OnLine NCLAT 1199], and '**Amit Jain (Suspended Directors of Mahagun (India) Pvt. Ltd.)' Vs. 'IDBI Trusteeship Services Ltd. & Anr.'**' reported in [2025 SCC OnLine NCLAT 1753], were relied to support the submission of project-wise resolution, without even advertng to the said judgements, the Tribunal came to conclusion that project-wise insolvency is not contemplated and statutory scheme under IBC is only for project-wise resolution. Certain clauses of the Trust Deed were also referred to by the adjudicating authority for rejecting the plea of project-wise resolution. The view of the adjudicating authority that no project-wise insolvency is permissible is contrary to the judgements of this Tribunal. Learned counsel for the appellant has relied on the recent judgement of this Tribunal in '**Gagan Tandon & Ors.' Vs. 'IL&FS Financial Services Ltd. & Ors.'**' reported in [2026 SCC OnLine NCLAT 16], where this Tribunal has reiterated the law pertaining to Real Estate Company with regard to project-wise resolution, which judgement fully covers the issues raised in the present appeal. It is submitted that had the Section 7 application initiated for correct amount due against the corporate debtor,

corporate debtor would have discharged the said debt but due to incorrect and inflated amount claimed in Section 7 application, the corporate debtor was put to prejudice and great loss. The corporate debtor is carrying various projects in state of Haryana and National Capital Region, the respondent is only lender of the project in question. There are 58 projects spanning over various cities, in Northern India and 50 ongoing projects at Gurgaon itself, putting all the projects in insolvency, with respect to which lender has no concern will cause great prejudice to stakeholders of different projects, including the homebuyers. It is further submitted that in pursuance of liberty granted by this Tribunal on 06.02.2026, on 25.02.2026, the appellant has submitted a proposal to the financial creditor to liquidate the entire amount claimed under Part IV, which offer was rejected by the financial creditor, which clearly indicates its intention to endeavour to misuse the IBC and take control of entire corporate debtor, which included 58 projects and assets worth ₹18,000 crores. It is submitted that this Tribunal may exercise its jurisdiction under Rule 11 of the NCLAT Rules, 2016 and close the CIRP in the facts of the present case and permit the appellant to liquidate the entire amount in fazed manner as suggested by the appellant.

5. Learned counsel for the respondent refuting the submissions of the counsel for the appellant submits that in the present case, debt and default has been fully proved. With effect from 15.03.2022, the corporate debtor has failed to make quarterly payments of coupon interest. Notice dated 29.12.2023 was issued demanding the payment of ₹29,72,29,959/- towards interest payment within 15 days. Amount having not been paid an event of

default has been committed under Clause 19 of the DTD, which lead the financial creditor to file Section 7 application on 24.01.2024. The submission of the appellant that amount of ₹274,13,45,241/- was not due is incorrect. By virtue of Clause 19.2(b) of the DTD, the entire amount under the debenture becomes due, hence financial creditor has rightly claimed the amount in default as ₹274,13,45,241/-. The submission of the appellant that by payment of ₹37.2 crore during pendency of the Section 7 application, entire default has extinguished is incorrect. The amount paid during pendency of Section 7 application was not even able to clear the quarterly interest default. The default continues and adjudicating authority has rightly admitted Section 7 application. Supporting the order of the adjudicating authority, rejecting the plea of project-wise resolution, it is submitted that law does not contemplate project-wise insolvency, but only project-wise resolution, which question need to be considered by RP and the Committee of Creditors (CoC) in the CIRP. It is falsely portrayed that project defined in DTD is 'Project Aspirations'. 'Project Aspirations' came to be registered only in the year 2022, hence it cannot be accepted that funds were extended to the corporate debtor in 2017 for the project in question. It is submitted that RERA registration of 'Project Aspirations' has also expired. It is submitted that Clause 8.3 of DTD contemplate that corporate debtor shall utilise the subscription amount to meet on going requirement of funds for business activities and general corporate purpose, hence the amount of debenture was for corporate purpose and not confined to any project. Judgement of this Tribunal in '**Gagan Tandon & Ors.**' (*supra*), is not applicable. There are various distinguishing

features in the present case from the case of Gagan Tandon. It is submitted that there was no obligation on the financial creditor to issue NoC. It is submitted that it was an obligation of the corporate debtor to make the payment of coupon interest, irrespective of the availability of the cash flow in the Escrow Account. The requirement seeking prior permission before sale of project unit is the covenant binding on the corporate debtor is with intention to protect the debenture security created in favour of the Debenture Holders. Issuance of NoC was contingent upon servicing of interest payment, when corporate debtor defaulted in payment of interest, there was no obligation to issue NoC for sale of units. Debt and default having been proved, as per the law laid down by the Hon'ble Supreme Court, the adjudicating authority had no option except to admit Section 7 application. Appellants are not entitled for any relief in this appeal.

6. Learned counsel appearing for the homebuyers/respondents No. 3 to 6 submits that they have already filed a Section 65 application for seeking a declaration that Section 7 proceedings have been initiated fraudulently and with malicious intent, which application has been rejected, which is separately challenged. An I.A. No.1162/2026 has been filed by M/s. Omkara Asset Reconstruction Private Ltd. praying for impleadment and dismissal of company petition, applicant is also creditor of the corporate debtor vide Assignment Agreement dated 28.12.2024. I.A. No.1134/2026 has been filed by Scaler Ventures Business Solutions Private Limited praying for intervention in the appeal. Appellant claimed to be financial creditor in a

class, corporate debtor entered into an Agreement to Sell dated 17.01.2024, for sale of 165 plots situated in Project Vatika Limited next to.

7. From the submissions of counsel for the parties and materials on the record, following are the questions which arise for consideration:

- I. Whether the default by the corporate debtor was for the amount of ₹29,72,29,959/- as claimed in notice dated 29.12.2023 or financial creditor was entitled to claim the entire amount, including principal amount of debentures in Part IV i.e., of ₹274 crore?
- II. Whether financial creditor has been able to prove debt and default on part of corporate debtor?
- III. Whether due to payment of ₹37.2 crore during pendency of Section 7 application before the NCLT, default by corporate debtor stood cured?
- IV. Whether view of the adjudicating authority that insolvency cannot be project-wise in case of Real Estate Company and only resolution can be done project-wise is correct in law?
- V. Whether DTD dated 30.06.2017, contemplated payment of amount for a project against a property and what were the security under the DTD?
- VI. Whether in the facts of the case, CIRP is liable to continue against the corporate debtor as a whole or confine to the project contemplated under the DTD?
- VII. Relief, if any to which, appellant is entitled?

Question Nos. (I), (II) & (III):

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8. All these questions being interconnected are taken together.

9. The DTD dated 30.06.2017 contemplated as per Schedule IX of the DTD dealing with terms and debentures, the Debenture Holders were entitled to receive an interest at a coupon rate of 11.30% per annum, compounded monthly and payable quarterly. The term of debenture was 48 months i.e., 30.06.2021. Paragraphs 2 & 3.1 of the Schedule IX is as follows:

“2. Term

The term of the Debentures shall be 48 (forty eight) months from the Investment Date until 30 June, 2021 (“Outer Date”).

3.1 From and including the date of disbursement (the ‘Investment Date’), the Debenture Holders shall be entitled to receive an interest at a coupon rate of 11.39% (Eleven point three nine percent) per annum compounded monthly (“Coupon”) which shall be payable quarterly and shall accrue as per dates mentioned in the Repayment Schedule (“Interest Due Date”), provided however that:

(a) The interest shall be payable Irrespective of the availability of cash flows in the Escrow Accounts, provided however the unpaid interest shall accrue and be payable per paragraph 3.2 below.

(b) In the event the Company pays the interest prior to any Interest Due Date (“Interest Payment Date”), such interest will be deemed to have been accrued on the date of such payment.”

10. The period of debenture was extended by first amendment to the debenture on 28.06.2021 and thereafter further extension were granted in the tenure of the debenture, last extension was granted on 27.06.2023 issued by R-1 under which the principal amount of debenture of ₹146 crore was payable on 30.06.2024. Letter dated 27.06.2023 issued by R-1 to the corporate debtor, which letter was part of Section 7 application filed as Annexure A-20

to the Section 7 application. Thus, the principal amount was payable only on 30.06.2024. Letter dated 27.06.2023, issued by R-1 is as follows:

“Date: June 27, 2023

To,

IDBI Trusteeship Services Ltd.

Asian Building GF 17 Kamani Marg.

Ballard Estate, Mumbai 400001.

Dear Sir,

Subject; Non-convertible debentures aggregating to Rs.146,00,00,000/- (Rupees One Hundred Forty Six Crore only) issued by Vatika Limited ("Company")

We refer to Non-convertible debentures aggregating to Rs.146,00,00,000/- (Rupees One Hundred Forty Six Crore only) issued by Vatika Limited ("Company") issued by Vatika Limited and subscribed aggregating to to Rs.146,00,00,000/- (Rupees One Hundred Forty Six Crore only) by India bulls High Yield Fund and Indiabulls India Opportunities Fund.

In connection to the request received from the Company Vide letter dated 26th June, 2023 and various discussions with their officials regarding extension of redemption date of debentures to 30th June 2024, we hereby confirm to grant our approval for extension of the redemption date to 30th June 2024 and further amend the necessary document in this regard.

The Parties hereby agree to delete and replace Clause 5.3 of Schedule IX (Interest Payment Dates/Repayment Schedule) of the Original OTD with the following:

Date	Coupon	Fixed RP	Variable RP	Principal Repayment
15-Sep-17	3,54,15,009	-	-	-
15-Dec-17	4,18,54,101	-	-	-
15-Mar-18	4,13,94,166	-	-	-
15-Jun-18	4,23,14,036	-	-	-
15-Sep-18	4,23,14,036	-	-	-
15-Dec-18	4,18,54,101	-	-	-
15-Mar-19	4,13,94,166	-	-	-
15-Jun-19	4,23,14,036	-	-	-

15-Sep-19	4,23,14,036	-	-	-
15-Dec-19	4,18,54,101	-	-	-
15-Mar-20	4,18,54,101	-	-	-
15-Jun-20	4,23,14,036	-	-	-
15-Sep-20	4,23,14,036	-	-	-
15-Dec-20	4,18,54,101	-	-	-
15-Mar-21	4,13,94,166	-	-	-
15-Jun-21	4,23,14,036	-	-	-
15-Sep-21	4,23,14,036	-	-	-
15-Dec-21	4,18,54,101	-	-	-
15-Mar-22	4,13,94,166	-	-	-
15-Jun-22	4,23,14,036	-	-	-
15-Sep-22	4,23,14,036	-	-	-
15-Dec-22	4,18,54,101	-	-	-
15-Mar-23	4,13,94,166	-	-	-
15-Jun-23	4,23,14,036	-	-	-
15-Sep-23	4,23,14,036	-	-	-
15-Dec-23	4,18,54,101	-	-	-
15-Mar-24	4,18,54,101	-	-	-
15-Jun-24	4,23,14,036	-	-	-
30-Jun-24	68,99,028	46,71,70,000	As per Paragraph 5.1 (b) of Original DTD	1,46,00,00,000

We confirm that all other terms of the DTD shall remain unchanged and will continue in full force and effect and shall not be amended without following the procedure for amendment as set out in the DTD, We further confirm that except as expressly stated, nothing contained herein is intended to or shall be construed as waiver of any rights or remedies that a Debenture Holder may have against the Issuer pursuant to the DTD or any other Debenture Documents.

Terms capitalized but not defined herein shall have the meaning ascribed to the under the DTD.

Yours sincerely

For Indiabulls Investment Management Limited”

11. The corporate debtor was, however obliged to make the payment of interest as per DTD. On 01.09.2023, notice was issued by the Debenture Trustee calling for payment of ₹24,26,61,821/- within 15 days. The

Debenture Trustee issued another notice dated 29.12.2023, demanding payment of ₹29,72,29,959/- within 15 days from receipt of notice, which notice was basis for Section 7 application. The notice dated 29.12.2023 referred to outstanding interest and the notice directed the corporate debtor to pay the amount within 15 days from the date of receipt of the notice. The notice reads as follows:

“COURIER/E-MAIL

Ref. No.: 61453/ITSL/OPR/2023-24

Date: December 29, 2023

1. VATIKA LIMITED

VATIKA TRIANGLE, 4TH FLOOR

SUSHANT LOK, PHASE-1, BLOCK-A

MG ROAD, GURUGRAM-122002, HARYANA

2. APLIN DEVELOPERS PVT. LTD.

**FLAT NO. 621-A, 6TH FLOOR, DEVIKA TOWERS 6,
NEHRU PLACE, NEW DELHI-110019**

3. MR. ANIL BHALLA

**FARM NO 4 HYDE PARK SULTANPUR FARM
MEHRAULI, NEW DELHI-110030**

4. MR. GAUTAM BHALLA

**FARM NO 4 HYDE PARK SULTANPUR FARM
MEHRAULI, NEW DELHI-110030**

EMAIL: anilbhalla@vatikagroup.com

gautambhalla@vatikagroup.com

nikkhilbhatia@vatikagroup.com

surendersingh@vatikagroup.com

**SUBJECT : Notice under the Debenture Trust Deed
and/or the applicable laws for, inter alia, (a)
payment of amount(s) under the Debenture Trust
Deed and/or (b) sale/transfer/assignment etc. of**

the Security/Securities provided under the Security Documents.

Dear Sir(s),

We, IDBI Trusteeship Services Limited, a company incorporated in terms of the Companies Act, 1956 and acting as Debenture Trustee (hereinafter Trustee) for debenture holders of the non-convertible debenture aggregating Rs.146 Crore (Debentures) issued by you, the addressee No. 1 in terms of the Debenture Trust Deed dated 30.06.2017 executed between the Addressees No. 1, 2 and the Trustee issue the following notice to you:

Please note that in terms of the Debenture Trust Deed, quarterly interest amounts (coupons) became due and payable to Indiabulls High Yield Fund and Indiabulls India Opportunities Fund, the debenture holders as per beneficiary position list in the relation to the Debentures as under:

<i>Due Date</i>	<i>Outstanding Interest (INR)</i>
15-Mar-2022	28,71,445/-
15-Jun-2022	4,23,14,036/-
15-Sep-2022	4,23,14,036/-
15-Dec-2022	4,18,54,102/-
15-Mar-2023	4,13,94,1667-
15-Jun-2023	4,23,14,036/-
15-Sep-2023	4,23,14,036/-
15-Dec-2023	4,18,54,102/-
Total	29,72,29,959/-

However, you have failed to pay the interest amounts which have become due and payable under Clause 3.1 of the Schedule IX of the Debenture Trust Deed. This entails payment of additional coupon @ 5.00% per annum compounded monthly on the outstanding interest amount from the date of default till the company makes payment of the interest amount in

terms of Clause 3.2 read with Clause 7.1 of Schedule DX of the Debenture Trust Deed. Accordingly, an event of default has occurred in terms of Clause 19.1 of the Debenture Trust Deed.

As per the terms and conditions of the Debenture Trust Deed, you have 15 calendar dates from the respective due dates to cure the default and make the payment of the interest amounts alongwith additional and/or default interest to the Debenture Holders.

Accordingly, you are called upon to pay above mentioned amounts aggregating INR 29,72,29,959/- (Rupees Twenty Nine Crores Seventy Two Lakhs Twenty Nine Thousand Nine Hundred Fifty Nine). In addition to the said amount, you are also liable to pay additional coupon @ 5.00% per annum on a monthly basis over and above documented interest rate, penalty charges and all applicable charges in terms of the Debenture Trust Deed, computed on the entire outstanding secured obligations with effect from respective dates of default (alongwith further interest till date of payment) within 15 days from the date of receipt of this notice failing which the Debenture Trustee shall be constrained to inter alia enforce the securities (or any part thereof) that have been created to secure the Debentures and enforce all such rights that are available to them under applicable laws.

Please note that this notice is without prejudice to and/or without impairing/affecting any of our rights as a Debenture Trustee and/or rights of the Debenture Holder under the Debenture Trust Deed, the Transaction Documents or otherwise.

Any capitalized terms used and not defined herein shall have the same meaning as ascribed to such terms under the Trust Deed and the other Transaction Documents.

Yours sincerely,

AUTHORIZED SIGNATORY

IDBI TRUSTEESHIP SERVICES LIMITED

DEBENTURE TRUSTEE

CC: Debenture Holders”

12. Along with the Section 7 application, the Debenture Trustee has also placed reliance on NeSL certificate, which certificate mentions, date of submission as 29.12.2023 and default amount as ₹29,72,29,959/-. Part B of the NeSL certificate contained following information:

“NATIONAL E-GOVERNANCE SERVICES LIMITED

PART B

(History of all filing of information received by IU for the same UDI, whether regular debt or default, and the status of authentication by the party) History of submission and Authentication in respect of M/s VATIKA LIMITED (Debtor)

Unique Debt Identifier:
TRUST0460D_INE790J07073

<i>Date of Submission</i>	<i>29-12-2023 12:00:43</i>
<i>Type of Submission</i>	<i>Default Submission</i>
<i>Submission ID</i>	<i>1</i>
<i>Submitted by (CREDITOR)</i>	<i>M/s CREDITOR FRP REP. BY IDBI TRUSTEESHIP SERVICES LTD</i>
<i>Debtor</i>	<i>M/s VATIKA LIMITED</i>
<i>Default Amount</i>	<i>297229959.00</i>
<i>Status of Authentication by Debtor</i>	<i>DEEMED TO BE AUTHENTICATED</i>
<i>Authentication Completed on</i>	<i>14-01-2024 00:06:46”</i>

13. The application was filed under Section 7 by the Debenture Trustee on 24.01.2024, i.e., immediately after authentication of the above amount of default of ₹29,72,29,959/-. As noted above, quarterly interest payment was contemplated by the DTD, the notice dated 29.12.2023 clearly mentions the details of default of the interest accumulating the amount of ₹29,72,29,959/-, which amount was also authenticated by NeSL certificate as relied by the financial creditor itself. Now we come to the Section

7 application filed by the financial creditor to notice the pleadings and basis of Section 7 application. In Part IV of the application, at column No. 1 under the heading **“Particulars of Financial Debt”** after giving details of DTD, various securities referring to various clauses of DTD as well as Schedule IX(3) of Trust Deed, financial creditor has referred to the notice dated 29.12.2023 and referring to the above notice, the financial creditor pleaded that corporate debtor is in default of ₹274,13,45,241/-. Para U of Part IV, column 1 is as follows:

“Part – IV

PARTICULARS OF FINANCIAL DEBT		
1.	TOTAL AMOUNT OF DEBT, DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE, AND THE DATE FROM WHICH SUCH DEBT FELL DUE	 u) Subsequently, owing to the continuous failure of the Corporate Debtor, Corporate Guarantor and Personal Guarantors to pay outstanding amounts, the Applicant issued another Demand notice dated December 29, 2023 demanding payment of Rs. 29,72,29,959/- (Rupees Twenty Nine Crores Seventy Two Lakhs Twenty Nine Thousand Nine Hundred and Fifty Nine only) along with. additional coupon@ 5% per annum on a monthly basis over and

		above documented interest rate, penalty charges and all applicable charges in terms of the Trust Deed, within 15 days from the date of receipt of this notice. However, yet again the Corporate Debtor along with the Corporate Guarantor and Personal Guarantors failed to pay the outstanding amounts. True Copy of the Demand Notice dated December 29, 2023, is annexed herewith and marked as Annexure - A/22.
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14. Part IV, Item No. 2, which gives a detail of amount claim to be in default is as follows:

“Part – IV

PARTICULARS OF FINANCIAL DEBT		
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	Amount in Default: Rs. 274,13,45,241/- (Rupees Two Hundred Seventy-Four Crores Thirteen Lakhs Forty-Five Thousand Two Hundred Forty only) which comprises of the Principal Amount, Interest, Other Charges (Fixed Redemption Premium) and Default Interest.

		A tabulated computation of the amounts due and payable is annexed herewith and marked as Annexure - A/23. The defaults committed by the Corporate Debtor are of a continuing nature. Date of Default: The date of default is June 15, 2022.
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15. When we look into Part V, documents annexed with the application were referred to prove the existence of debt of ₹274,13,45,241/-. As noted above, Part IV last notice which is referred to in Part IV is notice dated 29.12.2023. The DTD provides for event of default, in clause 19.2. Clause 19.2 provides for issuing the notice on occurring the event of default. Clause 19.2 on which reliance is placed by learned counsel for both the parties, provides as follows:

“19.2 Upon the occurrence of an Event of Default which is capable of being cured, the Debenture Holders may cause the Debenture Trustee to Immediately. Issue a written notice ("Default Notice") requiring the Promoters, the Land Owning Companies and the Company to remedy the Event of Default within the Cure Period. If the Event of Default remains unremedied after the expiry of the Cure Period the Debenture Holders may, at their sole discretion and option, exercise through the Debenture Trustee, any or all of, or a combination of, the following remedies, notwithstanding the other rights of the Debenture Holders under this Deed:

(a) Terminate the Definitive Agreements in accordance with the terms thereof;

(b) Require the Company to redeem all the outstanding Debentures, within 10 (ten) days of the expiry of the

Cure Period such that the Debenture Holders achieve the Default Redemption Price:

(c) Require the Promoters to purchase all the outstanding Debentures, within 10 (ten) days of the expiry of the Cure Period, such that the Debenture Holders achieve the Default Redemption Price:

(d) Appoint such numbers of Director's on the Board of the Company and the Land Owning Companies as the Investors deem appropriate (Debenture Director(s)):

Provided that. subject to Applicable Law, the Company, the Land Owning Companies and the Promoters expressly agree and undertake that:

(A) The Debenture Director shall not be liable for any default or failure of the Company or the Land Owning Companies in complying with the provisions of any applicable Law, Including but not limited to, defaults under the Companies Act, taxation and labour Laws of India;

(B) The Debenture Director shall not be identified as an officer in default of the Company or the Land Owning Companies, or occupiers of any premises used by the Company or the Land Owning Companies or employers under applicable Law; and

(C) The Articles of Association of the Company and the Land Owning Companies shall provide for indemnification of the all Directors including the Debenture Director. up to the extent permitted under Law. All Directors shall be indemnified, out of the Assets and capital of the Company or the Land Owning Companies against any liability Incurred by the Directors in defending any proceedings, whether civil or criminal, against the Company or the Land Owning Companies.

(e) Exercise their rights under any of the Definitive Agreements including in relation to enforcement of security created under the Definitive Agreements;

(f) Direct the Escrow Agent to:

(I) recognise the Escrow Nominee as the exclusive authorized signatories with respect to the Escrow Accounts;

(II) Cease making payments of any amounts payable to the Promoters under the Definitive Agreements until the Debentures are rendered in terms thereof, and

(III) Cease making payments of any amounts payable in the Company/Land Owning Companies under the Definitive Agreements until the Debentures are redeemed in terms hereof.

(g) Require the Promoters, the Land Owning Companies and the Company to undertake all actions necessary for the Escrow Nominee to be solely authorized to operate the Escrow Accounts;

(h) Direct the Escrow Nominee to deliver written Instructions to the Escrow Agent to deal with the monies lying or to be received in the Escrow Accounts (Including, if necessary as attorney for and in the name of the Company Land Owning Companies), generally in such manner, and upon such terms whatever as the Debenture Holders may consider fit. Including deliver to the Escrow Agent a written notice instructing the Escrow Agent to make payment of all the amounts received to be received in the Escrow Accounts in the Debenture Holders including to create, break, premature break, liquidate, and appropriate the proceeds of any fixed deposits created out of such amounts in terms of the Escrow Agreement), till such time that the aggregate amounts outstanding to the Debenture Holders in terms of the Definitive Agreements have been fully recovered by the Debenture Holders:

(i) Require the Debenture Trustee to exercise rights under this Deed, including (illegible) not limited to enter and take possession of the Property, appoint a new developer to develop the Project via joint venture/joint development/development management model, disposition/sale of the entire Project. bulk sale of Project units, sale of FAR/development rights: and/or to enforce any or all of, or a combination of the Security Interest created pursuant to the Definitive Agreements; and/or

(j) Assign all or any of the Debentures and/or any of the respective rights under this Deed, without the prior consent of any Person.”

16. Clause 19.3 provides that upon the occurrence of event and default, which is not capable of being cured, Debenture Holder may cause the

Debenture Trustee to immediately issue the default notice and their sole discretion and option exercised through the Debenture Trustee any or all of the combination of all the remedies set out in clause 19.2. Clause 19.3 is as follows:

“19.3 Upon the occurrence of an Event of Default which is not capable of being cured, the Debenture Holders may cause the Debenture Trustee to immediately Issue the Default Notice and at their sole discretion and option, exercise through the Debenture Trustee, any or all of or a combination of, the remedies set out at Clause 19.2, notwithstanding the other rights of the Debenture Holders under this Deed.”

17. The above clauses thus require cure notice to be issued by Debenture Trustee to company on event of default. In the present case notice dated 29.12.2020 which gives 15 days period for making the period is as per Clause 19.2 and is a notice providing cure period of 15 days for payment of amount of ₹29, 72, 29, 959/-. We have already extracted the relevant part of the notice dated 29.12.2023. The notice is clearly called upon the corporate debtor to pay amount aggregating to ₹29,72,29,959/- along with the additional coupon @ 5% per annum on monthly basis over and above documented interest rate, penalty charges and all applicable charges in the terms of DTD. As noted above on 29.12.2023, the principal payment of ₹146 crore was not due. The R-1 itself having extended the date for payment of principal amount as 30.06.2024 vide letter dated 27.06.2023, as extracted above. The notice required the corporate debtor to pay the amount “within 15 days from the date of receipt of this notice, failing with the debenture trust shall be constrained to *inter alia* enforce the securities for any part thereof that have been created to secure the debenture and enforce all such rights

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that are available to them under applicable laws”. Notice further mentioned that it is without prejudice to and or without impairing affecting any of rights or rights of the Debenture Holder under DTD. As noted above account of default committed by corporate debtor and after expiry of the cure period Debenture Holders may at their sole discretion and option exercise through Debenture Trustee **any or all of or a combination, the following remedies:**

“(a) Terminate the Definitive Agreements in accordance with the terms thereof;

(b) Require the Company to redeem all the outstanding Debentures, within 10 (ten) days of the expiry of the Cure Period such that the Debenture Holders achieve the Default Redemption Price:

(c) Require the Promoters to purchase all the outstanding Debentures, within 10 (ten) days of the expiry of the Cure Period, such that the Debenture Holders achieve the Default Redemption Price:

(d) Appoint such numbers of Director's on the Board of the Company and the Land Owning Companies as the Investors deem appropriate (Debenture Director(s)):

Provided that. subject to Applicable Law, the Company, the Land Owning Companies and the Promoters expressly agree and undertake that:

(A) The Debenture Director shall not be liable for any default or failure of the Company or the Land Owning Companies in complying with the provisions of any applicable Law, Including but not limited to, defaults under the Companies Act, taxation and labour Laws of India;

(B) The Debenture Director shall not be identified as an officer in default of the Company or the Land Owning Companies, or occupiers of any premises used by the Company or the Land Owning Companies or employers under applicable Law; and

(C) The Articles of Association of the Company and the Land Owning Companies shall provide for indemnification of the all Directors including the Debenture Director. up to the extent permitted under

Law. All Directors shall be indemnified, out of the Assets and capital of the Company or the Land Owning Companies against any liability Incurred by the Directors in defending any proceedings, whether civil or criminal, against the Company or the Land Owning Companies.”

18. Admittedly, the payment was not made in pursuance of the cure notice 29.12.2023, hence the default of payment of ₹29,72,29,959/- is fully established, but there is no further action taken by the Debenture Holders or Debenture Trustee nor any notice issued after 29.12.2023 requiring the company to redeem all the outstanding debentures within 10 days of expiry of the cure period. As noted above Debenture Trustee having already extended the period for payment of principal amount of ₹146 crore till 30.06.2020 probably due to the above reason, no notice was even issued for requiring the payment of ₹146 crore by the company.

19. We, thus find substance in the submission of the appellant that the financial creditor has failed to show any basis in Section 7 application when they claim the entire amount in default of ₹274,13,45,241/-. As noted above, while calculating the amount of ₹274,13,45,241/- under Item 1 of Part IV, they have been added the principal amount of ₹146 crore. The principal amount never became due nor there was any notice requiring the company to pay the principal amount. The claim of ₹274,13,45,241/- in so far it adds the principal amount of debenture is not in accordance with the DTD and the Debenture Trustees were not entitled to claim default of principal amount on date when the file Section 7 application i.e., 24.01.2024. However, the records clearly indicate that there was clear default on the part of the company for non-payment of amount of ₹29,72,29,959/- with regard to which notice on *Comp. App. (AT) (Ins.) Nos. 266 of 2026*

29.12.2023 was issued and even after accepting the submission of the appellant that principal amount of ₹146 crore was not due. Amount defaulted on the date of filing of Section 7 application was well within threshold of ₹1 crore.

20. We may further notice the submission of the appellant that during pendency of Section 7 application, they have paid the amount of ₹37.2 crore which fact is not disputed. The R-2, however, had contained that the payment of ₹37.2 crore cannot absolve the company from default and that the amount of ₹37.2 crore was not sufficient even to cover the defaulted amount of interest. It is submitted that further amount of interest, appellant claims payment of ₹37.2 crore between the period 16.01.2024 to 13.09.2024, and further payment of ₹50 lakhs are claimed on 14.04.2024. On the date when Section 7 application was filed, there was default on the part of the corporate debtor which fully entitled the Debenture Trustee to initiate proceedings under Section 7. Payment of ₹37.2 crore during pendency of Section 7 application cannot be held to liquidate the amount defaulted by the company.

21. In view of the above discussions and our conclusions, we answer Question Nos. (I), (II) & (III) in following manner:

- I. There was default on the part of the company to pay the amount of ₹29,72,29,959/- on the date when Section 7 application was filed, the amount claimed in the Part IV of Section 7 application of ₹274 crore and odd was not correct amount which incorrectly has included the amount of principal payment of debentures of ₹146 crore which was

due only on 30.06.2024, and there was no action taken by trustee after the notice dated 29.12.2023, even requiring the payment of principal amount of debenture.

- II. The financial creditor in Section 7 application has fully proved the debt and default on the part of the corporate debtor, the corporate debtor having not paid the amount due payment of quarterly interest amount from 15.03.2022, default was thus clearly established.
- III. By payment of ₹37.2 crore during pendency of Section 7 application by the company to the financial creditor, it cannot be held that default by the company has been liquidated and the default stood cured.

Question No. (IV):

22. Before the adjudicating authority, the corporate debtor has raised the plea of project-wise insolvency. It was further pleaded that present debt of company of the financial creditor is project specific in nature, hence the insolvency ought to be initiated only on the project-wise basis and not against the corporate debtor as a whole, which has been noticed in paragraph 16 of the judgement, which is as follows:

“Project-wise Insolvency:

16. *The Respondent has vehemently contended that the present debt is project specific in nature and, therefore, insolvency, if any, ought to be initiated only on a project-wise basis and not against the Corporate Debtor as a whole. This submission, though elaborately argued, is neither borne out from the factual matrix nor sustainable in law and deserves to be rejected for the reasons recorded hereinafter.”*

23. The adjudicating authority has observed that Insolvency & Bankruptcy Code recognises insolvency as of a corporate debtor and not of the individual project. The said observations have been made in paragraph 16.1 which are as follows:

“16.1. Statutory Scheme under the IBC

At the outset, it is pertinent to note that the Insolvency and Bankruptcy Code, 2016 recognises insolvency of a “Corporate Debtor” and not of an individual project. Section 3(8) of the Code defines ‘Corporate Debtor’ as a corporate person who owes a debt to any person. The Code does not envisage a real estate project as an independent juridical entity capable of being subjected to initiation of CIRP. Further, Section 7(5)(a) mandates admission of an application once debt and default are established against the Corporate Debtor. The present petition has been filed against Vatika Limited as a corporate debtor and not against any specific project, and the statutory mandate cannot be diluted at the threshold by importing a project-wise filter at the admission stage.”

24. Further in paragraph 16.5, the adjudicating authority has noted provisions of Code providing for project-wise resolution. In paragraphs 16.5, 16.6 and 16.7 adjudicating authority made following observations while rejecting the plea of the corporate debtor, seeking project-wise insolvency:

“16.5. Code provides for Project wise Resolution and not for Project-wise Insolvency

At this stage, it is relevant to refer Regulations 4D and 36A to the Insolvency and Bankruptcy Board of India (Resolution Process for Corporate Persons) Regulations, 2016, as inserted in the said Regulations, 2016 by the Insolvency and Bankruptcy Board of India (Resolution Process for Corporate Persons) (Amendment) Regulations, 2024. Regulation 4D, of the Regulations, 2016, reads as under:

“4D. Operating separate bank account for each real estate project. Where the corporate

debtor has any real estate project, the interim resolution professional or the resolution professional, as the case may be, shall operate a separate bank account for each real estate project.”

Further, Regulation 36A, of the Regulations, 2016 provides as follows:

“36A. Invitation for expression of interest.

(1) The resolution professional shall publish brief particulars of the invitation for expression of interest in Form G of the Schedule I at the earliest, not later than sixtieth day from the insolvency commencement date, from interested and eligible prospective resolution applicants to submit resolution plans. [Clarification: The resolution professional after the approval of the committee may invite a resolution plan for each real estate project or group of projects of the corporate debtor.]”

A conjoint reading of the aforesaid provisions makes it abundantly clear that the statutory scheme under the Code and the Regulations provides only for project wise resolution after admission of the application, subject to approval of the Committee of Creditors, and does not contemplate initiation of insolvency proceedings on a project wise basis. The role of the Resolution Professional to invite resolution plans for individual projects arises only after commencement of CIRP and cannot be invoked to defeat admission of an application under Section 7 of the Code.

16.6. *It is also apposite to note, that the very concept of “project-wise insolvency” has been viewed as inherently inconsistent with the foundational structure of the Insolvency and Bankruptcy Code, 2016. In this context, it is necessary to understand the legislative intent behind the framework as was also explained by Sri Baijayant Panda, Chairperson of the Parliamentary Select Committee on the Insolvency and Bankruptcy Code (Amendment) Bill, 2025. It has been observed that insolvency under the Code is necessarily of a company and not of a project. The distinction drawn is between project-wise resolution, which may be operationally undertaken within CIRP, and insolvency itself, which statutorily attaches only to the corporate person. It is to be noted that permitting insolvency to*

remain confined to a project would dilute the core principle of the Code that default results in displacement of control of the corporate debtor and replacement of the promoter. Allowing promoters to retain control of the corporate entity while carving out isolated projects for insolvency would defeat the deterrent and disciplinary architecture embedded in the Code. This reinforces the position that while project-wise resolution mechanisms may be employed post admission within the CIRP framework, the initiation of insolvency proceedings itself cannot be restricted to a project alone.

16.7. *Accordingly, the contention of the Corporate Debtor seeking project wise insolvency at admission stage is untenable and deserves to be rejected.”*

25. It is further relevant to notice that in paragraph 5 of the judgement adjudicating authority itself has noticed the case of the appellant for project-wise insolvency in a tabular form. Paragraph 2 under the heading **“Reply of the Corporate Debtor”** is as follows:

Reply of the Corporate Debtor
“2. Project-wise Insolvency <i>The Corporate Debtor contends that the debenture financing was intrinsically linked to a specific real estate project and therefore insolvency, if any, can only be project wise and not against the Corporate Debtor as a whole. It is submitted that corporate wide CIRP would adversely affect other ongoing projects and stakeholders. Reliance is placed on Mansi Brar Fernandez v. Shubha Sharma, 2025 SCC OnLine SC 1972, Flat Buyers Association Winter Hills 77 v. Umang Realtech Pvt. Ltd., 2020 SCC OnLine NCLAT 1199 and Amit Jain v. IDBI Trusteeship Services Ltd., 2025 SCC OnLine NCLAT 1753.”</i>

26. In the above plea of the corporate debtor as noticed by the adjudicating authority itself, reliance was placed on three judgements. First judgement relied was judgement of the Hon’ble Supreme Court in **‘Mansi Brar Fernandes’ (supra)**, and second judgement relied was judgment of this

Tribunal in **‘Flat Buyers Association Winter Hills – 77, Gurgaon’ (supra)**, and third judgment relied was judgment of this Tribunal in **‘Amit Jain (Suspended Directors of Mahagun (India) Pvt. Ltd.)’ (supra)**.

27. Learned counsel for the appellant has also relied on the recent judgement of this Tribunal in **‘Gagan Tandon & Ors.’ (supra)**. It shall be sufficient to notice the judgement of this Tribunal in **‘Gagan Tandon & Ors.’ (supra)**, where this Tribunal has noted earlier judgements on the subject. This Tribunal in the above judgement has first noted the judgement of the Hon’ble Supreme Court in **‘Mansi Brar Fernandes’ (supra)** and relevant paragraph of the Hon’ble Supreme Court. We need to refer to the judgement of the Hon’ble Supreme Court in **‘Mansi Brar Fernandes’ (supra)**. The above appeal arose out of insolvency resolution process of Real Estate Project. In paragraph 15.5 of the judgement Hon’ble Supreme Court has laid down that a balanced judicial approach had to be adopted. In paragraph 15.5 following has been held:

“15.5. A balanced judicial approach in this regard will have far-reaching benefits : protecting homebuyers, restoring confidence in the real estate market, and encouraging reputed business houses and conglomerates to participate in residential development. In taking this approach, this court seeks to contribute towards cleansing and strengthening a core economic sector that sustains millions of livelihoods in both the organised and unorganised economy and touches the lives of people at their most fundamental level.”

28. Hon’ble Supreme Court in the above judgement has also held that right of shelter is a fundamental right. Various directions were issued by the

Hon'ble Supreme Court in the above judgement. The directions issued in paragraphs 21.2(5) & 21.2(6), which are relevant reads as follows:

“21.2. *In exercise of this court's jurisdiction, and to advance the constitutional and statutory objectives, the following directions are issued to the concerned authorities, in the larger interests of bona fide homebuyers and the stability of the real estate sector, which demand coordinated action by all stakeholders:*

(5) Since real estate is the second largest sector in the Insolvency and Bankruptcy Code proceedings, IBBI [Insolvency and Bankruptcy Board of India.] , in consultation with the RERA, authorities, shall constitute a council to frame specific guidelines for insolvency proceedings in real estate, including timelines for project- wise the corporate insolvency resolution process, and safeguards for allottees.

(6) Resolution of real estate insolvency should, as a rule, proceed on a project specific basis rather than the entire corporate debtor, unless circumstances justify otherwise. This would protect solvent projects and genuine homebuyers from collateral prejudice. The Insolvency and Bankruptcy Board of India shall also devise a mechanism to enable handover of possession to willing allottees where substantial units in a project are complete.”

29. This Tribunal in **‘Gagan Tandon & Ors.’ (supra)** has noticed the judgement of Hon'ble Supreme Court in paragraphs 77 to 80 and in paragraph 81, this Tribunal in **‘Gagan Tandon & Ors.’ (supra)** held as follows:

“81. *What Hon'ble Supreme Court has held in the above case is that resolution of real estate insolvency should, as a rule, proceed on a project specific basis rather than the entire CD, unless circumstances justify otherwise. This would protect solvent projects and genuine homebuyers from collateral prejudice.”*

30. In **‘Gagan Tandon & Ors.’ (supra)**, this Tribunal has noted relevant provisions of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (for short the ‘CIRP Regulations, 2016’), which has also been noticed by the adjudicating authority. In paragraphs 82, 83 and 84, following was observed:

“82. We also need to notice certain provisions of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“CIRP Regulations”), which deals with the process for resolution of a CD, with respect to resolution of a real estate company, which has several real estate projects, few amendments have been made in the CIRP Regulations, which need to be noticed. The CIRP Regulations as originally framed did not envisage any real estate project resolution. In Regulation 36A for the first time by amendment in Regulation 36A(1), a clarification has been added with effect from 15.02.2024. Regulation 36A, sub-regulation (1) with clarification provides as follows:

“36A(1) The resolution professional shall publish brief particulars of the invitation for expression of interest in Form G of the 123[Schedule-I] at the earliest, 124[not later than sixtieth day]from the insolvency commencement date, from interested and eligible prospective resolution applicants to submit resolution plans.

[Clarification : The resolution professional after the approval of the committee may invite a resolution plan for each real estate project or group of projects of the corporate debtor.]

83. The above provision is an enabling provision that empowers the RP after approval of CoC, to invite Resolution Plans for each real estate project or projects of the CD. The above Regulation thus, clearly contemplates the steps to be undertaken by the RP when there is more than one real estate project of the CD. Certain further amendments have been made in the Regulation with effect from 03.02.2025, which also needs to be noticed. Regulation 4E has been added with effect from 03.02.2025, which is as follows:

“4E. Handing over the possession. After obtaining the approval of the committee with not less than sixty-six percent of total votes, the resolution professional shall hand over the possession of the plot, apartment, or building or any instruments agreed to be transferred under the real estate project and facilitate registration, where the allottee has requested for the same and has performed his part under the agreement.”

84. *In Regulation 18, sub-regulation (4) has been inserted vide Notification dated 03.02.2025, which empowers the CoC to invite the competent authority, i.e. Real Estate (Regulation and Development) Act, 2016. Sub-regulation (4) of Regulation 18 is as follows:*

“18(4) Where the corporate debtor has any real estate project, the committee may direct the resolution professional to invite the ‘competent authority’ as defined in clause (p) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016) related to such project to attend such meeting(s) of the committee, as the committee may decide, without voting rights, for providing inputs on matters associated with the development of such project.”

31. This Tribunal, even after noticing the above Regulations as amended had observed that the said amendments throw very little lights over the complexities and difficulties which arise in the resolution of Real Estate Project. This Tribunal in **‘Gagan Tandon & Ors.’ (supra)**, has relied on earlier judgement of **‘Flat Buyers Association Winter Hills – 77, Gurgaon’ (supra)**, and has quoted the relevant paragraph. Paragraph 85 of the judgement of this Tribunal in **‘Gagan Tandon & Ors.’ (supra)** reads as follows:

“85. The above Regulations, even after amendments as noted above, throw very little light over the complexities and difficulties, which arise in the resolution of the real estate project, undertaken by a real estate Company. There have been several

precedence of this Tribunal, where this Tribunal had occasion to consider the resolution of a real estate project. The judgment of this Tribunal in Company Appeal (AT) (Ins.) No. 926 of 2019 - Flat Buyers Association Winter Hills - 77, Gurgaon v. Umang Realtech Pvt. Ltd. through IRP is one of such cases, where this Tribunal has noticed the problems in following certain process in the cases of infrastructure companies (for allottees). In Paragraphs 9 and 10 of the judgment, following observations have been made:

“9. In terms of the ‘I&B 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).

10. The Infrastructure which is constructed for the allottees by Corporate Debtor (Infrastructure Company) is an asset of the Corporate Debtor. The assets of the Corporate Debtor as per the Code cannot be distributed, which are secured for ‘Secured Creditors’. On the contrary, allottees (Homebuyers) who are ‘Unsecured Creditors’, the assets of the Corporate Debtor which is the Infrastructure, is to be transferred in their favour (‘Unsecured Creditors’) and not to the ‘Secured Creditors’ such as Financial Institutions/Banks/NBFCs.”

32. Paragraph 86 further notices the paragraph 21 of the judgement of the **‘Flat Buyers Association Winter Hills – 77, Gurgaon’ (supra)**. Paragraph 86 of the judgement is as follows:

“86. The Hon'ble Supreme Court in the above case has also noticed the concept of “reverse corporate insolvency resolution process”. This Tribunal in the above judgment, which was delivered on 04.02.2020 had observed that in the CIRP against a real estate, if allottees (Financial Creditors) or Financial Institutions are of one project initiated CIRP against the CD, it be confined to the particular project and it cannot affect other projects of the real estate company in other places. In Paragraph 21 of the judgment, following was laid down:

“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.”

33. This Tribunal clearly laid down following in paragraph 87 holding that ***“we have no hesitation to hold that when CIRP initiated by allottees or Financial institutions, under Section 7 relates to one project, the CIRP has to be confined to the said project and cannot take into its fold, the other real estate projects, situated in other cities or other states”.***

34. The adjudicating authority in the impugned order, although has noticed the judgement of the Hon’ble Supreme Court in ***‘Mansi Brar Fernandes’ (supra)*** and this Tribunal in ***‘Flat Buyers Association Winter Hills – 77, Gurgaon’ (supra)***, and ***‘Amit Jain (Suspended Directors of Mahagun (India) Pvt. Ltd.)’ (supra)***, but has not even adverted to the said judgements, law laid down by this Tribunal and the Hon’ble Supreme Court is fully binding on the adjudicating authority without adverting to the said judgements which had clearly held that project-wise insolvency process can begin and where the CIRP initiated by allottees or a financial institution, with respect to one project, it cannot take in its fold in other cities or other states. The judgement of the ***‘Gagan Tandon & Ors.’ (supra)***, was delivered by this Tribunal on 07.01.2026, where the impugned judgement has been passed by the adjudicating authority on 03.02.2026. The adjudicating authority has neither dealt the judgement of this Tribunal in ***‘Gagan Tandon & Ors.’ (supra)***, nor those judgments of this Tribunal and the Hon’ble Supreme Court which has been noticed by the adjudicating authority itself in paragraph 5 as noticed above.

35. We thus of the view that view taken by the adjudicating authority that project-wise insolvency cannot be held is not in accordance with law and has

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to be disapproved. Adjudicating authority felled in error in taking the view, contrary to the view taken by this Tribunal, which was clearly binding on the adjudicating authority.

36. We thus answer Question No. (IV) in following manner:

IV. The view of the adjudicating authority that insolvency cannot be project-wise in case of Real Estate Company and only resolution can be project-wise, is not in accordance with law laid down by this Tribunal and the Hon'ble Supreme Court.

Question Nos. (V) & (VI):

37. We need to notice the DTD dated 30.06.2017, which is a document under which debentures were issued to the company amounting to ₹146 crore. The DTD under Clause C indicated that the landowning company and the promoters are desirous of developing the project (as hereinafter defined) on the property (as hereinafter defined). Thus, Clauses C & D are as follows:

“(C) The Company, the Land Owning Companies and the Promoters are desirous of developing the Project (as hereinafter defined) on the Property (as hereinafter defined).

(D) The Company has availed a rupee term loan from Indiabulls Housing Finance Limited ("Lender") (such loan referred to as "Loan"), A loan agreement has been executed among, Inter alia, the Company and the Lender (the "Loan Agreement"). In terms of the Loan Agreement, the Company has mortgaged the Property (as defined hereafter) in favour of the Lender, created a first charge on the Receivables (as defined hereafter) In favour of the Lender, it is hereby clarified that. on or before the Closing Date, the Company shell have obtained a no objection certificate from the Lender, in Agreed Form, to the satisfaction of the Investors.”

38. In Clause D, it was mentioned that company has obtained a loan on the property and created a first charge on the receivables and the company shall obtain a NoC from the lender. Clause 1 deals with the various definition. Definition Business Plan clearly refers to the project. Definition Business Plan is as follows:

“Business Plan” shall mean the half yearly business plan, as may be revised from time to time, governing the construction, development and commercial exploitation of the Project. In form and substance and content agreed to by the Investors and the Company. prepared by the Company and the Land Owning Companies (setting out half yearly targets for the Project), which shall be reviewed and updated at the start of every half yes: In the manner set forth in Clause 15.1, which shall include without limitation:

- i. Sales price and fixing of a minimum price of units in the Project, and sales volumes;*
- ii. Construction milestones, cost estimates and building specifications;*
- iii. Construction Costs, Sales Expenses. Project Taxes;*
- iv. Marketing and sales strategy;*
- v. Development mix, building massing and phasing;*
- vi. Appointment of contractors and consultants for the Project;*
- vii. Loans to be availed;*
- viii. Layout plan of the Project;*
- ix. Saleable area of the Project;*
- x. Drawdown schedule of any loans availed from any lenders for the purpose of the Project;*
- xi. Status and review of Government Approvals; and*
- xii. Any decision materially affecting or substantially changing the Project or the Property;*

The initial Business Plan as agreed to amongst the Parties is annexed hereto as Schedule XIII;”

39. Hypothecated Property is defined in following words:

“Hypothecated Property” shall mean a first charge. in favour of the Debenture Trustee (acting on behalf of and for the benefit of the Debenture Holders) on:

(a) the Escrow Accounts of the Land Owning Companies and the Company:

(b) all the moneys, securities, instruments, Investments, and other properties deposited in, credited to or required to be deposited in or credited to or lying to the credit of the Escrow Accounts of the Land Owning Companies and the Company or liable to be credited to such accounts including, without limitation due to any actions taken or right exercised by the Company and the Land Owning Companies, and all the moneys lying to the credit of such accounts or liable to be credited to such accounts, including any interest accruing in respect thereof;

(c) developed undeveloped portion of the Project along with proportionate share of the Property, including any current & future FSI and any additional development rights on the Property:

(d) All cash flow in relation to the Project and Receivables of the Company and the Land Owning Companies from the Project and Property Including any fixed deposits created out of such monies from time to time together with all and any Interest accruing in respect thereof: and

(e) all present and future book debts, outstandings, moneys receivable, claims and bills which are now due and owing or which may at any time during the continuance of the Debenture Security become due and owing to the Company/Land Owning Companies from any Person in relation to the Project and Property;”

40. The Project has also defined in following words:

“Project” shall mean the development of a group housing project, comprising, inter-alia of residential apartments, to be developed on the Property in accordance with the Consents, Governmental Approval, applicable Law, Business Plan and/or Definitive Agreements:”

41. Property is defined as land to the extent of 12.212 acres situated in Sector 88 B, Village Harsaru, District Gurgaon, which is as follows:

“Property” shall mean the land to the extent of 12.212 acres of land as located in Sector 88B, Village Harsaru, District Gurgaon. Haryana, owned by and held in the name of the Land Owning Companies, as more particularly described at Schedule XI. where the Project is proposed to be developed:”

42. The above clauses thus clearly indicate that project was contemplated on property to the extent of 12.212 acres situated in Sector 88 B, Village Harsaru, District Gurgaon. The above clauses thus clearly indicate that project was contemplated on the property to the extent of 12.212 acres situated in Sector 88, Village Harsaru. The subsequent clauses throw considerable light on the arrangement between the parties. Clause 14.2 which contains obligation of company which requires that company shall develop the project in accordance with the business plans and transfer the property and other assets in accordance with the commercial practice. Clause 14.2(b) is as follows:

“14.2 The Company shall:

(b) Develop the Project In accordance with the Business Plan and Transfer the Property and any other Assets using procedures in accordance with sound commercial practices and as contemplated in the Business Plan and in compliance with the terms of this Deed;”

43. Further, Clause 14.2(f) contemplate that prior to sale no objection certificate from the Debenture Trustee has to be obtained for release of charge. Clause 14.2(f) is as follows:

“14.2 The Company shall:

(f) Ensure that the Security Cover is least 2 (Two) times of the amount of Secured Obligations at all times.”

44. Thus, the above clauses clearly indicate the charge of the trustee on the project and on every part of land and for sale of any asset requirement of prior no objection from lender was contemplated. Business Plan is defined in Clause 15.1. Clause 15.3, which dealt with debt financing which permit construction finance upto ₹50 crore. Clause 15.3.1 is as follows:

“15.3.1 The Promoters shall ensure that each of the Company and the Land Owning Companies do not, the Company shall ensure that the Land Owning Companies do not, and each of the Company and the Land Owning Company undertake not to incur any Financial Indebtedness or any other liability except for an aggregate construction finance upto Rs.50,00,00,000/- (Rupees Fifty Crores Only) for the sole purposes of the development of Project. Such construction licence shall rank pari-passu with Debentures. It is clarified that the restriction on the Company and the Land Owning Company under this Clause 15.3 is limited to Financial Indebtedness or other liability relating to the Project.”

45. Clause 15.4 provides for appointment of Project Management Consultant, which was to be appointed by the Debenture Holders. Clause 15.4 is as follows:

“15.4 Appointment of Project Management Consultant

The Debenture Holders shall have the right to appoint a project management consultant at any time to review the Business Plan and the Cast of Development of the Project. Costs associated with the same shall be borne by the Company.”

46. Clause 15.5 dealt with RERA and obliged the company to comply with the provisions of RERA at all times. Clause 15.5.1 is as follows:

“15.5.1 The Promoters and the Company shall ensure that the Company and the Land Owning Companies comply with the provisions of the RERA at all times and the Company shall on a quarterly basis, and at any time upon request from the Debenture Trustee. certify compliance with the provisions of the RERA.”

47. Clause 17 also empowers the Debenture Holders to appoint the internal auditor solely for the purposes of reviewing records and documents relating to the project. Clause 17.1 is as follows:

“17.1 The Debenture Holders shall have the right to appoint an Internal auditor solely for the purpose of reviewing records, accounts, documents etc. relating to the Project. Without prejudice to the rights of the internal auditor under applicable Law or as per Its terms of engagement, such auditor shall be entitled to review inter alia the financial details of the Project including costs Incurred, sales, management Information system and other accounting details, whether on a quarterly basis or otherwise, and for this purpose shall be entitled to review the relevant books and records of the Company or the Land Owning Companies All costs associated with the same shall be borne by the Company.”

48. The above clauses clearly indicate that what was contemplated was the development of a project on a specified land for which various provisions were made and clauses incorporated in the DTD, creating charge of the Debenture Holders on the project land and no unit was to be sold without taking prior approval of no objection of the Debenture Trustee. Project Monitoring Committee was to be appointed by the Debenture Holders and they can appoint the internal auditors. The above provisions indicate full and complete control of the Debenture Holders on the project and the receivables in the project. Escrow Account was also opened with respect to project receivables and which was part of security.

49. Now we come to the relevant classes which provides for debenture security. Clause 9 deals with the terms of debenture and debenture security. Clause 9.7 deals with the debenture security. Clause 9.7 is as follows:

“9.7 In consideration of the Debenture Holders subscribing to the Debentures In terms hereof and for the purpose of securing the payment of the Secured Obligations and the due discharge of the Secured Obligations by the Obligors under the Definitive Agreements, the Obligors hereby agree to create the requisite Security Interest specified in column (2) of the table below (collectively the Debentures Security, which Security Interest is more fully described in the corresponding document, where applicable) within the timelines specified in column (4) of the table below by taking all requisite actions in this regard including providing/executing the corresponding document (including payment of requisite stamp duty and registration. if required) specified in column (3) of the table below:

(1) S. No.	(2) Debenture Security	(3) Debenture Security Documents	(4) Timeline for Creation of Debenture Security
1.	Equitable mortgage by deposit of title deeds on the Project and the Property on a first charge basis to favour of the Debenture Trustee	Memorandum of Entry, Directors' Declarations and Tripartite Letter	Within 7 (Seven) days from the Closing Date
2.	First exclusive charge by way of hypothecation over the Hypothecated Property together with	Deed of Hypothecation (including the power of attorney therein) contained	On or prior to the Closing Date

	<i>all and any interest acquiring in respect thereof in accordance with the Deed of Hypothecation</i>		
3.	<i>Execution of the Power of Attorney by the Company in favour of the Debenture Trustee</i>	<i>Power of Attorney</i>	<i>On the Closing Date the</i>
4.	<i>Execution of the Escrow Agreement and setting up of the Escrow Accounts in accordance with the Escrow Account Agreement</i>	<i>Escrow Agreement Account</i>	<i>Within 7 (Seven) days from the Closing Date</i>
5.	<i>Issuance of the Corporate Guarantees</i>	<i>Corporate Guarantees</i>	<i>On or prior to the Closing Date</i>
6.	<i>Issuance of the Personal Guarantees</i>	<i>Personal Guarantees</i>	<i>On or prior to the Closing Date</i>
7.	<i>Handover of the Post Dated Cheques</i>	<i>Post Dated Cheques</i>	<i>On or prior to the Closing Date</i>
8.	<i>Execution of the Shortfall Undertaking</i>	<i>Shortfall Undertaking</i>	<i>On or prior to the Closing Date</i>
9.	<i>Execution of Demand Promissory Note and the</i>	<i>Demand Promissory Note and the</i>	<i>On or prior to the: Closing Date</i>

	<i>Letter of Continuity</i>	<i>Letter of Continuity</i>	
10.	<i>Charge/lien over DSR</i>	<i>Debenture Trust Deed (as provided in terms of Clause 14.1 (d))</i>	<i>Within 1 (One) Business Day from the Allotment Date</i>
11.	<i>Such other security as may be required to maintain the Security Cover in accordance with this Deed as may be required by the Debenture Holders</i>	<i>As may be required based on the Security Interest being created</i>	<i>As and when required by the Debenture Holders</i>

50. The above clearly contemplated equitable mortgage or deposit of title on the property and the property on first charge basis. The first exclusive charge by way of hypothecation over the hypothecated property was also contemplated. The securities also included execution of Power of Attorney, Escrow Agreement, Corporate Guarantee, Personal Guarantee, Post-Dated Cheques, Letter of Shortfall Undertaking, and Promissory Note.

51. Thus, above clauses clearly indicate that the security was basically the mortgage of the project and the property as well as the hypothecation over the hypothecated property together with all any interest accruing in respect according to the deed of hypothecation. The above provision clearly indicate that debentures were obtained by the company and the various provisions indicate that the findings by debenture was for the purposes of the project on

the project property that is land bearing 12.212 acres situated in Sector 88 B was contemplated.

52. At this juncture, we may notice one submission of the respondent. Respondent submits that the project has been registered by the company in the year 2022, hence there was no contemplation at the relevant time regarding the 'Project Aspirations', hence the funding cannot be said to the 'Project Aspirations' which was got registered in the year 2022. In the appeal, certain documents regarding registration of the HARERA and the license issued by DTCP, license have been brought on record. It is relevant to notice the license issued by DTCP as well as the RERA registration to consider the submission. License No.13/2022 from DTCP has been brought on record. The License No.13/2022, clearly mentions that license is granted for area admeasuring 12.212 acres for setting of group housing colony in the revenue state of Haryana, Harsaru, Sector 88 B, District Gurgaon:

"FORM LC-V

(See Rule 12)

HARYANA GOVERNMENT

TOWN AND COUNTRY PLANNING DEPARTMENT

Licence No.13. of 2022

This License has been granted under the Haryana Development and Regulation of Urban Areas Act, 1975 & the Rules 1976, made thereunder to Vatika Ltd., Aplin Developers Pvt. Ltd. in collaboration with Vatika Ltd. Unit No.-A-002, INXT City Centre, Ground Floor, Block-A, Sector-83, Vatika India Next, Gurugram-122012 for setting up of Affordable Plotted Colony under DDJAY over an area measuring 12.20 acres (after migration from license No. 90 of 2013 dated 26.10.2013 granted for an area measuring 12.212 for

setting up of Group Housing Colony) in the revenue estate of village Harsaru, Sector-88B, Distt. Gurugram.

1. The particulars of the land, wherein the aforesaid Residential Plotted Colony is to be set up, are given in the Schedule annexed hereto and duly signed by the Director, Town & Country Planning, Haryana.

...

4. The license is valid up to 23/02/2027.

*Dated: The 24/02/2022. (K. Makrand Pandurang,
Chandigarh IAS)*

*Director, Town & Country
Planning Haryana, Chandigarh*

Endst. No. LC-4560/Asstt(MS)/2022/5626

Dated: 24-02-2022

(S.K. Sehrawat)

*District Town Planner (HQ) For Director, Town &
Country Planning Haryana Chandigarh”*

53. Another license with respect for area 7.50 acres in addition to License No.13/2022 in Sector 88 B was granted, which is as follows:

“FORM LC-V

(See Rule 12)

HARYANA GOVERNMENT

TOWN AND COUNTRY PLANNING DEPARTMENT

Licence No. 152 of 2022

This Licence has been granted under the Haryana Development and Regulation of Urban Areas Act, 1975 & the Rule 1976, made there under to Haldis Developers Pvt. Ltd., Sahar Land and Housing Pvt. Ltd., Acklin Developers Pvt. Ltd., Vatika INXT 2 Pvt. Ltd. in collaboration with Vatika Ltd. Regd. Office Unit No. A-002, INXT City Centre, Ground Floor, Block-A, Sector-83, Vatika India Next, Gurugram-122012 for setting up of Affordable Residential Plotted Colony under Deen Dayal Jan Awas Yojna 2016 on the land

additional area measuring 7.50 acres (in addition to Licence no. 13 of 2022 dated 24.02.2022) in the revenue estate of village Harsaru, Sector-88-B, Gurugram Manesar Urban Complex.

1 The particulars of the land, wherein the aforesaid Affordable Residential Plotted Colony is to be set up, are given in the Schedule annexed hereto and duly signed by the Director General, Town & Country Planning, Haryana.

...

6. The licence is valid up to 28/9/2027

Dated: 29/9/2022. (T. L. Satyaprakash, IAS)

*Place: Director General,
Town & Country Planning
Haryana, Chandigarh*

*Endst. No. LC-4560-B/JE (SB)/2022/29597
Dated: 29-09-2022*

A copy along with a copy of schedule of land is forwarded to the following for information and necessary action:-

(Narender Kumar)

District Town Planner (HQ)

*For: Director General, Town & Country
Planning Haryana Chandigarh”*

54. When we look into the RERA registration relied by the appellant being Registration Certificate, No.130/2022, the said registration is with respect to Sector 88B, Gurgaon, area 19.70 acres, which refers to License No.13/2022 and License No.152/2022. It is useful to notice following part of the Registration Certificate:

“REGISTRATION NO. 130 OF 2022

FORM REP-III [See rule 5(1)]
HARYANA REAL ESTATE REGULATORY AUTHORITY GURUGRAM
HARERA
GURUGRAM

REGISTRATION NO. 130 of 2022			
RC/REP/HARERA/GGM/655/387/2022/130		Date: 23.12.2022	
UNIQUE NO. GENERATED ONLINE		RERA-GRG-PROJ-1170-2022	
REGISTRATION CERTIFICATE			
REAL ESTATE PROJECT – AFFORDABLE RESIDENTIAL PLOTTED COLONY UNDER DDJAY			
ASPIRATION			
1. This registration is granted under Section 5 of the Real Estate (Regulation & Development) Act, 2016 to the following project.			
(A) PARTICULARS OF THE PROJECT REGISTERED			
S.N.	Particulars	Details	
(i)	Name of the project	Aspiration	
(ii)	Location	Sector 88 B, Gurugram	
(iii)	Licence no. and validity	13 of 2022 dated 24.02.2022 valid up to 23.02.2027 152 of 2022 dated 29.09.2022 valid up to 28.09.2027	
(iv)	Total licensed area of the project	19.70 Acres	
(v)	Area of project for registration	19.70 Acres	
(vi)	Nature of the project	Affordable Residential Plotted Colony under DDJAY	
(vii)	Total saleable area of the project registered	41153.80 5 sq. m.	Residential = 38482.88 sq. m. Commercial = 2670.925 sq. m.
(viii)	Number of units	304 Residential Plots and 1 Commercial Block”	

55. The above clearly indicate that ‘Project Aspirations’ has been registered on the project land which registration also include an extra additional land of 7.75 acre.

56. The project land is ‘Project Aspirations’ is proved from other materials on records which we refer hereinafter. We have already noticed that under

the DTD dated 30.06.2017, the company was obliged to comply the provisions of RERA. Provisions of the RERA was thus obligation of the company and the company after the DTD has obtained certificate. We have already noticed that the DTD refers to property as land of 12.212 acres situated in Sector 88 B, which land is now part of the project, which land project was contemplated, which project got subsequently registered in RERA in 2022. The fact that registration of RERA was obtained in 2022 was in accordance with the terms of DTCP which require the company to comply with the requirement of RERA. The fact is that IDBI Trusteeship itself was well aware and dealing with the 'Project Aspirations' treating it to be a project which the Debenture Trustee has charge is apparent from other materials on record. We have already noticed that under the DTD, no objection was required for sale of any units from the Debenture Trustee by the company. Company has issued various letters to the IDBI Trusteeship seeking no objection. In response to the request from the company, no objection certificates were issued by the respondent with respect to different units in the Project "Aspirations". Various letters dated 30.10.2023 with respect to different units of project has brought on the record in the appeal. It is useful to notice one of the letters issued by the R-1 dated 30.10.2023 to the company the corporate debtor, which is as follows:

"IDBI Trusteeship Services Ltd.

CIN: U65991MH2001GO1131154

Ref: 59330/ITSL/2023-24

Date: 30-Oct-2023

Vatika Limited ("Vatika")

Unit No. A-002, INXT City Centre, Ground Floor, Block A, Sector 83, Vatika India Next, Gurugram 122012, Haryana

Subject: No Objection to the sale of Plot No. 16, A4, Aspiration, Gurgaon-122505 in favour of Anil Kumar Sehrawat

Dear Sir/Ma'am,

This is in relation to 1260 and 1200 number of [fully secured, unlisted, unrated, redeemable, optionally convertible debentures aggregating to INR 1,26,00,00,000/- (Indian Rupees One Hundred Twenty Six Crores only) and INR 20,00,00,000/- (Indian Rupees Twenty crores only) issued to Indiabulls High Yield Fund ("**IHYF**") & Indiabulls Opportunities India Fund ("**IOIF**"), respectively (the "**Debentures**") in accordance with the debenture trust deed dated June 30, 2017 executed between Vatika Limited. IHYF, IOIF and IDBI Trusteeship Services Limited and other related documents ("**Debenture Documents**")

Pursuant to your email dated October 09, 2023 we have been informed about your intention for sale of the below mentioned unit ("**Unit**") to Anil Kumar Sehrawat (the "**Purchaser**"), and accordingly you have requested us for issuance of a no objection certificate ("**NOC**") for release of our charge on the Unit and subsequent sale of the Unit

Customer Name	New Flat/Plot No.	Saleable Area (Sqyd.)	Total Sale Consideration (INR)	Total Amount received (INR)	Balance receivable (INR)
Anil Kumar Sehrawat	16	131	71,15,039	46,92,800	24,22,239

Please note that IHYF and IOIF have perused your request and hereby conveys no objection to release its rights, claims, interest and charge over the Unit in Project Aspiration.

Subject to balance sales consideration (excluding TDS as applicable) ie. an amount of INR 24,22,239/- ("**Said Amount**") being transferred/ deposited into the Escrow Account No. 57500001096352 held with HDFC Bank,

immediately upon sale of the Unit. In the event the Said Amount is not deposited in the manner stated in this NOC then this NOC shall stand terminated/withdrawn automatically without any notice to you

All the cost, fees, stamp duty, penalty, expenses and charges for, inter alia, release of the charge(s) over the Unit shall be borne by Vatika. Please note that our aforesaid NOC is without prejudice to, and shall not affect, (i) the rights, remedies, claims and/or interests of the IHYF and IOIF under the Debenture Documents and/or the applicable laws and/or (ii) the obligations of the Obligor(s) under the Debenture Documents.

Please note that the NOC for the abovementioned Unit will not affect the charge on any other plot/flat/shop/unit including the land and construction thereon or any other Security created in favour of IHYF and IOIF in relation to the Debentures

This no-objection shall form an integral part of the Debenture Documents.

Capitalized terms used and not defined herein shall have the meaning as ascribed to such terms in the Debenture Documents.

Yours sincerely,

For IDBI Trusteeship Services Limited

Authorised Signatory”

57. The above letter clearly mentions that no objection is being issued with regard to unit in the Project **“Aspirations”** Gurgaon. Thus, the party clearly understood that the charge of the Debenture Trustee is on the ‘Project Aspirations’.

58. We may also notice submission of learned counsel for the respondent relying on certain clauses of the DTD. Reliance has been placed on Clause 8.3 under the heading **“Usage of Funds”**. Clause 8.3 provides as follows:

“8.3 The Promoters shall cause the Company to and the Company shall utilize the Subscription Amount to

meet the Company's on-going requirement of funds for business activities and general corporate purposes.”

59. Learned counsel for the respondent submits that the usage of funds requires a company on going requirement of funds for business activities and general corporate purposes. He submits that the said is a very wide terms, hence the funding cannot be said to be only for the project. We have already noticed the other relevant clauses of the DTD, which clearly indicate that the project was charged with Debenture Holders and the project charge with the project units and other receivables were security for the Debenture Trustee. In the judgement of the **‘Gagan Tandon & Ors.’ (supra)**, noted above IL&FS has extended loan to the company where also there was a clause in similar terms, requiring utilisation of funds for corporate purpose. This Tribunal after noticing the relevant clauses of the DTD in above case has concluded that in view of the securities as mentioned in the deed, the lenders in the above case have rights to realise their debt from the securities. In the said case, this Tribunal has ultimately concluded that CIRP in the said case ought to have proceeded against the said project only. This Tribunal held that when securities are with respect to specific project, CIRP cannot engulf all other projects of corporate debtor which was held in paragraph 93 as noted above. Learned Counsel for the respondent has also relied on paragraph 14.1(a), which is as follows:

“14. COVENANTS OF THE COMPANY. THE LAND OWNING COMPANIES AND THE PROMOTERS

14.1 The Promoters shall ensure that the Company and the Land Owning Companies shall, and the Company and the Land Owning Companies shall:

(a) Apply the Subscription Amount exclusively in accordance with Clauses 6.2 and 8.3:”

60. Clause 8.3 we have already noticed. Clause 6.2 of the DTD is as follows:

“6.2 Notwithstanding anything to the contrary contained in this Deed of the Definitive Agreements, if, after payment of the relevant Subscription Amount, the Debentures are not allotted to the Investors on the Closing Date, the Company shall immediately refund the Subscription Amount lying in the Subscription Account to the Investors: and the Company shall pay an additional coupon of 5.00% (Five percent) per annum in addition to the coupon rate as specified in paragraph 3.1 of Schedule IX until the date of refund of the Subscription Amount.”

61. Learned counsel for the respondent has also relied on the provisions under which the additional security can be asked by the lenders by the security trust deed. Clause 14.8(e)(1) has been referred. The above provision is the enabling provisions which can require the company to provide additional security.

62. The deposit of the title deed on 31.03.2023, which is also on the record indicate the mortgage of the project land.

63. In view of the above discussions and conclusions, we are of the view that the finance extended by the debentures was with respect to the project and property situated on the land in Sector 88 B admeasuring to 12.212 acres, which subsequently got registered as Project “Aspirations.”

64. We thus answer Question Nos. (V) & (VI) in following manner:

V. The DTD dated 30.06.2017 contemplated payment of the amount of debenture amounting to ₹146 crore for a project and project on a property identified in the DTD as land situated in Sector 88 B area

admeasuring to 12.212 acres, and the securities provided to the Debenture Trustees were with respect to the project in question.

- VI. In the facts of the present case, CIRP against the corporate debtor ought to have been confined only to the project in question 'Aspirations' and the CIRP cannot be extended to other projects of the corporate debtor, situated in state of Haryana and other places.

Question No. (VII)

65. In view of the foregoing discussions and our conclusions, we dispose of the appeal in following manner:

- i. The Debenture Trustee having proved the debt and default, initiation of CIRP against the corporate debtor by order dated 03.02.2026 cannot be faulted. However, CIRP against the corporate debtor is to confine to only project situated in Sector 88 B, Gurgaon, 'Project Aspirations', the order dated 03.02.2026 is modified to that extent.
- ii. The IRP who was permitted to collate the claims after issuance of publication may issue revise updated publication consequent to this order. However, date of commencement of the CIRP shall remain same i.e., 03.02.2026, requiring updation of the claim, along with proof of the claims by the stakeholders of the 'Project Aspirations'.
- iii. The IRP to proceed in the CIRP process with respect to above project in accordance with law.

- iv. The financial creditors in class, financial institutions and other creditors of other projects of the corporate debtor are at liberty to take such remedy as available in law including proceedings under Section 7 of the IBC.

Parties shall bear their own costs.

All IAs are disposed of accordingly.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

27th March, 2026

himanshu