IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH, COURT-V

COMPANY PETITION NO. (IB)-541(ND)/2023

Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

IN THE MATTER OF:

INTELLICITY BUSINESS PARK PRIVATE LIMITED
THROUGH RESOLUTION PROFESSIONAL
MR. MANOJ KULSHRESTHA
Having its Registered Office at:-
4F-CS-14, Ansal Plaza Mall, Vaishali,
Opp, Dabur, Ghaziabad,
Uttar Pradesh, 201010.
Email: costadviser@hotmail.com

.... FINANCIAL CREDITOR

Versus

ASCOT PROJECTS PRIVATE LIMITED
CIN: U45201DL2006PTC1 45584
Havinq its reqistered Officett: House No. 134,
Block 33 Trilokpuri, NewDelhi-110091.

...CORPORATE DEBTOR

Order Pronounced on: 18.02.2025

CORAM

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

PRESENT
For the Applicant : Mr. Sumesh Dhawan, Ms. Vatsala Kak,
Mr. Shaurya Shyam
For the Respondent : Mr. Vinod Chaurasia, Adv

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. The present Application is being filed on behalf of Intellicity Business Park Private (formerly known as Airwil Business Park Private Limited) through its Resolution Professional, Mr. Manoj Kulshrestha (for brevity "Applicant/Financial Creditor") against M/s Ascot Projects Private Limited (for brevity "Respondent/Corporate Debtor") under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity "IBC/Code") seeking the initiation of Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor for the alleged default in repayment of loan of Rs. 24,56,09,411/- (Rupees Twenty Four Crore Fifty Six Lakh Nine Thousand Four Hundred Eleven Only).

2. The Corporate Debtor is a Company having its registered office at House No. 134, Block 33 Trilokpuri, New Delhi-110091. Since the registered office of the Respondent/Corporate Debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCLT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency

Resolution Process in respect of respondent corporate debtor under subsection (1) of Section 60 of the Code.

Averments of the Applicants:

3. Applicant submitted that the Corporate Debtor entered into the Lease Deed dated 09.01.2013 with Greater Noida Industrial Development Authority ("GNIDA") wherein GNIDA leased its Land admeasuring 1,00,000 sq. mtrs. situated at Plot No. 10, Sector Tech Zone IV, Greater Noida, Uttar Pradesh ("Project land").

4. Applicant further submitted that a Memorandum of Understanding ("MoU") was entered into on 06.09.2013 between the Corporate Debtor and the Financial Creditor wherein the Corporate Debtor shall hold the Land owning rights and the Financial Creditor shall be entitled to the Development rights over the Project Land.

5. Applicant further submitted that the Financial Creditor is holding 99.94 % of shares of the Corporate Debtor (i.e., M/s Ascot Projects Private Limited) thus making the Corporate Debtor a wholly owned subsidiary of the Financial Creditor.

6. Applicant submitted that for the purpose of payment of dues of the Project Land to ("GNIDA"), the Corporate Debtor had approached the Financial Creditor, being its holding/parent company for an unsecured

loan. That in furtherance of the same, the Financial Creditor granted an unsecured loan to the Corporate Debtor and disbursed payment of Rs 24,56,09,411/-.

7. Applicant further submitted that the liability of the loans due to the Financial Creditor has been duly acknowledged by the Corporate Debtor in its audited Balance Sheet for the Financial Year 2017-2018.

8. Applicant submitted that this Adjudicating Authority vide its Order dated 27.05.2019 in Company Petition (IB) 17 of 2019 (for brevity referred as "2019 case") titled as Ample Infrastructure Private Limited v. Intellicity Business Park Private Limited' initiated the Corporate Insolvency Resolution Process of the Financial Creditor (i.e., Intellicity Business Park Private) and appointed Mr. Mohit Kumar Gupta as the Interim Resolution Professional ("IRP") and the CoC in its 12th meeting of above mentioned 2019 case on 11.05.2022, appointed Mr. Manoj Kulshrestha appointed as the Resolution Profession (for brevity "RP").

9. The Applicant further submitted that, as the holder of 99.94% of the shareholding in the Corporate Debtor's company, the CoC in the above mention case, during its 1st meeting on 06.08.2019, reconstituted the Board of Directors of the Corporate Debtor's company. Subsequently, at its 13th meeting held on 21.03.2023, Mr. Rakesh Bajaj and Mr. Sanjay K

Sachdev were appointed as the new Board of Directors of the Corporate Debtor's company.

10. Applicant submitted that the Financial Creditor herein through its RP/Applicant vide Notice dated 10.05.2023 to the Corporate Debtor herein demanded the entire loan amount from the Corporate Debtor as reflected in its Balance Sheet for the Financial Year 2018-2019. The Corporate Debtor herein sent an Email dated 13.05.2023 to the Applicant, stating that before providing a proper Reply to the Notice dated 10.05.2023 Corporate Debtor sought (i) Copy of the MOU vide which loan of Rs. 24.56 Crore that Intellicity Business Park Private Limited had provided to Ascot Projects Private Limited; (ii) Copy of the resolution passed by the directors/shareholders where the loan was approved; (iii) Copy of the reminders and requests that you have sent in this regard; etc.

11. The Applicant submitted that the loan amount received by the Corporate Debtor from the Financial Creditor was not disputed in the email dated 13.05.2023. The present application has been filed by the Applicant as the Corporate Debtor has failed to repay the loan granted by the Financial Creditor to date.

Reply of the Respondent/Corporate Debtor:

12. Consequent to the notice issued by this Tribunal, the M/s Ascot Projects Private Limited (i.e., Respondent) through its Directors Sh. Rakesh Kumar Bajaj filed its reply and submitted that the Respondent is a wholly owned subsidiary of Intellicity Business Park Private Limited (hereinafter referred to as Financial Creditor) which is undergoing corporate insolvency resolution process (hereinafter "CIRP") vide order of this Adjudicating Authority dated 27.05.2019.

13. Respondent further submitted that the Respondent herein entered into a Memorandum of Understanding ("MoU") with Financial Creditor on 06.09.2013 for construction of a real estate project wherein it was agreed that the Respondent shall be the land holding company and Financial Creditor shall hold the development rights over the project land.

14. Respondent admittedly submitted that in 2013, the Corporate Debtor approached the Financial Creditor with a request for an unsecured loan for repayment of dues of GNIDA, which was disbursed to the Corporate Debtor.

15. Respondent further submitted that the Balance Sheet of the year 2022-23 of the Respondents herein reflects an amount to the tune of Rs. 11,69,07,605/- as a long-term liability of the Respondent and liability of the loans due to the Financial Creditor has been duly acknowledged by

the Corporate Debtor in its audited Balance Sheet for the Financial Year 2022-23.

16. Respondent further submitted that both the newly appointed directors (i.e., Mr. Rakesh Bajaj and Mr. Sanjay K Sachdev) have been recently appointed, the present Directors are giving their submissions based upon records and audited balance sheet available with the Respondent Corporate Debtor. Respondent submitted that the Respondent does not challenge the debt and the default as mentioned in the Petition. However, the Respondent seeks liberty to file additional documents during the course of the proceedings.

Analysis and Findings

17. We have heard Ld. Counsels for the applicant as well as the Ld. Counsel for the Respondent and perused the averments made in the application. The relevant documents annexed with the submissions have also been examined.

18. This Adjudicating Authority vide its order dated 04.01.2024, directed the Ld. Counsel for the Financial Creditor to verify whether CoC has authorized the Resolution Professional herein to file this Petition or not?

19. In compliance of the order dated 04.01.2024, passed by this Adjudicating Authority, the Applicant herein, through an affidavit dated 02.03.2024,

submitted the minutes of the 13th CoC meeting held on 21.03.2023, wherein the CoC approved that the RP (i.e., Mr. Manoj Kulshrestha) is authorized to issue a notice under Section 7 of the IBC against ASCOT Projects Private Limited. In the above mentioned 13th CoC meeting it was also approved that in the event of failure to pay the dues, the RP herein may proceed to initiate the CIRP against ASCOT Projects Private Limited (i.e., the Corporate Debtor).

20. Section 11 of the IBC restricts certain entities, such as corporate debtors and their related parties, from initiating CIRP against another corporate debtor. However, the RP, acting in their capacity as an independent professional appointed to manage the CIRP of the corporate debtor, does not fall within the category of restricted entities under Section 11 of the IBC.

21. Section 25 of the IBC, which prescribes the 'Duties of the Resolution Professional,' states that it shall be the duty of the professional to preserve and protect the assets of the corporate debtor. For this purpose, the professional shall undertake certain actions, such as representing and acting on behalf of the corporate debtor with third parties and exercising rights for the benefit of the corporate debtor in judicial proceedings. The similar observation has been made by the National Company Law Tribunal, Mumbai Bench in the case of *"Jai Ambe*

Enterprise vs.S.N. Plumbing Private Limited", MA 78/2018 In CP 1268/I&BC/NCLT/MB/MAH/2017, the relevant portion of the given case extract as below:

"3. To decide this Application, we have perused the provisions of Section 25 of The Code wherein prescribed the "Duties of Resolution Professional". The Section says that it shall be the duty of the Professional to preserve and protect the Assets of the Corporate Debtor. For that purpose, the Professional shall undertake certain actions viz. to represent and act on behalf of the Corporate Debtor with Third Parties, exercise rights for the benefit of the Corporate Debtor in any Judicial Proceedings. (Refer Section 25(2)(b))."

22. In the above said Case, the NCLT Mumbai bench observed that the action of the Resolution Professional to initiate the CIRP against one of the Debtor of the S.N. Plumbing appears to be a correct legal action. It is one of the duties of the Resolution Professional to recover the outstanding Debts of a Corporate Debtor against whom already CIRP is in progress. The relevant portion of the above-mentioned case extract below:

"4. In view of the above discussed provision of The Code, prima facie, the action of the Professional against one of the Debtor of the S.N. Plumbing appears to be a correct legal action. It is one of the duty of the Resolution

Professional to recover the outstanding Debts of a Corporate Debtor against whom already CIRP is in progress."

23. In view of the above-discussed facts and circumstances, it is observed that the RP is entitled to file the application.

24. Furthermore, in order to affirm that this petition falls within the ambit of Section 7, we need to see whether there is a "debt" owed to the Financial Creditor and whether there is a "default" with respect to such debt.

25. Upon perusal of the para 8 (page 3) of the reply filed by the Respondent herein, we observed that the Respondent through its reply admitted that claim of debt alleged by the Applicant and submitted that the Balance Sheet of the year 2022-23 of the Respondents herein reflects an amount to the tune of Rs. 11,69,07,605/- (Rupees Eleven Crore Sixty Nine Lakh Seven Thousand Six Hundred and Five Only) as a long-term liability of the Respondent and liability of the loans due to the Financial Creditor has been duly acknowledged by the Corporate Debtor in its audited Balance Sheet for the Financial Year 2022-23. Therefore, one essential ingredient with respect to Section 7, that there has been a "debt", stands substantiated.

26. The subsequent essential requirement of Section 7 of the IBC is to ascertain whether there is a 'default' with respect to such debt.

27. Furthermore, upon perusal of the para 13 (page 4) of the reply filed by the Respondent herein, we observed that the Respondent does not challenge the debt and the default as mentioned in the instant Application. In fact, the Learned Counsel appearing on behalf of the Corporate Debtor appeared before this Adjudicating Authority on 30.01.2024 and admitted that there was a debt and that the Corporate Debtor had committed default. This admission has been duly recorded in the order dated 30.01.2024 passed by this Adjudicating Authority

28. This Adjudicating Authority vide its order dated 30.01.2024 directed the Applicant to file an affidavit disclosing that this petition is a bona fide petition, and has not been filed for the purpose other than Resolution of Corporate Debtor.

29. In compliance of the order dated 30.01.2024 passed by this Adjudicating Authority, the Applicant through an affidavit dated 02.03.2024 disclosing that this petition is a bona fide petition and has not been filed for the purpose other than resolution of the Corporate Debtor. This has been recorded vide order dated 06.03.2024.

30. In view of the above and taking into into account the fact of the case and not payment of the loan amount on recall notice, we observed that not payment of loan amount is a default which is defined section 3(12) of

IBC. Therefore, another major essential ingredient of Section 7 i.e., "default" with respect to the debt stand substantiated.

31. At this juncture, it is important to refer to landmarks judgment of the Hon'ble Supreme Court in "**Innoventive Industries Limited v. ICICI Bank and Another, (2018) 1 SCC 407]"** where it was held that once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the Application under Section 7 of I & B Code, 2016. The relevant extract of the said judgment is reproduced hereunder as:

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

32. Hon'ble Supreme Court have reiterated in **Suresh Kumar Reddy v. Canara Bank & Ors. [Civil Appeal No. 7121 of 2022]** as under:-

"13. Thus, it was clarified by the order in review that the decision in the case of Vidarbha Industries was in the setting of facts of the case before this Court. Hence, the decision in the case of Vidarbha Industries cannot be read and understood as taking a view which is contrary to the view taken in the cases of Innoventive Industries and E.S. Krishnamurthy. The view taken in the case of Innoventive Industries still holds good."

33. From the perusal of aforesaid facts, it is clear that the applicants are Financial Creditors and the debt owed to them by the Corporate Debtor is a Financial Debt, and there has been a default, as stipulated in Sections 3(12), 5(7) and Section 5(8) of the IBC.

34. The present petition made by the Financial Creditor is complete is all respects as required by law. The Application established that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under Section 4(1) of the Code, stipulated at the relevant point of time. We are of the view that since this Petition was filed on 04.07.2023, and the debt owed to the Financial Creditor is an amount of Rs. 24,56,09,411/- (Rupees Twenty Four Crore Fifty Six Lakh Nine Thousand Four Hundred Eleven Only) meets the threshold of Rs. One Crore.

35. In light of the above observation, we admit the instant Application i.e CP No. (IB)-541/ND/2023 and initiates the Corporate Insolvency Resolution

Process against the Corporate Debtor i.e. M/s Ascot Projects Private Limited with immediate effect.

36. Sub-section (3) (b) of Section 7 mandates the Financial Creditor to furnish the name of an Interim Resolution Professional ("IRP"). In compliance thereof the applicant has proposed the name of Mr. Rajiv Bajaj for appointment as Interim Resolution Professional having Registration No. IBBI/IPA-002/IP-N00276/2017-18/10834. The Proposed IRP has a valid AFA which is valid upto 31.12.2025. Accordingly, this Adjudicating Authority, hereby appoints Mr. Rajiv Bajaj to act as Interim Resolution professional. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

37. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

38. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the

provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

a) "the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor."

39. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the

surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

40. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any preferential/undervalued/tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional shall make an application to this Adjudicating Authority with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

41. The registry is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

42. Let copy of the order be served to the parties.

Sd/-	**Sd/-**
(DR. SANJEEV RANJAN)	**(MAHENDRA KHANDELWAL)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT- V)

I.A. 1655/2024
IN
COMPANY PETITION No. (IB)-541/ND/2023

An application under Section 65 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016.

IN THE MATTER OF:

INTELLICITY BUSINESS PARK PRIVATE LIMITED
Through Resolution Professional
Mr. Manoj Kulshrestha

...PETITIONER/FINANCIAL CREDITOR

VERSUS

ASCOT PROJECTS PRIVATE LIMITED

....CORPORATE DEBTOR

AND IN THE MATTER OF:

MR. AMIT NAGAR
Address: Village+Post, Dujana,
G. B. Nagar Pincode: 203207.

... APPLICANT

Versus

1. **INTELLICITY BUSINESS PARK PRIVATE LIMITED**
Having its Registered Office at:-
4F-CS-14, Ansal Plaza Mall, Vaishali,
Opp, Dabur, Ghaziabad,
Uttar Pradesh, 201010.
Email: costadviser@hotmail.com

...RESPONDENT NO. 1

2. **ASCOT PROJECTS PRIVATE LIMITED**
Havinq its reqistered Officett: House No. 134,
Block 33 Trilokpuri, NewDelhi-110091.

...RESPONDENT No. 2

Order Pronounced on: 18.02.2025

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

PRESENT

For the Applicant : Mr. Gaurav Mitra, Mr. Ishaan Mukherjee, Mr. Vikrant Bhardwaj, Advs. in IA/1655/2024

For The Respondent :

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. The present application has been filed by Amit Nagar, who was an ex- director of the Corporate Debtor (for brevity "Applicant") under Section 65 of the Insolvency and Bankruptcy Code, 2016 (for brevity "IBC/Code") read with Rule 11 of the NCLT Rules, 2016 for dismissal of the Company Petition No. (IB) 541 (ND)/2023 filed by the Petitioner (i.e., M/s Intellicity Business Park Private Limited) for fraudulently and malicious initiation of CIRP proceedings against M/s Ascot Projects Pvt. Ltd. (hereinafter referred to as the Corporate Debtor/APPL).

2. Briefly stated, the facts of this case leading to filing of this present interlocutory application, averred by the applicant are as follows:-

I. Applicant submitted that as per lease deed dated 09.01.2013 entered between Greater Noida Industrial Development Authority (hereinafter referred to as 'GNIDA') and APPL/Corporate Debtor, the Corporate Debtor/APPL become the sole and exclusive lease holder of Plot No. 10, Sector Techzone-4, Greater Noida, (admeasuring 1,00,030 sq. mts) (hereinafter referred to as the subject Property). Moreover, the subleasing permissions of

units/apartments/flats/villas in favour of buyers were granted by GNIDA to APPL which is recognised by GNIDA as the land-owning entity.

II. Applicant further submitted that in lieu of the lease granted by GNIDA to APPL, APPL granted development rights to the Intellicity Business Park Pvt. Ltd. (i.e., Petitioner Company) vide Memorandum of Understanding "MoU" dated 06.09.2013 for building, developing and construction of the subject property, where profits are to be shared in 10:9 ratio between APPL and the Petitioner Company.

III. Applicant submitted that since the remuneration in the form of profit sharing was not transferred in lieu of the MOU executed between the parties and the contractual obligations were not complied, therefore, APPL vide cancellation agreement dated 17.8.2017 had cancelled the said MOU and revoked all the development rights initially granted to the Petitioner Company.

IV. Applicant submitted that this Adjudicating authority vide Order dated 27.05.2019 in M/s Ample Infrastructure Pvt. Ltd. v. M/s Intellicity Business Park Pvt. Ltd. bearing CP(IB) No. 17/2019 was initiated for CIRP against the Petitioner Company (i.e., Intellicity Business Park Pvt. Ltd) and appointed Mr. Mohit Kumar Gupta as the IRP of the Petitioner Company. That the Committee of Creditors "CoC" in its 12th CoC meeting dated 11.05.2022, appointed Mr. Manoj Kulshrestha as the Resolution Professional "RP" for the Corporate Debtor and the same was confirmed by this Adjudicating Authority vide its Order dated 14.10.2022.

V. Applicant submitted that the Resolution Professional "RP" of the Petitioner Company without taking into consideration the Cancellation Agreement dated 17.08.2017 entered between the parties had taken over the management of the APPL by removing the majority of the Directors of the Board of APPL and

thereby appointing new Directors on the Board in complete violation of the Companies Act, 2013 (hereinafter referred to as 'Act') read with Code/IBC.

VI. Applicant submitted that the Resolution Professional of the Petitioner Company fraudulently taken over the management and assets of APPL without due process of law and included of the properties of the APPL in the CIRP process of the Petitioner Company (i.e., Intellicity Business Park Private Limited).

VII. Applicant further submitted that such illegal action of hijacking the management of the Corporate Debtor/APPL by the homebuyers of the Petitioner Company and filing of the main Petition (i.e., C.P. No. (IB)-541/ND/2023) for initiating CIRP against the Corporate Debtor/APPL, falls within the scope of Section 65 of the Code. It is also submitted that the Petitioner Company has given a false affidavit in the main petition (i.e., C.P. No. (IB)-541/ND/2023) that the main petition is not a collusive Petition being filed against the Corporate Debtor.

VIII. Applicant further submitted that the board of the Corporate Debtor is managed, controlled and appointed by the RP of the Petitioner Company who want to initiate CIRP of the Corporate Debtor not for the resolution of the Corporate Debtor but for benefit and resolution of the Petitioner Company. Applicant submitted that the prayer sought in the Application is not granted, APPL will suffer irreparable harm and injury.

Reply filed by the Respondent No. 1/ Intellicity Business Park Private Limited/Petitioner

3. Consequent to the notice issued by this Tribunal, the Respondent No. 1 through its counsel filed its reply and submitted that the each and every averment made by the Applicant in the present Application is false and deserves to be dismissed. Respondent No. 1 further submitted that the Applicant, being the former Director of

the Corporate Debtor who resigned from the position on January 14, 2020, i.e., four years prior to the filing of the present Application, lacks the *locus standi* to file this Application before the Adjudicating Authority, rendering it non-maintainable.

4. Respondent No. 1 further submitted that the the Financial Creditor (i.e., Intellicity Business Park Pvt. Ltd.) is admittedly holding 99.94% of the shareholding of the Corporate Debtor's company which were duly transferred to the Financial Creditor much prior to the initiation of the CIR Process of the Financial Creditor and as such, the Financial Creditor duly possesses the right under Section 100 of the Companies Act, 2013 to requisition an Extraordinary General Meeting "EOGM" of the Corporate Debtor. Respondent further submitted that the Applicant is not even a stakeholder at the present stage and has no interest whatsoever in the assets of the Corporate Debtor and shall in no manner be aggrieved/prejudiced by the initiation of the CIR Process of the Corporate Debtor,

5. Respondent no. 1 further submitted that the "EOGM" of the Corporate Debtor duly took place on 22.07.2023 whereunder Mr. Rakesh Bajaj and Mr. Sanjay K Sachdev were appointed as the new Directors of the Corporate Debtor. It is submitted that the Applicant never challenged the appointment of the new Directors in the Corporate Debtor before the National Company Law Tribunal under the relevant provisions of the Companies Act, 2013.

6. Respondent no. 1 submitted that both the Corporate Debtor/Land Owning Company and the Financial Creditor/Developer Company failed to deliver units to more than 1800 Homebuyers even after collecting about Rs 400 Crores from innocent homebuyers and after siphoning of the funds the Ex-management/promoters who were common for both the companies abandoned the project in incomplete state and therefore homebuyers initiated corporate insolvency proceedings against these companies to revive their project and to secure their investments in the project. Thereafter, the Homebuyers who are CoC members of

the Financial Creditor through a resolution authorised Resolution Professional to file the main petition under Section 7 against the Corporate Debtor.

7. Respondent further submitted that there is no pleading of the Applicant with respect to any fact which may lead to the conclusion that there is any fraudulent or malicious intent of the Financial Creditor behind filing the Section 7 Petition and seeking the initiation of Corporate Insolvency Resolution Process of the Corporate Debtor and the basic ingredient of Section 65 of the Code has not been fulfilled by the Applicant.

8. Upon notice served to the Respondent No. 2, the Respondent No. 2 through its counsel submitted that that they do not wish to file any reply. The same has been record vide order dated 18.04.2024 passed by this Adjudicating Authority.

ANALYSIS AND FINDINGS:

9. We have heard the Learned Counsel for all parties and have reviewed the assertions made in the application and replies filed by the parties. The relevant documents attached to the respective submissions have been thoroughly examined. It is noted that the Applicant herein has alleged that the main petition (i.e., CP-(IB) 541 (ND)/2023), filed by the RP of Intellicity Business Park Pvt. Ltd. (the Petitioner), pertains to the fraudulent and malicious initiation of CIRP proceedings against M/s Ascot Projects Pvt. Ltd. (the Corporate Debtor). On the other hand, the Respondent No. 1 argued that the Applicant herein has not pleaded which lead to the conclusion that there is any fraudulent or malicious intent of the Financial Creditor behind filing the Section 7 Petition and seeking CIRP of the Corporate Debtor.

10. Therefore, before examining the other aspects it would be appropriate to examine whether the main petition i.e., CP No. (IB) no. 541/ND/2023 initiated by the Respondent No. 1 against the Corporate Debtor are fraudulent or with malicious

intent for purposes other than the insolvency resolution of the Corporate Debtor or not?

11. At this stage, it is important to refer the Section 65 of the IBC which are shown as below:

"65. Fraudulent or malicious initiation of proceedings. –

(1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.

(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees

(3) If any person initiates the pre-packaged insolvency resolution process— (a) fraudulently or with malicious intent for any purpose other than for the resolution of insolvency; or (b) with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees...."

12. From perusal of the contents of the Section 65, it can be observed that the Legislature has clearly stipulated that penalty can be imposed on a Person, who initiates the Insolvency Resolution Process fraudulently or with malicious intent for any purpose other than the resolution of insolvency of the Corporate Debtor.

13. Upon perusal of the para 11 (d) (page no. 24) of the present Application filed by the Applicant, we observed that the Ascot Projects Private Limited (i.e., Respondent No.

2) is a subsidiary Company of the Intellicity Business Park Private Limited (i.e., Respondent No. 3) wherein Intellicity Business Park Private Limited holds 99.94% shares in the paid-up capital of the Company.

14. Further, upon perusal of the order dated 09.01.2020 in the Company Application (IB) No. 94 of 2019 of CP (IB) No. 17/(ND)/2019 in the matter of *Ample Infrastructure Private Limited v. Intellicity Business Park Private Limited* passed by this Adjudicating Authority, we observed that the 99.94% share of the Financial Creditor has been duly transferred in favour of Corporate Debtor. The Relevant portion of the Order dated 09.01.2020 is extract as follows:

"Mr. Vipin Garg, Ld. Counsel appearing for the transferor/ex-shareholder duly confirms the submissions made by the Ld. Counsel for the RP ***that shares of 99.94% have been duly transferred in favour of the Corporate Debtor.*** *The share certificate as well as the transfer deed approved by the Board of Director in the meeting held on 02.04.2018 has been relied upon. Mr. Garg also submits that he represents the erstwhile Directors who had already submitted their resignation and filed FIR 11. The same had been taken due notice by the Board. However, DIR 12 has not been filed by the Company. Keeping in view the submissions made, we find that there is neither any prima facie case nor the balance of convenience in favour of the applicant for confirming the interim order staying the convening of the EOGM. The interim order is vacated. The RP would be entitled to requisition a meeting in terms of the Act. Fresh EOGM agenda should be circulated.CA 94/2019 is disposed off."*

15. Upon perusal of the above-stated facts, we observe that, being a 99.94% shareholder of the Corporate Debtor, the Petitioner Company is entitled to convene an Extraordinary General Meeting (EOGM) under Section 100 of the Companies Act, 2013, to approve the appointment of new directors for the Corporate Debtor's companies. The Applicant has failed to produce any documents or arguments to establish that the appointment of the new directors of the Corporate Debtor's

companies was malicious, fraudulent, or contrary to the provisions of the Companies Act or any other applicable law.

16. Upon perusal of the para 8 (page 3) of the reply filed by the Respondent (i.e., M/s Ascot Projects Private Limited) in the main petitioner (i.e., CP No. (IB)-541/ND/2023), we observed that the M/s Ascot Projects Private Limited admitted that claim of debt alleged by the Resolution Professional and the liability of the loans due to the Financial Creditor (i.e., Intellicity Business Park Private) has been duly acknowledged by the M/s Ascot Projects Private Limited in its audited Balance Sheet for the Financial Year 2022-23.

17. Now, we refer to the term 'malicious', which has not been defined anywhere under IBC, 2016. Therefore, we refer to the Judgement of the Hon'ble Supreme Court passed in the in the matter of *West Bengal State Electricity Board vs Dilip Kumar Ray, Civil Appeal 5188 of 2006* dated 24.11.2006, in which the definition of term 'malice' has been discussed –

"Malice means in law wrongful intention. It includes any intent which the law deems wrongful, and which therefore serves as a ground of liability. Any act done with such an intent is, in the language of the law, malicious, and this legal usage has etymology in its favour. The Latin malitia means badness, physical or moral - wickedness in disposition or in conduct - not specifically or exclusively ill-will or malevolence; hence the malice of English law, including all forms of evil purpose. design, intent, or motive. But intent is of two kinds, being either immediate or ulterior, the ulterior intent being commonly distinguished as the motive. The term malice is applied in law to both these forms of intent, and the result is a somewhat puzzling ambiguity which requires careful notice. When we say that an act is done maliciously, we mean one of the two distinct things. We mean either that it is done intentionally, or that it is done with some wrongful motive."

(Emphasis placed)

18. Hence, the Applicant of Section 7 or 9, who has initiated against the Company having common promoters, cannot be subjected to penalty under Section 65 of the IBC unless it is proved to the satisfaction of this Adjudicating Authority that the main Petition was filed with mala fide intention or there is some hidden/malicious/fraudulent motive behind initiating such CIR process. However the Applicant has not substantiated or justify that the main Petition was filed either with malicious or fraudulent intent.

19. It is pertinent to note that both the Corporate Debtor/Land Owning Company and the Financial Creditor/Developer Company failed to deliver units to more than 1800 Homebuyers even after collecting about Rs 400 Crores from homebuyers and after siphoning of the funds the Ex-management/promoters who were common for both the companies abandoned the project in incomplete state and therefore homebuyers initiated corporate insolvency proceedings against these companies to revive their project and to secure their investments in the project. Further that the homebuyers who are CoC members of the Financial Creditor through a resolution authorised Resolution Professional to file the main petition under Section 7 of IBC against the Corporate Debtor.

20. Since, the Applicant has failed to demonstrate and establish that the Petition under Section 7 filed by the Petitioner Company as an independent entity herein was either filed with malicious or fraudulent intent; the present IA (i.e., I.A. 1655/2024) is dismissed, being devoid of any merits.

21. Let copy of the order be served to the parties concerned.

Sd/-	**Sd/-**
(DR. SANJEEV RANJAN)	**(MAHENDRA KHANDELWAL)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**