



**NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI, SPECIAL BENCH (COURT-II)**

**COMPANY PETITION NO. (IB)-726/(PB)/2024**

**IN THE MATTER OF CP(IB)-726/(PB)/2024  
(Under Section 7 of IBC, 2016)**

**Neeraj Arora & Ors.**  
E-3, Greater Kailash-II,  
New Delhi-110048

**... Applicant/  
Financial Creditor**

**Versus**

**Real Tech Constructions Private Limited.**  
D-22, Defence Colony,  
New Delhi-110024

**... Respondent/  
Corporate Debtor**

**Order Delivered on: 28.04.2025**

**CORAM:**

**SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)  
SH. ANIL RAJ CHELLAN, HON'BLE MEMBER (T)**

**PRESENT:**

**For the Petitioner** : Adv. Nattasha Garg, Adv. Sahib Kochar  
**For the Respondent** : Adv. Prakhar Tandon

**PER: SH. ASHOK KUMAR BHARDWAJ, MEMBER (J)**

**ORDER**

Stating succinctly, the captioned company petition has been preferred under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. Neeraj Arora (hereinafter, referred to as the “**Financial Creditor/ FC/ Allottees**”) who is one of the Allottees of the Corporate Debtor



and has been authorized by all the Applicants herein through Affidavit to sign and execute documents for the filing of the present application, with prayer to initiate the corporate insolvency resolution process qua Real Tech Constructions Private Limited (hereinafter, referred to as the “**Corporate Debtor/ CD**”).

**2.** The brief facts as stated in the captioned petition reads thus: -

- i. The Corporate Debtor initiated the process of developing and constructing a Retail Mall & Multiplex which was to be known as the City Emporio Mall (“**Project**”). The land on which the Project was to be developed by the Corporate Debtor is situated at 143-A, Industrial Area Phase-I, Chandigarh-160002 admeasuring to an area of approx. 9702.89 Sq. Yds (“**Land**”). Land on which the Project was to be developed were owned by one Meters & Instrument Pvt. Ltd.(“**Landholder**”).
- ii. The Corporate Debtor executed a Property Development Agreement dated 02.03.2006 (“**Agreement**”) with Landholder, wherein the latter agreed to collaborate and develop the Land. Along with that, the licenses required for the purpose of development and the possession of the land were handed over to the Corporate Debtor.
- iii. Agreement was executed between the Landholder and the Corporate Debtor by way of which the Corporate Debtor was authorized by the Landholder to build and construct the said Project. It was agreed that after the complete construction of the Project, the total saleable area



would be divided into a ratio of 45:55 between the Landholder and Corporate Debtor.

- iv. The said Project was completed in accordance with the plans mentioned in Notification No. 28/8/51/UTFI (3)2005/6658 dated 19.09.2005 issued by Chandigarh Administration, Finance Department, UT, Chandigarh and received Occupancy Certificate on. 02.01.2012. The Corporate Debtor after acquiring exclusive rights from the Landholder floated a scheme for the sale of commercial units/ entertainment space/ commercial shops etc. and was made available for the general public at large.
- v. The Corporate Debtor also transferred some of the units belonging to itself in favour of Mr. Pankaj Dayal, who was the director and beneficial owner of the said Project by virtue of the Memorandum of Understanding dated 02.06.2011 executed between promoters of Corporate Debtor. The units that fell to the share of the Corporate Debtor by virtue of the 55:45 ratio under the Agreement, and were allotted to the present Financial Creditors by the Corporate Debtor. That 2 Financial Creditors herein were allotted units by the Corporate Debtor along with Mr. Pankaj Dayal as co-signatory.
- vi. The disputes arose between the Landholder and the Corporate Debtor in respect of the rights under the Agreement dated 02.03.2006 and the same are subsisting. It was informed to the Applicants by Mr. Pankaj Dayal that due to the dispute arising between the Landholder and the



Corporate Debtor, the Landholder on 12.02.20218 had fraudulently terminated the Agreement.

- vii. The Corporate Debtor on various instances assured the Applicants that the Corporate Debtor would soon resolve the dispute with the Landholders and transfer possession along with executing sale deed. That as such, although all the Financial Creditors received possession letters from the Corporate Debtor in 2012 and in 2016, and at the time of entering into respective agreements, it was projected as if the project was ready for handover and execution of the sale deed would be carried out immediately, however the same has not been done till date.
- viii. On the assurance of the Corporate Debtor and Mr. Pankaj Dayal, that the disputes between the Landholder and the Corporate Debtor would be resolved in due course, the Applicants have been waiting for their units, however the same has not been handed to the Applicants to date. That in the meanwhile Mr. Pankaj Dayal was in judicial custody in FIR/53/2018 registered at Police Station-Economic Offence Wing, Delhi for more than two years and the Applicants had no other option but to wait for his release.
- ix. The Financial Creditors invested huge sums of money in the procurement of units from the Corporate Debtor/Pankaj Dayal from 2011-2016 and to the present date they have not received possession of the Units which was promised to them by way of the Builder Buyer Agreement/ Agreement to Sell/Space Buyer Agreement executed on behalf of the Corporate Debtor.



- x. The Corporate Debtor has failed to provide physical possession of the Units in the said Project irrespective of receiving the entire consideration against the sale of certain units and partial consideration in respect of some units.
  - xi. The total number of units allotted in the said Project till today is around 45 as per the knowledge of the Financial Creditors. As such, the present application meets the threshold of 10% of 45 allottees, being 6 unit held by 9 allottees and co-allottees. Further, the Corporate Debtor has failed to pay its dues and running under economic stress. The last filed Balance Sheet of the Corporate Debtor is for the Financial Year 2008-2009, and till today no other financial statements have been filed with the Registrar of Companies.
  - xii. The Financial Creditors submit that the registered office of the Corporate Debtor is in Delhi and therefore, this Hon'ble Tribunal has the requisite jurisdiction to entertain and adjudicate the instant petition. The Financial Creditors submit that the instant petition is well within the period of prescribed limitation as the units against the respective bookings are not provided to the allottees and therefore, the default is a continuous arising.
- 3.** On behalf of the Respondent/ Corporate Debtor, the following submissions were made: -
- i. The petition filed by the 5 Allottees is not maintainable against the Corporate Debtor as the same is against the provisions of law / IBC,



without any cause of action and is vague, misconceived, based on wrong facts. These 5 Allottees while filing the present petition under the garb of Financial Creditors have concealed various material facts including details of various pending litigations which are necessary for proper adjudication of present matter and in view of same present petition deserves to be dismissed with costs.

- ii. The present petition is not maintainable as its being filed by only 5 Allottees out of hundreds of Allottees, the number of Allottees filing the application is below the threshold prescribed under the second proviso to Section 7(1) of the Insolvency and Bankruptcy Code, 2016 (IBC), as amended by the Insolvency and Bankruptcy (Amendment) Act, 2020.
- iii. The Para (h) of the Brief Synopsis filed by these 5 Allottees, thought they have claimed ignorance on the number of Allottees but having malicious intentions falsely claimed that:

*“That the total number of units allotted in the Said Project till today is around 45 as per the knowledge of the Financial Creditors. As such, the present application meets the threshold of 10% of 45 allottees, being unit held by 9 allottees and co-allottees.”*

- iv. The Project i.e. City Emporio Mall, Chandigarh is a huge Mall spread over more than 2,25,000 Sq. Ft. having 6 (Six) Floors and Terrace and has hundreds of Allottees. The Area has been divided into many Units where the average size of a Unit ranges from 500 Sq. Ft. to 2000 Sq. Ft. & a Multiplex and barring some Units, the Project has been sold to hundreds of Allottees from the year 2006 to 2017.



- v. The Project was completed in the year 2011 and even its Occupancy Certificate dated 02.01.2012 was issued by Estate Office, Chandigarh way back in the year 2012 which is annexed by the Allottees as Annexure A – 3 with petition.
- vi. 5 Allottees have falsely claimed themselves to be 9 Allottees by claiming the Joint Allottees of a Single Unit to be different Allottees whereas as per law joint allottees of a single unit are to be treated as only one Allottee and thereafter under the garb of “*as per the knowledge*” falsely claimed the total number of allotted units to be “*around 45*” just to frivolously meet the threshold and falsely pretend before this Hon’ble Tribunal that petition is maintainable in law whereas in reality the Allottees themselves fully knowing that it’s a huge Mall spread across more than 2,25,000 Sq. Ft. having 6 (Six) Floors, terrace and a Multiplex. Further even the Maps annexed by the Allottees themselves with the Petition would show that it’s a huge Mall where there are more than 30 (Thirty) Units on each floor of different sizes.
- vii. The present Allottees have failed to demonstrate the statutory threshold under the IBC. The petition is defective and liable to be dismissed in light of the ruling in ***Manish Kumar v. Union of India (2021) 5 SCC 1***, wherein the Hon’ble Supreme Court upheld the constitutional validity of the threshold limit for filing Section 7 petitions by Allottees.
- viii. As per the law, in case of financial debt owed to Allottees under a real estate project, an application under Section 7 can be filed only



if at least 100 allottees or 10% of the total allottees in a project, whichever is lesser, join in the petition. The present application does not meet this requirement and is thus liable to be dismissed at the threshold.

- ix. The Allottees have concealed the material fact that there are various pending litigations between the Allottees the Developer and the Land Owner i.e. M/s Meters & Instruments Pvt. Ltd. at Chandigarh and at New Delhi. The details of pending litigations are herein reproduced from para 10 and 11 of the reply:

*“10. That the Allottees have concealed the material fact that there are various pending litigations between the Allottees present before this Hon’ble Tribunal and the Developer and the Land Owner i.e. M/s Meters & Instruments Pvt. Ltd. at Chandigarh and at New Delhi including Civil Suits and Criminal Revision Petitions i.e. Civil Suit No. CS/27/2023 titled “Rameez Raja & Ors. Vs. Real Tech Constructions Pvt. Ltd. & Ors.” pending before Chandigarh District Court, Civil Suit No. 810/2019 titled “M/s Meters & Instruments Pvt. Ltd. Vs. Anuradha Bardeja & Ors.” pending before Chandigarh District Court, Criminal Revision No. CR REV/487/2023 titled “Rameez Raja & Ors. Vs. State & Ors.” pending before Ld. ASJ, Patiala House Court, New Delhi etc. Copy of plaint in Civil Suit No. CS/27/2023 titled “Rameez Raja & Ors. Vs. Real Tech Constructions Pvt. Ltd. & Ors.” pending before Chandigarh District Court is annexed herewith and marked as Annexure P – 2. Copy of plaint in Civil Suit No. 810/2019 titled “M/s Meters & Instruments Pvt. Ltd. Vs. Anuradha Bardeja & Ors.” pending before Chandigarh District Court is annexed herewith and marked as Annexure P – 3. Copy of Revision Petition in CR REV/487/2023 titled “Rameez Raja & Ors. Vs. State & Ors.” pending before Ld. ASJ, Patiala House Court, New Delhi is annexed herewith and marked as Annexure P – 4.*

*11. That the present petition is a counter blast as Application under 156(3) Cr.P.C. filed by few of the parties present before this Hon’ble Tribunal had been dismissed by Ld. MM, Patiala House Court against which the aforesaid revision petition is pending and even the revision petition is on the verge of dismissal. Further even the Civil Suit filed by few of the parties present before this Hon’ble*



*Tribunal is on the verge of being dismissed under Order 7 Rule 11 CPC. Also, one of the Civil Suits where one of the Allottees i.e. Ms. Anuradha Bardeja is a party is also on the verge of being dismissed as the Corporate Debtor had filed an Application under Section 8(2) of the Arbitration & Conciliation Act, 1996. Copy of latest Order dated 19.12.2024 passed in Civil Suit No. CS/27/2023 titled “Rameez Raja & Ors. Vs. Real Tech Constructions Pvt. Ltd. & Ors.” is annexed herewith and marked as Annexure P – 5. Copy of latest Order dated 28.01.2025 passed in Civil Suit No. 810/2019 titled “M/s Meters & Instruments Pvt. Ltd. Vs. Anuradha Bardeja & Ors.” is annexed herewith and marked as Annexure P – 6. Copy of Order dated 25.05.2023 passed by Ld. MM, Patiala House Court in Cr. Cases/7579/2022 in Case titled “Rameez Raja & Ors. Vs. State” is annexed herewith and marked as Annexure P – 7.”*

- x. The present petition filed by the allottees under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) is not maintainable as the alleged debt is disputed and cannot be adjudicated in summary proceedings. Furthermore, the alleged default pertains to a delay in the delivery of possession, which does not constitute a financial debt under the provisions of the IBC. Additionally, certain allottees, namely Sh. Rajesh Wason, Sh. Anmol Wason (Unit No. FF-05), and Sh. Ayan Pandey (FF-17), have themselves submitted documents acknowledging possession of their respective units, as evidenced on Pages 118 and 127 of the petition. The existence of a financial debt and default is a sine qua non for admission under Section 7 of the IBC. Since this case involves complex disputes regarding obligations, payments, and timelines requiring detailed evidence, it cannot be decided summarily by this Hon’ble Tribunal.



xi. The Allottees before this Hon'ble Tribunal are part of a project developed by the Corporate Debtor, but their claims are contentious as they either seek refunds due to alleged delayed possession or have failed to fulfill their financial obligations under the Agreement. Consequently, the present petition under Section 7 of the IBC is not maintainable, as the alleged default does not meet the criteria of a financial debt under the IBC. The Hon'ble Supreme Court, in various judgments, including ***Pioneer Urban Land and Infrastructure Ltd. & Anr. v. Union of India***, has clarified that the IBC is not a substitute for RERA and that allottees should seek remedies under RERA rather than initiating insolvency proceedings.

*Landowner i.e. M/s Meters and Instruments Pvt. Ltd. which Is the necessary party and epicenter of all the disputes had not been made a party due to selective persecution and malice on behalf of the Allottees*

xii. The Corporate Debtor, a reputed developer, had completed the Project in 2011, and the Occupation Certificate (OC) was issued on 02.01.2012. Despite fulfilling its obligations by fully constructing the Mall, the Land Owner, M/s Meters and Instruments Pvt. Ltd., failed to demarcate the Corporate Debtor's 55% share, leading to frivolous disputes. As a result, the Corporate Debtor was compelled to file FIR No. 3/2024 under Sections 406, 420, and 120-B at P.S. EOW, Chandigarh, against M/s Meters and Instruments Pvt. Ltd. and its management, which is currently under investigation alongside other pending litigations.



- xiii. The Corporate Debtor maintained its office and sales office in the Said Mall (Unit Nos. GF 28, GF 29, and GF 29A) until February 2018, when M/s Meters and Instruments Pvt. Ltd. allegedly trespassed into these offices and dishonestly took away original papers and records without the Corporate Debtor's knowledge or consent.
- xiv. The two joint Allottees, Sh. Rajesh Wason and Sh. Anmol Wason (Unit No. FF-05), along with another Allottee, Sh. Ayan Pandey (FF-17), have already filed documents acknowledging possession of their respective units (as recorded on Pages 118 and 127 of the Petition). However, they have still proceeded with the present petition without ascertaining whether M/s Meters and Instruments Pvt. Ltd. had dispossessed or prevented them from taking possession. Given the complexity of disputes regarding obligations, payments, and timelines, this case necessitates detailed evidence and cannot be summarily adjudicated by this Hon'ble Tribunal.
- xv. The matter originates from a Property Development Agreement dated 02.03.2006 between Realtech Constructions Pvt. Ltd. and M/s Meters & Instruments Pvt. Ltd. for constructing a shopping mall on Industrial Plot No. 143-A, Industrial Area, Phase-I, Chandigarh-160002, which was initially allotted to M/s Meters & Instruments Pvt. Ltd. by the Estate Office, Chandigarh, through a Deed of Conveyance dated 11.07.1960. Additionally, two irrevocable General Power of Attorneys (GPAs), dated 08.03.2006, were executed and registered with the Sub-Registrar, Chandigarh, authorizing Realtech



Constructions Pvt. Ltd. as the true and lawful attorney of M/s Meters & Instruments Pvt. Ltd.

- xvi. In terms of the Property Development Agreement dated 02.03.2006, Corporate Debtor constructed and developed a Shopping Mall-cum-Multiplex known as “City Emporium Mall,”. The entire construction was undertaken at its own expense, amounting to over ₹50 Crores, without any financial contribution.
- xvii. Corporate Debtor also facilitated the change of land use from industrial to commercial and obtained all requisite statutory permissions from the competent authorities. The completion/occupation certificate for the project was received from the concerned authority on 02.01.2012.
- xviii. Under the terms of the Property Development Agreement dated 02.03.2006 and the irrevocable General Power of Attorney (GPA) dated 08.03.2006, Corporate Debtor is entitled to a 55% share of the total Floor Area Ratio (FAR) on each floor, including basements, terrace, common areas, facilities, and amenities, along with 55% of the undivided, indivisible, and impartible ownership rights in the total land underneath the mall.
- xix. This entitlement includes offices, shops, flats, showrooms, storage spaces, and parking areas, with all associated easement rights. Furthermore, as per the irrevocable GPAs, Corporate Debtor has the authority to negotiate, enter into agreements for sale, mortgage, transfer, and create liens or charges on its allocated share in the mall.



- xx. The Property Development Agreement executed between Meters & Instruments Pvt. Ltd. and Corporate Debtor required Corporate Debtor to deposit ₹7.5 Crores as an interest-free refundable security with Meters & Instruments Pvt. Ltd. Additionally, Corporate Debtor was responsible for applying for the conversion of land use from industrial to commercial, preparing construction plans, and coordinating with consultants, as agreed upon in the Property Development Agreement.
- xxi. The agreement stipulated that if the building plans were not sanctioned within a reasonable period, Meters & Instruments Pvt. Ltd. could terminate the agreement. However, Corporate Debtor fulfilled its obligations, obtained plan approvals, and no steps for termination were taken by Meters & Instruments Pvt. Ltd.
- xxii. In consideration of bearing all costs for conversion fees, construction, and labor, Corporate Debtor was entitled to 55% of the total saleable space in the project, while Meters & Instruments Pvt. Ltd. was entitled to 45%, with the same ratio applied to common areas and facilities.
- xxiii. In terms of Clause 17 of the Property Development Agreement, the saleable space was to be earmarked for allocation between the owners and developers under joint signatures from both parties. While both parties had been jointly selling areas in the Mall to different Allottees or selling units from their respective shares by mutual consent from 2006 to 2017, Meters & Instruments Pvt. Ltd. has consistently refused to demarcate the entire area despite



repeated requests from Corporate Debtor. As a result, Corporate Debtor was compelled to initiate multiple legal proceedings, which remain pending before various forums in Chandigarh.

- xxiv. The alleged default claimed by the Financial Creditors is unsustainable since any delay in handing over certain units arose due to circumstances beyond the control of the Corporate Debtor. Furthermore, the Corporate Debtor had sent a Legal Notice dated 28.08.2023 to M/s Meters and Instruments Pvt. Ltd., invoking arbitration, and Arbitration Petition No. ARB-471-2024 is currently pending before the Hon'ble Chandigarh High Court, where the matter has been referred to mediation for an amicable resolution. Copies of the Legal Notice and the Hon'ble High Court's Order dated is annexed as Annexures P-9 and P-10, respectively.
- xxv. The Corporate Debtor has already completed the project and has not willfully defaulted, if any default exists, in fulfilling its obligations. Initiating an insolvency resolution process would be detrimental to all stakeholders, including the Financial Creditors/Allottees themselves, as it would jeopardize their investments rather than provide any effective remedy.
- xxvi. The Hon'ble Supreme Court and the National Company Law Appellate Tribunal (NCLAT) have consistently held that the IBC is not a debt recovery mechanism and should not be misused by Financial Creditors/Allottees to exert undue pressure on developers, the Financial Creditors have come to this Tribunal with unclean



hands and has suppressed material facts. Therefore, the petition is liable to be dismissed.

**ANALYSIS & FINDINGS: -**

4. We have perused the contentions made on behalf of both the parties. As can be seen from Section 7(1) of the Code r/w the explanation provided therein, a Financial Creditor may file an application for initiating CIRP against a Corporate Debtor when a default occurs in respect of a financial debt. The said provision reads thus: -

***“7. Initiation of corporate insolvency resolution process by financial creditor. —***

*(1) A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.*

*Explanation. —For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.”*

5. In the facts of the present case, the primary objection raised by the Respondent is that the application is not maintainable as the threshold for filing such Petition by Financial Creditors/Allottees in terms of second proviso to Section 7 of the Code has not been satisfied.

6. At this stage, it is pertinent to refer to the definition of the expression of ‘financial debt’, as provided under Section 5(8) of the Code, means disbursal of any debt against the consideration for the time value of money and includes



money borrowed against the payment of interest. The Section 5(8) of the Code reads thus: -

**“5. Definitions.** – *In this part, unless the context otherwise requires, -*

*[...]*

*(8) “financial debt” means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes—*

*(a) money borrowed against the payment of interest;*

*(b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;*

*(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*

*(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;*

*(e) receivables sold or discounted other than any receivables sold on nonrecourse basis;*

*(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*

*[Explanation. -For the purposes of this sub-clause,-*

*(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and*

*(ii) the expressions, “allottee” and “real estate project” shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate*

*(Regulation and Development) Act, 2016 (16 of 2016);]*



*(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;*

*(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;*

*(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;”*

**7. In *Pioneer Urban Land & Infrastructure Ltd. vs. Union of India***

[(2019) 8 SCC 416], the Hon’ble Supreme Court held that for the purposes of Section 5(8) of the Code, the disbursal must be against consideration for “time value of money” from the lender to the borrower who then utilizes the money.

The relevant excerpt of the judgment reads thus: -

*“61. The definition of “financial debt” in Section 5(8) then goes on to state that a “debt” must be “disbursed” against the consideration for time value of money. “Disbursement” is defined in Black’s Law Dictionary (10th ed.) to mean:*

*“1. The act of paying out money, commonly from a fund or in settlement of a debt or account payable. 2. The money so paid; an amount of money given for a particular purpose.”*

*In the present context, it is clear that the expression “disburse” would refer to the payment of instalments by the allottee to the real estate developer for the particular purpose of funding the real estate project in which the allottee is to be allotted a flat/apartment. The expression “disbursed” refers to money which has been paid against consideration for the “time value of*



money”. In short, the “disbursal” must be money and must be against consideration for the “time value of money”, meaning thereby, the fact that such money is now no longer with the lender, but is with the borrower, who then utilises the money [...].”

8. Examining whether the Applicants, being the Financial Creditors/allottees fulfil the threshold limit as prescribed under section 7 of IBC, 2016. At this stage, we consider it appropriate to refer to the Proviso of Section 7(1) of the IBC, 2016, which lays down as under:

**“Section 7: Initiation of corporate insolvency resolution process by financial creditor.**

*(1) A financial creditor either by itself or jointly with [other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.*

The 2nd proviso to Section 7(1) reads as follows: -

*“Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten percent. of the total number of such allottees under the same real estate project, whichever is less”*

9. For better understanding of the preceding paragraph, we may refer to the definitions of “Allottee” defined under Section 2(d) and “Real Estate Project” defined under Section 2(zn) of the RERA Act, 2016.

Section 2(d) and Section 2(zn) reads thus:

**“2. Definitions —**

*(d) “allottee” in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold*



*(whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;”*

*(zn) “real estate project” means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;”*

**10.** The project in question namely “City Emporio Mall”, a Commercial, situated at 143-A, Industrial Area Phase-I, Chandigarh-160002, as per the Financial Creditor/Allottees knowledge the project have 45 units out of which 6 units are held by 9 allottees and co-allottees. The details of Allottees are read thus:

**ALLOTTEE NO.1 (Mr. Neeraj Arora)**

- a. That the Corporate Debtor executed a unit buyer agreement dated 01.03.2011 with Allottee No.1 and was allotted two Commercial Units (SF-17 and SF-18) in the Said Project, admeasuring to an area of 2587 sq. ft. at the cost of Rs 5650/- per sq. ft. A copy of the Unit Buyer Agreement dated 01.03.2011 executed between Corporate Debtor and Mr. Neeraj Arora is annexed herewith and marked as ANNEXURE A-5.
- b. That the Allottee No.1 has already paid a consideration of Rs 86,00,000/- (Rupees Eight Six Lakhs Only) at the date of the time of the registration of his purchase for his units. The same is acknowledged in Clause 4 of the Unit Buyer Agreement dated 01.03.2011.

**ALLOTTEE NO. 2-5 (Co-allottees Mr. Rameez Raja, Mr. Tanweer Ahmad, Mr. Saeed Ahmad and Late Mr. Tafsir Ahmad)**



- a. That Allottees No. 2-5 executed a Space Buyer Agreement dated 29.11.2011 with the Unit No.GF-14 in the Said Project, admeasuring to an area of 1900 sq. ft. at the cost of Rs 8650/- per sq. ft. That the Allottees No. 2 to 5 have already paid a consideration of Rs 1,80,00,000/- (Rupees One Crore Eighty Lakhs Only) towards the purchase of their unit out of which Rs 1,64,00,000/- was towards the registration of their unit and the remaining balance of Rs 15,65,000/- (Rupees Fifteen Lakhs Sixty-Five Thousand) was towards the miscellaneous charges and was supposed to be adjusted at the time of taking the possession. The same is acknowledged at Clause 4.1 of the Space Buyer Agreement dated 29.11.2011. A copy of the Space Buyer Agreement dated 29.11.2011 executed between the Corporate Debtor and Mr. Rameez Raja, Mr. Tanweer Ahmed, Mr. Saeed Ahmed and Mr. Tafsir Ahmed is annexed herewith and marked as ANNEXURE A-6.
- b. That one of the co-allottees Late Mr. Tafseer Ahmad left for heavenly adobe on 09.05.2024. The present application is filed through the legal heir of the Late Mr. Tafseer Ahmad. A copy of the Succession Certificate of Late Mr. Tafseer Ahmad is annexed herewith and marked as ANNEXURE A-7.

**ALLOTTEE NO. 6 and 7 (Mr. Rajesh Wason and Mr. Anmol Wason)**

- a. That Unit No. FF-5 was agreed to be sold to Mr. Pankaj Dayal by the Corporate Debtor on the basis of his Agreement to Sell dated 20.08.2015. That the Pankaj Dayal therefore jointly with the Corporate Debtor allotted Unit No. FF-5 to Mr. Rajesh Wason and Mr. Anmol Wason qua Allotment/ Possession letter dated 13.04.2016 and Agreement to Sell dated 13.04.2016 in the Said Project, admeasuring to an area of 1302 Sq. Ft. at Rs 7000/- per sq. feet. That the Allottees No. 6 and 7 have already paid the entire consideration of Rs 91,14,000/- (Rupees Ninety-One Lakhs Fourteen Thousand only) at the date of signing the agreement. The same is acknowledged at Clause 3 of their Agreement to Sell dated 13.04.2016. A copy of the Possession Letter dated 13.04.2016 issued by the Corporate Debtor along with Mr. Pankaj Dayal to Mr. Rajesh Wason and Mr. Anmol Wason is annexed herewith and marked as ANNEXURE A-8. A copy of the Agreement to Sell dated 13.04.2016 executed between Mr. Pankaj Dayal and Mr. Rajesh Wason and Mr. Anmol Wason is annexed herewith and marked as ANNEXURE A-9.



**ALLOTTEE NO.4 (Mr. Avan Pandey)**

- a. That Unit No. FF-17 was agreed to be sold to Mr. Pankaj Dayal by the Corporate Debtor on the basis of his Agreement to Sell dated 20.08.2015. That the Pankaj Dayal therefore jointly with the Corporate Debtor allotted Unit No. FF-17 to Mr. Ayan Pandey qua one possession letter dated 13.04.2016 and Agreement to Sell dated 13.04.2016 in the Said Project, admeasuring to an area of 836 Sq. Ft. at Rs 7000/- per sq. feet. That the Allottee No.4 has already paid the entire consideration of Rs 58,52,000/- (Fifty-Eight Lakhs Fifty-Two Thousand only) at the date of signing the agreement. The same is acknowledged in Clause 3 of the Agreement to Sell dated 13.04.2016. That the Corporate Debtor along with Mr., Pankaj Dayal has also issued one possession letter dated 13.04.2016 to the Allottees No.4. A copy of the Possession Letter dated 13.04.2016 issued by the Corporate Debtor along with Mr. Pankaj Dayal to Mr. Ayan Pandey is annexed herewith and marked as ANNEXURE A-10. A copy of the Agreement to Sell dated 13.04.2016 executed between Mr. Pankaj Dayal and Mr. Ayan Pandey is annexed herewith and marked as ANNEXURE A-11.

**ALLOTTEE NO. 5 (Mrs. Anuradha Bardeja)**

- a. That the Allottee No. 5 booked Unit No. SF-13 (admeasuring to an area of 1441 Sq. Ft.) in the Said Project and had paid Rs. 75,45,000/- to the Corporate Debtor and Landholder. That Allottee No.5 received a letter dated 09.05.2012 from the Corporate Debtor for the confirmation of booking and offer of possession, which categorically mentioned the unit allotted to Allottee No.5 and the consideration already paid. A copy of the letter dated 09.05.2012 issued by the Corporate Debtor to Mrs. Anuradha Bardeja is annexed herewith and marked as ANNEXURE A-12.

**11.** As per the Contentions of the Respondent it has been stated that the Project i.e. City Emporio Mall, is a huge Mall spread over more than 2,25,000 Sq. Ft. having 6 (Six) Floors and Terrace and has hundreds of Allottees. The



Area has been divided into many Units where the average size of a Unit ranges from 500 Sq. Ft. to 2000 Sq. Ft. & a Multiplex and barring some Units, the Project has been sold to hundreds of Allottees from the year 2006 to 2017. Further Respondent has contended that 5 Allottees have falsely claimed themselves to be 9 Allottees by claiming the Joint Allottees of a Single Unit to be different Allottees. However, Respondent has failed to substantiate its claim and nothing has been provided by the Respondent to prove its contentions that there are more than 45 units in the Project. The Respondent has neither given a specific number of allottees nor submitted any document which indicates the number of allottees/units.

**12.** The present application has been preferred over by 9 allottees of the aforesaid project. Even if the Respondent's claim of 5 allottees is considered, the application is maintainable under the threshold limit established in Section 7 of the Code. As per the settled law, the Financial Creditors/homebuyers are entitled to file petition under Section 7 of the Code against the Corporate Debtor for its failure to hand over the possession in terms of the Buyer Agreement by claiming the Principal Amount along with Interest payable (delay penalty as well as Interest payable for the delay). In the present case, as a matter of fact, the Corporate Debtor is liable to make payment to all the allottees for the delay in handing over the possession along with the Interest. Apparently, the threshold limit as prescribed under the provisions of the code is satisfied.



13. Before considering this petition for admission, it would not be out of context to refer to the default amount in the Petition to satisfy the threshold limit of the code. Part IV of the Petition read thus:

PART - IV PARTICULARS OF FINANCIAL DEBT		
1.	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	Rs. 4,91,11,000/-
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)	The total amount which is due from Financial Creditor as on 20.09.2024 is Rs. 4,91,11,000/-

14. Further, as can be seen from the provisions of Section 7(3) of IBC, 2016, while considering admission of the application filed under Section 7, we need to satisfy ourselves as to whether the record of default is enclosed with the petition. The Section 7(3) reads thus: -

***“7. Initiation of corporate insolvency resolution process by financial creditor.—***

[...]

*(3) The financial creditor shall, along with the application furnish-*

*(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;*



*(b) the name of the resolution professional proposed to act as an interim resolution professional;*

*(c) any other information as may be specified by the Board.”*

**15.** In the facts of the present case, the Financial Creditor has enclosed the Space Buyer Agreements of the allottees from Annexure 5 to 12 to the petition as evidence of the default.

**16.** The Applicant/ Financial Creditors has espoused that the date of default is 01.03.2011, 29.11.2011, 13.04.2016, and 09.05.2012 as per Unit Buyer Agreement/ Possession Letter.

**17.** In view of the aforesaid contentions and documents relied upon by the parties, this Tribunal is of the view that there was a default in repayment of the financial debt owed to the Financial Creditor by the Corporate Debtor. The documents filed by the Financial Creditor constitute ‘record of default’ in terms of Section 7(3)(a) of the Code.

**18.** In ***Innoventive Industries Limited vs ICICI Bank Ltd*** [(2018) 1 SCC 407], the Hon’ble Supreme Court had observed the scope and extent of the powers conferred with the Adjudicating Authority under Section 7 of the Code and held that in case of a Corporate Debtor who commits default, the Adjudicating Authority merely has to see from the records or evidence produced by the FC to satisfy itself that a default has occurred in order to . Relevant excerpt of the judgment reads thus: -

*“29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to*



*the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing - i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.*

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

(Emphasis Supplied)

**19.** Furthermore, the Hon'ble Supreme Court in the matter of **M. Suresh Kumar Reddy V. Canara Bank**, [(2023) 8 SCC 387] held that once the Adjudicating Authority is satisfied that the default has occurred, there is hardly a discretion left with it to refuse the admission of the application under Section 7 of the Code. The relevant extract of the aforesaid judgement reads thus: -

*“11. Thus, 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. "Default" is defined under sub-section (12) of Section 3 IBC which reads thus:

"3. Definitions. In this Code, unless the context otherwise requires-

.....

(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not [paid] by the debtor or the corporate debtor, as the case may be;"

Thus, even the non-payment of a part of debt when it becomes due and payable will amount to default on the part of a corporate debtor. In such a case, an order of admission under Section 7 IBC must follow. If NCLT finds that there is a debt, but it has not become due and payable, the application under Section 7 can be rejected. Otherwise, there is no ground available to reject the application."

**20.** In Part- III of the application, the Applicant has proposed the name of Mr. Pankaj Khetan to act as the Interim Resolution Professional. Relevant excerpt of the same reads thus: -

**PART - III  
PARTICULARS OF THE PROPOSED INTERIM  
RESOLUTION PROFESSIONAL**

1.	<b>NAME, ADDRESS, EMAIL ADDRESS AND THE REGISTRATION NUMBER OF THE PROPOSED INTERIM RESOLUTION PROFESSIONAL</b>	<p>NAME: Mr. Pankaj Khetan</p> <p>ADDRESS: K-37/A (Basement), Kailash Colony, Delhi-110048</p> <p>REGISTRATION NUMBER: IBBI/IPA-002/IP- N00010/2016-17/10014</p> <p>A copy of the consent given by the proposed Resolution Professional is annexed herewith and marked as ANNEXURE P-14. (Colly)</p>
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21. It is also pertinent to mention that the aforementioned proposed IRP has submitted a declaration under Rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by way of Form 2 to indicate that no disciplinary proceedings are pending against him and he is eligible to be appointed as the RP qua the Corporate Debtor. The relevant excerpt of the same reads thus: -

**FORM 2**  
(See sub-rule (1) of rule 9)  
*(Under rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

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**WRITTEN COMMUNICATION BY PROPOSED INTERIM RESOLUTION PROFESSIONAL**

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14.10. 2024

To,  
The Hon'ble National Company Law Tribunal  
New Delhi Bench

From,  
Pankaj Khetan  
K-37/A, Basement, Kailash Colony, Near Kailash Colony  
Metro Station, Delhi-110048

In the matter of REAL TECH CONSTRUCTION PRIVATE LIMITED

Subject: Written communication in connection with an application to initiate corporate insolvency resolution process in respect of REAL TECH CONSTRUCTION PRIVATE LIMITED

Madam/Sir,

I, Pankaj Khetan, an insolvency professional registered with ICSIIP having registration number IBBI/IPA-002/IP-N00010/2016-17/10014 have been proposed as the interim resolution professional by Aryan Pandey & Others in connection with the proposed corporate insolvency resolution process of REAL TECH CONSTRUCTION PRIVATE LIMITED.

In accordance with rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, I hereby:

- (i) agree to accept appointment as the interim resolution professional if an order admitting the present application is passed;
- (ii) state that the registration number allotted to me by the Board is [IBBI/IPA-002/IP-N00010/2016-17/10014] and that I am currently qualified to practice as an insolvency professional;
- (iii) disclose that I am currently having the following assignments in hand:



Sl. No.	Assignment as	Number of Assignment(s)	No.	Name of corporate debtor	Date of commencement of process	Expected date of closure of process
Corporate Processes						
1	IRP		1	Concept Horizon Private Limited	14.10.2022	Stay from Hon'ble NCLAT on COC.
			2			
			3			
2	RP		1			
			2			

			3			
3	Liquidator (including voluntary liquidations)		1	Dissolution Application has been filed Stride Auto parts Limited	24.12.2020	Under sub judice with Hon'ble NCLT, New Delhi since 2022, Dissolution order Pending
			2	VCRM Petrochemicals Private Limited	01.01.2021	Under sub judice with Hon'ble NCLT, New Delhi since 2022, Dissolution order Pending
			3			
4	Authorised Representative		1			
			2			
			3			
Individual Processes						
5	Resolution Professional					
6	Bankruptcy Trustee					

7	Any other.	
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- (iv) certify that there are no disciplinary proceedings pending against me with the Board or ICSIIP
- (v) affirm that I am eligible to be appointed as a resolution professional in respect of the corporate debtor in accordance with the provisions of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;
- (vi) make the following disclosures in accordance with the code of conduct for insolvency professionals as set out in the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016;



(ICSI Institute of Insolvency Professionals)



**22.** As a sequel to the above discussion and in terms of sub-section (5) of Section 7 of IBC, 2016, where this Adjudicating Authority is satisfied that a default has occurred and the application filed under Section 7(2) is complete and there are no disciplinary proceedings pending against the proposed Resolution Professional, it may admit the application. Section 7(5) of the Code reads thus: -

***“7. Initiation of corporate insolvency resolution process by financial creditor.—***

*[...]*

*(5) Where the Adjudicating Authority is satisfied that—*

- (a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or*
- (b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:*

*Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.”*

**23.** Thus, it is clear that when a default takes place i.e., the debt becomes due and is not paid, the Insolvency Resolution Process shall begin against the corporate debtor. Therefore, on the basis of discussion in the aforesaid paragraphs, we are satisfied that the present application is complete in all



respects. The Applicant/financial creditor is entitled to move the application against the corporate debtor in view of outstanding financial debt in default above the pecuniary threshold limit as provided under Section 4 of the Code, 2016. In the facts and circumstances of the case, as noted above we are left with no option but to **admit the present application**. Ordered accordingly.

**24. In the wake, moratorium as provided under Section 14 of IBC, 2016 is declared qua the CD** and as a necessary consequence thereof the following prohibitions are imposed, which must be followed by all and sundry:

(a) The institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent 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 Respondent.

**25.** As proposed by the Petitioner, Mr. Pankaj Khetan, having Registration No. IBBI/IP A-002/IP-N00010/2016-17/10014, is hereby appointed as IRP. It is further ordered that Mr. Pankaj Khetan, shall take charge of the CIRP of



the Corporate Debtor with immediate effect and would take steps as mandated under the IBC, 2016 specifically under Section 15, 17, 18, 20 and 21 of the Code read with extant provisions of CIRP Regulations, 2016.

**26.** The Petitioner is directed to deposit Rs. 2,00,000/- with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

**27.** A copy of this Order shall immediately be communicated by the Registry/Court Officer of this Tribunal to the Petitioner /Financial Creditor, the Respondent/Corporate Debtor and the IRP mentioned above.

**28.** In addition, a copy of this Order shall also be forwarded by the Registry/Court Officer of this Tribunal to the IBBI for their record.

**Sd/-**  
**(ANIL RAJ CHELLAN)**  
**MEMBER (T)**

**Sd/-**  
**(ASHOK KUMAR BHARDWAJ)**  
**MEMBER (J)**