



**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI BENCH, COURT-III**

IA-6672/2023  
In  
IB-654(PB)/2019

**IN THE MATTER OF IB-654(PB)/2019:**

**VISHAL FABRICS & ORS.**

**..... FINANCIAL CREDITORS**

**VERSUS**

**M/s AVJ DEVELOPERS (INDIA) PVT. LTD.**

**..... CORPORATE DEBTOR**

**AND IN THE MATTER OF IA-6672/2023:**

**KOTAK MAHINDRA BANK LIMITED**

*Through its Authorized Representative Mr. Somesh Sundriyal.*

*Having its Registered Office at:*

*27 BKC, C 27, G Block, Bandra Kurla Complex,*

*Bandra (E), Mumbai, Maharashtra-400051.*

*Having Branch Office at:*

*G-9, Vikas Puri, New Delhi-110018.*

**..... APPLICANT BANK**

**VERSUS**

**1. Mr. ANIL TAYAL**

*(Earlier RP of AVJ Developers (India) Pvt. Ltd.)*

*R/o 201, Sagar Plaza, District Centre,*

*Laxmi Nagar, New Delhi-110092.*

**..... Respondent No.1**

**2. Mr. VIVEK KUMAR**

*(Present Resolution Professional of AVJ Developers (India) Pvt. Ltd.)*

*R/o C-604, Rosewood Apartments,*

*Mayur Vihar-I, Ext., New Delhi-110091.*

**.....Respondent No.2**

**3. COMMITTEE OF CREDITORS (CoC)**

*(CoC of AVJ Developers (India) Pvt. Ltd.)*

*Office No. 106, D-248 Gali No. 10, Laxmi Nagar, Delhi-110092.*

**..... Respondent No.3**



**Order Pronounced On: 14.11.2025**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

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

**PRESENT:**

For Applicant : Mr. Gulshan Kumar Sachdev

For Respondent : Mr. Saurabh Kalia, Ms. Mani Gupta, Mr. Aman  
Choudhary, Advs. Mr. Vivek Kumar (RP)

**ORDER**

**PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)**

1. I have the advantage of going through the order authored by my Learned Brother Member (J). I have perused the comprehensive order and with utmost respect to the views expressed by my learned brother on the Bench, I find myself unable to concur with the opinion
2. The present Application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016 by the Applicant/Kotak Mahindra Bank and is seeking the following reliefs: -

*“A) Condone the delay of 1480 days in filing claim before the Respondent being the Resolution Professional; or*

*B) To direct to the RP to confirm whether PNBHFL filed a claim before the IRP/RP regarding the above-mentioned units/Borrowers.*

*C) To direct the RP to provide the status of the above-mentioned units and whether the above-mentioned units namely- 1701,17, Tower D, AVJ Heights, Plot No. GH-12/2, Sector- Zeta-1, Greater Noida, Uttar Pradesh- 201310 have been listed for claims under the Resolution Plan.*

*D) To Direct the RP to accept the claims of the Applicant to the tune of Rs. 57,90,947/- (Rupees Fifty-Seven Lacs Ninety Thousand Nine Hundred Forty Seven Only) in stipulated FORM*



CA as an allottee of the Corporate Debtor in respect of the Units stated above.

E) Pass any further orders as Hon'ble Bench deem fit and proper.”

3. It is the case of the Applicant Bank that the Applicant/Kotak Mahindra Bank Limited, being a Claimant, filed its claim aggregating to Rs. 57,90,947/- (Rupees Fifty-Seven Lacs Ninety Thousand Nine Hundred Forty-Seven Only) in Form F under Regulation 9A of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 on 23.11.2023. The Respondent/Resolution Professional did not reply to the said E-mail and have neither accepted nor rejected the claim of the Applicant.
4. It is submitted that the details of the Borrowers and their corresponding unit/flat details along with their Loan Account Number are mentioned in the table below: -

S. No	Loan Account Number	Name of Borrowers	Unit/ Flat Details	Amount Disbursed
1.	HOU/GHA/07 15/2306/77	Ranjan Chandra Dey & Smriti Dasgupta	1701, 17, Tower D, AVJ Heights, Plot No- GH-12/2, Sector-Zeta- 1, Greater Noida, Uttar Pradesh-201310.	43,41,000/-

5. It is submitted that the allottees failed to maintain the financial discipline towards the said loan accounts and in pursuance of the same, the facility accounts of the borrowers were classified as Non- Performing Asset (NPA) by PNBHFL. Further, vide Deed of Assignment dated 04.03.2023, the original lender PNBHFL assigned all the rights, title and interest in the aforesaid loan accounts along with all the underlying securities to Kotak Mahindra Bank Limited (Applicant herein) and thus the applicant has charges over all the above-mentioned units.
6. It is submitted that in view of the mortgage rights created by the allottee and the permission to mortgage being granted by the Corporate Debtor having



the development rights over the units and having parted with the ownership over the unit's subsequent to its allotment, PNBHFL disbursed the funds directly to the Developer/ Corporate Debtor for its aid and benefit. The Corporate Debtor as the developer acknowledged the valid and subsisting charge over such flats/units of PNBHFL.

7. It is submitted that the Tripartite Agreement determines the relationship between the Corporate Debtor (Builder), the allottees/Homebuyers (Borrower) and PNBHFL. As per Clause 5 of the agreement, the Corporate Debtor had specifically agreed that if borrowers fail to pay the balance amount or in case of cancellation and/or termination of the agreement between the Builder and the Borrower and/or in the event of death of the Borrower, the entire amount advanced by the PNBHFL will be refunded by the Builder to PNBHFL forthwith. Moreover, the Builder has given its consent that PNBHFL shall have a lien on the Property. The Borrowers have to furnish the Property as security for loan to PNBHFL and create mortgage in favour of the PNBHFL, as and when the sale deed/lease deed of the Property is executed it will be sent directly to PNBHFL. Moreover, from the reading of the contents of the agreement it is crystal clear that PNBHFL has lien over all the units and also builder cannot transfer any such unit which can be transferred by the builder without getting NoC from the PNBHFL.
8. The Respondent/Resolution Professional submitted that the claim of the Applicant is not maintainable as the same does not qualify as a debt in terms of the definition of the financial debt as defined under section 5(8) of the Code as the claim has been filed with respect to the amounts disbursed for allotment of units to Homebuyers in the Project. The Applicant Bank is neither a secured nor a Financial Creditor of the Corporate Debtor. A bare reading of the Tripartite Agreement, clearly indicate that PNBHFL had granted loan to Home Buyers and not to the Corporate Debtor.
9. It is contended by the Resolution Professional that the Applicant herein relied upon the Tripartite Agreements executed amongst the Homebuyer, the Applicant and the Corporate Debtor for establishing its status as "secured creditor" of the Corporate Debtor. However, the Applicant has conveniently ignored the fact that Builder's liability to refund the amount arises only if -



- a. *the Builder fails to provide the original, executed, duly stamped and registered agreement for sale, original registration receipt and letter of authority from Sub-registrar and/or sale deed in favour of the Borrower(s); or*
- b. *the Builder fails to ensure that effective security is created in favour of the Bank in the manner prescribed by the Bank; or*
- c. *if the Borrower fails to pay his stipulated margin amount.*

**10.** It is submitted that The Builder has neither failed to provide the original, executed, duly stamped and registered agreement for sale, original registration receipt and letter of authority from Sub-registrar and/or sale deed in favour of the Borrower(s) nor failed to ensure that effective security is created in favour of the Bank in the manner prescribed by the Bank. Infact, the Clause 6.11 of the Resolution Plan specifically provides for handing over of flats to the homebuyers and as such, security in favour of the bank can only be created thereafter. Furthermore, the Applicant has not given any detail in its application as to how the borrower has failed to pay the margin money and as such, the Applicant cannot rely on the same without any specific pleading to that effect.

**11.** It is submitted that the Respondent has already admitted the claim of one homebuyer being Mr. Mohammad Adnan in respect of unit D-1701. However, the unit being D-1701 was allotted multiple times by the suspended management of the Corporate Debtor. In this regard, even though the names of the Borrowers, Ranjan Chandra Dey and Smriti Dasgupta, appear in the records of the Corporate Debtor, they have not filed their claims as allottees of the unit D-1701, before the Respondent. The Respondent has also submitted an affidavit dated 12.09.2023, in this regard, before this Adjudicating Authority.

**12.** The Applicant Bank relies upon the Clauses of the Tripartite Agreement dated 13.08.2015 which are reproduced as under: -

*“5. If the Borrowers desire to withdraw and/or in case of death of Borrowers and/or if Borrowers fail to pay the balance amount representing the difference between the Loan sanctioned by PNBHFL and the actual purchase price of the*



*Property, the entire amount advanced by the PNBHFL will be refunded by the Builder to PNBHFL forthwith.*

*7. Further, the Builder, in the event of default of repayment of Loan by the Borrowers, shall on written intimation/ instructions of PNBHFL cancel the allotment of the Property of the Borrowers and refund, the entire amount advanced/funded by PNBHFL directly to PNBHFL, and the builder shall have right to recover/ forfeit the earnest money from the borrower.*

*12. The Builder has given its consent that PNBHFL shall have a lien on the Property. That the Borrowers have to furnish the Property as security for loan to PNBHFL and create mortgage in favour of the PNBHFL, as and when the sale deed/lease deed of the Property is executed it will be sent directly to PNBHFL.*

*13. The Builder will not transfer the said Property to any other member or other person without obtaining the previous written consent/ NOC from PNBHFL.*

*14. Without prejudice to the rights available to PNBHFL under Clause 5 and 7 herein, in the event of default by the buyer/s or Mortgagor/s or Borrowers, if PNBHFL exercise its right to enforce the security by sale/transfer to any third party including transferring to itself, the Builder would accept the purchaser/s of the Property/PNBHFL as a the buyer (as the case may be), on such purchaser(s) /transferee complying with the necessary formalities which are required by the builder to become a transferee/ purchaser/ allottee/ owner of the property.”*

**13.** The Ld. Counsel for the Applicant Bank submitted that since the Corporate Debtor failed to provide original sale deed in favour of the Borrower and/or create any security in favour of the Bank in absence of registered sale deed, the Corporate Debtor is liable to repay the debt in terms of the irrevocable and unconditional guarantee provided in the clauses above. Therefore, the



Applicant Bank assumes the character of the Financial Creditor in terms of Section 5(8) of the Code.

14. The Ld. Counsel for the Applicant placed reliance upon the Order dated 09.01.2025 in the case of Canara Bank vs. Sh. Vivek Kumar, Resolution Professional of M/s AVJ Developers (India) Private Limited, Comp. App. (AT)(Ins) 390 of 2023, wherein the Hon'ble NCLAT referred to Clause 16 of the Tripartite Agreement executed by Canara Bank, the Corporate Debtors and the Allottees therein, to hold that there is a clear obligation to repay upon the Corporate Debtor, albeit in the event of default. It is submitted that the said Clause 16 of the Tripartite Agreement is similar to the Clause 5 and 7 of the Tripartite Agreement executed by PNBHFL to the extent it captures the obligation of the Corporate Debtor to pay under crystalized events.
15. In reply, the Ld. Counsel for the Respondent/Resolution Professional submitted that the above clause applies only in the event of the failure of the builder to create a security in favour of the bank. Such an occasion would only arise after approval of the resolution plan as the builder (as Successful Resolution Applicant), would hand over the possession of the flats to the homebuyers as per clause 6.11 of the Resolution Professional.
16. The Ld. Counsel for the Respondent/Resolution Professional submitted that Clause D, E and F of the Recital and Clause 1 and 4 of the Tripartite Agreement, makes it is clear that the loans were disbursed to the individual homebuyers and not the Corporate Debtor as per the law laid down by the Hon'ble Supreme Court in the case of ***Pioneer Urban Land and Infrastructure Ltd. v. Union of India, (2019) 8 SCC 416***. The relevant clauses of the Tripartite Agreement are reproduced as under:

*“D. The Borrowers are short of finance for purchasing the Property hence in order to make up their finance for the purchase approached PNBHFL for grant of Housing Loan. The Borrowers under the provisions of the housing loan scheme framed by the PNBHFL have applied to PNBHFL for a loan for the purchase of the Property and PNBHFL has agreed to grant a loan of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ Only) to the Borrowers (hereinafter referred to as the "Loan") subject to the terms and conditions applicable to the Loan for Purchase of*



*Property. The Borrowers have represented that they have not availed any loan from anywhere.*

*E. PNBHFL has considered the said request with a clear understanding and an irrevocable undertaking by the Borrowers that subsequent to the disablements as requested by the Borrowers, there would be no repayment default for any reason whatsoever including but not limited to any concern/issues by and between the Borrowers and the Builder/Developer;*

*F. The Borrowers have represented, and such representation being a continuing representation, that Borrower's obligation to repay the Loan shall be a distinct and independent obligation more particularly independent of any issues/concern/ dispute of whatsoever nature between the Borrowers and Builder:*

*NOW THEREFORE, IN CONSIDERTAIION OF MUTUAL COVENANTS HEREIN THE PARTIES HERETO AGREE AS FOLLOWS:*

*1. That on application for grant of Loan of the Borrowers and on receipt of intimation from the Builder that the Property has been allotted to the Borrowers, PNBHFL has sanctioned the loan for purchase of Property of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_) Only) to the Borrowers according to its rules, but the actual payment in instalments will be made by PNBHFL directly to the Builder as per the norms of PNBHFL Any amount. towards purchase price in excess of the "Loan for purchase of Property" sanctioned .by PNBHFL will be paid by the Borrowers directly to the Builder as per sale agreement between the Builder and 'the Borrowers and original money receipts will be submitted to PNBHFL.*

*4. That irrespective of the stage of construction of the Project and irrespective of the date of handing over the possession of the Property to the Borrowers by the Builder. the Borrowers shall 'be liable to pay to PNBHFL regularly each month the Pre-*



*EMIs/EMIs as laid down in the Loan Agreement signed by and between PNBHFL and the Borrowers. The Borrowers shall execute an indemnity and such other documents as may be required by PNBHFL in favour of PNBHFL in this regard.*

### **Analysis and Findings**

- 17.** In the case of *Canara Bank vs. Shri. Vivek Kumar*, Company Appeal (Ins.) 390/2023, the Hon'ble Appellate Tribunal has determined that in case the Builder/Corporate Debtor expressly undertook the liability to refund the entire amount advanced by the Bank, it creates a direct financial obligation upon the Corporate Debtor to refund the amount back to the Bank. This Adjudicating Authority cannot return to the reasoning as was rejected by the Hon'ble NCLAT in its Order dated 09.01.2025. In view of the findings of the Hon'ble NCLAT, the Bank's claim as based upon the Clause 5 of the Tripartite Agreement qualifies as a Financial Debt as defined under Section 5(8) of the Code and must be admitted as such.
- 18.** The Hon'ble NCLAT in its order dated 09.01.2025 has given specific findings after detailed analysis that cannot be ignored. The operative portion states: *"We have examined both the cases in greater details in preceding paragraphs as well as legal provisions of the Code and various clauses of the agreement specially in contrast with provisions of the Tripartite Agreement of the present case vis-a-vis Value Infracon India Private Limited (Supra), as such we find that the Adjudicating Authority has erred in not considering the aspects brought out by the Appellant in the present appeal."*
- 19.** The Hon'ble NCLAT concluded that *"In view of above detailed discussion, the appeal succeeds. The Impugned Order is set aside and IA No. 836/2023 in C.P. (IB) No. 654(PB)/2019 is restored to its original number and the matter is remanded back to the Tribunal for reassessment of the case, in accordance with law."*
- 20.** Hon'ble NCLAT in order dated 9.1.2025 has taken the view that the Tripartite Agreement (TPA) in the present case is materially different from Value Infracon as it creates a direct liability on the Builder and has categorically recorded in Para 79 that *"...the Corporate Debtor/Builder has undertaken to refund the entire amount advanced by the Bank in case of event of default of repayment of the loan."*



- 21.** The undisputed fact is that the Applicant Bank directly disbursed loan amounts to the Corporate Debtor/Builder, albeit on behalf of and on the instructions of the homebuyer and money reached the Corporate Debtor from the Bank.
- 22.** In this case also the Clause 5 of Tripartite Agreement provides that upon borrower's default or any specified event due to which the loan is not utilised for purchase of the flat, the entire amount advanced by the Bank shall be refunded by the Builder to the Bank. The TPA does not merely indemnify the Bank, it creates a direct contractual obligation upon the Corporate Debtor to refund the entire amount advanced by the Bank in case of specified defaults and upon the occurrence of specified events.
- 23.** Further the Borrower authorized the Bank to disburse loan to the Builder and the Builder undertook to refund all amounts disbursed in case of specified defaults. With these provisions in TPA the Bank steps into the shoes of the homebuyer upon disbursing funds and occurrence of defaults acquires the right to enforce the refund from the Builder. The agreement creates a structure where the homebuyer's receivable from the Builder is, by contract, assigned to the Bank to the extent of loan disbursed.
- 24.** The Corporate Debtor received funds from the Bank to complete the real estate project. The homebuyers obtained financing from the Bank to enable them to purchase units. The Tripartite Agreement was structured such that Builder would receive the funds directly from the Bank and the Corporate Debtor undertook a contractual obligation to refund the entire amount to the Bank in case of default or failure to complete the project. This arrangement clearly has the commercial effect of a borrowing with the home buyers as intermediaries within the meaning of Section 5(8)(f) of the Code.
- 25.** Section 5(8) requires disbursement against consideration for time value of money. In this case loan amounts were directly disbursed by the Bank to the Corporate Debtor for construction and the refund obligation carries interest. This satisfies requirements of guarantee and Section 5(8)(f) requirements of commercial effect of borrowing therefore, a financial debt exists. Bank's claim is a valid "Financial Debt" under Section 5(8) and the Bank acquires the status of a "Financial Creditor".



- 26.** The Homebuyer may have approached the Bank seeking the loan but this not this negate the fact that TPA creates a direct and primary obligation upon the Corporate Debtor to refund the loan amount to the Bank in case of occurrence of specified events. The initial genesis of the transaction does not negate the contractual obligation that was ultimately created in favour of the Bank against the Corporate Debtor. The Corporate Debtor entered into the Tripartite Agreement voluntarily, agreed to receive money directly from the Bank, and it agreed to undertake the obligation to refund this money in specified circumstances. The Resolution Plan itself recognizes this by providing for treatment of bank as Financial Creditor. If the Bank had no claim at all, there would be no need for such a provision in the Resolution Plan.
- 27.** In cases were the homebuyers who have not filed any claims, if the Bank's claim is rejected, there will be no claim admitted in respect of these accounts despite the Corporate Debtor having received the money. This would lead to a situation where the Corporate Debtor which has failed to complete the project, would escape liability for substantial amounts it received, simply because the homebuyers have not filed claims.
- 28.** In view of Clause 5 of the Tripartite Agreement, it is evident that the Borrower/Homebuyer has authorized the Bank to disburse the above said loan amount directly to the Builder/Corporate Debtor; and such disbursement and the obligation to repay gave a right to the Bank to claim payment from the Corporate Debtor in terms of Section 3(6) and 5(8) of the Code.
- 29.** In light of the findings of Hon'ble NCLAT in CA 390 of 2023, the Ld. Bengaluru Bench in the case of Kotak Mahindra Bank v. Prasanna Kumar Rath & Ors., in IA-713/2024 vide Order dated 07.08.2025 came to the following findings: -
- “4. We have heard the Learned Counsel for the Applicant and RP and gone through the material available on record. Apparently, the RP not considered the claim made by the Applicant on the basis of the decision in Axis Bank Vs Value Infracon India Pvt Ltd Case.*
- 5. The Counsel during the course of hearing cited latest judgement of the Hon'ble NCLAT bearing Company Appeal (AT) (Ins.) No.390 of 2023 in the case*



of *Canara Bank vs. Shri.Vivek Kumar* and referred to Para-77 of the decision passed by the Hon'ble NCLAT. Para 77 to 80 of the judgment are extracted below:

*“ We have already taken into consideration that the Impugned Order rejected the claims of the Appellant mainly based on the judgment of the Hon'ble Supreme Court of India in the matter of Pioneer Urban Land (Supra) and this Appellate Tribunal in the case of Value Infracon India Private Limited (Supra). The Impugned Order passed by the Adjudicating Authority stated that the bank did not finance the Corporate Debtor and real financial creditors are the homebuyers and based on the judgment of this Appellate Tribunal Value Infracon India Private Limited (Supra) the Adjudicating Authority rejected the case of the Appellant.*

*78. We have examined both the cases in greater details in preceding paragraphs as well as legal provisions of the Code and various clauses of the Comp. App. (AT) (Ins.) No. 390 of 2023 agreement specially in contrast with provisions of the Tripartite Agreement of the present case vis- a vis Value Infracon India Private Limited (Supra), as such we find that the Adjudicating Authority has erred in not considering the aspects brought out by the Appellant in the present appeal.*

*79. The Appellant Bank has directly disbursed the amount to the Corporate Debtor/Builder, albeit, on behalf of the Borrowers/Homebuyers and in terms of the Tripartite Agreements amongst the Allottees, Builder and the Bank, the Corporate Debtor/ Builder has undertaken to refund the entire amount advanced by the bank in case of event of default of repayment of loan.”*

*6. It is seen that in this case also there is a tripartite agreement between the Homebuyers, Corporate Debtor and PNB Housing Finance Limited which is placed at pages 329 to of the petition. Clause 7 of the Tripartite Agreement is reproduced below. As per Clause 7 of this Agreement and,*



*“7. That the Builder, in the event of default of repayment of loan by the Borrower shall on written intimation instructions of PNBHFL cancel the allotment of said property of the Borrower and refund the amount standing to the credit of borrowers in the books of developers account by PNBHFL directly to PNBHFL and the Builder shall have right to recover/forfeit the earnest money.” Further Clauses 7-14 lay down the undertaking given by the Builder.*

*7. Hence, the facts of this case are similar to the matter decided by the Hon’ble NCLAT in respect of the Tripartite Agreement and also considering the Clause 7 of the Agreement, It has to be held that the present Assignee namely the KOTAK MAHINDRA BANK has to be considered as a Finance Creditor in respect of the Amounts advanced by the then Assignor PNB Housing Finance Limited.*

*8. In view of the above Discussion, this present application is liable to be allowed. Accordingly, I.A No.713 of 2024 is allowed with the following direction.*

*The Respondent No. 1 is directed to admit the claim of the Applicant as Financial Creditor replacing the Respondent No. 2 to No. 5 to the extent of the claim of the Applicant in accordance with the right of subrogation pursuant to the terms of Tri-partite Agreement and consequently reconstitute the Committee of Creditors by including the Applicant along with entitled voting share to the Applicant in the Committee of Creditors.*

*In View of this direction, separate orders on other prayers at a, b and c separately are not considered necessary.”*

- 30.** Further, the Ld. Delhi Bench-II in the case of Indian Bank v. Ansal Properties & Infrastructure Ltd. in IA-6224/2024 vide Order dated 25.04.2025 placing reliance on Hon’ble NCLAT’s Canara Bank Order directed the Successful Resolution Applicant and Resolution Professional to file an affidavit that the Resolution Plan would be implemented in due deference to the Hon’ble NCLAT’s judgment.



**31.** After careful consideration of the entire matter, including the specific directions of the Hon'ble Supreme Court and the detailed analysis by the Hon'ble NCLAT, we arrive at the following conclusions:

- (a) The Tripartite Agreement creates a direct and primary contractual obligation upon the Corporate Debtor/Builder to refund the entire loan amount to the Applicant Bank in case of various specified events.
- (b) This clause is fundamentally different from the corresponding clause in the Value Infracon case, where there was no such obligation of repayment by the Builder to the Bank.
- (c) The disbursement by the Bank directly to the Corporate Debtor, coupled with the Corporate Debtor's undertaking to refund this amount, constitutes a transaction having the commercial effect of a borrowing within the meaning of Section 5(8)(f) of the IBC.
- (d) The fact that the initial loan agreement was between the Bank and the homebuyer does not negate the separate debt obligation created by TPA in favor of the Bank against the Corporate Debtor.
- (e) The Applicant Bank qualifies as a Financial Creditor of the Corporate Debtor under Section 5(7) read with Section 5(8) of the Insolvency and Bankruptcy Code, 2016.
- (f) The Resolution Plan itself recognizes banks deriving claims from Tripartite Agreements as financial creditors.
- (g) The delay in filing the claim cannot be a ground for rejection when the Resolution Plan itself provides for filing of claims within 45 days of its approval and the Plan has not yet been approved.

To again reject the Bank's claim after the Hon'ble NCLAT's detailed analysis finding error in the earlier rejection would not be in accordance with the appellate directions and would frustrate the judicial process.

### **Order**

- i. In view of the relevant clauses of the Tripartite Agreement, the findings of the Hon'ble NCLAT and the above mentioned Orders of the coordinate Benches i.e. Ld. Bengaluru Bench and Ld. New Delhi



Bench-2, this Adjudicating Authority holds the Applicant Bank to be a Financial Creditor of the Corporate Debtor.

- ii. It is ordered that the Applicant Bank, be recognized as a Financial Creditor of the Corporate Debtor for all those cases where claim has not been filed by the Homebuyer and based on the contractual obligation created under the Tripartite Agreement, the Resolution Professional is directed to admit the claim of the Applicant Bank. Consequently, the Applicant is entitled to be treated as a Financial Creditor for all purposes of CIRP, including participation in the Committee of Creditors and distribution under the Resolution Plan.
- iii. This order does not prejudice the rights of homebuyers who may file their own claims. If any homebuyer in respect of whose loan the Bank's claim is admitted subsequently files a claim within the timeline provided in the Resolution Plan, the Resolution Professional shall examine such claim independently. In case of any overlap or duplication between the Bank's claim and a homebuyer's claim in respect of the same unit, appropriate adjustments shall be made to avoid double counting, with priority given to the Homebuyers.
- iv. The present application stands allowed to the extent indicated above.

**-Sd/-**

**(DR. SANJEEV RANJAN)**  
**MEMBER (TECHNICAL)**