



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

**IA. NO. 1732/ND/2023, IA. NO. 678/2022, and**  
**IA NO. 3778/2022**

**IN**

**Company Petition No. (IB)-456/(ND)/2018**

**IN THE MATTER OF:**

**Pallavi Joshi Bakhru**

... Applicant/  
Financial Creditor

**Versus**

**Universal Buildwell Private Limited**

... Respondent/  
Corporate Debtor

**AND IN THE MATTER OF IA. NO. 1732 of 2023:**

- 1. Mr. Jeetendra S Kaushal**  
R/o D-4, East Azad Nagar,  
Street No-5, Delhi-110051  
... Applicant No. 1
- 2. Mr. Harbhajan Singh**  
R/o II-A/69, Lajpat Nagar,  
New Delhi-110024  
... Applicant No. 2
- 3. Mr. Darpan Ghai**  
R/o F-1/20, Krishna Nagar,  
Delhi-110051  
... Applicant No. 3
- 4. Mrs. Vandana Bhatnagar**  
R/o C-9/9153, Vasant Kunj  
New Delhi-110070  
... Applicant No. 4
- 5. Mr. Sushil Chander Khanna**  
R/o W-15/32, Western Avenue,  
Lane W-15, Sainik Farms, Delhi-110062  
... Applicant No. 5
- 6. Mrs. Neelam Khanna**  
R/o W-15/32, Western Avenue,  
Lane W-15, Sainik Farms, Delhi-110062  
... Applicant No. 6
- 7. Mr. Ravinder Kumar Ghai**  
R/o F-5/17, Krishna Nagar,  
Delhi-110051  
... Applicant No. 7
- 8. Mr. Y. Puran Kumar**  
R/o 132, Sector 24,  
Chandigarh-160023  
... Applicant No. 8

**VERSUS**

**Atul Kumar Kansal**

Resolution Professional  
For Universal Buildwell Private Limited  
Address: SCO 61, 3<sup>rd</sup> floor, old judicial complex,  
Above Kotak Mahindra Bank,  
Civil Lines, Gurgaon-122001

... Respondent



**SECTION: Section 60(5) of IBC 2016 r/w Rule 11 of NCLT Rules, 2016**

**AND IN THE MATTER OF IA. NO. 678 of 2022:**

**M/s Grace Steel Private Limited**

Through:

Mr. Bhuvnesh Sarawat, Director

R/o 158A, DDA Flats,

Ghazipur, New Delhi-110027

**... Applicant**

**VERSUS**

**Atul Kumar Kansal**

Resolution Professional

For Universal Buildwell Private Limited

Address: SCO 61, 3<sup>rd</sup> floor, old judicial complex,

Above Kotak Mahindra Bank,

Civil Lines, Gurgaon-122001

**... Respondent**

**SECTION: Section 60(5) of IBC 2016 r/w Rule 11 of NCLT Rules, 2016**

**AND IN THE MATTER OF IA. NO. 3778 of 2022:**

**HDFC Bank Limited,**

Through: Ms. Deepti Bhardwaj,

Authorized Legal Manager,

R/o HDFC Bank House

Senapati Bapat Marg,

Lower Parel (West),

Mumbai - 400013

**... Applicant**

**VERSUS**

**Atul Kumar Kansal**

Resolution Professional

For Universal Buildwell Private Limited

Address: SCO 61, 3<sup>rd</sup> floor, old judicial complex,

Above Kotak Mahindra Bank,

Civil Lines, Gurgaon-122001

**... Respondent**

**SECTION: Section 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016**

**Order Delivered on: 01.11.2023**

**CORAM:**

**SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)**

**SH. L. N. GUPTA, HON'BLE MEMBER (T)**



**PRESENT:**

**For the Applicant** : Adv. Dhurv Gupta in IA. No. 3778/2022,  
Adv. Aditya Maheshwari in IA. No. 678/2022  
& IA. No. 1732/2023  
**For the Respondent** : Adv. Sandeep Bhuraria, Adv. Monish Surendran,  
**For the RP** : Adv. Swapnil Gupta, Adv. Sadiq Noor

**ORDER**

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

**IA-1732/2023**

The CD viz. Universal Buildwell Pvt. Ltd. was admitted to CIRP in terms of the order dated 03.07.2018 passed in IB-456(ND)/2018. Subsequently, the RP filed IA-1550/2019, seeking confirmation of the plan for Resolution of the Insolvency of the CD, approved by CoC in its meeting dated 11.11.2019 with 7.44% voting in favour of the plan. Considering the application, this Adjudicating Authority passed the order dated 11.06.2021 remitting the Resolution Plan to CoC for modification in terms of the payments to the objectors, namely, DHFL, Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited. The ground perceived by this Adjudicating Authority to take such a view was that the two banks (ibid) could not be kept attached to the Corporate Debtor till completion of the project and they were entitled to get the payment of Rs.3 Crores within a specified period.

2. Assailing the aforementioned order, the Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited preferred Company Appeal (AT) (Insolvency) No.661 of 2021 before Hon'ble National Company Law Appellate Tribunal. The appeal was dismissed in terms of the order dated 11.04.2023, with the view that the directions contained in para 49 of the order dated



11.06.2021 were to be affirmed while the same contained in para 50 thereof were to be deleted.

3. Nevertheless, the appeal was dismissed, and the order passed by this Adjudicating Authority remitting the Resolution Plan to CoC for modification in terms of the payment as specified in the order viz., DHFL, Kotak Mahindra Bank and Kotak Mahindra Prime Limited were to be paid cash and could not be made attached to the plan/project till execution/completion of the same. Para 49 of the order passed by this Adjudicating Authority on 11.06.2021, as affirmed by the Appellate Authority in terms of the order dated 11.04.2023 reads thus: -

*“49. Now, in the light of position of law settled by the Hon’ble Supreme Court (Supra), we consider the contention of Mr. Sumant Batra, Advocate and we notice that the amount proposed to be paid in the Resolution Plan is approved by the CoC. Under Section 30(2)(b) of IBC read with Section 53 of IBC, 2016, it is duty of the Resolution Professional to examine the Resolution Plan, whether the distribution to the Creditors is made in terms of the provisions of law and Regulations, thereafter the Resolution Professional shall place the same before the Committee of the Creditors u/s 30(3) IBC 2016 for its approval. The CoC proposed, may approve the Plan by not less than 66% of voting share u/s 30(4) of the IBC 2016. It is the commercial wisdom of the Coc to determine what amounts are to be paid to different classes and sub classes of creditors in accordance with the provisions of the Code and the Regulations made thereunder. It is seen that while deciding the amounts in the instant case, the Coc has considered the liquidation value placed by the Resolution Professional as well as the Resolution Applicant as mentioned in aforementioned paragraphs. Since the units, that have already been sold, are no longer an asset of the Corporate*



*Debtor and consequently cannot be liquidated, their liquidation value has been provided as NIL. The CoC after considering the same, approved the amounts proposed to be paid to Kotak Mahindra Bank Limited, Kotak Mahindra Prime Limited and similarly, to DHFL. Hence, we find, no force in the contention raised by the Ld. Counsel for the Objectors that the amounts which are proposed to be paid to the DHFL, Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited are contrary to the provision of Section 30(2)(b) of the IBC read with Section 53(1) of the IBC, 2016.*

4. After the order dated 11.06.2021 passed by this Adjudicating Authority, the CoC circulated notice and Agenda for 16<sup>th</sup> meeting of CoC scheduled to be held on 25<sup>th</sup> June, 2021. The Financial Creditors, AR and Suspended Directors were apprised of the agenda.

5. As can be seen from paras 54, 59 and 60 of the IA-5003/2021, the Resolution Professional calculated the liquidation value for Financial Creditors on the basis of the unsold area available in the project which they had financed. However, the secured Financial Creditor did not concur with the view of the Resolution Professional. The aforementioned paras of the application read thus: -

*“54. In the meeting, CoC deliberated on the issue of re-examination of liquidation value and length. Legal Opinion of Mr. Jayant Metha, Senior Advocate was also placed before CoC for its consideration. Following are the excerpts from the legal opinion of Mr. Jayant Mehta: -*

*“21.1.5. Therefore the calculation of liquidation value must exclude the value of such number of units, which are already subject to ATSSs/BBA and it is only any balance consideration payable in*



*respect thereof and the unsold units that can be taken as the asset of the corporate debtor that can be realized by way of sale thereof.”*

*“21.2.2. Therefore, only the units which are unsold should be treated as the realizable asset of the corporate debtor. For the sold units, the value to the corporate debtor can only be the difference is any between the receivable from the unsold units and the cost of construction as any purchaser of the corporate debtor, even in liquidation, would not be able to purchase the property free of rights created by the existing ATs/BAs.”*

*CoC also noted that there is no need to have fresh valuation as the valuation itself is not the subject matter of dispute. The only issue is to re-examine the liquidation value attributable to secured creditors in view of the fact that there was no unsold inventory or limited unsold inventory available with the Corporate Debtor in event of liquidation. Further, other issues like overselling of area, non-obtaining of NOC from secured creditors etc. Were also discussed in the meeting.*

*After the discussions, it appeared that both Kotak Mahindra Bank Limited and DHFL require some time for internal discussions and this issue of re-examining of liquidation value is going to take some more time, Resolution Professional proposed that an application for extension of CIRP period by another 60 days should be made to Hon’ble NCLT and sought opinion from participants on this issue.*

*Further, resolution applicant also proposed to make some arithmetical changes in their resolution plan and proposed that they will re-submit the same to resolution professional within couple of days.*

*After discussions, matter of extension of CIRP Period by 60 days was put to voting. This resolution was approved by 93.36% voting in favour of resolution.*



Copies of Minutes of 17<sup>th</sup> meeting of CoC along with voting results are attached herewith and marked as Annexure E.

**XXX**

59. For the above, resolution professional has calculated the liquidation value for financial creditors on the basis the unsold area available in the project which they have financed. Secured financial creditors have not concurred with this view of resolution professional. Resolution Professional hereby seeks directions of this Hon'ble over this issue.

**XXX**

60. Liquidation value attributable to the secured financial creditors after taking into consideration the unsold area in the respective projects is as under:

S No.	Name of the Project	Liquidation Value (Rs. Crores) on the basis of unsold area	Name of Secured Creditor to whom charged	Mode of payment
1.	Universal Aura	23.21	Dewan Housing Finance Corporation Limited	Cash in 180 days, INR 44.81 Crores after deducting pro-rata CIRP cost.
2.	Universal Greens	21.37	Dewan Housing Finance Corporation Limited	
3.	Universal Business Park	-	Kotak Mahindra Bank / Kotak Mahindra Prime Limited	Cash in 180 days (INR 3 Crores)
4.	The Pavillion	24.98	Kotak Mahindra Bank / Kotak Mahindra Prime Limited	Release of security in favour of lender or from proceeds of sale in manner as provided in the Plan
5.	Universal Prime	1.47	SIDBI	Release of security in favour of lender or from proceeds of sale in the manner as provided in the Plan



6. The salient plea espoused in the present application filed by 7 Applicants is, that “since the conveyance deed qua the unit/property nos. 4-A, 03, 02, A-2, 01/1B, 04 and 4C, duly registered could be executed by CD in their favour much before the commencement of CIRP, which was initiated in terms of the order dated 03.07.2018”, the units/property could not have been treated as part of the asset of CD. To buttress the plea, the applicants have pleaded that: - (i) at the time of execution of the conveyance deed, the units nos. 02, 03, 04, 4-A were already leased out to ICICI Bank, unit nos. 01, 1-B were leased out to the State Bank of Bikaner and Jaipur (now SBI) and unit no. 4-C was leased out to IndusInd Bank; (ii) the Applicants received rent qua their respective units till the year 2020; (iii) the conveyance deeds shows clear specifications and demarcation of the properties transferred to the Applicants. Copies of the conveyance deeds executed in favour of the Applicants are enclosed as Annexure A1 (collectively) to the application.

7. It is the case of the Applicants that the conveyance deeds qua the subject properties had been executed in favour of the CD only after payment of full consideration, thus the legal title and all rights in the properties stood vested in the Applicants and the same are their assets in all respect and for all purposes.

8. According to the Applicants, when this Adjudicating Authority passed the order dated 03.07.2018 initiating CIRP qua the CD and appointed Mr. Atul Kumar Kansal as IRP, no intimation whatsoever was received by them and there was no correspondence regarding any controversy with respect to the conveyance deeds (ibid) entered between the Applicants and the CD.



9. Relying upon the order dated 11.06.2021 passed by this Adjudicating Authority remitting the Resolution Plan back to the CoC, the Applicants have pleaded that out of the total super built-up area measuring 2,15,915 sq. ft, conveyance deeds had been executed in respect of 90,606.03 sq. ft, thus the area of 90,606 sq. ft could not be the subject matter of mortgage with the Kotak Bank, thus the valuer had not taken the said area into consideration for the purpose of valuation. The Applicants have also made reference to the report of RP to contend that as the entire area qua Universal Trade Towers had been sold to the allottees, the project was not treated as an asset of the Corporate Debtor.

10. According to the Applicants, it was only after approval of the Resolution Plan by the Committee of Creditors and the order dated 11.06.2021 passed by this Adjudicating Authority, they could come to know that the SRA had treated the conveyance deed holders at par with the builder buyer agreement holders and the assets/property which formed the subject matter of conveyance deed were considered as the asset of the Corporate Debtor. In the captioned application, the Applicants have also averred that in response to a specific query raised by them, the Resolution Professional could inform them that the conveyance deeds had been executed without obtaining the occupancy certificate (OC) from concerned authorities, thus an explanation/clarification was sought from the Registrar regarding the conveyance deeds. Paras xii and xiii of the application reads thus: -

*“(xii) In light of the liberty granted by this Honourable Adjudicating Authority by its order, dated 16/07/2021, the Applicants wrote a representation dated 24/07/2021 to the Resolution*



*Professional submitting that the Subject Properties are not an asset of the Corporate Debtor. In respect thereof, the Applicants raised following queries before the Resolution Professional:*

- “a. Does the resolution plan proposed by you, includes conveyance deed holders as allottees?*
- b. Can there be any just plan implementation on us the conveyance deed holders without asking us or a chance to be heard in CoC or by you.*
- c. Has there been any application/order for cancellation of Conveyance deed:*
- d. Do we also come under allottees? And be treated as par with BBA holders?*
- e. What is the meaning of treating conveyance deed holders at par with BBA holders? Can we the conveyance deed holders be asked to pay any amount, surrender our unit, relocated or resized without any intimation/order of court of jurisdiction?”*

*A copy of the representation, dated 24/07/2021, of the Applicants sent to the Resolution Professional by email, dated 28/07/2021, is appended herein as **Annexure A5**.*

*(xiii) In response thereof, the Resolution Professional stated that area in Universal Business Park has been sold by ex-directors of the Corporate Debtor in excess of available area and in this regard application before Hon’ble Adjudicating Authority for appointment of local commissioner to determine rights of allottees/buyers is also pending. It was further stated by the Resolution Professional that Conveyance deeds have been executed without obtaining Occupation Certificate (“OC”) from*



*the concerned authorities. Additionally, the Resolution Professional informed the Applicants that no application has been filed for cancellation of conveyance deeds however only a letter was sent to Registrar seeking explanation in this regard. A copy of the email dated 10/08/2021 sent by the Resolution Professional to the Applicants is appended herein as **Annexure A6**.*

11. As in the amended Resolution Plan qua Universal Business Park Owners Association, the conveyance deed holders could be treated at par with builder buyer agreement holders and the units in respect of which the purported conveyance deeds had been executed in their favour are treated as the assets of the CD, the Applicants filed the captioned IA praying therein: -

- I. “Allow the present application filed by the Applicants; and/or*
- II. Declare that units 4-A, 03, 02, A-2, 01, 1-B, 04 and 4C (Subject properties) of Universal Business Park, which are subject matter of the present application, are not the assets of the Corporate Debtor and be excluded from the resolution plan; and/or*
- III. Declare that the Applicants, who are the conveyance deed holders cannot be treated at par with the BBA holders as a valid sale/conveyance/title deed has already been executed in their favour; and/or*
- IV. Any other relief that this Honourable Adjudicating Authority deems fit in the interest of justice.”*

12. The salient contentions put forth on behalf of the Applicants are:- (i) in terms of the provisions of Section 18(f) of the Code, the units in respect of conveyance deed had been executed in their favour, could not have been treated as part of assets of the CD; (ii) the ownership of conveyance deed holder was recognised by this Adjudicating Authority in terms of the order dated 30.04.2019; (iv) the absence of occupancy certificate would not touch



upon the rights/titles of the Applicants qua the units/properties transferred to them under conveyance deed; (v) the Applicants were never allowed to file their claim before IRP and they were never treated as part of CoC qua the CD; (vi) in the absence of there being any claim espoused by the Applicants before IRP, the CoC could not have treated the Applicants at par with BBA holders; (vii) even the stand of the RP recorded in order dated 11.06.2021 also reflects that the units in respect of which the conveyance deed had been executed in favour of the Applicants could not have been treated as part of the assets of the CD; (viii) the applicants had made complete payment for the subject properties as well as stamp duties/registration charges as against the BBA holders who had not paid the full consideration for the units allotted to them.

13. Per contra, in the short reply filed on behalf of the Resolution Professional, it has been espoused that the Project Universal Business Park is a commercial project located on land admeasuring 2.1625 Acres in Sector 66, Gurugram, Haryana. The project land is owned by M/s Blaze Promoters Private Limited while the development right qua the same had been entrusted to the Corporate Debtor in terms of the Collaboration Agreement dated 28.09.2008 entered into between M/s Blaze Promoters Private Limited and the Corporate Debtor. The project consists of a commercial building having a 03 Level basement and 14 floors, which could be oversold by the Corporate Debtor. Except for the ground floor of the building, the entire building is a base structure and is incomplete state with no flooring or finishing work done. Further, there is no unit wise demarcation of sold and unsold units qua the project.



14. It is the stand taken by the RP in the reply filed by it that the area sold by the Corporate Debtor in the project Universal Business Park is in excess of the saleable area, as out of the total super built-up area of 2,15,915 sq. ft. an area of 3,59,759 sq. ft. has been sold by the Corporate Debtor through Conveyance Deeds and Builder Buyer Agreements. In the reply filed by him, the RP has specifically averred that there is an overselling of an area approximately 1,41,844 sq. ft.

15. In para 3 of the reply, the RP has averred that he could move an application viz. CA No. 500/2019 before this Court for appointment of a Local Commissioner to demarcate and ascertain the right of the allottees of the project and the application is pending for adjudication. As could be highlighted by the Applicants, one of the pleas raised on behalf of RP is that the Conveyance Deeds executed without there being availability of the Certificate of Occupancy of the building required to be issued by the Competent Authority, no Conveyance Deed could have been executed in favour of the Applicants in the present application.

16. The RP has also pleaded that in terms of the Plan, the allottees/homebuyers are required to contribute an amount of Rs. 20 Cr. for completion of the project. Para 3 and 4 of the reply, wherein the RP has reproduced the relevant excerpts of the plan reads thus:

*“3. It is pertinent to note that the said project i.e., Universal Business Park is still incomplete and as per resolution plan submitted by the Association of home buyers itself the allottees of the said project are willing to and required to contribute further contribute an amount of Rs. 20 Cr. for the completion of the said*



*project. The content of Resolution Plan under the head 'Resolution Plan for Universal Business Park' are set out as under:*

*'6. The unit holders have agreed upon to share the additional cost of Rs.695/sq Ft. and the building constructed fully and require some refurbishment, repair of machinery/lifts/pumps etc. no major construction/replacement is involved except few toilets/repair of Lifts, DG Sets, Water leakage/ logging problems etc. However, if any increase in the total fund requirement, repair of the additional burden if so occurs, In this manner an amount of Rs. 15cr. shall be collected and balance 5.33 cr. shall be arranged/collected by leasing out the property...'*

4. *The contents of Resolution Plan under the head 'Treatment to deal with various claims/claimants' are as under:*

*'4. All the conveyance deed will be treated at PAR equivalent to BBA and shall be subjected to Forensic audit and shall be treated to part of resolution plan.'*

*'7. Unit owners who have executed conveyance deed needs to be kept at par as Occupancy Certificate is not yet received. Appropriate instructions needs to be issued in this regard by the competent authority through Hon'ble NCLT.'*

17. In para 5 of the reply, the RP could espouse that the IA. 1550 of 2019 filed way back in the year 2019, opposing the Plan could be rejected and the Plan was approved. The remission of the Plan back to the CoC was on limited issue i.e., the mode of payment to financial institutions. The RP has also referred to the order dated 16.07.2021 passed by this Adjudicating Authority rejecting the IA. No. 2962/2021 filed by a group of Conveyance Deed holders seeking clarification qua the Resolution Plan. Another vital objection raised by the RP to the captioned IA is that the commercial wisdom of the CoC cannot be interfered with by this Adjudicating Authority in terms of the order dated



11.06.2021 and there is no scope of interference with such view of the CoC by this Adjudicating Authority. In para 9 and 10 of his reply, the RP has made reference to the queries raised by the Conveyance Deed holders and his reply thereto. The paras read thus:

*“9. The only liberty given to the Applicant while disposing of application IA 2962 of 2021 was to seek clarification from the Resolution Professional. However, the letter dated 24<sup>th</sup> of July 2021 was written by the Applicant was not seeking any clarification but seeking to overturn the Resolution Plan. The following points were made out in the representation sent by the Applicants herein: -*

- a) Does the resolution plan proposed by you, includes conveyance deed holders as a allottees?*
- b) Can there be any just plan implementation on us the conveyance deed holders without asking us or any chance to be heard in CoC or by you?*
- c) Has there been any application/order for cancellation of Conveyance deed?*
- d) Do we also come under allottees? And be treated as par with BBA holders?*
- e) What is the meaning of treating conveyance deed holders at par with BBA holders? Can we the conveyance deed holders be asked to pay any amount, surrender our unit, relocated or resized without any intimation / order of court of jurisdiction?*

*The RP gave a reply to the said letter stating that the matter is covered by order dated 10 August **2021**. Relevant part of the response dated 10 August **2021** by the RP is being reproduced hereunder: -*

- i. Resolution Plan has not been proposed by Resolution Professional but the same has been submitted by Universal Aura Welfare Association, Universal Green Buyers Association and Universal Business Park Owners Association and has been duly approved by the committee of creditors as per provisions of IBC, 2016.*



- ii. *Conveyance deed holders were not made part of the committee of creditors and in this regard, sufficient explanations were provided to all persons who had communicated with RP. You have also met RP in his office many times to understand progress in CIR process.*
- iii. *Further, as you are well aware that area in Universal Business Park has been sold by ex-directors in excess of available area and the application before Hon'ble NCLT for appointment of local commissioner to determine rights of allottees / buyers is also pending before NCLT. Copy of report of area sold in Universal Trade Tower and Universal Business Park filed with application is available at [www.universalgroupindia.com](http://www.universalgroupindia.com).*
- iv. *After Collating information from the available records and claims submitted by the claimant RP had filed an application before Hon'ble NCLT as referred in point b and same is pending before Hon'ble NCLT for adjudication. RP had also highlighted the true fact before Hon'ble NCLT that Conveyance deeds have been executed without obtaining Occupation Certificate (OC) from the concerned authorities. You may also refer to order dated 30th April, 2019 (copy of order attached) which is self- explanatory regarding position of execution Conveyance deed without OC.*
- v. *RP has not filed any application for cancellation of conveyance deed however letter was sent to Registrar for getting explanation as asked by bench.*
- vi. *For answer to queries raised under e) above, you may refer to Page No.51 to 60 of the Resolution Plan attached, which is self-explanatory. Further, as per provisions of Insolvency & Bankruptcy Code, Resolution Plan is binding on all stakeholders after approval of Adjudicating Authority.*

10. *The revised Resolution Plan submitted before the Hon'ble NCLT vide application bearing LA. No. 5003/2021 for approval is pending adjudication.”*



18. By filing the written submissions dated 29.05.2023, the Applicant reiterated the stand taken by them in their application. Their emphasis in the submission again is that the subject properties referred to in the IA are not the assets of the Corporate Debtor as the ownership qua those rests with the Applicants. To buttress their plea, the Applicants relied upon the Judgment of Hon'ble Supreme Court in Suraj Lamp and Industries Private Limited (2) vs. State of Haryana and Another 2012 (1) SCC page 656 and that of Hon'ble NCLAT in M/s Indo World Infrastructure Private Limited v. Shri Mukesh Gupta and Ors., Company Appeal (AT) (Ins.) No. 93 of 2022. Indubitably, the view taken by the Hon'ble Supreme Court in Suraj Lamp and Industries Private Limited (ibid) is that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed) and in the absence of a deed of conveyance, no right, title or interest in an immovable property can be transferred. There can be no two opinions regarding such a proposition. Obviously, the view taken by Hon'ble NCLAT in para 20 of M/s Indo World Infrastructure Private Limited v. Shri Mukesh Gupta and Ors., Company Appeal (AT) (Ins.) No. 93 of 2022 is just a reiteration of the view taken by Hon'ble Supreme Court in Suraj Lamp and Industries Private Limited vs. State of Haryana (Supra).

19. To meet the objection regarding validity of the conveyance deeds executed in the absence of the Occupancy Certificate (OC), raised by the RP, the Applicants have relied upon the judgment of the Hon'ble Supreme Court in Rameshwar and Ors. v. State of Haryana and Ors. 2022 SCC Online SC page 898. As can be seen from the facts of the said case, the 105 individuals



had approached the Punjab and Haryana High Court with the plea that they were bona fide and innocent purchasers of the land which was in their possession, thus the same should have been excluded from the deemed award in favour of HSIIDC. It was a case where after publication of a notification under Section 4 of the Land Acquisition Act, 1894, on 27.08.2004, the State of Haryana decided not to proceed with the acquisition. However, the Hon'ble Supreme Court found the discontinuance of the acquisition process as vitiated. Nevertheless, between the date of notification i.e., 07.08.2004 and the date of decision of the of the Hon'ble Supreme Court i.e 29.01.2010 colonisers and developers entered into collaboration agreement and obtained licenses from the Department of Town and Country Planning, Government of Haryana. However, in terms of the judgment of Hon'ble Supreme Court, the acquisition process was restored and the land referred to para 42.2 of the judgment was vested in HUDA/HSIIDC. In the case of Rameshwar (ibid) (Supra), Hon'ble Supreme Court viewed that only such allottees who were bona fide purchaser of units/flats could retain the same with title. The judgment did not draw any distinction between allottees or CD holders. In the larger interest of justice, the occupants/allottee/CD holders were allowed to retain their respective units, irrespective of the fact that the Occupancy Certificate was not issued. Para 112,113 and 117 to 120 of the judgment reads thus: -

*“112. At the same time, this Court is cognizant of the fact that a number of allottees appear to have invested substantial amounts (in respect of the commercial building of Legend Heights, and not the hotel building of Paramveer). Although HSIIDC is silent as to whether the occupation certificates have been granted, there is some material*



*on record (by way of averments in the special leave petition as well as in the application by the Legend Heights Association) that several sale deeds/conveyances were executed and registered.*

*113. The larger interest of justice would lie in ensuring that such of the allottees who are either granted occupation, and/or in whose favour conveyance has been executed, should be handed over the commercial units that they had originally booked. As far as others are concerned, HSIIDC should first verify the claims of all persons/entities who claim to have paid substantial amounts and have not been allotted their spaces, and shall, depending on the stage and nature of construction and the extent of amount paid (It is more than 75 per cent of the total consideration) hand over possession of the units, after due completion.*

**XXX**

*117. 105 individuals approached the Punjab and Haryana High Court, through a common writ petition, claiming directions that they were residents of village Manesar. The claim put forth by them was that they were bona fide and innocent purchasers who had acquired the lands which were included in the notification under Section 4. They acquired rights in respect of lands – presently under their occupation during the suspect period, i.e., between 27.08.2004 and 29.01.2010. It is alleged that assuming the transactions to be free from any cloud on the title, these petitioners had even proceeded to construct upon lands. The claim made to the Punjab and Haryana High Court was that their lands should be excluded from the deemed award. The Hight Court declined the claim, reasoning that the purchases were made by them during the suspect period and this court's judgment provided relief only to the original land owners who had not transferred, alienated or in any manner sold or parted with rights in respect of the land. Since these petitioners admittedly claimed to have purchased the land when they were facing acquisition, no relief could be granted to them. It was argued on*



*behalf of these petitioner by Mr. Rathi that all the petitioners invested their hard-earned money and had built houses in which they have been living all this while. It was urged that many of those dwellers are ex-army personnel.*

*118. During the course of hearing, HSIIDC submitted that the land occupied by such individuals are to the extent of 27 acres. HSIIDC expressed difficulties in verifying the transactions claimed to be bona fide. It was pointed out that these petitioners proceeded to complete the alleged transactions even though the lands were facing imminent acquisition. This court has granted relief only to those land owners who were coerced into selling lands to developers. Such developers used the acquisition proceedings to make profit and ultimately ensure that the acquisitions were dropped. These individuals, however, ran the risk of acquisition being completed.*

*119. The entire tenor and reasoning of the main judgment is that proceedings under the Land Acquisition Act were used as device, whereby through a web of holding or shell companies, developers ultimately entered into transactions and paid valuable amounts towards developmental rights – during pendency of acquisition proceedings. Those rights in turn were exploited to persuade the state machinery to withdraw from the acquisition. The prices of land had risen astronomically by then. Taking all these facts into consideration, as well as the fact that developers had proceeded to develop properties and construct buildings in which units were sold or allotted, this Court allowed only one kind of exception, i.e., that bona fide purchasers of such units, flats or shops etc. to be vested with title. In respect of all unallotted, unconstructed land as well as buildings and land forming part of each of such project, title was to vest in HSIIDC.*

*120. Wherever development agreements were entered into and licenses issued, and no activity took place in the form of construction or development, land was to vest in HSIIDC. If the above thread of*



*reasoning were to be considered, it is apparent that third-party bona fide purchasers who secured allotment by paying valuable considerations which is verifiable as a matter of fact (by independent material) was protected. In the case of all other transactions, however, such protection was not extended for the simple reason that there is no manner for verifying whether in fact a bona fide transaction of the kind alleged took place. For these reasons, this Court is of the opinion that there is no infirmity with the judgment and order of the Punjab and Haryana High Court.*

20. Apparently, the reliance placed by Applicants on Rameshwar and Ors. (ibid) is not relevant to their proposition that in the backdrop of the Conveyance Deeds executed in their favour, irrespective of the availability of the Occupancy Certificate, the units should be excluded from the assets of the Corporate Debtor. On the contrary, in view of the judgment, the allottees and Conveyance Deed holders are treated at par. Nevertheless, the view was taken to keep the flats/units/shops qua which allotment/possession/CD had taken place in favour of the allottees/prescribers/CD holders outside the acquisition. The judgment was totally in different facts. Nevertheless, we do not propose to prosper that the assets qua which Conveyance Deed is executed more than two years before the commencement of CIRP cannot be kept outside the assets of the CD. From Section 18(g)(a) it is clear that the assets by a third party shall not be included in the assets of the CD. Besides, even otherwise also, the Applicants had not staked any claim before CD qua the units in respect of which the conveyance deed had been executed in their favour, thus they always proceeded with the notion that the units transferred to them in terms of the conveyance deed were their independent property and they were not required to approach IRP or RP to stake their claim. In any case,



since the RP could include the names of the Applicants in the list of claimants, thus the position needs to be verified independently. If the transfer of assets could be a fraudulent transaction, the RP ought to have moved an application praying that the ex-promoters/management and the transferee be directed to restore the possession of the transferred assets to the CD. In the present case, neither the Applicants nor the RP have brought on record the clear facts either in their pleadings or through written submissions. On the contrary, in the reply filed by the RP, it has been espoused that there is a need for the appointment of a Court Commissioner by this Adjudicating Authority. To meet the plea raised on behalf of the RP that the Applicants herein did not file any claim for possession, the Applicants have relied upon the judgments of Hon'ble Supreme Court in B Gangadhar v. B G Rajalingam, (1995) 5 SCC page 238 and Sushil Kumar Agarwal v. Meenakshi Sadhu, (2019) 2 SCC page 241 and contented that a right to ownership is a bundle of right of possession and unless otherwise the possession is that of the Applicants alone. There can be no two opinions qua the proposition, but what is troubling us is that when in para 2 of the written synopsis as also in the application the plea raised by the Applicants is that the units allotted to them had been let out to ICICI Bank and State Bank of Bikaner and Jaipur and the Applicants received the rent qua the same, in para 11 of the written synopsis, the Applicants have pleaded that the Resolution Professional is harassing them and is not letting them to use their premises. Once, at the time of execution of the conveyance deed, the units allotted to the Applicants were in the possession of tenants and after execution of the same, the Applicants received rents, it is not understood that how the issue of possession and relationship between Applicants and their



tenants could not be resolved before initiation of CIRP and appointment of RP/IRP. A view regarding the exclusion of the property/units qua which CD was executed in favour of the Applicants can be taken only after clarity of the facts, which neither the IRP/RP verified before filing his reply nor the Applicants could bring on record in a proper manner. It is seen from one of the conveyance deeds dated 28.10.2014 executed in favour of Mr. Jeetendra S. Kaushal i.e., Applicant No.1 in the Captioned IA, it only refers to the transfer of the space comprised in Unit No.02 admeasuring 1000 Sq. Ft. situated at the Ground Floor of the building. There is no reference either in the application or in the conveyance deed regarding the invitation of applications by the CD for allotment of the units and further process between the application and execution of the CD. It is not understood that when the project is still not complete and other allottees are waiting to get their units even now, how the Conveyance Deeds in respect of certain units in the same building could have been executed way back in the year 2014. We are also unable to comprehend that how in respect of the same project, the CD could resort to different methods of transactions and that too at different points of time viz. entering into builder buyer agreement with some of the parties and directly executing conveyance deed in favour of certain others. Our doubt gets further strengthened from the fact that when the Project Universal Business Park is located on land admeasuring 2.165 Acres, the Corporate Debtor could transfer an area of 3,59,759 Sq. Ft. through Conveyance Deeds and Builder Buyers Agreements. According to RP, there is no unit demarcation of sold and unsold units in the project. The RP has specifically emphasised for an appointment of a Local Commissioner in order to demarcate and ascertain the



rights of allottees qua the project. Though we expected the RP to resolve the issue of demarcation, but the situation remained as it was. Also, even at this stage when the plan has been submitted, the RP has expressed his helplessness regarding the state of affairs of the entire project. Even, in the Resolution Plan (page 288 of IA-5003/2021, under the head Resolution Plan for Universal Business Park), there is a mention that the Forensic Audit of the unit will be conducted to reach the genuine/bona fide claimants. The relevant excerpts of the plan reads thus: -

***“Treatment to deal with various claims/claimants: -***

*1. The Forensic audit will be conducted to reach up to the genuine/bona fide claimant and bring preferential/related/bogus transaction to the knowledge of Hon’ble Tribunal for invalidation through Hon’ble NCLT. After Forensic Audit the claims shall be settled by means of offering membership, accepting all conditions of affidavits, proportionate share of Area/Unit else by offering ₹ 300/Sq Ft as full and final settlement as represented in cash flow. The resolution Applicant shall keep the window for accepting the claim, to join the Association, affidavits etc. for 15 days from effective date. After expiry of this period no claim shall be entertained whatsoever. Where the settlement to the bona fide owners is incomplete, the same shall be treated with full and final settlement @₹ 300/-psf or come as unit holder as the case may be.”*

21. As can be seen from the aforementioned, the plan indicates that the claims shall be settled after conducting the Forensic Audit and weeding out the bogus transactions. It is quite surprising that the RP did not verify the claim of the stakeholders/creditors before preparing the Information Memorandum, with reference to which the SRA needs to submit its Resolution



Plan and the Forensic Audit as also authentication of the claim of stakeholders, particularly, the BBA holders/CD holders is left to SRA. Such an approach is contrary to not only the scheme of IBC, but also to that of the mechanism provided therein to be followed by RP/IRP. As can be seen from Section 17 of IBC, 2016, from the date of the appointment of Interim Resolution Professional: -

- “(a) the management of the affairs of the corporate debtor shall vest in the interim resolution professional;*
- (b) the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional;*
- (c) the officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to such documents and records of the corporate debtor as may be required by the interim resolution professional;*
- (d) the financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional.”*

Besides, the Interim Resolution Professional stands vested with the management of the Corporate Debtor and: -

- “(a) acts and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents, if any;*
- (b) takes such actions, in the manner and subject to such restrictions, as may be specified by the Board;*
- (c) has the authority to access the electronic records of corporate debtor from information utility having financial information of the corporate debtor;*



- (d) *has the authority to access the books of accounts, records and other relevant documents of corporate debtor available with government authorities, statutory auditors, accountants and such other persons as [may be specified; and]*
- (e) *[be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor.]”*

22. It is quite surprising that despite the provisions contained in Section 17 of IBC, 2016 (ibid), which provided for recourse to all kinds of resources at the end of IRP, how the IRP could not verify and collate the claims of the genuine and bona fide stakeholders in a credible manner and how without verifying and authenticating the claims of the Creditors/Stakeholders, the Expression of Interest (EOI) could be invited and at the strength of what provision of law it could be left to SRA to verify the claims after Forensic Audit.

23. As can be seen from Section 18 of the IBC, 2016, the Interim Resolution Professional is required to perform the duties, namely: -

*“(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to-*

- (i) Business operations for the previous two years;*
- (ii) Financial and operational payments for the previous two years;*
- (iii) List of assets and liabilities as on the initiation date; and*
- (iv) Such other matters as may be specified;*



*(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;*

*(c) constitute a committee of creditors;*

*(d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;*

*(e) file information collected with the information utility, if necessary; and*

*(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including-*

*(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;*

*(ii) assets that may or may not be in possession of the corporate debtor;*

*(iii) tangible assets, whether movable or immovable;*

*(iv) Intangible assets including intellectual property;*

*(v) Securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;*



*(vi) Assets subject to the determination of ownership by a court or authority;*

*(g) to perform such other duties as may be specified by the Board.”*

24. As can be seen from the aforementioned (Section 18(a)(iii) and (b) of IBC, 2016), it was the duty of the IRP to collect all information relating to assets, finances, and operations of the Corporate Debtor for determining its financial position, including information relating to list of assets and liabilities of the Corporate Debtor and to receive and collate all the claims submitted by the creditors to him pursuant to the public announcement made under Section 13 and 15. The dictionary meaning of the term ‘collate’ is to collect information from different places in order to put it together, examine, and compare it. It is not understood that how without examining and comparing the claims of the BBA holders etc., the IRP could admit the same and could constitute the Committee of Creditors comprising such Financial Creditors whose claims are yet to be confirmed after conducting the Forensic Audit. We are also unable to appreciate that how the RP could move an application under Section 21(6a)(b) for appointment of Authorised Representative on behalf of BBA holders, without satisfying himself regarding the bona fide of their claims.

25. It is also difficult to appreciate that how the RP failed to discharge his duty in terms of the provisions of Section 25 (2)(e) and (d) i.e., to maintain the updated list of claims and failed to appoint professionals i.e., expert Auditor to conduct the Forensic Audit. And if the IRP/RP had satisfied himself about the list of creditors/collation of claims then how he could place a plan which



contained the provision regarding verification of the claim of creditors/stakeholders before the CoC and how could he not question such provision in the plan? Once, in terms of the provisions of Section 25(2)(d) of the IBC, 2016, it was for RP to engage the professional to get the Forensic Audit of the CD to be conducted which he could do as per the provisions of Regulation 27(3) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, it is against the scheme of IBC, 2016, to accept the proposal in Resolution Plan regarding authentication of list of stakeholders/creditors. Besides, what is left to be decided by SRA is to arrive at a genuine list of creditors, thus it is not understood that before availability of genuine list of Creditors, how the CoC could be constituted. Even when the plan is approved by so-called CoC, one cannot argue that leaving it to SRA to decide the list of bona fide creditors/stakeholders as per provisions of the Resolution Plan is an exercise of commercial wisdom of CoC.

26. In terms of the provisions of Section 25(2)(g) of the Code, the Resolution Professional needs to prepare an Information Memorandum in accordance with Section 29 of the Code. In terms of the provisions of Section 29(2) of the Code, the RP is required to provide to RA access to all relevant information contained in the Information Memorandum in physical and electronic form. As can be seen from Regulation 36(2)(d) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, the Information Memorandum shall contain inter alia a list of Creditors containing the names of the Creditors, the amounts claimed by them, the amount of their claims admitted and the security interest if any in respect of such claims. As can be seen from



Regulation 36(b) of IBBI (Insolvency Resolution for Corporate Persons) Regulations 2016. It is with reference to the information contained in IM that the Resolution Applicant submits their Resolution Plan. Thus, before submitting the Resolution Plan, the PRA must know the list of Creditors and their claim. In the present case, as can be seen from the contents of the plan, it is left to SRA not only to finalise the list of claimants, but also to invite fresh claims.

27. Thus, the RP itself is not clear about the area/units available in the project to be allotted to the BBA holders/ CD holders. He is also not very clear about the number of claimants. The decision in this regard cannot be left to SRA. To a pointed query raised by us regarding the provisions contained in the plan, reproduced in para 20 hereinabove, both the Ld. Counsels for both RP and SRA submitted that the provision is residuary. It is not disputed by the Ld. Counsel for RP that the Applicants herein have been included in the list of claimants/creditors and are treated at par with BBA holders, even though they had not submitted any claim. It is also submitted by Ld. Counsel for the RP that though the area qua the project has been oversold, but still there is sufficient area to accommodate such BBA holders, who have come forward with their claims. In view of the fact that there is no division of units in the project, the RP has confusion regarding the number of claimants and available units. In the conspectus facts and circumstances and in view of the plea raised by the RP as also the uncertain situation regarding the area available in the project, numbers of claimants and even the admission of their claim, we deem it appropriate ask the Court Commissioner appointed qua CA-



891/2019 and CA-253/2019 to examine the record, books of accounts and other documents of CD qua the project in question i.e. the Universal Business Park situated at Badshapur, Gurgaon i.e. one of the projects of the CD, and would arrive at an independent conclusion as to whether:- (i) the units qua which the conveyance deeds were executed in favour of Applicants existed at the time of execution of conveyance deed and had been leased out to the State Bank of Bikaner and Jaipur, ICCI Bank and IndusInd Bank; (ii) there is any proof of payment of rent by the aforementioned banks to the Applicants; (iii) there is record available in the books of accounts of CD's to establish that the Applicants had paid full price qua the units in respect of which the conveyance deeds had been executed in their favour; (iv) the Applicants ever staked any claim before the IRP/RP qua the units allotted to them. The Court Commissioner shall submit its report to RP within 03 weeks. The RP would examine the same within 03 days thereafter and file the Report/ findings of the Court Commissioner with this Tribunal within 07 days thereafter. The fees of the Court Commissioner qua the present issue would be Rs.2 Lacs, which would be paid Rs. Fifty thousand each by the Applicants in IAs- 1732/2023, 678/2022, 3778/2022 and RP. The expenses and logistic support to the Court Commissioner would be provided by the RP. The District Administration shall provide the requisite police force and other support to the Court Commissioner, as and when needed, to facilitate the Court Commissioner to perform the aforementioned job and file her report. Court Officer as also RP would make a copy of this order available to the Court Commissioner, whose details would be available in the order passed in CA- 891/2019 and CA-253/2019 forthwith. List the IA on 04.12.2023.



**IA-678/2022**

List on 04.12.2023 along with IA-1732/2023.

**IA-3778/2022**

List on 04.12.2023 along with IA-1732/2023.

**Sd/-  
(L. N. GUPTA)  
MEMBER (T)**

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