NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

IA. 2026/2021 and IA. 2378/2021
IN
Company Petition No. (IB)-197(PB)/2021

IN THE MATTER OF:

M/s. Wave Megacity Centre Private Limited

...Corporate Applicant

AND IN THE MATTER OF IA. 2026/2021:

Mr. Rakesh Taneja & Others **...Applicants**

Versus

Wave Megacity Centre Private Limited **...Respondent**

AND IN THE MATTER OF IA. 2378/2021:

Under Section 65 of IBC, 2016

1. **Mr. Anshu Saran**
   S/o Late Shri. R.K. Saran
2. **Ms. Richa Shrivastava**
   W/o Mr. Anshu Saran,
   R/o C-115, Pocket-6, Kendriya Vihar-II,
   Sector-82, NOIDA-201304,
   G.B. Nagar, Uttar Pradesh

...Applicant No. 1 & 2

3. **BGN Bhavani Shankar**
   S/o Late BVL Somayajulu
   R/o G-404 Roystonea Magarpatta City,
   Hadapsar, Pune, Maharashtra - 411014

...Applicant No. 3

4. **Mrs. Parul Sharma**
   W/o Mr. Varun Kumar Sharma
   Rio A-1 07, Sector – 23,
   G.B. Nagar, NOIDA
   Uttar Pradesh- 201301

...Applicant No. 4

5. **Mayank Sharma**
S/o Mr. Shyam S. Sharma

6. **Mrs. Raj Rani Sharma**
W/o Mr. Shyam S. Sharma,
Rio H-250, Vikas Puri,
New Delhi - 110018

...Applicant No. 5 & 6

Versus

Wave Megacity Centre Private Limited **...Respondent**

Order Delivered on: 06.06.2022

CORAM :

SH. BHASKARA PANTULA MOHAN, HON'BLE MEMBER (JUDICIAL)
SH. HEMANT KUMAR SARANGI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicants : Adv. Aditya Parolia, Adv. Piyush Singh, Adv. Aditi Sinha for the Applicants/Homebuyers

For Corporate Debtor : Sr. Adv. Kapil Sibal, Sr. Adv. U.K. Chauhdary, Adv. Pramod Gupta with Adv. Hardeep Sachdeva, Adv. Kamal Shankar, Abhyudai Singh, Ms. Priyamvada Shenoy, Adv. Kunal Vajani, Adv. Sumeer Sodhi, Ms. Manisha Chaudhary, Adv. Mansumyer Singh, Ms. Shreya Nair, Adv. Siddhant Bhasin, Advs. Ms. Nanda devi Deka, Senior Adv. Sanjiv Sen, Adv. Sourav Roy, Adv. Kaushal Sharma, Adv. Girijapati Kaushal and Adv. Prabudh Singh

For Other Objector : Adv. Sahej Uban & Adv. Abdulla Naseeh, Adv. Mohit Yadav & Adv. Sangya Negi, Adv. Krishna Mohan K Menon, Adv. P. Chaitanyashil, Adv. Parul Sachdeva, Adv. Somya Jaitly, Bhanu Tejaswi & Adv. Dania Nayyar, Adv. Astha Nigam, Adv. Abhijit Mittal, for objectors

ORDER

PER: SHRI BHASKARA PANTULA MOHAN, MEMBER (J)

The present IA No. 2026 of 2021 is filed by Mr. Rakesh Taneja & Ors., hereinafter referred as Applicants of IA No. 2026 of 2021, under Section 65 of IBC 2016. That IA No. 2378 of 2021 has been preferred by Mr. Anshu Saran & Others, (hereinafter referred as Applicants of IA No. 2378 of 2021), under Section 65 of IBC, 2016.

2. The Applicants of both the IAs have made similar prayers i.e., for seeking dismissal of IB-197(PB) of 2021, which is an Application filed under Section 10 of IBC, 2016, preferred by M/s Wave Megacity Centre Private Limited, seeking initiation of CIR Process against itself. Hence both the IAs are adjudicated vide this common order.

3. The Applicants of both the IAs, (**together hereinafter referred to as Applicants),** are the allottees of M/s Wave Megacity Centre Private Limited, **(hereinafter referred as Corporate Applicant/ Corporate Debtor).**

4. It is stated by the Applicants that the Corporate Debtor is a major defaulter in terms of not completing the construction of the project and handing over possession of the same, in terms of the Arrangement entered into with various buyers, since over ten years, after having accepted huge amounts of monies, to the tune of millions of Rupees, from each subscriber, after making out false commitments,

handing out hopes and assurances for delivery of the properties with 48 to 54 months from the dates of allotment to the Allottees.

5. It is further stated by the Applicants that it is not the case of the Corporate Debtor before this Tribunal, in terms of the captioned petition, that the aggrieved Arrangements/allottees/subscribers committed default in making payment of the instalments in compliance with the allottees/arrangement under variety of payment arrangements. And now the instant unilateral action on the part of the Corporate Debtor is aimed at usurping their lifetime savings and their rights are adversely affected due to the malafide acts of the Corporate Debtor.

6. It is submitted by the Applicants that nowhere it has been averred or discussed in the pleadings, filed u/s 10 of the IBC, as to why was the CD not able to develop the project for a period of over 10 years, after having received huge amounts of money, admittedly to the tune of over Rs. 1400 Crore, received from over 2300 subscribers (a figure which may not have been correctly reported before this Tribunal).

7. It is further submitted by the Applicants that the Corporate Applicant has cited no reasons for delay and non-delivery for over ten years. It is added that aforesaid reflects the fraudulent motive and malicious intent of the Corporate Applicant.

8. In order to demonstrate, that the Application filed under Section 10 of IBC, has been filed with malicious and fraudulent intent, the Applicants have stated the following:

i) That the project ought to have been delivered in 2016, however, nothing has been developed or delivered, which is a matter of record;

ii) Almost all the subscribers are before various judicial fora and law enforcement authorities for redressal of the grievances and it is the intention of the CD to escape its liability to pay and/or face prosecution.

iii) The latest one being FIR No. 63 of 2021, registered by the Economic Offences Wing of Delhi Police on 13.4.2021. The copy of which is placed on the file and is marked as Annexure 1-2.

iv) That in terms of the judgment pronounced on 13.4.2021, by the Delhi State Consumer Disputes Redressal Commission, New Delhi, the Applicant herein, has been awarded refund of his money with interest, compensation and costs, the copy of which is placed on the file and is marked as Annexure 1-3.

v) That for the purpose of substantiating the misconduct of the Corporate Applicant in terms of misleading, misrepresenting and concealing the facts, the applicants have relied upon the reply to the RTI application received from NOIDA on 8.3.2021, wherein it has been stated that Completion Certificates in respect of only two land parcels, 3D and 3F, have been granted in favour of the Corporate Applicant on 16.9.2019, whereas in the petition filed u/s 10 of the IBC before this Tribunal, the CD has claimed to have received completion certificate in respect of land parcel 2B also.

vi) That the Corporate Applicant, prior to filing the instant application for Insolvency, under Section 10 of the IBC, has siphoned off huge amounts of money to its other various associate and sister Companies to develop other projects in the vicinity of the Wave City Centre, Noida and the present

application is only an eyewash to mislead this Tribunal with misrepresentation and concealment of material facts to usurp the hard earned life savings of the allottees/subscribers.

vii) That in the list of over 2300 allottees/subscribers, the Corporate Applicant has mischievously failed to bring to the knowledge of this Tribunal, about the case of a peculiar homebuyer, Mr. Ram Krishna Sharad, who was awarded relief before the Hon'ble National Consumer Disputes Redressal Commission (NCDRC) in CC/640/2018, in terms of Judgment passed on 20.9.2019, this Judgment passed by the Hon'ble NCDRC had been upheld by the Hon'ble Supreme Court of India in terms of Order dated 29.11.2019, passed in Civil Appeal No. 8781 of 2019. That not only the Corporate Applicant has concealed the fact of the said complainant before the NCDRC as a subscriber in the list of allottees, it has gone to the extent of failing to include the details of the said case before the NCDRC and/or before the Hon'ble Supreme Court of India, which reflects the intention of the CD in concealing vital and material information from this Tribunal and also indicates the possibilities of concealment of several such cases and the allottee details and the monies accepted from them by the CD in the last over 10 years.

The above highlighted instance of concealment of facts only reflects the mischievous and malafide intention of the Corporate Applicant and a suspicion as to how many more such cases would not have been held back from bringing before this Tribunal, thus justifying a Forensic Audit.

viii) That it is further most respectfully submitted that some of the applicants, in the instant application u/s 65 of the IBC, are making a statement on record that the CD accepted payment in cash from them and issued plain paper receipts while inducing them to accept a reduced price of the

property (s) on paper, to cause serious losses to the State exchequer in terms of stamp duty, at the stage of registration of title, by reducing the value of the property.

ix) That the applicant Nos. 25 and 26, named hereinabove, have deposited cash to the tune of Rs. 40.26 lakh, on being so induced by the Corporate Applicant and were given receipts with Company seal on plain paper on 21.11.2015, 28.4.2016 and one undated, scanned copies of which, alongwith the first page of the agreement, are being filed herewith as Annexure 1-7.

x) That in this regard, it is most respectfully submitted that applicants, who have been induced into making cash payments to the Company at the relevant time, are not the only ones and by this method of taking cash by the CD at the time of booking and then offering to sell the property at a lower price to evade stamp duty and thus causing revenue losses of a huge magnitude to the exchequer. The CD thus may kindly be called upon to submit an affidavit, giving the price applied in respect of each of the units that they allotted to over 2300 homebuyers, listed in the petition. That the CD has conveniently shown only the amounts received from the allottees and has cleverly shied away from revealing the price of the property charged from each of the allottees, in terms of the allottee arrangements signed with them. The difference in price for similar units in a large number of cases, shall definitely lead to the conclusion that it is not due to any inadvertent error but a deliberate, conscious and intentional act to cause losses to the public exchequer.

xi) That the applicants by way of the instant application beg to make humble submission before this Tribunal that they're in possession of definite and cogent evidence to substantiate

the above alleged illegal conduct on the part of the CD, if a Forensic Audit is set up against the CD.

xii) That the CD has the intention of escaping the liability of satisfying the orders, decrees and awards against it by invoking the powers of this Tribunal on false, misconceived and mischievous grounds.

xiii) That three of the main Directors of the CD being Sh. Manpreet Singh Chadha (DIN 00032276); Sh. Charanjeet Singh (DIN 01028271) and Sh. Rinkal (DIN BRQPR739H), who were holding office since 2011, 2020 and 2019 respectively, have been fraudulently changed just before the filing of the instant petition u/s 10 of the IBC, as would be revealed from the two copies of the MCA Company Master Data obtained (downloaded from the MCA website) in August 2020 and April 2021 respectively and are enclosed herewith (Annexure 1-8).

xiv) That the CD has apparently resorted to this act to assist the said directors to escape criminal prosecution which has been initiated against them by name and that would clearly reflect from the copy of the FIR registered with the EOW and enclosed with the instant application u/s 65 of the Code. That one of the said erstwhile Directors, being Sh. Manpreet Singh Chadha (DIN 00032276), has been transposed as Financial Creditor in the present petition. That the applicants most respectfully submit that the said changes in the board of the Company have been made just before the filing of the captioned petition and with malafide intention in so far as all the other stakeholders are concerned, including the homebuyers. Furthermore, this is a fact which has been conveniently concealed by the petitioner from this Tribunal and warrants immediate and urgent attention as this would reflect the malicious intent of the petitioner.

xv) That the CD is an active, solvent and compliant Company having all the necessary means and resources to satisfy the claims of the allottees and subscribers.

xvi) That according to the petition u/s 10 of the IBC, the CD has gone on record to state that it had assumed the dues to the NOIDA authority to the tune of over Rs. 1200 crore, but fell short of making a statement as to what actions were being taken in the last so many years towards repayment of the dues of NOIDA.

9. It is averred by the Applicant that it is, therefore most respectfully prayed that this Tribunal may kindly be pleased to allow this Application for rejection of the petition u/s 10 of the IBC, otherwise the Applicants will suffer irreparable loss and injury, which cannot be compensated in terms of money.

10. The Corporate Debtor/Corporate Applicant has filed its reply to the applications and has stated that the Corporate Applicant's Petition has been filed under the aegis of the Insolvency Code, for the commencement of the Corporate Insolvency Resolution Process for the Corporate Applicant. Such proceedings are in absolute compliance with the provisions of the Insolvency Code and are intended to protect the interest of all creditors and stakeholders, including the Applicants. On the other hand, it is the Intervenors' objections that are filed with fraudulent and malicious intent with ulterior and malafide motives.

11. It is stated by the Corporate Applicant that an almost identical set of objections have been filed on behalf of allottees earlier, and the present

Intervenors' objections are almost a replica of the earlier objections, many of which are reproduced mechanically, without application of mind, such as the purported allegations regarding Sh. Manpreet Singh Chadha, a former director and related party of the Corporate Applicant, having been purportedly 'transposed' as a financial creditor to dominate the committee of creditors.

12. It is further stated by the Corporate Applicant that the Intervenors have made allegations which are not in relation to the present proceedings and, or are unduly attempting to delay the commencement of the Corporate Insolvency Resolution Process for the Corporate Applicant. It is also pertinent to note that matters pertaining to other legislations, before other statutory and judicial authorities are to be determined by the relevant authorities and such proceedings cannot be used to stall bonafide proceedings initiated by the Corporate Applicant under the provisions of the Insolvency Code.

13. The Corporate Applicant has addressed the allegations made by the Applicants w.r.t. the Corporate Applicant's application, filed under Section 10 of IBC, with malicious and fraudulent intent. The same are discussed below –

(i) It is submitted that the Corporate Debtor has completed a substantial part of the Project and has also received completion/occupancy certificates for the completed buildings. The Corporate Applicant has placed on record the copies of the completion/occupancy certificates received by the Corporate Debtor

and therefore, the Intervenors' Objections are absolutely false and incorrect;

(ii) The Corporate Insolvency Resolution Process is a statutory process under the Code, which is a law, binding on all parties. The Code clearly seeks to protect the interest of the creditors and stakeholders including the Intervenors. The Intervenors have failed to explain how the Corporate Debtor would benefit from the Insolvency Resolution Process. Therefore, the Intervenors' Objections are totally misplaced, misleading, without any understanding of the law (including the provisions of the Insolvency Code) and thus, are liable to be rejected;

(iii) First Information Report (**"FIR"**) No. 63 of 2021 have been filed malafidely, with ulterior motives on 13.04.2021, which is after the hearing of the Corporate Debtor's Petition on 05.04.2021, by this Tribunal and wherein one of the said intervenors, namely Mr. Rakesh Taneja, appeared as a representative of certain allottees. It is therefore, clear that the filing of the said FIR is yet another malafide attempt to derail the commencement of the Corporate Insolvency Resolution Process for the Corporate Debtor, which is bonafide and in accordance with the law. Without prejudice, it is submitted that such allegations are yet to be examined and tried by the appropriate judicial authority. Furthermore, such proceedings, filed by the Intervenors with mala fide intent and being contrive, ought to be completely disregarded by this Tribunal;

(iv) It is specifically submitted that the copies of completion/occupancy certificates dated 16.09.2019 – (for Parcel 3D and Parcel 3F) and 26.09.2019 (for Parcel 2B), issued by NOIDA Authority to the Corporate Debtor, have already been placed on record by the Corporate Applicant before this Tribunal, along with the Petition and marked as Annexure 25 (Colly.) at Pg.1908 – 1926

of Volume 10, thereof. It is, therefore, apparent that the Intervenors have made false and fabricated statements before this Tribunal and are guilty of having played a fraud (in possible collusion with the NOIDA Authority) upon this Tribunal. The Intervenors' Objections are liable to be dismissed on grounds of such fraud alone, with exemplary costs;

(v) The Corporate Applicant's Petition under Section 10 has been filed, with the relevant financial information, including the audited accounts as well as other information, regarding the creditors and the investments made in the Corporate Debtor's Project by the promoters and related parties. It is pertinent to note that the financial debt to the bank, i.e., Yes Bank Limited is only Rs. 200 Crores, whereas the investments/ loans and advances by the promoters and related parties are in excess of Rs. 1800 Crores. The Intervenors' Objections are completely contrary to the record before NCLT and are untenable, being without any basis whatsoever. The Intervenors' ought to be put to strict proof of the allegations made therein;

(vi) In relation to Mr. Ram Krishna Sharad, it is submitted that the Corporate Debtor has, inter alia, issued the said allottee a refund as per the directions of the Hon'ble Supreme Court of India in January 2020. Therefore, Mr. Ram Krishna Sharad is no longer an allottee as on date. It is apparent that the Intervenors are attempting to malign the Corporate Debtor, by making false allegations, to somehow sustain their objections by misleading this Tribunal. Such conduct of the Intervenors is deplorable, and their application ought to be rejected on such grounds alone, along with costs. Furthermore, it is submitted that the Insolvency Code does not require the Corporate Applicant to file the details of specific judgments, since the judgment/decree holder would be a creditor of the Corporate Debtor, under the provisions of the Insolvency Code.

(vii) Without prejudice to the forgoing, it is submitted that the Corporate Debtor has processed refunds between October 2014 and April 2021, aggregating over INR 185 Crores approximately, to over 500 allottees, who have been given full refunds (aggregating over INR 170 Crores approximately) and over 50 allottees have been given partial refunds (aggregating over INR15 Crores approximately) and further, the Corporate Debtor has also paid interest to allottees on the said amounts. Therefore, the conduct of the Corporate Debtor has been bonafide and responsible towards its allotees, whereas, the conduct of the Intervenors has been malafide.

(viii) The Intervenors have failed to explain how the commencement of the corporate insolvency resolution process would benefit the Corporate Debtor and its promoters, who would lose control of the Project, as well as their investment, upon the admission of the Corporate Applicant's Petition. The Intervenors have also failed to explain how the resignation of directors of the Corporate Debtor affects the proposed corporate insolvency resolution process. It is submitted that the directors are entitled to tender their resignation as per law and the same has been carried out in accordance therewith. The allegations of the Intervenors regarding Sh. Manpreet Singh Chadha being 'transposed' as a financial creditor is incorrect and without basis.

(ix) It is submitted that the Corporate Applicant has clearly stated that it had approached the Hon'ble High Court, for the adjudication of the amounts incorrectly appropriated by the NOIDA Authority, which aggregates to approximately INR 650 Crores, which was paid towards interest and has been incorrectly (and against the provisions of the Project Settlement Policy, 2016) appropriated by the NOIDA Authority. Furthermore, the Corporate Debtor has also explained that the NOIDA Authority has made exaggerated, incorrect and

arbitrary demands against the Corporate Debtor and further has failed to provide approvals and even execute tripartite agreements, for handing over of the residential and commercial units to the allottees of the buildings for which the completion/occupation certificates have been granted and are constructed on the land parcel which is fully paid. In the absence of such cashflows from the completed units, the Corporate Debtor has been starved of funds and has further been subjected to proceedings by irate allottees.

14. The Applicant of IA-2378 of 2021 has filed one additional affidavit bringing on Resignation letter dated 11.1.2021 of Sh. Manpreet Singh Chadha as director of the Corporate Debtor. It is further stated in the Additional Affidavit that just prior to approaching this Tribunal u/s 10 of the Insolvency and Bankruptcy Code, 2016, that the Corporate Debtor carried out substantial changes in the Board of Directors of the Company by way of resignation even by the Managing Director since all these persons who were responsible for the affairs of the Company since the incorporation.

15. The Applicant of IA-2026 of 2021 has filed its rejoinder and has stated the following –

a) It is a matter of record that the project launched in 2011 ought to have been completed and delivered by 2016 maximum and it is the case of the Corporate Applicant itself that the NOIDA Authority enforced its demands after 2016 and thereafter. That there is no explanation of the Corporate Applicant on record as to why was the project delayed beyond 2016 since none of the subscribers was in default of any nature or at all. Moreover, the CD on its part has, according to the petition u/s 10 of the IBC, the CD has gone on

record to state that it had assumed the dues to the NOIDA authority to the tune of over 1200 crore rupees but fell short of making a statement as to what actions were being taken towards repayment of the dues of NOIDA at the relevant time in the last so many years after 2011 and upto 2016 when the project was supposed to be delivered upon completion.

b) That the CD has siphoned off the money accepted from over 2300 homebuyers after inducing them to subscribe in the project Wave City Centre giving them hopes of developing for them residential and commercial units of various sizes, types and dimensions and now trying to wriggle out of a self-created mess while throwing all them in lurch under the garb of seeking insolvency with a malafide and fraudulent intention as would be evident from the submissions already made in the application u/s 65 of IBC and the present rejoinder both supported by an affidavit on record.

c) That it is a matter of record and abundantly visible from the documents on record that the FIR No. 0063 of 2021 dated 13.4.2021 has been registered on the basis of a complaint dated 17 August 2020 and those advising the CD for making a factually incorrect statement on affidavit must actually be subjected to criminal prosecution alongside the CD for trying to mislead this Tribunal for making a false and misconceived statement. That the applicant Rakesh Taneja is a homebuyer and one of the victims of the massive financial misconduct, fraud and mischief played upon by the CD who has been pursuing his legal remedies ever since the project was apparently shelved / abandoned by the CD in the year 2016.

16. After hearing submissions made by both the parties and perusing the pleadings and documents placed on record, this Bench observes that the present Applications have been filed under Section 65 of IBC, 2016.

Therefore, at this juncture we would like to visit the contents of Section 65 of IBC, 2016.

> ***"65. Fraudulent or malicious initiation of proceedings. –***
>
> *(1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.*
>
> *(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees*
>
> *[(3) If any person initiates the pre-packaged insolvency resolution process—*
>
> *(a) fraudulently or with malicious intent for any purpose other than for the resolution of insolvency; or*
> *(b) with the intent to defraud any person,*
>
> *the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees...."*

17. Here, we would further like to refer to the definition of 'initiation date' which is defined under Section 5(11) of IBC, 2016 –

> ***"Section 5(11)** initiation date" means the date on which a financial creditor, corporate applicant or operational creditor, as the case may be, makes an application to the Adjudicating Authority for initiating corporate insolvency resolution process [or pre-packaged insolvency resolution process, as the case may be..."*

18. From the perusal of the above, it can be, inter alia, observed that penalty can be imposed on a Person who initiates Insolvency Resolution Process fraudulently or with malicious intent for any purpose other than for the resolution of insolvency.

19. Further, in our considered view, if it is proven, to the satisfaction of this Adjudicating Authority, that the Application under Section 10 of IBC, has been filed with malicious or fraudulent intent, then the same will be deemed as if the Applicant has approached this Adjudicating Authority with unclean hands. Furthermore, it is a trite law that no one can approach the Court of law with unclean hands.

20. Although, Section 65 of IBC, 2016, speaks only about the imposition of penalty. However, the same is also a ground of dismissal of Petition. In this context we refer to the Judgement of the Hon'ble Supreme Court passed in the matter of **A.V. Papayya Sastry & Ors. Vs Government Of A.P. & Ors. (AIR 2007 SC 1546) dated 07.03.2007** wherein it is held that –

> *"Now, it is well settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed; "Fraud avoids all judicial acts, ecclesiastical or temporal".*
>
> *It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Such a judgment, decree or order by the first Court or by the final Court has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings. In the leading case of Lazarus Estates Ltd. v. Beasley, (1956) 1 All ER 341: (1956) 1 QB 702: (1956) 2 WLR 502, Lord Denning observed:*
>
> *"No judgment of a court, no order of a Minister, can be allowed to stand, if it has been obtained by fraud."*

21. In the instant case, the issue raised is that the Section 10 Application has been filed with Malicious and Fraudulent intent.

22. The Applicants have relied upon the FIR No. 63 of 2021 dated 13.4.2021, registered with Economic Offence Wing, against the Corporate Debtor and its Directors, registered under Section 406, 420 and 120B of IPC, 1860. Per Contra the Corporate Debtor has stated that the FIR is registered malafidely after the Section 10 petition was filed. The Applicants in their rejoinder has been able to satisfy us that they were pursuing the matter for registration of FIR since August 2020 i.e., much before the present Application under Section 10 of IBC was filed. The scanned copy of the FIR is reproduced below: –

16

FIRST INFORMATION REPORT

(Under Section 154 Cr.P.C.)

(धारा 154 दंड प्रक्रिया सहिंता के तहत)

1. District (ज़िला):EOW P.S.(थाना): ECONOMIC OFFENCES WING Year(वर्ष): 2021 FIR No(प्र.सू.रि.सं.):0063 Date :13/04/2021

2. Act(s)(अधिनियम): Section(s)(धारा(एँ)):

- IPC 1860 406/420/120B

3. Occurrence of Offence (अपराध की घटना):

(a) Day(दिन): INTERVENING DAY Date From(दिनांक से): 01/01/2011 Date To(दिनांक तक): 13/04/2021

Time Period (समय अवधि): Time From (समय से): 00:00 hrs Time To (समय तक): 00:00 hrs

(b)Information received at P.S.(थाना जहां सूचना प्राप्त हुई): Date(दिनांक): 13/04/2021 Time (समय): 18:00 hrs

(c)General Diary Reference (रोजानामचा संदर्भ): Entry No.(प्रविष्टि सं.): 034A Date/Time(दिनांक/समय): 13/04/2021 18:28

4. Type of Information (सूचना का प्रकार): Written

5. Place of Occurrence (घटनास्थल):

(a) Direction and Distance from P.S (थाना से दूरी और दिशा): N/A , Beat No(बीट सं.) : 00

(b) Address(पता): ,WAVE MEGACITY CENTER, PVT. LTD ,M-4, MEZZANINE FLOOR ,SOUTH EXTENSION PART II, (CMM NEW DELHI) NEW DELHI

(c) In case, Outside the limit of the Police Station (यदि थाना सीमा के बाहर हैं):

Name of P.S(थाना का नाम): District(ज़िला):

6. Complainant / Informant (शिकायतकर्ता/सूचनाकर्ता):

(a) Name(नाम): SH RAKESH TANEJA (S/O) LATE KRISHAN LAL TANEJA

(b)Date/Year of Birth (जन्म तिथि /वर्ष): 24/04/1966 Nationality (राष्ट्रीयता): INDIA

(c)Passport No.(पासपोर्ट सं.): Date of Issue (जारी करने की तिथि): Place of Issue (जारी करने का स्थान):

(d)Occupation (व्यवसाय):

(e)Address(पता): E-82, SECTOR-41, NOIDA, GAUTAM BUDDHA NAGAR, UTTAR PRADESH, INDIA.

7. Details of Known/Suspect/Unknown accused with full particulars(attach separate sheet if necessary)(जात/ संदिग्ध /अजात अभियुक्त का का पुरे विवरण सहित वर्णन): (2)

- WAVE MEGACITY CENTRE PRIVATE LIMITED

(R/O) MEZZANINE FLOOR, M-4, NEW DELHI SOUTH EXTENSION, PART - II, NEW DELHI, DELHI, 110049, INDIA

- DIRECTORS OF WAVE MEGACITY CENTRE PRIVATE LIMITED

(R/O) MEZZANINE FLOOR, M-4, NEW DELHI SOUTH EXTENSION, PART - II,, NEW DELHI, DELHI, 110049, INDIA

8. Reason for delay in reporting by the complainant/informant (शिकायतकर्ता / सूचनाकर्ता द्वारा रिपोर्ट देरी से दर्ज कराने के कारण):

NO DELAY

District : EOW P.S: ECONOMIC OFFENCES WING Year: 2021 FIR No: 0063 Date: 13/04/2021

9. Particulars of the properties stolen/involved (attach separate sheet if necessary):

Sl.No. (क्र.सं.) Property Type(Description) Est. Value(Rs.)(मूल्य (रु में))

10. Total value of property stolen (चोरी हुई सम्पत्ति का कुल मूल्य):

11. Inquest Report / U.D. Case No., if any (मृत्यु समीक्षा रिपोर्ट / यू.डी.प्रकरण न., यदि कोई हो):

12. F.I.R. Contents (attach separate sheet, if required)(प्रथम सूचना रिपोर्ट तथ्य):

17 Aug 2020 From: 1. Rakesh Taneja S/o Late Krishan Lal Taneja 2. Mrs. Seema Taneja W/o Mr. Rakesh Taneja Both R/o E-82, Sector-41, NOIDA – 201303, G.B. Nagar, Uttar Pradesh Email: rakesh@taneialawoffice.com Phone – 9810168120 3. Inderjit Arora S/o Munshi Ram 4. Sachin Arora S/o Mr. Inderjit Arora Both permanent R/o 522/7, Sant Nagar, Patiala Chowk, Jind, Haryana Email: deen.arora82@izmail.com Phone – 9810998183 5. Mrs. Geeta Rani Garg W/o Mr. Ravinder Kumar Garg 6. Prashant Garg S/o Mr. Ravinder Kumar Garg Both Rio M-2, Parvana Vihar, Sector-9, Rohini, Delhi-110085 Email. gargprashant@gmail.com Phone – 9899293373 7. Surojit Ray S/o Late Sunil Kumar Ray AC-701, Defence Officers Apartments, Sector - 4, Plot No. 33, Dwarka, New Delhi - 110078. Email: fca@flameproofonline.com Phone – 9811227787 8. Amit Pandey S/o Late Sushil Kumar Pandey H.No 3B Billandpur, Gorakhpur 273001, UP Email: ampan75@gmail.com Phone – 8447134142 9. Vanm Khemani S/o Gopal Krishan 1203, Tower 38, Lotus Bvd. Espacia, Sector 100, Noida – 201301 Email: varun.khemani@gmail.com gkhemani2001@gmail.com Phone – 9810147468 10. Abhijeet Mahanty S/o Late Shyam Mahanty 11. Priyanka Bhattacherjee W/o Mr. Abhijeet Mahanty 24 Roundways, Ruislip, Greater London-HA46DZ Middlesex United Kingdom Email: mahantvll@gmail. com Phone: +44 7502 418519 12. Mrs. Tulika Rastogi W/o Mr. Paritosh Rohatgi 13. Paritosh Rohatgi, S/o Mr. Dhirendra Rohatgi, A-3/102, BLOCK 4, F-29, Silver Estate, Sector-50, Noida-201301, Uttar Pradesh, India To, The Joint Commissioner of Police: Economic Offences Wing, P.S. Mandir Marg Complex, New Delhi-110001 Email: jtcpeow@delhipolice. Cbeow-dl@delhipolice.govin Re: Complaint for the offence of Cheating and Criminal Breach of Trust in a fraud related to Land & Building (Builder related fraud) against: 1 Manpreet Singh Chadha (DIN 00032276); 2. Harmandeep Singh Khanduri (DIN 01028271); 3. Charanjeet Singh (DIN 03064963) 4. Rinkal (DIN BRQPR7359H) All Directors of Wave Megacity Centre Private Limited, Mezzanine Floor, M-4, New Delhi South Extension Part - II, New Delhi – 110049 5. Wave Megacity Centre Private J imited through above named Directors, Mezzanine Moor, M-4, New Delhi South Extension Part - II, New Delhi - 110049 (CIN U45204DL201 1PTC220488) 1. The instant complaint against the accused persons is to bring to light an offence of cheating and criminal breach of trust that the accused persons named above, have committed in connivance with each other, both directly and indirectly through unfair, misleading and deceptive methods, intentionally, with common intention, mischievously and in a pre-planned manner, to cause substantial monetary losses to the complainants by indulging in unfair practice of promoting and dishonestly inducing the complainants to book Office and residential Spaces and by parting with huge sums of money and thereafter not developing, constructing and/or setting up the said proposed office and residential spaces as such or at all since 2012 and thereafter when the units had been booked until the date of the instant complaint; 2. The accused persons named above, in the course of committing the crime of cheating and criminal breach of trust, in connivance with each other have been using the name and style of the Company Wave Megacity Centre Private Limited, intentionally, with common intention and in a pre-planned mischievous and deceptive manner, caused substantial monetary losses to the Complainants herein as would be revealed from the narration of facts outlined in the following paragraphs 2.1 That the complainants were induced into purchasing various Office and residential spaces the details of which have been outlined in a tabular format attached as Appendix 'A' to the instant complaint, in accordance with the specifications outlined in Brochures handed over to

them at the relevant time. 2.2 The complainants were thereafter induced by the accused into booking the properties with them being Units as identified in Appendix 'A' in terms of the Allottee(s) Arrangements or money receipts accepted as booking documents. That in terms of Arrangement, the Office and Residential Spaces ought to have been offered for possession within 48 to 60 months from the date of the Arrangement. 2.3 That all the Complainants accumulatively have already paid to the accused t3.15Cr. inclusive of Taxes paid to or on behalf of the accused as on the date of filing of the instant complaint as per their respective details in the Appendix A enclosed with the instant complaint. 2.4 That the complainants have been constantly and rigorously following up with the accused about the status of progress in construction work and the likely date of possession, however, no proper or firm reply was ever received by the complainants from the accused persons. 2.5 That the period of 48 and also 60 months in respective cases elapsed in 2016, 2017, 2018 and 2020 however, there is no sign of an offer of possession as contemplated in the Office / Residential Space Allottee(s) Arrangements signed by the accused with the complainants. 2.6 The Complainants are aggrieved since there is tremendous delay and there is no firm date of possible possession in sight being indicated by the contactable persons in the office of the accused, some of the complainants were compelled to seek exit from the subscription and made a humble request for refund of their money paid to the accused with interest pendent elite besides compensation for deficient service, loss of opportunity and for having suffered mental agony and inconvenience without anyone of the complainants being able to get refund of their money; 2.7 The Complainants submit that they are fed up of receiving oral assurances and symbolic optimism preached by the accused through their representatives and that the matter of fact position is that the accused have not even completed the basic structure of the towers in the Wave City Center, NOIDA as promised to the complainants and as a matter of fact the project as such has been shelved/abandoned. 2.8 The accused have not build the Office/residential Spaces as assured, and in fact, has been trying to compel the complainants towards an irreparable monetary loss that they had never conceived of. 2.9 That by way of separate letters received by the complainants, the accused admitted to the facts of the complaint confirming the lapse on their part in respect of failure in offering possession and abandoning of the Office/residential Space units as booked by the complainants. 2.10 The accused persons are currently holding responsible position as directors in the Company Wave Megacity Centre Private Limited and the latest Company Master Data as obtained from the MCA website on 8.8.2020 is being filed herewith. 2.11 That the accused persons named herein above, by committing various criminal acts as explained in the foregoing paragraphs have caused tremendous loss to the Complainants in terms of loss of interest, loss of opportunity, deficient service, mental agony and inconvenience and some of the Complainants initially filed Consumer Complaints before the Hon'ble State Consumer Disputes Redressal Commission which after completion of pleadings and evidence (wherein the accused has entered appearance and did not deny to the facts of the complaint as such) was set down for final arguments hearing for consideration of the prayers in the said Complaint. In other cases, the proceedings are in various stages of prosecution. 3. In such circumstance, it would be just and equitable and in the interests of the justice that accused are subjected to criminal prosecution for intentionally cheating the Complainants while indulging in criminal breath of trust as the project as such has been shelved / abandoned as is evident from the letters dated 2016 and 2017 referred above and this amounts to a unilateral decision of the accused to have floundered on their commitment which, irrespective of its propriety or acceptability, has been communicated by the accused with utmostsimpunity. Therefore, it is apparent that the failure to provide the Office/residential Spaces as per the terms of the Office / Residential Space Allottee(s) Arrangements and the subsequent unilateral decision to withdraw the commitment, are both not justifiable and guided by intention of cheating from the beginning itself at the time of the entering into

allotment arrangement and thereafter when the complainants entrusted the accused with large sums of money in the hope of getting office/residential spaces within a given period of time and the accused continued to accept the money while keeping the complainants in dark about their intentions of not and never being in a position to implement the project and having given the complainants false hopes of developing properties for them. Needless to state that the aforesaid conduct of intentional cheating and criminal breath of trust as alleged above is further fortified and evidenced in the conduct of the accused in the manner of their participation and lapses before the Consumer Court where the accused are intentionally and on false excuses, avoiding final arguments hearing and disposal of the case by the Hon'ble Commission for years now. 4. In view of the above, the complainants most respectfully, and with greatest respect, submit that Your Honour may kindly be pleased to take cognizance of the offences u/Ss 420, 406, 34 and 120B of the Indian Penal Code and register FIR against the accused persons named above in terms of the complaint in accordance with law, investigate the matter, prosecute the accused persons so that they are subjected to trial and awarded deterrent punishment in accordance with letter and spirit of sections 420, 406, 34 and 120B of the Indian Penal Code, 1860; Sd/English Rakesh Taneja Sd/English Mrs Seema Taneja Sd/English Inderjit Arora Sd/English Sachin Arora Sd/English Mrs. Geeta Rani Garg Sd/English Prashant Garg Sd/English Sorajit Ray Sd/English Amit Pandey Sd/English Varun Khemani Sd/English Abhijeet Mahanty Sd/English Priyanka Bhattacherjee Sd/English Tulika Rastogi Sd/English Paritosh Rohatgi Date: 17 August 2020 Complainants Copy to: The Office of the Special Commissioner of Police: Economic Offences Wing PS Mandir Marg Complex New Delhi-110001. splcp.eow@delhipolice.gov.in To, The Duty Officer, Police Station EOW Delhi. Sir, It is submitted that present complaint filed jointly by Sh. Rakesh Taneja, Mrs Seema Taneja, Ms Inderjeet Arora, Sachin Arora , Mrs. Geeta Rani Garg , Prashant Garg , Sorajit Ray, Amit Pandey, Varun Khemani , Abhijeet Mahanty , Priyanka Bhattacherjee , Tulika Rastogi , Paritosh Rohatgi was received at EOW vide Reference No. D-2204/20. After conducting of enquiry Prima-Facie offence U/s 406/420/120-B IPC is made out. Kindly register a case U/s 406/420/120-B IPC and investigation of the case be handed over to the undersigned as per direction of senior officers. Date and Time of occurrence – Since of 2011-12 onwards. Place of occurrence – Wave Megacity Center, Pvt. Ltd. M-4, Mezzanine Floor South Extension Part II Delhi-110049. Date and time of presenting Rukka- 6.00 PM Dated: 13.04.2021 Sd/English SI Ajay Moral Sec VI/EOW Delhi, Belt No. D-3383 PIS No. 28060399. Action taken at police station at this time SI Ajay Moral Sec VI/EOW Delhi, Belt No. D-3383 PIS No. 28060399 came at duty officer room of police station- EOW and produced the above mentioned complaint for the registration of case. Case has been registered. Copy of FIR and original Rukka is being handed over to SI Ajay Moral Sec VI/EOW Delhi, Belt No. D-3383 PIS No. 28060399 for further investigation. Copy of FIR will be delivered to senior officers through DAK ASI/DO

District : EOW P.S: ECONOMIC OFFENCES WING Year: 2021 FIR No: 0063 Date: 13/04/2021

13.Action Taken Since the above information reveals commission of offence(s) u/s as mentioned at Item No. 2:
(की गयी कार्यवाही: चूंकि उपरोक्त जानकारी से पता चलता है कि किया गया अपराध मद सं.2.में उल्लेख धारा के तहत है):

(i)Registered the case and took up the investigation:

OR (या)

(प्रकरण दर्ज किया गया और जांच के लिए लिया गया):

(ii)Directed (Name of the I.O.)(जांच अधिकारी का नाम): AJAY KUMAR MORAL Rank (पद): SI (SUB-INSPECTOR)

No(सं.): 28060399 to take up the investigation (को जांच आपने पास में लेने के लिए निर्देश दिया गया) OR(या)

(iii)Refused investigation due to(जांच के लिए): OR (के कारण इंकार किया या)

(iv) Transferred to P.S(name)(थाना): District(ज़िला):

on point of jurisdiction (को क्षेत्राधिकार के कारण हस्तांतरित)

F.I.R read over to the complainant/informant,admitted to be correctly recorded and a copy given to the complainant/informant, free of cost : (शिकायतकर्ता / सूचनाकर्ता को प्राथमिकी पढ़ कर सुनाई गयी, सही दर्ज हुई माना और एक कॉपी निशुल्क शिकायतकर्ता को दी गयी) :

R.O.A.C.(आर.ओ.ए.सी.):

14.Signature / Thumb Impression of the Complainant / Informant:
(शिकायतकर्ता / सूचनाकर्ता के हस्ताक्षर / अंगूठे का निशान):

Signature of Officer

Name(नाम): OM PRAKASH

Rank (पद): ASST. SI (ASSISTANT SUB-INSPECTOR)

No.(सं.): 28850666

15.Date and Time of despatch to the court:
(अदालत में प्रेषण की दिनांक और समय):

23. The Applicants have further stated that the Directors Sh. Manpreet Singh Chadha (DIN 00032276); Sh. Charanjeet Singh (DIN 003064963); who were the Directors during the period when default had occurred, had resigned just before the filing of Petition.

24. At this juncture, we refer to the record of MCA obtained from public domain i.e., official website of MCA available free of cost, is reproduced below:

Ministry of Corporate Affairs

User ID : YASH18LAW

View Director / Designated Partner Details

DIN/DPIN : 03064963

Date: 01/06/2022 01:10:10 AM

Name : CHARANJEET SINGH

CIN/LLPIN	Name of the Company/ LLP	Current designation of the Director/ Designated Partner	Date of appointment at current designation	Original date of appointment	Date of cessation	Company/ LLP Status	Defaulting status
U29252DL2010PTC202986	BREW EVOLUTION EQUIPMENTS PRIVATELIMITED	Director	20/05/2010	20/05/2010	17/11/2017	Strike Off	-
U45204DL2011PTC220488	WAVE MEGACITY CENTRE PRIVATE LIMITED	Managing Director	15/02/2020	15/02/2020	17/02/2021	Active	-
U52609UP2017PTC091792	NPR PROMOTIONS PRIVATE LIMITED	Director	29/03/2017	29/03/2017	13/05/2017	Active	-

Ministry of Corporate Affairs

User ID : YASH18LAW

View Director / Designated Partner Details

DIN/DPIN : 00032276

Date: 01/06/2022 01:00:38 AM

Name : MANPREET SINGH CHADHA

CIN/LLPIN	Name of the Company/ LLP	Current designation of the Director/ Designated Partner	Date of appointment at current designation	Original date of appointment	Date of cessation	Company/ LLP Status	Defaulting status
L21012UP1990PLC011878	CHADHA PAPERS LIMITED	Additional Director	12/08/2011	12/08/2011	13/08/2011	Active	-
U00000PB2004PTC027731	WAVE BEVERAGES PRIVATE LIMITED	Director	15/12/2004	15/12/2004	02/11/2019	Active	-
U01400DL2009PTC193979	WAVE AGRO PRIVATE LIMITED	Director	07/09/2009	07/09/2009	07/04/2015	Active	-
U14103UP1995PTC019241	G S R GRANITES PRIVATE LIMITED	Director	01/04/1996	01/04/1996	-	Active	-
U15100DL2018PTC342767	MASA GLOBAL FOODS PRIVATE LIMITED	Director	07/12/2018	07/12/2018	-	Active	-
U15127UP2019PTC117238	INNOVATIVE POTATO PRODUCTS PRIVATELIMITED	Director	23/05/2019	23/05/2019	-	Active	-
U15316DL2002PTC114534	HI-PRO CEREAL FOODS PRIVATE LIMITED	Director	10/12/2012	10/12/2012	16/07/2015	Active	-
U15400DL2010PTC209774	WAVE FRESH PRIVATE LIMITED	Director	25/10/2010	25/10/2010	07/04/2015	Active	-
U15421DL1997PLC128097	A B SUGARS LIMITED	Director	30/09/2009	05/12/2008	10/07/2011	Active	-
U15421UP1996PTC019463	SURAJ SUGAR & ALLIED INDUSTRIES PRIVATELIMITED	Director	29/09/2012	21/02/2012	07/04/2015	Active	-
U15422DL2010PTC202716	ADIE BROSWON SUGARS & INDUSTRIES PRIVATE LIMITED	Director	15/05/2010	15/05/2010	20/10/2011	Active	-
U15424DL2004PTC125786	CHADHA SUGARS AND INDUSTRIES PRIVATELIMITED	Director	13/04/2004	13/04/2004	20/10/2011	Active	-
U15494DL2011PTC225835	WAVE POULTRY PRODUCTS PRIVATE LIMITED	Director	26/09/2012	10/10/2011	23/04/2015	Strike Off	-
U15520DL1995PLC127967	CHADHA DISTILLERIES LIMITED	Director	28/09/2012	01/12/2011	23/04/2015	Active	-
U15549UP2019PTC122904	AGRISTO MASA PRIVATE LIMITED	Director	31/10/2019	31/10/2019	-	Active	-
U16000DL2006PTC153752	JESSAMINE FRESHENERS PRIVATE LIMITED	Director	29/09/2010	28/04/2010	-	Amalgamated	-
U21011UR1991PLC012705	MANORAMA PAPER MILLS LIMITED	Director	12/03/2007	12/03/2007	01/09/2009	Active	-
U45200DL2006PTC154544	CARA TOWN PLANNERS PRIVATE LIMITED	Director	27/09/2008	20/02/2008	08/06/2016	Active	-
U45200DL2007PTC157522	WAVE LAKEWOODS PRIVATE LIMITED	Director	27/09/2008	20/02/2008	07/04/2015	Active	-
U45200DL2007PTC160062	JAGAT GURU REAL ESTATE DEVELOPERSPRIVATE LIMITED	Additional Director	01/12/2011	01/12/2011	15/05/2012	Active	-
U45200DL2007PTC161050	HIMKUNJ BUILDWELL PRIVATE LIMITED	Director	28/09/2012	01/12/2011	15/09/2015	Under Process of Striking Off	-
U45200DL2008PTC174673	WAVE INFRATECH PRIVATE LIMITED	Director	30/09/2016	28/02/2008	-	Active	-
U45200DL2010PTC202023	WAVE INFRADEVELOPERS PRIVATE LIMITED	Director	01/06/2010	04/05/2010	07/04/2015	Active	-
U45200DL2010PTC205971	WAVE VERTICA PRIVATE LIMITED	Director	24/12/2020	16/07/2010	-	Active	-
U45200DL2010PTC208893	WAVE INFRADEVELOPERS (SHAHGANJ) PRIVATELIMITED	Director	29/09/2010	29/09/2010	23/04/2015	Strike Off	-
U45200DL2010PTC209775	WAVE INFRADEVELOPERS (NAWABGANJ) PRIVATE LIMITED	Director	25/10/2010	25/10/2010	23/04/2015	Strike Off	-
U45200DL2010PTC209776	WAVE INFRADEVELOPERS (LAXMI GANJ)PRIVATE LIMITED	Director	25/10/2010	25/10/2010	23/04/2015	Strike Off	-
U45200DL2010PTC209777	WAVE INFRADEVELOPERS (RAMKOLA) PRIVATELIMITED	Director	25/10/2010	25/10/2010	23/04/2015	Strike Off	-
U45200DL2010PTC209971	NOSTRI DESIGN CONSULTANTS PRIVATELIMITED	Director	30/10/2010	30/10/2010	05/10/2015	Active	-
U45201DL2004PTC128784	UPPAL-CHADHA HI-TECH DEVELOPERS PRIVATELIMITED	Director	30/09/2011	19/06/2009	23/02/2022	Active	-
U45201DL2004PTC129928	A B ESTATES PRIVATE LIMITED	Director	14/10/2004	14/10/2004	29/09/2014	Active	-
U45201DL2004PTC131529	UP TOWNSHIP PRIVATE LIMITED	Director	27/09/2013	03/12/2012	-	Active	-
U45201DL2005PTC135334	HONEY WELL ESTATE PRIVATE LIMITED	Director	18/02/2010	18/02/2010	-	Active	-
U45201DL2009PTC242671	TEJASWANI DEVELOPERS PRIVATE LIMITED	Director	24/09/2010	04/05/2010	-	Active	-
U45201UP1996PTC019296	LOTUS COLONIZERS PRIVATE LIMITED	Director	10/12/2012	10/12/2012	07/04/2015	Active	-
U45201UP1996PTC019297	G.B. PROPERTIES PVT.LTD.	Director	12/07/2012	12/07/2012	07/04/2015	Active	-
U45201UP2004PTC042060	RCPL FOOD PROCESSING PRIVATE LIMITED	Director	09/09/2011	04/05/2011	15/07/2019	Active	-
U45202DL1996PTC191641	CHADHA INFRASTRUCTURE DEVELOPERS PRIVATE LIMITED	Director	29/09/2010	01/11/2005	-	Amalgamated	-
U45204DL2011PTC220488	WAVE MEGACITY CENTRE PRIVATE LIMITED	Director	07/06/2011	07/06/2011	11/01/2021	Active	-
U45204DL2011PTC220492	WAVE INFRATECH TOWNSHIP PRIVATE LIMITED	Director	07/06/2011	07/06/2011	06/07/2015	Strike Off	-
U45400DL2008PTC172825	GRH INFRASTRUCTURE PRIVATE LIMITED	Director	15/07/2009	06/02/2008	14/04/2015	Under Process of Striking Off	-

25. We agree with the submission of the Applicants that Sh. Charanjeet Singh and Sh. Manpreet Singh Chadha were removed as directors, just before filing of application under Section 10 of IBC, 2016. The aforesaid is also an indicator that the Management, who was running the Corporate Debtor, wants to hide from answering the reasons of such default and wants to immunise itself from the provisions of Section 17(1)(c) of IBC, 2016. The Contents of Section 17(1)(c) are reproduced below –

> ***"17. Management of affairs of corporate debtor by interim resolution professional. –***
> ***(1)*** *From the date of appointment of the interim resolution professional, -*
> ***a.....***
> ***b.....***
> ***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;"*

26. It is further contended by the Applicants, that there are various litigations pending against the Corporate Debtor before different fora and to escape that liability the Corporate Debtor is seeking the shelter of its Resolution Process. That the Corporate Debtor has itself agreed and given details regarding the pending litigations in its application. The scanned copy of the same is reproduced below:

Pending Legal Cases List of WMCC as on 10-03-2021

SL. No.	Name of Court/Authority/Tribunal/FIR	No. of Cases	Amount Involved	Interest Amount
1	RERA Cases	211	1,70,98,32,529.54	To be calculated @ SBI MCLR+1%
2	Arbitration Cases	6	2,58,86,433.00	To be calculated @ SBI MCLR+1%
2	NCDRC Cases	20	52,75,97,742.44	To be calculated @ SBI MCLR+1%
3	SCDRC, Delhi	17	6,75,05,838.16	To be calculated @ SBI MCLR+1%
4	SCDRC, Lucknow	6	2,06,21,280.85	To be calculated @ SBI MCLR+1%
5	Distt. Consumer Delhi & Noida	1	2,00,000.00	To be calculated @ SBI MCLR+1%
6	Distt. Court,Delhi	1	0	To be calculated @ SBI MCLR+1%
7	Criminal Matters, Delhi & Noida	6	7,77,84,416.70	To be calculated @ SBI MCLR+1%
8	NCLT Cases	17	10,99,05,622.75	To be calculated @ SBI MCLR+1%
	Total Cases	285	2,53,93,33,863.44	
	Amount in Crores		253.93	

27. From perusal of the above, it can be observed that at least 285 cases are pending against the Corporate Debtor before various fora as on 10, March, 2022.

28. The Corporate Debtor has stated the following in context of the said pending proceedings in reply of IA 2378 of 2021 –

> *"8. That the Intervenors have made allegations which are not in relation to the present proceedings, and, or are unduly attempting to delay the commencement of the corporate insolvency resolution process for the Corporate Debtor. It is also pertinent to note that matters pertaining to other legislations, before other statutory and judicial authorities are to be determined by the relevant authorities and such proceedings cannot be used to stall bonafide proceedings initiated by the Corporate Applicant under the provisions of the Insolvency Code.*
>
> *9. There is no merit in the Intervenors Objections as they are merely referring to other proceedings before judicial authorities and have sought reasons/justifications which are not in the purview of the Insolvency Code, such as the reasons for delay in*

completion. However, the Corporate Applicant has duly explained the default as well as the reasons for seeking commencement of the corporate insolvency resolution process for the Corporate Debtor..."

29. In our considered view the IBC proceedings are proceedings *in rem* and on admission of the application to initiate CIRP, not only the Corporate Debtor is affected but also its other stakeholders.

30. On initiation of CIRP, the moratorium under Section 14(1) of IBC, 2016, comes into effect and by virtue of that all the proceedings against the Corporate Debtor are put to rest, till the time the CIR Process is in force. The moratorium imposed during the CIRP period offers a calm time and a breathing room to the Corporate Debtor, in order to maximize asset realization and to eventually rehabilitate the Company. However, such is not the case of the Corporate Debtor as it has justified the initiation of CIRP on the ground of committing default. Further, the pending Litigations against the Corporate Debtor, as stated is 285 in numbers, which is huge in number, therefore, the possibility of initiating CIRP, by itself, to escape the liability which may arise out of the 285 pending litigations, cannot be overlooked.

31. It is further stated by the Applicants that the CD accepted payment in cash from them and issued plain paper receipts while inducing them to accept a reduced price of the property(s) on paper, to cause serious loss to the State exchequer, in terms of stamp duty at the stage of registration of title, by reducing the value of the property. The scanned copy of the one of such cash receipt is reproduced below :

Mr. Shashi Sharma
Against Varieties 126 4.18.
20,00,000/- (10002).

21st Nov 2015.

WAVE ONE

32. After considering the above stated proof provided by the Applicants, which is an indicator, it appears that the Corporate Debtor was indeed involved in malpractice and was reducing the market value of its own assets.

33. Now a question arises, whether the CD has filed the Section 10 application with a malicious and fraudulent intent. The term malicious has not been defined anywhere under IBC, 2016. Therefore, at this juncture we refer to the Judgement of Hon'ble Supreme Court, passed in the matter of **West Bengal State Electricity Board Vs Dilip Kumar Ray, Civil Appeal 5188 of 2006** dated 24.11.2006, wherein the term 'malicious' has been discussed. The extracts of the Judgement are reproduced below: –

> *"Malice means in law wrongful intention. It includes any intent which the law deems wrongful, and which therefore serves as a ground of liability. Any act done with such an intent is, in the language of the law, malicious, and this legal usage has etymology in its favour. The Latin malitia means badness, physical or moral - wickedness in disposition or in conduct - not*

specifically or exclusively ill-will or malevolence; hence the malice of English law, including all forms of evil purpose, design, intent, or motive. But intent is of two kinds, being either immediate or ulterior, the ulterior intent being commonly distinguished as the motive. The term malice is applied in law to both these forms of intent, and the result is a somewhat puzzling ambiguity which requires careful notice. ***When we say that an act is done maliciously, we mean one of the two distinct things. We mean either that it is done intentionally, or that it is done with some wrongful motive."***

(Emphasis Supplied)

34. That in view of the aforesaid discussion, we are of considered view that in the garb of IBC Proceedings the Corporate Debtor has attempted to play fraud on its Stake Holders. The IBC Proceedings cannot be utilised to make the illegal acts as legal. Hence, we conclude that the Application under Section 10 has been filed with malicious and fraudulent intent, to cause injury to the stakeholders of the Corporate Debtor.

35. Now we would like to examine that whether any case is made out to impose penalty under Section 65 of IBC, 2016. In this context we would like to refer to the Judgement of NCLT Delhi Court –II in the matter of **The Registrar National Company Law Tribunal Vs M/s. Om Logistics Ltd. dated 30.05.2022 passed n MA 04/2021 in IB 1742/ND/2019** wherein the following was held -

9. From the conjoint reading of Section 5(11) and Section 65 of IBC, 2016, it can be inferred that there are two necessary conditions to attract provisions of the Section 65 of IBC, 2016 on an Applicant of Section 7, 9 or 10 as the case maybe. One is that an Application must

be filed to trigger CIR Process and the other is that it should be filed with malicious intent.

36. That in the instant case the Application under Section 10 of IBC, 2016 was filed by the Corporate Debtor and the Applicants herein have filed an application under Section 65 of IBC, 2016. That this Adjudicating Authority has given the opportunity to the Corporate Debtor to file reply in IA 2026 & 2378 of 2021.

37. That after the aforesaid discussion we have concluded that the Application filed under Section 10 of IBC, 2016 was an attempt on the part of the Corporate Debtor to play fraud on thousands of Home Buyers, Noida Authority, Government Authorities etc. Further great prejudice must have caused to them if the CIR Process was triggered. **Therefore, we are imposing Rs 1 Crore penalty on the Corporate Debtor which shall be deposited in Prime Minister's Relief fund within 15 days from today.**

38. That we have observed serious allegations against the Corporate Debtor with respect to siphoning off the money collected from Home Buyers. Furthers there is evidence produced by the Home Buyers that the Corporate Debtor was taking huge amount of cash from the Home Buyers. It is surprising to note that despite receiving the entire amount from the Home Buyers the Corporate Debtor failed to either give possession or returned the money. Therefore, we are of the view that the affairs of the Corporate Debtor were conducted with the intent to play fraud on the creditors of the Corporate Debtor. In light of above circumstances, we

direct the Central Government to make necessary investigation into the affairs of the Corporate Debtor.

39. We make it clear that this order shall be considered to be passed under Section 210(2) of Companies Act, 2013. So far as it relates to giving directions to the Central Government to make investigation is concerned.

40. IA 2026 AND 2378 of 2021 are accordingly allowed and IB-197/PB/2021 is accordingly dismissed.

41. All the other pending IAs are disposed of being infructuous

-sd-

(HEMANT KUMAR SARANGI)
MEMBER (T)

-sd-

(BHASKARA PANTULA MOHAN)
MEMBER (J)

Pronounced today under Rule 151 of the NCLT Rules 2016 as Shri. Hemant Kumar Sarangi, Hon'ble Member (Technical) is not holding Principal Bench.

COURT OFFICER