

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No.1441 of 2024

[Arising out of Order dated 12.07.2024 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, Court-IV in C.P. No.(IB) 462 of 2023]

IN THE MATTER OF:

**Ram Kishore Arora Directors (Powers Suspended) Of
Supertech Township Projects Ltd.** ...Appellant

Versus

Punjab and Sind Bank & Anr. ...Respondents

Present:

For Appellant: Mr. Abhijeet Sinha, Sr. Advocate with Mr. Siddharth Bhatli, Ms. Lashita Dhingra, Ms. Heena Kochar, Ms. Anvesha Jain, Advocates.

For Respondents:
Mr. Sanjay Bajaj, Mr. Shivam Takkar, Mr. Rajat Prakash, Advocates for R-1.
Mr. Akshit Gupta, Advocate with Mr. Umesh Singhal, IRP in person for IRP.
Mr. Amar Gupta, Mr. Pranav Tanwar, Advocates for YEIDA.
Mr. Arvind Nayyar, Sr. Advocate with Mr. Mansumyer Singh, Mr. Akshay Joshi, Advocates for Applicant Homebuyers in IA No. 7378 of 2024.
Mr. Anshul Sharma, Mr. Chaaitanya Jain, Advocates for Intervener - SGCWA.
Mr. Mrinav K. Mandl, Mr. K.V. Jagdishvaran, Advocates for Homebuyer Rituraj Sharma.
Mr. Bhaskar Tripathi, Mr. Venamra Mahaseth, Advocates for Applicant Homebuyers in IA No.5972 of 2024.

J U D G M E N T
(6th March, 2025)

Ashok Bhushan, J.

This Appeal by Suspended Director of the Corporate Debtor- M/s. Supertech Township Projects Limited has been filed challenging the order

dated 12.07.2024 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, Court-IV admitting Section 7 application filed by Punjab & Sind Bank. The Corporate Debtor was incorporated on 15.06.2010 to develop a residential complex named— Golf Country at Plot No. TS-05, Sector-22-D, Yamuna Expressway, Greater Noida. On request of the Corporate Debtor, Punjab & Sind Bank sanctioned a term loan of Rs.140 Crore in the year 2012-2013. Corporate Debtor executed revival letters in favour of the financial creditor acknowledging and confirming their liability on 31.03.2016/ 26.07.2016. On 30.06.2018, the account of the corporate debtor was classified as NPA. Financial facilities were also extended to the corporate debtor by two other consortium banks namely— Bank of Maharashtra and Oriental Bank of Commerce (now Punjab National Bank). PNB has disbursed the amount of Rs.100 Crores and Bank of Maharashtra also disbursed the amount of Rs.100 Crores. Financial creditor also issued notice under Section 13(4) of the SARFAESI Act on 18.09.2018. On 21.08.2019, Original Application was filed by the financial creditor along with the other consortium members for amount of Rs.292,86,07,288/-. Corporate debtor vide its letter dated 06.12.2022 has also submitted an OTS proposal to the lenders. Punjab & Sind Bank filed an application under Section 7 dated 13.07.2023 claiming amount in default of Rs.216,92,87,046/- upto 30.06.2023 along with pendente-lite and future interest. Adjudicating Authority issued notice to the corporate debtor in response to which reply was filed by the corporate debtor. In the reply, various objections including that petition has not been filed with proper authority and application is barred by time were taken. Corporate debtor also pleaded that it has approached the

financial creditor for settlement of dues. It was pleaded that the corporate debtor is willing to safeguard the interests of the lenders. There are numerous homebuyers who are stakeholders of the corporate debtor and whose interest are to be protected. Rejoinder-affidavit was also filed by the financial creditor responding to the various objections raised by the corporate debtor.

2. Adjudicating Authority heard the parties and noticed that the corporate debtor has acknowledged its debt towards lenders in the balance sheet for the F.Y. 2018-19, 2019-20 and 2020-21. Corporate debtor issued a OTS proposal on 17.01.2022 which was not accepted by the lenders. Corporate debtor further submitted OTS proposal on 06.12.2022 acknowledging the debt which OTS proposal was also subsequently rejected by the financial creditor. Adjudicating Authority held that the application filed under Section 7 is not barred by time. Adjudicating Authority also returned a finding that the application filed by the financial creditor is by the person who is fully authorised to file the proceedings. Adjudicating Authority also returned a finding that the default by the corporate debtor is proved from the materials on record. Adjudicating Authority held that the application under Section 7 is fully complete and by order dated 12.07.2024 admitted Section 7 application and appointed Shri Umesh Singhal as Interim Resolution Professional.

3. This Company Appeal (AT) (Insolvency) No.1441 of 2024 was filed by the Appellant in this Tribunal on 23.07.2024. Appeal was heard on 29.07.2024. Appellant submitted before this Tribunal that Appellant is taking steps to settle the entire dispute with the financial creditor and within 7 days'

appropriate proposal be submitted to Punjab & Sind Bank. On 29.07.2024, following order was passed by this Tribunal:-

“29.07.2024: *Learned counsel for the Appellant submits that the Appellant is taking steps to settle the entire dispute with the Financial Creditor and within 7 days from today an appropriate proposal shall be submitted to the Punjab and Sind Bank, the Financial Creditor herein. It is further submitted that 75% of development has already taken place and State of Uttar Pradesh has introduced Zero Policy Scheme and the Corporate Debtor also intend to take benefit of the said scheme. Shri Nayyar has appeared for a Group of Homebuyers, he submits that the Homebuyers also support the proposal of the Appellant.*

List this Appeal on 21.08.2024.

In the meantime, in pursuance of the impugned order no further steps shall be taken except collation of claims which have already been invited.”

4. By interim order passed on 29.07.2024, this Tribunal directed that no further steps shall be taken except collation of claims which have already been invited. Appellant has given a settlement proposal dated 06.08.2024 with investor- M/s. Nisus Finance Services Co. Ltd. which proposal was considered by Punjab & Sind Bank and in the Joint Lenders’ Meeting (JLM) held on 14.08.2024 the proposal was not accepted. Appellant submitted 2nd proposal dated 26.09.2024 with investor namely— HRDI Group Private Limited and IA No.6948 of 2024 was filed by the Appellant dated 24.09.2024 bringing on record the 2nd proposal. This Tribunal on 26.09.2024 noticing the 2nd proposal submitted by the Appellant which was to be circulated by the Appellant,

granted two weeks' time to the Appellant to complete the proposal and circulate it to the Bank as well as to all the homebuyers. Proposal was also permitted to be put on website. Objections to the proposal were also permitted to be filed.

5. Yamuna Expressway Industrial Development Authority (YEIDA), a land owning company who has allotted the land in question for the project vide allotment letter dated 01.08.2011 filed an IA No.7607 of 2024 dated 22.10.2024 praying for impleadment/ intervention in the appeal. A separate objection dated 22.10.2024 was also filed by YEIDA objecting to the 2nd settlement proposal given by the Appellant. In the objections, YEIDA claimed that it has filed its claim under Form C on 25.07.2024 claiming dues of Rs.741,40,90,609/-. In view of the liberty granted to the homebuyers, Supertech Golf Country Welfare Association also filed an IA No.6691 of 2024 dated 04.09.2024 seeking intervention and raising objection to the proposals submitted by the Appellant.

6. Another IA No.5972 of 2024 has been filed by Himanshu Shehrawat and 84 Ors. (by 85 homebuyers) praying for seeking intervention in the appeal and objecting to the prayers made by the appellant in proposals circulated. It was pleaded by the applicant that applicant has already filed an application under Section 7 being CP (IB) No.835 of 2020. In view of the order dated 12.07.2024 in the Section 7 application filed by Punjab & Sind Bank, application of the appellant was rejected on 15.07.2024 as infructuous. Applicants claimed that they have submitted their claims before the IRP.

Applicants have objected to the prayers made by the appellant as well as settlement proposal submitted by the Appellant.

7. Another IA No.7378 of 2024 has been filed by MD Tofik Solanki & Ors. claiming to be authorised representative of 168 homebuyers who by the application contends that the homebuyers prayed that construction of project may be directed to recommence under the supervision of Respondent No.3-IRP. It is pleaded that 70-80% work is completed and unless the construction of project is not commenced, the homebuyers shall suffer irreparable loss.

8. Punjab & Sind Bank has also filed an affidavit on 06.01.2025 pleading that settlement proposal submitted by the Appellant on 06.08.2024 by M/s. Nisus Finance Services Co. Pvt. Ltd. was considered by Joint Lenders' Meeting on 14.08.2024 and was not agreed, on 2nd proposal which has been submitted along with the investor- HRDI Group Private Limited has also been considered and in the Joint Lenders' Meeting held on 04.01.2025, proposal was unanimously rejected by all the lenders. It is submitted that the amount of Punjab & Sind Bank in the application was Rs.216,92,87,046/- on 30.06.2023 and in the proposals which are submitted by the appellant, the bank is proposed to be paid only an amount of Rs.91.03 Crore in three years. In the Affidavit, Punjab & Sind Bank has referred to the reasons due to which the settlement proposals submitted by the appellant were not accepted.

9. Another Affidavit dated 20.02.2025 has been filed by the Appellant submitting a 3rd settlement proposal claiming to have obtained support of another investor namely- Apex Heights Pvt. Ltd. In the Affidavit, details of the settlement proposal submitted by the appellant has been brought on the

record. The lenders have been proposed to pay with their ledger balance within three years. YEIDA has also been proposed to be paid an amount of Rs.387.34 Crore in three years. Proposal further stated that the investor proposes to infuse Rs.50 Crores. Rs. 5 Crore as interim finance and promoters proposes to infuse Rs.50 Crores by Apex Heights Pvt. Ltd., a development manager.

10. We have heard Shri Abhijeet Sinha, Learned Senior Counsel for the Appellant and Shri Sanjay Bajaj, Learned Counsel for Punjab & Sind Bank. We have heard Counsel appearing in IA No.6691 of 2024 filed on behalf of Supertech Golf Country Welfare Association. We have also heard counsel appearing in IA No.5972 of 2024 filed by Himanshu Shehrawat and 57 Ors. We have also heard Shri Arvind Nayyar, Learned Senior Counsel appearing in IA No.7378 of 2024 filed by MD Tofik Solanki & Ors. and Shri Amar Gupta, Learned Counsel for YEIDA.

11. Shri Abhijeet Sinha, Learned Senior Counsel for the Appellant contends that with regard to Real Estate Project in question i.e. Golf Country permitting construction of units as per settlement dated 17.02.2025 is in the interests of homebuyers. It is submitted that out of 4332 units in the project, possession has been given to 506 units and there are 1401 unsold units. It is submitted that this Tribunal in several matters relating to Real Estate Project has permitted construction under the supervision of IRP with the assistance of promoter with co-developers to protect the interests of the homebuyers. Appellant is also proposing to pay the ledger balance of all the lenders including Punjab & Sind Bank. It is submitted that although YEIDA has filed

a claim of Rs.651.79 Crores, the land dues computed after availing zero period shall be only Rs.387.34 Crore. It is submitted that the Writ Petitions have been filed by the Appellant before the Allahabad High Court against YEIDA with respect to demand of Rs.651.79 Crores and as per government orders and Amitabh Kant Committee Report, only Rs.387.34 Crores is payable which shall be paid in three years. The fact that some homebuyers' groups are objecting the proposal is not determinative. There are other homebuyers i.e. 168 in numbers who are supporting proposal of the promoters. Appellant has given feasible and viable plan to revive the distress position.

12. Counsel appearing for Punjab & Sind Bank submitted that debt and default being due against the Appellant, Adjudicating Authority has rightly commenced Section 7 proceedings against the Appellant. Appellant has submitted three proposals from time to time. 1st and 2nd proposals were considered by all the lenders and have been rejected. It is submitted that against the huge dues of the Punjab & Sind Bank alone of more than Rs.216 Crores as on 30.09.2023. The Appellant is proposing to pay entire Rs.90 Crores which is not acceptable to the bank. All lenders unanimously in the JLM meeting held on 05.01.2025 has rejected the proposals submitted by the Appellant.

13. Counsel appearing for YEIDA submits that YEIDA has already filed its claim in Form C before the IRP for an amount of Rs.741 Crores. In the objection and application by YEIDA, details and breakout of Rs.741 Crores have been given. It is submitted that the Appellant was asked to provide various documents which have not been fully provided by the Appellant.

YEIDA being land owning development authority, no development work can be carried out on the lease premises without applicant's approval. The dues of YEIDA cannot be wished away by the Appellant. The proposal submitted is not viable and contrary to the law and liable to be rejected.

14. Counsel appearing for Supertech Golf Country Welfare Association submits that the proposals given by the appellant are not acceptable to the registered association i.e. Supertech Golf Country Welfare Association. The submission of the appellant that 75% of the development work have already taken place in the project "Golf Country", is totally wrong. Project is at a very pathetic condition. It is further submitted that with regard to zero policy scheme of Uttar Pradesh, the appellant has already made an application under the scheme which is not accepted. Appellant again applied for the scheme on 20.11.2023 which application came to be rejected vide order dated 09.08.2024 by the YEIDA. Appellant is not entitled for any relief in this appeal. Appellant having not approached this Tribunal with clean hands and bonafide intention is not entitled for any relief.

15. Counsel for Applicant in IA No.5972 of 2024 filed on behalf of Himanshu Shehrawat and 84 other homebuyers contends that the homebuyers have not been delivered their units upto September 2017 which was average deadline for possession and after giving extension of 6 month, possession was required to be provided by March/April 2018. On 08.06.2020, applicants filed Section 7 application on which CP (IB) No.835 of 2020 was registered against the corporate debtor. The Adjudicating Authority admitted Section 7 application filed by the Punjab & Sind Bank on 12.07.2024, hence, CP (IB) No.835 of 2020

filed by the homebuyers have become infructuous. After the publication made by the IRP, homebuyers have filed their claims. All the homebuyers were allowed units in the project. Even after eight years of execution of Builder Buyers' Agreement, no possession could be handed over, Corporate Debtor having committed continuous default. In the Appeal right from 29.07.2024, Appellant on the pretext that it is settling the dispute with the financial creditor- Punjab & Sind Bank and has getting interim order extended and CoC could not be constituted. Homebuyers are facing considerable difficulties with the banks' dues on the default committed by the corporate debtor. Homebuyers have already suffered grave prejudice and injustice.

16. Shri Arvind Nayyar, Learned Senior Counsel appearing in IA No.7378 of 2024 on behalf of MD Tofik Solanki & Ors. submits that the applicants who represent 168 homebuyers seeks direction to IRP to recommence and complete the construction of the project namely— Golf Country. The project has been completely stopped and stalled. In event, the work is continued, the allottees- homebuyers will get the possession which they are waiting for the last several years. About 70-80% of the work is complete. Object of the applicants for filing the application is to look into the interest of the homebuyers who have spent their hand earned money and desperately waiting for their units. Applicants have also referred to the report submitted by Amitabh Kant Committee in July 2023 which contains a proposal for State Government's Rehabilitation Package. It is further submitted that this Tribunal in several orders have directed facilitating the construction of Real Estate Project for protection of interests of the homebuyers. Respondent No.3

to recommence and complete the construction, applicants are not in favour of the insolvency process.

17. The factum of disbursement of term loan of Rs.140 Crores to the corporate debtor is an admitted fact. Declaration of account of the corporate debtor as NPA and notice under the SARFAESI Act, 2002 and thereafter filing an application under Section 7 is matter of record. In Part IV of Section 7 application dated 13.07.2020, details of the disbursement, creation of charges on Plot No.TS-05, Sector 22-D, Yamuna Expressway, Greater Noida, U.P., issuance of revival letters dated 31.03.2016, 26.07.2016 and 28.02.2019 is pleaded as well as submission of OTS on 06.12.2022, account of corporate debtor was declared NPA on 30.06.2018. Amount claimed in Part-IV, Item No.2 is as follows:-

“Part-IV

2.	<i>Amount Claimed to be in default and date on which the default occurred</i>	<i>Rs.216,92,87,046.00 (Rupees Two Hundred Sixteen Crores Ninety Two Lacs Eighty Seven Thousand Forty-Six only) up to 30.06.2023 as along with pendent-lite and future interest from 01.07.2023 till payment, actual realisation in full duly shown in statement of account annexed as Annexure with this Application. The certified copy of the Statement of Accounts in respect of the above said accounts are filed with (as detailed hereafter)</i> <i>However, the Respondent Company/Corporate Debtor did not maintain financial discipline and its</i>
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	<i>loan/facility accounts remained continuously irregular despite repeated requests and reminders given by the Applicant Bank/Financial Creditor.</i> <i>That due to continuous default on the part of the Respondent Company/Corporate Debtor, its account was classified as a "Non-Performing Assets" on 30.06.2018.</i> <i>The Financial Creditor for itself and for and on behalf of other member of consortium issued notice dated 10.07.2018 under Section 13(2) of the SARFAESI Act upon the Corporate Debtor and other related parties.</i> <i>The true copies of the said notices with postal receipts are filed herewith as Annexure A-7 Colly.</i> <i>The Financial Creditor for itself and for and on behalf of other member of consortium issued notice dated 18.09.2018 under Section 13(4) of the SARFAESI Act upon the Corporate Debtor and other related parties.</i> <i>The true copies of the said notices with postal receipts are filed herewith as Annexure A-8.</i>
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18. Reply was filed by the corporate debtor opposing Section 7 application raising various objections to the application. Adjudicating Authority in the impugned order has considered objections and has held that the application filed by the Punjab & Sind Bank was filed by person authorised and further application is not barred by time. Adjudicating Authority also returned a finding that there exists debt and default. Finding returned in paragraph 29 of the impugned order is as follows:-

“29. With regard to the existence of debt and default, on a perusal of Form - I and the documents annexed with the application, we are satisfied that the applicant clearly comes within the definition of Financial Creditor and the loan was disbursed to Corporate Debtor and there exists a debt and its default.”

19. The present is a case where debt and default is not even contested. As noted above, when the appeal was heard on 29.07.2024, Appellant contended that it is taking steps to settle entire dispute and appropriate proposal be given within 7 days. Interim order was passed on 29.07.2024 which was extended from time to time.

20. The material on record indicate that Appellant from time to time brought three settlement proposals to take care of the debt of lenders. 1st proposal was submitted with M/s. Nisus Finance Services Co. Pvt. Ltd. dated 06.08.2024. 2nd proposal which was submitted by Appellant with investor-HRDI Group Private Limited dated 26.09.2024. The proposal which was submitted by M/s. Nisus Finance Services Co. Pvt. Ltd. was considered by

Joint Lenders' Meeting held on 14.08.2024 and Joint Lenders' Meeting in its decision dated 14.08.2024 did not accept the settlement proposal submitted by the Appellant. It was thereafter 2nd proposal was submitted through HRDI Group Private Limited which proposal came to be considered by the financial creditor in its resolution dated 04.01.2025. Copy of the minutes of the Joint Lenders' Meeting has been brought on record by Punjab & Sind Bank along with their Affidavit dated 06.01.2025. In Item No.4 of the minutes, following has been recorded:-

"Item No. 4:

To discuss the Settlement Proposal of the loan to the Consortium for "Golf Country" Project vide Supertech Township Project Limited letter dated 26.09.2024.

In the meeting all the lenders unanimously rejected the OTS proposal since it is not in conformity with Bank's Recovery Management Policy. Lead Bank will intimate the company regarding rejection of the proposal on the behalf of lenders."

21. It is also relevant to notice that the registered homebuyers' association of the project i.e. Supertech Golf Country Welfare Association has also filed an IA seeking intervention. The registered association has pleaded that the project is in pathetic condition.

22. It is relevant to notice Shri Abhijeet Sinha has referred to Amitabh Kant Committee Report and submit that it has already made certain applications and it shall pursue the matter with the YEIDA for extending the benefit of zero period by which benefit the claim made by YEIDA be substantially reduced

due to which appellant shall be able to pay the dues in graded manner as proposed in the settlement plan. The copy of Amitabh Kant Committee Report (July 2023) has been brought on record along with IA No.7378 of 2024. Paragraph IV of the report is proposal for the State Government's Rehabilitation Package. It is useful to notice said Para IV which is to the following effect:-

“IV. Proposal for State Government's Rehabilitation Package

a. The Committee recommends that State Governments may announce a rehabilitation package aimed at bolstering financially distressed, incomplete projects. The package should be designed to make the projects financially viable. Developers adopting this package would have to commit to a three-year completion timeline. The State RERA will set quarterly project targets and oversee progress as per the RERA Act. A model package suitable for Noida/Greater Noida is given below. Other State Governments are also encouraged to devise similar packages:

i. Introduction of a "Zero Period": *To alleviate financial stress caused by extraordinary circumstances, the Committee suggest suspending interest and penalties due to events like the Covid-19 pandemic (01.04.2020 to 31.03.2022), and court orders suspending projects within a 10 km radius of the Okhla Bird Sanctuary (14.08.2013 to 19.08.2015). The State Governments could examine and provide further zero periods based on the local conditions/circumstances.*

ii. Interest Application: *The Committee advises applying interest based on the 3Y Marginal Cost of funds-based Lending Rate (MCLR) SBI of 1^a June 2020 for fresh calculation under this package, to ensure a fair and consistent rate for all developers. The calculation should be done denovo from the date of allotment and delivery of land to the developer.*

iii. Inclusion of Co-developers: *For harnessing additional funds to ensure project completion, the Committee recommends allowing developers to induct co-developers, either for entire projects or specific parts thereof without any permission from Noida/Greater Noida and Land-Owning Authorities. However, Land Authorities would be informed of such inductions. This will foster collaborative efforts and expedite completion times.*

iv. Partial Surrender Policy: *The Committee proposes a flexible policy that allows for partial surrender of land. This will give developers a greater degree of flexibility to adjust their commitments based on their operational capabilities. All dues on the surrendered land will be waived. The Authority may adjust money already paid for surrendered land with outstanding dues of the developers. Land costs have increased in the past ten years. The Authority will be more than compensated by selling the surrendered land to fresh allottees.*

D. Plan Approval/Extension Process: *The Committee recommends allowing plan approvals and extensions without requiring clearance of dues. A fresh three-year extension may be given to all projects at no payment to Authority. This would ensure continuous project*

development while addressing the financial constraints of developers.

vi. Recalculation of dues: All dues will be re-verified and recalculated by an Independent Chartered Accountant/Third Party.

vii. Non-cancellation of Lease deeds: Land Authorities will not cancel lease deeds till implementation of the plan under RERA supervision.

viii. No additional cost: No penalty/extra interest/extra cost will be charged from the homebuyers in projects where State Government's Rehabilitation package concessions have been availed.

ix. Current FAR for projects: The Committee proposes granting the current Floor Area Ratio (FAR) applicable to similar projects as on 01.04.2023 to the project on payment of charges to the Authority and fulfillment of other necessary requirements. This increased buildable area can be used for additional development, which will also provide extra funding.

x. Additional resources from Excess Land (if any): If a project has excess land, it can provide immediate resources for construction. This land could be used for shopping centres and other such uses. Land Authorities should permit this on payment basis. This optimization can provide financial relief and expedite project completion.

xi. Permission to mortgage should be given by land authorities without insisting upon 100% clearance of dues so that builders can mobilize resources for completion of projects and payment of dues.

b. The Committee recommends that developers pay 25% of the balance due to the Authority after the above concessions within sixty (60) days as a measure of commitment. The balance 75% would be paid over a three-year period with simple interest specified in para a(ii) above. If a developer fails to complete the project within the stipulated time frame or progress is found unsatisfactory by RERA, 20% penalty will be imposed, and the project will come under the direct management of State RERA as detailed in Part (V) below.

c. The Committee believes that this model package can be particularly beneficial for regions like Noida/Greater Noida and we encourage all other State Governments to consider similar adaptations.

(Action: State Governments)”

23. In IA No.6691 of 2024 filed by Supertech Golf Country Welfare Association, copy of the order issued by YEIDA dated 09.08.2024 has been brought on the record where YEIDA has in reference to the request made by Appellant for zero period by letter dated 20.11.2023, has communicated that the said request cannot be accepted due to non-fulfilment of all parameters. Copy of the order is brought on the record along with IA as Annexure A3.

24. The financial creditor- Punjab & Sind Bank who has initiated Section 7 application have filed affidavit bringing on record the minutes of the Joint Lenders' Meeting which record that all members unanimously have rejected the settlement proposal submitted by the appellant. It is to be noted that the proposal which is circulated along with the affidavit dated 20.01.2022

is the similar proposal which was contained in 2nd settlement proposal submitted with HRDI Group Private Limited. The facts indicate that the corporate debtor itself has no financial capacity to carry on the project even under supervision of the IRP. Appellant has come up with three settlement proposals by three different investors from time to time. With regard to last proposal submitted by Apex Heights Pvt. Ltd., counsel for the homebuyers submitted that even Apex Heights was in CIRP. Appellant submitted that although CIRP was initiated against Apex Heights Pvt. Ltd. but CIRP has been closed on 24.07.2024 with regard to Apex Heights Pvt. Ltd. in view of the settlement agreement. Be that as it may, present is a case where debt and default by the corporate debtor is proved and not even disputed. It is true that this Tribunal in some cases of Real Estate insolvency project had directed the IRP to carry on the construction with the assistance of the promoters/ co-developers in the interests of the homebuyers.

25. Counsel for the Appellant has placed reliance on the judgment of the Hon'ble Supreme Court in ***"Anand Murti vs. Soni Infratech Pvt. Ltd. & Anr.- Civil Appeal Nos.7534 of 2021"*** where on the undertaking given by the promoters that cost be not escalated the Hon'ble Supreme Court took the view that it would be in the interest of homebuyers that promoter is permitted to complete the project as undertaken by him. In the above case, Section 7 application was initiated on an application by the homebuyers by order dated 22.11.2019. Aggrieved by the order, appeal was filed where appellant pleaded that it is ready and willing to settle the matter with the homebuyers. During pendency of the Appeal, Appellant settled the matter with Respondent No.2 i.e. homebuyers. Despite the said settlement, NCLAT passed an order

modifying the interim order and directed the IRP to go ahead with the constitution of CoC and carry forward. Appellant thereafter approached the Hon'ble Supreme Court by filing Civil Appeal No.1928 of 2020 which was disposed of permitting the Appellant to approach the NCLT for modification of its order. Appellant filed modification application in the NCLT which was rejected against which the appeal was filed. Hon'ble Supreme Court in the above context has made following observations in paragraphs 22 and 23:-

“22. Taking into consideration the salient features of the undertaking given on affidavit by the Promoter, Shri Kashi Nath Shukla and the fact that there are only seven out of the 452 homebuyers, who opposed the Settlement Plan, we find that it will rather be in the interest of the homebuyers that the appellant/promoter is permitted to complete the project as undertaken by him. It is pertinent to note that he has agreed that the cost of the flat will not be escalated. He has also given the time line within which the project would be completed. Not only this, but he has also undertaken to refund the amount paid by the seven objectors, if they so desire. He has further agreed that there shall be a team of 5 persons, 2 from the homebuyer's side and 2 from the management side and that the entire process shall be monitored by the IRP.

23. We find that there is every possibility that if the CIRP is permitted, the cost that the homebuyers will have to pay, would be much higher, inasmuch as the offer made by the resolution applicants could be after taking into consideration the price of escalation, etc.

As against this, the Promoter has filed a specific undertaking specifying therein that the cost of the flat would not be escalated and that he would honour the BBA signed by the previous management.”

26. In the above case, only 7 out of 457 homebuyers were opposed to the settlement plan. The present is a case where registered homebuyers and other group of homebuyers are opposed to settlement plan. Thus, it is not a case of only miniscule of homebuyers objecting to the settlement plan. In the above reference, Hon'ble Court has decided the appeal by permitting the promoter to complete the project.

27. The above judgment, thus, clearly provides that in appropriate case, promoters can be permitted to complete the project. However, for passing appropriate order, the facts on each case need to be noticed and considered. The present is a case where Appellant has submitted three different settlement plans backed by three different investors. Last investor- Apex Heights Pvt. Ltd. has been out of insolvency only on 24.07.2024. Punjab & Sind Bank who has initiated Section 7 proceeding and other two lenders Bank of Maharashtra and Punjab National Bank has out rightly rejected the settlement proposals. YEIDA who has claimed of Rs.751 Crores has also expressed its reservation to the proposal and in its affidavit has submitted that the proposals deserve to be rejected. When there are huge liabilities on the corporate debtor and lenders are not expressing their agreement with the proposal and having unanimously rejected the settlement proposal and further, the registered association of homebuyers and another set of homebuyers who had earlier initiated Section 7 proceedings against the

corporate debtor in the year 2020 are opposed to any settlement plan. The mere fact that one application which was filed being IA No.7378 of 2024 by MD Tofik Solanki & Ors. claiming to be authorised representative of 168 members who support the appellant cannot be a reason to accept the settlement plan submitted by the appellant and direct the IRP to carry out the construction. Looking to the huge liabilities against the corporate debtor, we are satisfied that present is not a case where this Tribunal may interfere with the order passed by the Adjudicating Authority admitting Section 7 application. Present is a case where resolution of the corporate debtor is required to be found in accordance with statutory scheme under the IBC and the CIRP Regulations. In view of the interim order dated 29.07.2024, no further steps could be taken by the IRP except collation of the claims. We are of the view that period from 29.07.2024 till today need to be excluded in the CIRP period.

28. In view of the foregoing discussions, we do not find any merit in the appeal. The appeal is dismissed. CIRP process against the corporate debtor may proceed in accordance with law.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

New Delhi
Anjali