IN THE NATIONAL COMPANY LAW TRIBUNAL,

ALLAHABAD BENCH, PRAYAGRAJ

CP (I.B.) NO.105 OF 2024

(Application by Financial Creditor to initiate Corporate Insolvency Resolution Process under Section 7 of Insolvency and Bankruptcy Code, 2016 read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.)

IN THE MATTER:

M/S ALFA PROPBUILD PVT. LTD

R/o: D-105, South City 1. Gurugram-122001

Mob: 09810663256

Email: aadiprop105@gmail.com

...Financial Creditor/Applicant

VERSUS

M/S PROTO DEVELOPERS AND TECHNOLOGIES LTD

Registered office 127/1/29, W-1 SAKET NAGAR,

KANPUR NAGAR KANPUR Uttar Pradesh 208025

Email id-protolimited@yahoo.in

...Corporate Debtor/Respondent

Order Pronounced on:09.09.2025

CORAM:

Sh. Praveen Gupta : Member (Judicial)

Sh. Ashish Verma : Member (Technical)

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Appearances:

Ms. Anshika Dubey &
Sh. Avinash Yadav, Advs. : *For the Financial Creditor*

Sh. Dilip Kumar Rana &
Sh. Sumit Panwar, Advs. : *For the Corporate Debtor*

ORDER

1. This Application has been filed on 07.08.2024 by M/s Alfa Probuild Private Limited (hereinafter referred as "Applicant / Financial Creditor") under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IBC") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 against M/s Proto Developers & Technologies Ltd (hereinafter referred as "Respondent/Corporate Debtor") in Form 1 containing all the information as required in Part I, II, III, IV and V of the Form showing a total financial debt of Rs. Rs. 1,77,96,540.00 /- along with Interest@24% Annually: Rs. 17,37,86, 114. Total Amount Rs. 19, 15,82,654 till 11.04.2011 with the date of default as specified in the application being 24.04.2013 i.e 24 Months from the date of MOU.

2. The Respondent Corporate Debtor is engaged in the business of real estate and infrastructural development, including the construction and

development of residential and commercial complexes. The Corporate Debtor has entered into arrangements/collaborations with companies and individual owners to construct and develop a group multi-storey residential apartment complex on land measuring 61.5 bighas (equivalent to approximately 61,500 sq. yards) in Khasra No. 519, 522-525/5, falling under Village Chajarasi Pargana Loni, Tehsil Dadri, District Gautam Budh Nagar, UP.

3. As stated in the application, the Respondent Corporate Debtor, in consonance with the landowners, has taken over the said project land for constructing the multi-storey group housing complex/township. As per the Development Collaboration Agreement dated 21.01.2010, executed between the CD and M/s Raksha Vigyan Karamchari Sahakari Awas Samiti Ltd. (hereinafter referred to as "RVKAS"), Ghaziabad, Uttar Pradesh, and the landowner, the Respondent Corporate Debtor was empowered to develop the multi-storey apartment complex and sell the apartments.

4. The Respondent Corporate Debtor was responsible for developing a residential housing project named "Sanskriti Apartment" on the specified land and was obligated to complete the project within the designated timeframe. The details of the project are as follows: -

1. PROJECT NAME: Sanskriti Apartment

2. AREA: 61,500 sq. yards

3. LOCATION: Ghaziabad, U.P.

5. The Applicant Financial Creditor contends that misled by false advertisements and agreements, reserved and acquired units/flats in the "Sanskriti Apartments" project, a multi-storey residential complex developed by the Corporate Debtor for commercial purchase. The Applicant booked residential flats in the project "Sanskriti Apartments," the CD's real estate project with 1,600 total flats, located in Ghaziabad, U.P. The Respondent/Corporate Debtor (PDTL), along with RVKAS, made an Agreement to sell 200 flats to the Applicant Financial Creditor under the terms specified in the Memorandum of Understanding dated 21.04.2011, granting all rights to sell these flats.

6. On 9.10.2010, an Indenture of Collaboration Agreement was executed among the Respondent Corporate Debtor, RVKAS (the landowner), and M/s Antriksh Realtech Pvt Ltd (the developers). Under this agreement, Respondent Corporate Debtor and RVKAS together would receive 37.5% of the total developed area, encompassing both constructed and non-constructed portions, while M/s Antriksh Realtech Pvt Ltd would receive 62.5%.

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7. The Memorandum of Understanding (MOU) dated April 21, 2011, referencing the Collaboration Agreement dated February 2, 2010, stipulated that the Corporate Debtor (CD) and RVKAS were collectively entitled to 600 flats in the Sanskriti Apartments project. Of these, PDTL was allocated 363 flats, RVKAS was assigned 237 flats for its members, and the remaining 1,000 flats were designated for the developer, M/s Antriksh Realtech Private Limited.

8. Applicant Financial Creditor states that Under the Development Collaboration Agreement dated 21.01.2010, all legal rights and obligations were transferred to the Respondent Corporate Debtor, with RVKAS retaining only an interest in 237 flats from the yet-to-be-developed flats. At the time of the agreement between the Applicant and the Respondent, RVKAS lacked authority over the property and was not actively involved, making the Respondent Corporate Debtor solely responsible.

9. In accordance with the terms of the MOU dated 21.05.2011, the Applicant–Financial Creditor invested a principal sum of ₹1,77,96,540 (Rupees One Crore Seventy-Seven Lakh Ninety-Six Thousand Five Hundred Forty only) into the designated bank account. Of this total, the Applicant directly disbursed ₹61,01,000 (Rupees Sixty-One Lakh One Thousand only) from his own bank account, while the remaining ₹1,16,95,540 (Rupees One

Crore Sixteen Lakh Ninety-Five Thousand Five Hundred Forty only) was paid directly by the purchasers to whom the Applicant intended to resell the flats.

10. As per Clause 17 of the MOU, in the event of willful default, the Respondent is liable to pay interest at the rate of 24% per annum, compounded, on the principal amount. The total default amount stands at ₹19,15,82,654.

11. Applicant Financial Creditor contends that the Respondent–Corporate Debtor has severely neglected its obligations and failed to adhere to the Agreement dated 21.04.2011, including non-payment of dues to the Ghaziabad Development Authority (hereinafter referred to as "GDA"). Consequently, the GDA has sealed the project on multiple occasions, and outstanding dues remain unpaid, ultimately resulting in the project's failure.

12. Furthermore, the Respondent Corporate Debtor has willfully breached the terms of the MOU dated 21.04.2011, executed between the Applicant Financial Creditor and the Respondent. These willful defaults include, but are not limited to, the following:

a) The map sanctioned by GDA is S + 8 (up to eight storeys), but the seller did not pursue further map sanctions up to 20 storeys as per the MOU, nor did they update M/s Alfa Prop Build Pvt Ltd.

b) The Respondent Corporate Debtor made no genuine efforts to remove the adjoining slaughterhouse.

c) The Respondent Corporate Debtor failed to secure home loan approvals for the project from banks.

d) The Respondent Corporate Debtor has not handed over the flats or refunded the principal amount with 24% compounded interest and expenses incurred by the Applicant.

13. Applicant Financial Creditor contends that the Respondent Corporate Debtor has not handed over any flats to the Applicant, even after extending the project for 36 months, thereby defaulting on the terms of the Memorandum of Understanding dated 21.04.2011.

14. A Supplementary Development Collaboration Agreement executed on 05.09.2016, in continuation of the Development Agreement between RVKAS and Respondent Corporate Debtor, reiterates the liability of PDTL to repay in case of default. The key points are:

a) The lands of RVKAS, with all rights to build and sell, are in favor of Proto for the consideration received by RVKAS. The ownership of the flat's rests with Proto, and RVKAS must remit all monies collected from the sale of flats to PDTL.

b) RVKAS will not interfere with the working of PDTL.

c) PDTL will settle any matters or payments to GDA out of the pending sale proceeds.

d) RVKAS must not withhold any payments to PDTL.

e) PDTL can assign the agreement to any third party for project completion and handover of flats, with RVKAS raising no objections.

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15. The details of the Applicant, their unit, date of possession, and the amount defaulted by the Respondent Corporate Debtor are provided in the table below:

Name	**No. of Unit**	**Paid amount**	**Default Date/Date of Possession**
M/s Alfa Propbuild Pvt Ltd	200 units	Rs.1,77,96,540.00	24.4.2013

16. Applicant Financial Creditor contends that the Respondent Corporate Debtor breached its obligations by failing to complete the project's construction, thereby defaulting on handing over possession of the units/flats purchased by the Applicant Financial Creditor, from 24.04.2013 onwards. Additionally, the Respondent Corporate Debtor did not comply with the proposed schemes that had been accepted by the Applicant.

17. Further Applicant Financial Creditor contends that the Respondent Corporate Debtor's default is evident as the Applicant Financial Creditor was not informed about the delay and default in the project and possession. No progress reports were provided to the Applicant, even after repeated requests, indicating a lack of intention on the part of the Corporate Debtor to hand over possession in the near future. The Respondent Corporate Debtor has defaulted on the financial debt by failing to hand over

possession of the units/flats purchased, despite taking advance payments. The total amount of the default as of the date stands at Rs. 19,15,82,654.00.

18. Furthermore, Applicant Financial Creditor contends that the default committed by the Respondent Corporate Debtor is unaffected by the COVID-19 pandemic or lockdown, as all defaults occurred before 25/03/2020. Therefore, these defaults do not fall under Section 10A of the Insolvency and Bankruptcy Code, 2016 (as amended). No moratorium under Section 10A of the Code is applicable, as the default dates to before 25.03.2020.

19. The Applicant states that debt falls within the definition of Financial Debt under Section 5(8) of the Insolvency and Bankruptcy Code, 2016, due to the following reasons:

a) The debt carries an interest rate of 24% per annum, reflecting the time value of money, and the Corporate Debtor's inability to discharge its liabilities.

b) The amounts paid by the Financial Creditor fall within the definition of Financial Debt under Section 5(8)(f) of the Code.

c) The default amount exceeds Rs. 1 Crore, meeting the pecuniary jurisdiction condition.

d) The Applicant/Financial Creditor is covered under the definition of Financial Creditor, with the Corporate Debtor owing the Financial Debt to the class.

20. The Corporate Debtor's failure to deliver possession and execute the sale deed in favour of the Applicant within the agreed timeframe, despite repeated reminders, amounts to a default under the Insolvency and Bankruptcy Code, 2016. This lapse constitutes a breach of its financial debt obligations, resulting in significant financial hardship to the Applicant and warranting the commencement of the Corporate Insolvency Resolution Process against the Corporate Debtor under Section 7 of the Insolvency and Bankruptcy Code, 2016.

21. The Applicant Financial Creditor state that he fell under the category of a financial creditor in a class, as he had purchased units for the purpose of resale and considered himself an allottee. Accordingly, he filed an application as a Financial Creditor in a Class category under Section 7 of the Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor, registered as CP (IB) No. 08/ALD/2024, on 10.01.2024 before this Tribunal. This Tribunal issued a notice regarding the petition on 05.03.2024. This Tribunal vide order dated 10.07.2024, dismissed the

petition as withdrawn, granting the applicant liberty to refile the petition in an appropriate format in accordance with the law.

22. Accordingly, the present Application has been filed under section 7 of the Insolvency and Bankruptcy Code, 2016 for initiation of C.I.R.P. against the Corporate Debtor namely, M/s Proto Developers & Technologies Ltd.

REPLY ON BEHALF OF THE CORPORTE DEBTOR

23. In response to the aforesaid application, the Respondent Corporate Debtoe has filed reply wherein he has denied all the allegations made in the instant application and has submitted the following averments in support of his claim: -

I. The Respondent Corporate Debtor averred that on 21.01.2010, the Respondent entered into a collaborative agreement with RVKS for the construction of a complex. For doing necessary compliances, the Respondent obtained the necessary approvals from authorities, including the Ghaziabad Development Authority and the Revenue Authority, enabling changes in land use.

II. The Respondent further averred that he diligently carried out physical surveys, soil and water testing, and land levelling, while also engaging architects and engineers. He then proceeded with the physical development of the land, constructing the complex, installing water and sewerage systems, and obtaining approval for electrical power supply. Although the Respondent demonstrated a

clear commitment to meeting the stipulated timeline, the completion of the project was unfortunately hindered by financial constraints.

III. Subsequently, iii. Subsequently, the Respondent–Corporate Debtor, RVKS, and M/s Antriksh Realtech Pvt. Ltd. entered into an agreement outlining the terms of collaboration and resource allocation, under which ARPL was entitled to 62.5% of the share, with the remaining share to be divided between the Corporate Debtor and RVKS, as specified in Clause 1(d) of the agreement dated 9 February 2010.

IV. iv. It is noteworthy that the Corporate Debtor also entered into a Memorandum of Understanding (MOU) with the Applicant on 21 April 2011, wherein the Corporate Debtor agreed to hand over physical possession within the stipulated timeframe, with provision for extension, in relation to the project "Sanskriti Apartment."

V. As per Paragraph 22 of the MOU dated 21 April 2011, the Corporate Debtor is required to hand over possession of the flats only after obtaining the Occupancy Certificate (OC) and Completion Certificate (CC) from the Ghaziabad Development Authority (GDA). However, this process has been hindered by the non-payment of outstanding dues to the GDA, which has led to the project being sealed. This situation highlights the urgent need for the Corporate Debtor to clear its dues to the GDA in order to secure the necessary OC and CC. Until these payments are made, the project will remain stalled, preventing the Corporate Debtor from fulfilling its obligation to deliver possession of the flats to the concerned parties.

VI. The Respondent Corporate Debtor has raised preliminary objections in reply regarding arbitration clause in the MoU dated 21.4.2011. At the outset, the Respondent respectfully submits that the dispute between the parties is to be resolved through arbitration, as stipulated in the Memorandum of Understanding (MOU) dated 2011. The MOU, which governs the terms of the parties' relationship, expressly designates arbitration as the agreed mechanism for dispute resolution.

VII. The arbitration clause in the MOU explicitly states that any disputes or differences arising from or in connection with the agreement shall be referred to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996. At the time of executing the MOU, both parties voluntarily consented to this process, thereby binding themselves to arbitration as the mode of dispute resolution.

VIII. The Arbitration and Conciliation Act, 1996, under Section 8, mandates that in cases where a valid arbitration agreement exists, courts must refer the matter to arbitration if a party so requests. Courts in numerous decisions have upheld that arbitration agreements must be honoured, and the courts should direct the parties to resolve their disputes through arbitration, thus promoting speedy and cost-effective resolution of disputes.

IX. Despite the unambiguous provisions of the MOU and the binding arbitration clause it contains, the Applicant Financial Creditor has disregarded the agreed dispute resolution mechanism by instituting the present suit before this Hon'ble Court. The Respondent submits that such action is premature and is in direct contravention of the

MOU's terms. Accordingly, the Respondent prays that the Applicant Financial Creditor be directed to commence arbitration proceedings, and that this Tribunal refrain from adjudicating the matter at this stage.

X. With regard to Debt Acknowledgment and Limitation Period, Respondent averred that the present claim is time-barred under the law of limitation. While the Applicant Financial Creditor seeks to revive the claim by relying on the acknowledgment of debt dated 22.01.2021, the Respondent does not dispute the existence of such acknowledgment. However, it is pertinent to note that this acknowledgment was made over three years ago. As per Section 18 of the Limitation Act, 1963, a fresh period of limitation starts from the date of the acknowledgment of debt. In this case, the acknowledgment made on 22.01.2021 which extends the limitation period for filing the claim by three years, meaning that the applicant had until 22.01.2024 to file the present claim before this Tribunal.

XI. The Applicant Financial Creditor has failed to initiate proceedings within the prescribed limitation period, and there has been no further acknowledgment of debt after 22.01.2021. Therefore, the claim is time-barred, and as per the settled principles of law, any suit filed after the expiry of the limitation period is not maintainable and must be dismissed.

XII. The Courts have consistently held that the law of limitation is not merely a technicality but a substantive law that aims to protect the rights of parties and prevent the revival of stale claims. Therefore,

the respondent submits before this Tribunal to dismiss the present application as it is barred by limitation.

XIII. The Respondent admits there was a delay in completing the project but attributes it to unforeseen and uncontrollable circumstances despite acting in good faith and making diligent efforts. The key factors cited include:

1. Disputes with M/s Antriksh Realtech Pvt. Ltd. – Legal and operational disruptions from contractor disputes.
2. GDA Delays – Slow approvals and bureaucratic hurdles despite timely compliance.
3. Demonetization (2016) – Liquidity crisis affecting payments to contractors and suppliers.
4. GST Implementation (2017) – Increased costs and supply chain disruptions.
5. Covid-19 Pandemic – Lockdowns, labour shortages, and supply chain issues causing major delays.

XIV. The Respondent Corporate Debtor reaffirms its commitment to completing the project and delivering the flats to the applicant. Despite the challenges faced, the respondent has continued to make efforts to expedite the completion of the project. Significant progress has already been made, and the respondent is now on the verge of completing the remaining work. The respondent humbly requests this Hon'ble Court to grant additional time for the completion of the project, taking into account the uncontrollable delays that occurred

due to factors such as the pandemic, demonetization, and disputes with third parties.

24. In view of the above facts and circumstances, the Respondent Corporate Debtor has prayed for the following relief before this Tribunal :

A. Refer the matter to arbitration as per the terms of the MOU dated 2011 and direct the applicant to pursue arbitration, as the agreement requires.

B. Dismiss the present petition on the grounds that it is barred by limitation as per Section 18 of the Limitation Act, 1963.

C. Grant the respondent additional time to complete the project, considering the uncontrollable and unforeseen delays caused by the pandemic, demonetization, GST implementation, and disputes with third parties.

25. The Applicant Financial Creditor has filed Affidavit vide dairy no. 1516 on 06.8.2025 for submitting the following documents which are relevant and necessary for the just adjudication of the matter:

a) Letter dated 10.05.2015 sent by the Alfa Probbuild Pvt Ltd through its Director to Proto Developers &Technologies Ltd. and to Raksha Vigyan Sehkari Awas samiti Ltd. ---Annexure A-1(Colly).

b) Reply dated 18.05.2015 in reference of letter dated 10.05. 2015 sent by Proto Developers &Technologies Ltd……Annexure A-2.

c) Letter dated 24.04.2016 sent by the Alfa Probbuild Pvt Ltd through its Director to Proto Developers & Technologies Ltd. and to Raksha Vigyan Sehkari Awas samiti Ltd…..Annexure A-3(Colly).

d) Reply dated06.05.2016 in reference of letter dated 24.04.2016 sent by Proto Developers &Technologies Ltd. AnnexureA-4

e) Copy of Acknowledgment of Debt by the CD dated 12.11.2019…..AnnexureA-5

f) Copy of Acknowledgment of Debt by the CD dated 18.10.2023…. AnnexureA-6.

26. During the course of hearing on 05.8.2025, Ld. Counsel representing the Financial Creditor has made her submissions on merit. She also relied upon a supplementary affidavit filed on 07.06.2025, which is already on record. Ld. Counsel representing the Corporate Debtor stated that the reply has been filed. He however states on instructions that he is ready to settle the matter with the Financial Creditor, and therefore has also acknowledged the debts in past.

27. The Applicant Financial Creditor has also filed record of Default in Form-D. The details of which are reproduced below:-

FORM D

RECORD OF DEFAULT(RoD)

(Issued By information utility under sub- regulation (4) of regulation 21 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017)

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This Record of Default is issued to the Financial Creditor M/s ALFA PROPBUILD PRIVATE LIMITED in respect of the default of debt as per details given below-

(a) Name of the Submitter:	M/s ALFA PROPBUILD PRIVATE LIMITED
(b) Schedule-2 Bank (Y/N):	N
(c) Name of Corporate Debtor:	M/s PROTO DEVELOPERS AND TECHNOLOGIES LIMITED
(d) Unique Debt Identifier Number:	AAJCA0203B_NA
(e) Registered Address:	Room No.101, 1/42, FIRST FLOOR, LALITA PARK, VIKAS MARK, EAST DELHI
(f) Total Outstanding Amount:	191582654.54
(g) Default Amount:	17796540.00
(h) Date of Default:	22-04-2013
Status of Authentication of Default:	DEEMED TO BE AUTHENTICATED

28. An application has been filed under section on 60(5) of the I&B Code, 2016 read with rule 11 of the NCLT Rules, 201 6 , seeking substitution of the interim resolution professional namely Mr. Ashwani Kumar Singla earlier proposed by the Financial Creditor, whose AFA remained valid until 30.06.2025. Meanwhile, the main petition has been heard and already reserved for orders.

29. This application therefore is for substitution of the name of Mr. Ashwani Kumar Singla by Ms. Garima Diggiwal holding IBBI Reg. No.IBBI/IPA001/IP-P02018/2020-2021/13158, R/o 91, Moji Colony, Malviya Nagar, Jaipur, Rajasthan, 302017, email ID-garima286@gmail.com.

30. The fact that the main petition has already been reserved after hearing, however this being a simplicitor application for placing on record the proposed name of the IRP, therefore, this tribunal allowed this application vide order dated 21.8.2025.

31. However, while allowing this application and bringing on record the proposed name of Ms. Garima Diggiwal as being the IRP, whose AFA is valid until 30.06.2026, it is made clear that allowing the application shall in no manner be construed as an expression of opinion, in so far as the merits of the main case is concerned.

FINDINGS AND ORDER

32. We have considered the submissions made in the pleadings filed by the parties and have perused the record and have also taken into account the oral arguments made by their respective Ld. Counsels during the course of the hearings.

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33. From the submission of learned Counsel for the parties and analysis of the records, we find that there are four issues that have arisen for consideration before us as stated below: -

i. **Whether this application is filed within the limitation period by the Applicant.**

ii. **Whether there is debt and default as per ingredients of Section 7 of IBC, 2016.**

34. The first and foremost issue to be decided by us in this matter is whether this application is barred by the limitation.

35. This Application was filed on 07.8.2024 by the Applicant and date of default is stated to be 24.4.2013 in Part-IV of the Application. As per the MoU dated 21.4.2011, it is stated in clause 19 that the Corporate Debtor shall undertake to complete the construction of all the flats agreed to be sold within the period of 24 months as per the conditions mentioned in the present agreement. Clause 19 of the MoU is reproduced below: -

> **"…**
>
> **Clause 19.** *The Vendors hereby agree and undertake to complete the construction of all the flats agreed to be sold hereunder on or before the expiry of 24 months from the date of execution of these presents in accordance with the plans duly approved and sanctioned by the Concerned Authority and specifications as set out*

in the collaboration Agreement with Antriksh Realtech Pvt Ltd written hereunder and other terms and conditions as set out in this agreement.

Provided that the Vendors shall be entitled to reasonable extension of time for giving delivery of buildings on the aforesaid date, if the completion of the buildings is delayed on account of-

(i) non-availability of steel, cement, other building material, water or electric supply;

(ii) war, civil commotion or act of God;

(iii) any notice, order, rule, notification of the Government, concerned authority and/or other public or competent authority or any circumstance beyond the control of the vendors.

....”

36. Clause 12 of the Agreement of Development Collaboration 2. 9-5 .9 between M/s. Raksha Vigyan Karamchari Sehkari Awas Samiti Ltd and M / s Proto Developers & Technologies Ltd dated 2 1.01.2010 the said project shall be completed within 36 months from the receipt of sanction an approval of the plan. The said clause is reproduced below:-

“.....

12. That the Developers undertake to start the construction work immediately after receipt of approval of building plans as aforestated and complete the construction of the Complex/Township within 36 months from the date of receipt of all sanctions and approval of plans and that the time schedule of said 36 months is an essence of the contract except when non-completion of Complex/Township is as a result of earthquake, lightening or any order or notification of the Government or the act of State which prevents the progress of the construction or by reason of war or enemy

action or act of God or for any reason beyond the control of the Developers and in any of the aforesaid events, the Developers shall be entitled to a reasonable extension of time for completing the said Complex/Township under all circumstances.

…"

37. As per the aforesaid clauses, the completion period of the said project would fall on 24.4.2013. After this, due to non-completion of project as per the stipulated time, Applicant wrote a letter on 18.5.2015 to the Corporate Debtor addressing the issue of delay in construction of the flats. In response to the said letter, the Respondent has acknowledged its debt. The relevant extract of the letter dated 18.5.2015 is reproduced below:-

"…

As far as account reconciliation is concerned, as per our books, we have received amount of Rs. 1,77,96,540.00/- from your company and have acknowledged the same debt. On this amount Rs. 1,77,96,540.00/-, interest at the rate of 24% per annum is also payable, in line with the principle of reciprocity.

…"

38. Again the Applicant raised the same issue vide letter dated 24.4.2016 in response to which Corporate Debtor wrote a letter on 06.5.2016 acknowledging its debt stating that *"..We wish to clarify that we have never denied or overlooked the receipt of 1,77,96,540/-from your company, along with the agreed interest at the rate of 24% per annum, as duly reflected in our books of account…".*

39. The Corporate Debtor vide letter dated 26.7.02017 acknowledged its liability under MoU dated 21.4.2011 towards the applicant and stated that as under:-

"...

M/s Proto Developer & Technologies Ltd is indebted to said Creditor, the amount of Rs.1,77,96,540/- along with interest due@24% , P·a compounded from the date of fund received in our Books.

We furthermore acknowledge that we have no argument with said debts which were incurred by M/s Proto Developer & Technologies Ltd for failing to deliver 200 flats as per the MOU dated 21.04.2011 even after extension of 36 months to the said projects and for which company is solely responsible.

..."

40. The Corporate Debtor vide letter dated 03.12.2019 confirmed the balance of outstanding debt as on 12.11.2019 of Rs. 1,77,96,5448.

"...

I, authorized signatory of M/s Proto Developer & Technologies Ltd vide Board Resolution dated the undersigned, hereby confirm and acknowledge to the Creditor M/s Alfa Propbuild (P) Ltd that M/s Proto Developer & Technologies Ltd is indebted to said Creditor, in the amount of Rs. 1,77,96,540/- along with interest due@24% p.a compounded from the date of fund received in our Books

We furthermore acknowledge that this Debt-Acknowledgement in continuation of previous provided one which was signed on 26/07/2017 and not disputing any terms of such one.

..."

41. Again, the Corporate Debtor vide letter dated 18.10.2023 acknowledged its debt in continuation of previous acknowledgement letter dated 26.7.2017. The relevant extract of the letter dated 18.03.2023 is reproduced below:-

> *"...*
>
> *This acknowledgment is in continuation and confirmation of the previous written acknowledgments dated 26th July 2017 and subsequent confirmations thereof, reaffirming the liability of ₹1,77,96,540/- along with interest at the rate of 24% per annum, compounded annually, from the date of receipt of funds.*
>
> *...*
>
> *The above-stated amount of ₹1,77,96,540/- is undisputed, legally subsisting, and binding on Proto Developers & Technologies Ltd.*
>
> *..."*

42. Herein, the acknowledgement has been made before the expiration of prescribed period of limitation for filing an application under section 7 of the IBC, 2016. This brings into effect section 18 of the Period of limitation which states that a fresh period of limitation starts from the date of the acknowledgment of debt. As stated, aforesaid, the date of default is 24.4.2013, within the period of three years, Corporate Debtor acknowledged its debt vide letter dated 18.05.2015. Further, this continued vide letters dated 06.5.2016, 26.7.2017, 03.12.2019, 22.01.2021 and 18.10.2023 which give rise to fresh period of limitation till 18.10.2026.

During the said period, the Application filed this application on 07.8.2024 which is well within the period of limitation. Thus, the plea taken by the Corporate Debtor in its reply that the said application is barred by limitation is not sustainable.

ii. <u>Whether there is debt and default as per ingredients of Section 7 of IBC, 2016.</u>

43. Before dwelling into this issue, it is significant to state facts which lead to filing of this present application for initiating CIRP against the Corporate Debtor i.e M/s Proto Developers and Technologies Ltd. In the instant case, the Respondent Corporate Debtor with the aim of developing multi-storey group housing Project named Sanskriti Apartment with 1600 flats entered into an Agreement of Development Collaboration executed on 21.1.2010 with Raksha Vigyan Karamchari Sahakari Awas Samiti Ltd. The Applicant Financial Creditor entered into Memorandum of Understanding on 21.4.2011 with the Respondent Corporate Debtor to purchase 200 flats in the said project and invested Rs. 1,77,96,540 as a principal amount. Out of the said amount Rs. 61,01,000/- was disbursed from the personal bank account from the Applicant Financial Creditor and remaining Rs. 1,16,95,540 was directly paid by the purchasers to whom the Applicant

want to resell these flats. Due to the Respondent Corporate Debtor failure to make timely payment of dues and compliances of the Ghaziabad Development Authority, the Project failed and couldn't be completed as per the agreed timelines. The total outstanding amount stated in the Part-IV of the application is Rs. 19,15,82,654.

44. An Application under Section 7 of the IBC for initiating CIRP against the Corporate Debtor by the allottee under a Real Estate Project named "Sanskrit Apartment" is required to be filed jointly by not less than 100 of such allottees or not less than 10% of the total number of such allottees under the same Real Estate Project whichever is less. Herein, the Applicant intended to purchase 200 flats from the Corporate Debtor.

45. As per the clause 1, the applicant has deposited EMD of Rs. 51,01,000 which is refundable as stated in Clause 7A of the MoU dated 21.4.2011. The relevant clauses 1 and 7A are reproduced below:-

> *Clause 1. The Vendors shall sell for resell to the Purchasers and the Purchasers shall purchase from the Vendors 200 flats being constructed thereon at the rate of Rs 2200.00 (Rs. Two Thousand two hundred only) per sq. ft. of built up area of the entire completed buildings to the vendors Plus E.D.C, I.D.C. & TDR Charge: payable to G.D.A plus additional government levies shall be charged extra if and Rs 75000.00 shall be charged by vendors for each covered parking of car· in respect of following, flats :-*
>
> *Details of Flats are as follows;*

One tower two bedroom flat size 900 sq ft 20 storey tower :- *=20*8 = 160*

Another tower *Flat size 1150 sq ft* *=10*

Flat size 1370 sq ft *= 15*

(From I to 19th Floor) *Flat size 1880 sqft* *=15*

TOTAL FLATS *= 200*

+ /- 1.0% depending on availability of flats.

2. The total consideration payable by Purchasers to Vendors i.e. to PROTO/RVS is worked out as follows:-

A)

No. of Flats	Size	Area of Flats	Rate per Sq. Ft.	Total Amount (in Rs.)
160	900	14400		
10	1150	11500		
15	1370	20550		
15	1880	28200		
200		204250	2200/-	44,93,50,000/-

B) Parking (Covered)

No. of Flats	No. of parking	Rate of parking area	Amount (in Rs.)
200	200	75000/-	1,50,00,000/-

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C) EDC, IDC, TDR and other charges (misc. Or incidental Exps.) of GDA.

Approximate @ Rs. 120/- sq. ft. (or actual which ever is less as payable/paid to GDA)	**2,45,10,000/-**
TOTAL A+B+C	48,88,60,000/-

7A. The purchase has paid (refundable) earnest money as follows: -

Amount (in Rs.)	**Cheque No.**	**Date**	**Bank**
2,51,000	157802	22.09.2010	J&K Bank
23,00,000	160681	24.12.2010	J&K Bank
15,00,000	141001	25.01.2011	J&K Bank
10,50,000	141002	02.02.2011	J&K Bank
Total 51,01,000			

Bookings under this agreement in respect of which payments will be made to vendors shall reduce the amounts payable and number of flats under this agreement. The amount of deposits of Rs. 51,01,000/- given under the agreement by purchasers shall be refundable at the conclusion of this agreement.

Clause 3. Thereafter booking of above flats will be made by the ALFA PROPBUILD (P) LTD.

As per Clause 17 of the MoU dated 21.4.2011- If the sale of the land with flats is not completed due to willful default on the part of the Vendors, the Purchasers shall be entitled either to claim specific performance or to terminate the agreement and claim damages from the Vendors and in either of the events, the Vendors shall be

liable to pay all costs, charges and expenses, solicitors' fees and costs incurred by the Purchasers together with the return of earnest money and other sum paid with . interest thereon at the rate of 24 per cent per annum.

If purchaser fails to make the payment within stipulated time, even in extended time of 6 months from due date as per payment schedule (with interest @ 18% P.A. on delayed period) the seller has right to cancel that flat and forfeit the amount against that flat.

Clause 21. If the Vendors fail to complete the said buildings on the said land within the period or the extended period as stipulated in the foregoing provision and fail to deliver the possession of the same to the Purchasers by the stipulated date, the Vendors shall be liable to pay liquidated damages calculated as recovered from Antriksh Realtech Pvt. Ltd. Per day for the period during which the said works shall so remain incomplete and the purchasers may deduct such damages from any moneys due to the Vendor. The Vendors hereby authorise the Purchasers to deduct such liquidated damages, if any, from any payments to be made to the Vendors in terms of this agreement.

46. From reading the aforesaid clauses of the MoU dated 21.4.2011 executed between the Applicant and Respondent, it stipulates that allottee the transaction between the Allottee and the 'Corporate Debtor' is clarified to be treated as 'Financial Debt' under Section 5(8) of the Code.

47. The Applicant has filed this application considering himself as an allottee under the category of Financial Creditor in class. He holds 200 units out of the total units i.e. 1600 and thus, fulfilling the condition of allotted unit being more than 100 as well as more than 10% of total units. This fulfils

the threshold limit required for filing the application being an allottee under second proviso to Section 7 of the IBC, 2016. As per the clause 17 of MoU, the Corporate Debtor is liable to pay *be liable to pay all costs, charges and expenses, solicitors' fees and costs incurred by the Purchasers together with the return of earnest money and other sum paid with . interest thereon at the rate of 24 per cent per annum.*

48. The Corporate Debtor has himself admitted that in the Reply in Para no.11 that due to demonisation impact, dispute with sub developer namely, Antriksh Realtech Pvt. Ltd, changes brought due to introduction of GST, Covid -19 Pandemic and considerable delays in obtaining necessary approvals and clearances from the GDA led to the delay in performance of the agreement dated 21.04.2011 and non-completion of the subject project.

49. Upon examination of the records, we have further observed that there is a clear acknowledgement of debt on behalf of the Corporate Debtor through letter dated 18.05.2015, 06.05.2016, and 26.07.2017. Additionally, the balance confirmation letter dated 03.12.2019 and 18.10.2023 wherein the Corporate Debtor has acknowledged and confirmed the liability to pay the amount of Rs. 1,77,96,540 due as on 21.04.2023. These communications substantiate the existence of debt and the intent to settle, thereby supporting the Applicant's submission.

50. In the light of the aforesaid clauses of the MoU dated 21.04.2011, it is established that the Applicant is an allottee under the second proviso of the section 7 of IBC. The Applicant paid a sum of Rs.1, 77,96,540.00 for purchasing 200 units in the said project however, due to reasons stated by the Corporate Debtor in reply the said project couldn't be completed which constitute default.

51. The default on the part of the Corporate Debtor is evident from the NeSL records submitted by the Applicant as on 02.9.2023, showing that there is a default committed by the Corporate Debtor.

52. Thus, in view of the aforesaid analysis, the Applicant / Financial Creditor has proved that there is a 'debt' and 'default' on the part of the Corporate Debtor. Hence, as per Section 7(5) of IBC, 2016, the present application is found to be fulfilling all the conditions for admission of the Application and initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, i.e. M/S PROTO DEVELOPERS AND TECHNOLOGIES LTD.

53. In view of our above findings, we are satisfied that the Applicant/Financial Creditor has proved the debt and the default, which is more than the threshold limit of Rs.1 crore applicable at present. The application is also filed within limitation period and complete in all respect and a resolution

professional is also proposed as per section 7(3)(b). Accordingly, the present application under Section 7, has been found fit to be admitted as per Section 7(5) of the I & B Code, 2016.

54. The Financial Creditor has proposed the name of IRP vide an I.A No. 557 of 20525 as mentioned in paras no. 29 and 30 of this order. The Financial Creditor has proposed the name of Mr. Garima Diggiwal as Interim Resolution Professional having Registration Number: IBBI/IPA-001/IP-P-02018/2020-2021/13158; R/o 91, Moji Colony, Malviya Nagar, Jaipur Rajasthan, 302017, having Email ID: garima286@gmail.com. The IRP has duly given consent in Form No. 2 dated 06.8.2025, annexed as Annexure A-2 with the interim application. The Law Research Associate of this Tribunal, Ms. Ankita Sharma, has checked the credentials of Ms. Garima Diggiwal, and found that there are no disciplinary proceedings pending against the proposed IRP, and also there is nothing adverse against her. Upon verification from the website of IBBI, it is found that Insolvency Professional holds valid authorisation till 31.12.2025. After considering these details, we appoint Ms. Garima Diggiwal, having IBBI Registration No. IBBI/IPA-001/IP-P-02018/2020-2021/13158, as Interim Resolution Professional (IRP).

55. In the given facts and circumstances of the case as per our above findings, the present application u/s 7 being complete in all respect and having established the default in payment of the Financial Debt for the default amount being above the threshold limit and an IRP also having been appointed as per above para 24, the application is admitted in terms of Section 7(5) of the 1 & B Code, 2016 against the Corporate Debtor and accordingly, moratorium is declared in terms of Section 14 of the Code.

56. The IRP is directed to take steps as mandated under sections 13 and 15 of the IBC for making public announcement about the commencement of CIRP against the Corporate Debtor and moratorium against it u/s 14, and also take necessary actions as per sections 17, 18, 20 and 21 of IBC, 2016.

57. The Suspended Board of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the

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location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAL. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is

also directed to make a specific mention of non- compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

58. The IRP is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with requests for information/documents available with those authorities/ institutions/others pertaining to the Corporate Debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the IRP to enable him to conduct the CIR Proceedings as per law.

59. The IRP shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every month.

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60. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority.

b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.

e) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period.

f) The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

61. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this

Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.

62. We direct the Financial Creditor to deposit a sum of Rs.1,00,000/- with the Interim Resolution Professional, to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

63. A certified copy of the order shall be communicated to both parties. The learned counsel for the petitioner shall deliver a certified copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a certified copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

64. List the matter on 14.10.2025 for filing of the progress report/further proceeding.

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(**Ashish Verma)**
Member (Technical)

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(Praveen Gupta)
Member (Judicial)

Date: - 09.09.2025