

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

Company Appeal (AT) (Insolvency) No. 1203 of 2024

[Arising out of Order dated 12.06.2024 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, Court-IV in C.P. No. (IB) 305 of 2022]

IN THE MATTER OF:

**Mr. Ram Kishore Arora
Director (powers suspended) of
M/s Supertech Realtors Private Limited
Registered office at
1114 Hemkunt Chambers 89,
Nehru Place New Delhi-110019**

...Appellant

Versus

**1. Bank of Maharashtra
Through it Constituted Attorney
Having its registered office at:
Central Office, 'Lokmangal',
1501, Shivajinagar,
Pune-411005 Maharashtra**

**Branch at: Bank of Maharashtra,
Stressed Assets Management Branch,
B-29, Maharashtra Bank Building,
Connaught Place, New Delhi -110001.**

**2. IRP, Supertech Realtors Private Limited.
Ms. Anju Agarwal
73, National Park,
Lajpat Nagar IV,
Delhi, 110024
Mail ID--anju@insolvencyservices.in**

...Respondents

Present:

For Appellant:

Mr. Abhijeet Sinha, Sr. Advocate with Mr. Siddharth Bhatli, Ms. Lashita Dhingra, Ms. Neha Bhal, Ms. Heena Kochar, Ms. Khyati Jain, Mr. Diwaker Lohia, Mr. Md. Hussain, Advocates.

For Respondents:

Mr. Sudhir Makkar, Sr. Advocate with Mr. Nishant Awana, Ms. Saumya Gupta, Ms. Nitya

Cont'd.../

Sharma, Mr. Vaibhav Yadav (Chief Manager), Mr. Ankur Jain (Sr. Manager), Advocates for Respondent No.1.

Ms. Anju Agarwal IRP in person with Mr. Aadil Khan and Ms. Shipra, Advocates for Respondent No.2.

Mr. Sunil Fernandes, Sr. Advocate with Mr. Palash S. Singhai and Mr. Harshal Sareen, Advocates for Applicant in IA. No. 2889 of 2025.

Mr. Gajanand Kivodiwal, Ms. Tanya Singh, Advocates for Parmesh Construction Co. Ltd.

Mr. Govind Jee, Mr. Dmanakuttan K.K & Mr. Rambha, Singh, Advocates for Home Buyers.

Ms. Ekta Choudhary, Ayush Kumar and Rushali Sikand, Advocates for Intervenor.

J U D G M E N T

Ashok Bhushan, J.

This Appeal by the Suspended Director of the Corporate Debtor of M/s Supertech Realtors Private Limited has been filed challenging the order dated 12.06.2024 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, Court-IV admitting Section 7 application filed by the Bank of Maharashtra, Respondent No.1 herein.

2. The Corporate Debtor which is a Real Estate Company has approached the Consortium of Banks led by Union Bank of India for seeking financial assistance to tune of Rs.735.58 Crores. The Bank of Maharashtra, Respondent No.1 was requested to grant Credit Facilities to the tune of Rs.150 Crores for partial financing of development of residential apartments,

office, retail and luxury hotel in the name and style of 'Supernova'. A Term Loan of Rs.150 Crore was sanctioned by the Financial Creditor to the Corporate Debtor on 14.12.2012. On default being committed by the Corporate Debtor in repayment of financial facilities, the account of the Corporate Debtor was declared as Non-Performing Asset (NPA) on 28.09.2018. On 08.04.2022, a Section 7 application was filed by the Bank of Maharashtra against the Corporate Debtor claiming default for an amount aggregating to Rs.168,04,59,415/-. During the pendency of the petition under Section 7, the Corporate Debtor submitted an OTS offer dated 15.06.2022 acknowledging the debt. On request of the Corporate Debtor, the Financial Creditor sanctioned the OTS proposal dated 15.06.2022. The OTS was later rescinded by the Financial Creditor on account of non-adherence of terms by the Corporate Debtor. Cancellation of OTS was challenged by the Corporate Debtor in Delhi High Court by a Writ Petition, which was dismissed by the Delhi High Court on 17.11.2022. Special Leave Petition filed by the Corporate Debtor challenging the order of Delhi High Court was also dismissed by the Hon'ble Supreme Court on 15.12.2022. During pendency of the Section 7 application, Corporate Debtor again gave an OTS offering Rs.310 Crore towards the total outstanding of all lenders with support of M/s Kotak Advisors Ltd., which proposal was given on 09.02.2024. The lead bank acknowledged the OTS and Joint Lender Meeting was held on 18.03.2024 and OTS proposal was not accepted. The said fact was communicated to the Adjudicating Authority during hearing of the matter on 22.03.2024. The Adjudicating Authority heard the parties

and reserved the order on Section 7 application. Vide order dated 12.06.2024, the Adjudicating Authority held that debt and default has been proved by the Financial Creditor. Adjudicating Authority admitted Section 7 application, appointed IRP and declared moratorium. Challenging the order dated 12.06.2024, this appeal has been filed by the Appellant, the Suspended Director of the Corporate Debtor.

3. The appeal came to be heard by this Tribunal on 01.07.2024 and by a detailed order dated 03.07.2024 after recording the submissions of the parties, an interim order was passed directing that the CoC be not constituted. Learned counsel for the Appellant before this Tribunal on 03.07.2024 has pleaded that the Appellant is not raising any dispute regarding debt and default of Bank of Maharashtra. Submission which was advanced was that a settlement proposal was submitted by the Corporate Debtor with the assistance from an investor – M/s Kotak Advisors Ltd. offering 75% of running ledger book balance. In Joint Lenders' Meeting dated 18.03.2024, the Bank of Maharashtra took 2-3 days' time to consult their Head Office. It was pleaded that real-estate project is 80% complete and investor having offered to infuse funds for construction, the Corporate Debtor be permitted to complete the construction. Learned counsel for the Bank of Maharashtra has submitted that OTS earlier approved was not honoured by the Corporate Debtor and before the Adjudicating Authority it was communicated that OTS was not accepted, hence, the Adjudicating Authority passed the order. This Tribunal noted the submissions of the Appellant in Para 6 that Appellant has not disputed debt and default. This

Tribunal, however, took note of the submission of the Appellant that revised offer submitted by the Corporate Debtor under which the offer of 75% of running ledger book balance of members of the Consortium was put and present project being a real estate project, 600 units have been allotted and rest of the project shall be completed by the Corporate Debtor with the offer of the Investor – M/s Kotak Advisors Ltd. This Tribunal has observed following in Para 8, 9 and 10:

“8. In the facts of the present case, we are of the view that the revised OTS proposal, which was submitted by Corporate Debtor and which is under consideration of the Consortium of Bank and lead Bank having principally agreed with the offer, it is appropriate to await the decision of Consortium of Members and the decision of lead Bank, with regard to OTS proposal in order to proceed further in the matter. As noted above, the Project is a real-estate Project, which is an ongoing Project and as per the Appellant, more than 600 unit holders have been allotted units and they are residing there and rest of the Project shall be completed by the Corporate Debtor with the agreed offer and amount to be infused by the Kotak.

9. Considering the submissions of the learned Counsel for the parties, we are of the view that decision of Consortium of Bank as well as the decision of lead Bank on the revised offer submitted by the Corporate Debtor from Investor, Kotak Advisors Limited needs to be awaited, for which purpose, we are of the view that Appeal needs to be heard after

four weeks to enable the parties to bring on record the decision of Joint Lenders' Meeting on the revised offer as noted above.

10. In the meantime, we direct that Committee of Creditors be not constituted. However, the ongoing Project may be continued with under the supervision of the IRP and the IRP shall be extended all cooperation by the Corporate Debtor, its officers and employees in carrying out the construction. Bank accounts of the Corporate Debtor shall be operated only with the joint signature of the IRP, only for the purpose of carrying out construction."

4. The interim order passed by this Tribunal on 03.07.2024 has continued from time to time. This Tribunal has noticed that revised proposal was received but without any upfront payment, which fact was noticed in order dated 23.10.2024. A letter dated 23.11.2024 was sent by the Appellant to the General Manager of the Union Bank of India informing that they have one M/s. Parmesh Construction Company Ltd. (PCCL) a Group Entity of Bhutani Infra Group as co-developer to complete the project. The Lead Bank was requested to approve the OTS proposal dated 18.10.2024. A consortium meeting of the banks was held, where it was noted that proposal has been given on 18.10.2024 with final revised offer letter dated 06.01.2025 for Supernova Project wherein M/s. Parmesh Construction Company Limited, a group entity of Bhutani Group has to be co-developer to complete the project. The Bank of Maharashtra informed that they in-principally agree for the settlement, subject to the approval from

their respective competent authority. The meeting was deferred to obtain a consensus on OTS proposal. The Appellant claimed to have entered into a Co-Development Agreement on 11.11.2024 with M/s. Parmesh Construction Company Limited for carrying out the development. On 15.07.2025, an email was sent by the Consortium of Banks to the Appellant informing that all of the OTS proposal submitted by the Appellant and revised proposal were discussed in the Joint Lenders' Meeting and were not found acceptable to the Consortium Banks. The upfront amount deposited in the no lien account was also remitted back.

5. In the above background facts and development which took place during pendency of the Appeal, Appeal came to be listed on 17.07.2025, when learned counsel for the Respondent submitted that settlement with the Financial Creditor not found acceptable. On 17.07.2025 following order was passed:

"O R D E R
(Hybrid Mode)

17.07.2025: *As prayed, list this appeal on **21st July, 2025.***

Learned counsel for the respondent submits that settlement with the financial creditor has not been found acceptable.

Appellant to address arguments on merits on the next date."

6. Appeal thereafter was heard on 23.07.2025 and 29.07.2025, on which date order was reserved.

7. We have heard Shri Abhijeet Sinha, learned senior counsel for the Appellant and Shri Sudhir Makkar, learned senior counsel appearing for the Bank of Maharashtra. We have also heard Shri Krishnendu Datta, learned senior counsel appearing for L&T Finance in IA No.7010 of 2024. We have heard Shri Sunil Fernandes, learned senior counsel and Shri Palash S. Singhai, learned counsel in I.A. No. 2889 of 2025. We have also heard Shri Govind Jee, learned counsel appearing for Supernova Apartment Owners Association, Shri Gajanand, learned counsel for M/s. Parmesh Construction Company Limited and Ms. Ekta Choudhary, learned counsel for Union Bank of India. We have also heard Ms. Anju Agarwal, IRP appearing in person.

8. Shri Abhijeet Sinha, learned counsel for the Appellant in support of the Appeal submits that present is a case relating to a real estate company who is developing a project Supernova, an infrastructure project consisting of residential towers and other facilities. It is submitted that there are large number of homebuyers and hundreds of homebuyers are residing in the units. It is submitted that present is a case where reverse CIRP has to be resorted to complete the project which is in interest of the homebuyers who are waiting for their units. It is submitted that now M/s. Parmesh Construction Company Limited, a group entity of Bhutani Group has been selected to complete the project, which is also ready to infuse all finances and this Court may permit the project to be completed by the Corporate

Debtor with M/s. Parmesh Construction Company Limited as Co-Developer. It is submitted that the prime object in homebuyer projects is completion of the project so that units can be handed over to the homebuyers. In real estate infrastructure companies' matters completion of project through CIRP is not successful in large number of cases whereas in several cases of infrastructure project, this Tribunal has directed for reverse CIRP by which projects were successfully completed and units were handed over to the homebuyers. It is submitted that the appellant has offered revised OTS proposal to the Consortium of Banks with 100% outstanding ledger balance which although was in-principle agreed by all banks in February, 2025, however, on 15.07.2025, without giving any reason, the Consortium of Banks have rejected the OTS. The rejection of OTS by the Consortium Banks is wholly arbitrary and is not in the interest of the completion of the project. Consortium of Banks including the Respondent have to give reasons for rejecting the OTS proposal. It is submitted that Noida Authority has also granted approval in the year 2024. It is submitted that Consortium of Banks had no jurisdiction to arbitrarily reject the OTS proposal given by the Appellant. The construction has to be completed through reverse CIRP for which agreement with Co-Developer has already been entered into and this Tribunal may permit completion of the project through Co-Developer – M/s. Parmesh Construction Company Limited.

9. Shri Sudhir Makkar, learned counsel appearing for the Bank of Maharashtra opposing the submissions of learned counsel for the Appellant submits that present is a case where the Financial Creditors had earlier

approved the OTS proposal submitted by the Corporate Debtor in the year 2022, which on account of non-adherence on the terms was cancelled, against which Writ Petitions were filed by the Corporate Debtor which was dismissed by the Delhi High Court and Special Leave Petition before Hon'ble Supreme Court was also dismissed. During pendency of the Section 7 application proposal submitted in February, 2024 was also considered but was not approved, which fact was brought into the notice of the Adjudicating Authority. Present is a case where debt and default on the part of the Corporate Debtor is not even disputed. This Tribunal while passing the interim order on 03.07.2024 has noticed the submission of learned counsel for the Appellant that they do not dispute debt and default on the part of the Corporate Debtor. When debt and default on the part of the Corporate Debtor is not being disputed no error can be found in the order of the Adjudicating Authority admitting Section 7 application. The revised OTS proposal which was submitted by the Appellant during pendency of the appeal was also considered and not accepted by the Consortium of Banks. It is submitted that in the Joint Lenders' Meeting held on 13.06.2025, the revised OTS proposal submitted by the Appellant was noticed and all Banks decided not to accept the OTS proposal submitted by the Appellant. On 15.07.2025, a communication was issued to the Appellant. It is submitted that the Consortium of Banks have taken their decision after considering all aspects of the matter and did not accept the proposal, hence, the Appellant cannot be heard in saying that the Banks are obliged to accept the OTS proposal and permit Appellant to carry out construction. It is submitted

that in facts of the present case, CIRP need to be proceeded in accordance with law. Appellant who is a Suspended Director is now bringing a Co-Developer - M/s. Parmesh Construction Company Limited which is a full-fledged real estate company. The present is a case where the Suspended Director is bringing a resolution applicant for carrying out construction which procedure is contrary to the procedure as prescribed in the I&B Code and CIRP Regulations. Appellant's request to permit the construction company of his choice to complete the construction cannot be accepted. It is submitted that in the present case no grounds have been made out to interfere with the impugned order. Appeal deserves to be dismissed and CIRP be proceeded in accordance with law.

10. Shri Krishnendu Datta, learned senior counsel appearing for L&T Finance submits that L&T Finance has also filed its claim before the IRP which claim has been partially accepted and the L&T Finance is taking steps with regard to the claim which was not accepted. It is submitted that proposal submitted by the Appellant by bringing a Co-Developer, which is another real estate company cannot be accepted. The resolution applicant for completing the project has to be selected in accordance with the I&B Code and Regulations therein.

11. Shri Sunil Fernandes, learned counsel appearing for the Applicant in I.A. No.2889 of 2025 submits that the majority of homebuyers are in support of the Developer - M/s. Parmesh Construction Company Limited which has offered the finance to complete the project. Permitting the

Corporate Debtor with M/s. Parmesh Construction Company Limited to complete the project is in interest of the homebuyers which may be permitted.

12. Learned counsel appearing for the Supernova Apartment Owners Association refuting the submissions of learned counsel for the Appellant and submissions of other set of homebuyers contends that from last one year not a single brick has been laid in the project. The project is stand still from last more than one year. The Appellant cannot be permitted to bring another real estate company to complete the project which need to be selected as per the CIRP process.

13. Learned counsel appearing for the Union Bank of India has also opposed the prayers of the Appellant and submitted that Consortium of Banks have not accepted the revised proposal of the Appellant.

14. Ms. Anju Agarwal, IRP has also appeared in person and submitted that although steps were taken to start the construction but construction has not yet commenced. With respect to MOU entered with M/s. Parmesh Construction Company Ltd., IRP submitted that any MOU entered was subject to approval and order by this Tribunal and IRP on its own could not have taken any decision. IRP, however, does not dispute that construction has not yet commenced.

15. We have considered the submissions of learned counsel for the parties and perused the record.

16. Present is a case where debt and default on the part of the Corporate Debtor is not even disputed. In our order dated 03.07.2024 by which order after hearing learned counsel for the Appellant and learned counsel for the Financial Creditor, an interim order was passed. The submission of the Appellant was recorded in Para 3 of the order, which is to the following effect:

“3. Shri Arun Kathpalia, learned Senior Counsel appearing for the Appellant submits that the Appellant is not raising any dispute regarding the debt and default of the Bank of Maharashtra.”

17. Further, even during pendency of the application under Section 7 Appellant claims to have submitted OTS proposal of Rs.310 Crores, which proposal was not accepted by the Consortium of Banks. In the appeal, Appellant initially submitted, as noted by order dated 03.07.2024, proposal of settlement has been given with the investor Kotak Advisors Ltd. Subsequently, Kotak Advisors Ltd. withdrew from offer and another proposal has been given by the Appellant with one M/s. Parmesh Construction Company Ltd., as noted above. The fact that Appellant repeatedly is giving OTS proposals clearly proves the debt and default on the part of the Corporate Debtor. Hence, the debt and default having been proved, the Adjudicating Authority was entitled to pass the order for admission of Section 7 application.

18. The submission which has been pressed by the Appellant in support of the Appeal is that the CIRP in the present case being of a real estate

infrastructure company which is carrying out a project for homebuyers, reverse CIRP needs to be followed as has been laid down by this Tribunal in large number of cases, as also approved by the Hon'ble Supreme Court. It is submitted that present is a fit case where project need to be completed with the assistance of the Appellant, staff and officers of Corporate Debtor under the supervision of the IRP. It is submitted that M/s. Parmesh Construction Company Ltd. has come up and entered into a MOU for completion of the project, in which settlement proposal the offer has been given to pay 100% ledger balance of the Financial Creditors. Completion of the project under reverse CIRP is in the interest of the homebuyers whose interest has to be given precedence in considering CIRP of a real estate infrastructure company. Learned counsel for the Appellant in support of his submission has placed reliance of judgments of this Tribunal and Hon'ble Supreme Court, which we need to notice.

19. The first judgement which has been relied by learned counsel for the Appellant is judgment of this Tribunal in ***“Flat Buyers Association Winter Hills – 77, Gurgaon vs. Umang Realtech Pvt. Ltd., Company Appeal (AT) (Ins.) No.926 of 2019 (2020 SCC OnLine NCLAT 1199)”*** decided on 04.02.2020. In the above case, Section 7 application was filed by two allottees Mrs. Rachna Singh and Mr. Ajay Singh on which CIRP commenced on 20.08.2019. Appeal was filed by Flat Buyers Association challenging the initiation of CIRP. In the above background, this Tribunal come to consider and decide the said appeal. In the said judgment, this Tribunal came to

consider the concept of “Reverse Corporate Insolvency Resolution Process”.

In Para 12 of the judgment following was laid down:

“12. In "Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors. (MANU/SC/1577/2019)", Hon'ble Supreme Court observed as follows:

"90. In Swiss Ribbons (supra) this Court was at pains to point out, referring, inter alia, to various American decisions in paras 17 to 24, that the legislature must be given free play in the joints when it comes to economic legislation. Apart from the presumption of constitutionality which arises in such cases, the legislative judgment in economic choices must be given a certain degree of deference by the courts. In para 120 of the said judgment, this Court held:

"120. The Insolvency Code is a legislation which deals with economic matters and, in the larger sense, deals with the economy of the country as a whole. Earlier experiments, as, we have seen, in terms of legislations having failed, "trial" having led to repeated "errors", ultimately led to the enactment of the Code. The experiment contained in the Code, judged by the generality of its provisions and not by so-called crudities and inequities that have been pointed out by the petitioners, passes constitutional muster. To stay experimentation in things economic is a grave responsibility, and denial of the right to experiment is fraught with serious consequences to the nation. We have also seen that the working of the Code is being monitored by the Central Government by Expert Committees that have been set up in this behalf. Amendments have been made in the short period in which the Code has operated, both to the Code Itself as well as to subordinate legislation made under it. This process is an ongoing process which involves all stakeholders, including the petitioners."

In view of the observation of the Hon'ble Supreme Court, we experimented as to whether during the Corporate Insolvency Resolution Process the resolution can reach finality without approval of the third party resolution plan.”

20. This Tribunal in the above case noted that one Uppal Housing Pvt. Ltd. agreed to play the role of lender (Financial Creditor) and JM Financial Credit Solutions Ltd. one of the financial institution has agreed to cooperate in terms of the agreement that they will get 30% of the amount paid by the allottees at the time of registration of the flat/apartment. In Para 13 of the judgment following was observed:

“13. One of the Promoter - Uppal Housing Pvt. Ltd./Intervenor agreed to remain outside the Corporate Insolvency Resolution Process but intended to play role of a Lender (Financial Creditor) to ensure that the Corporate Insolvency Resolution Process reaches success and the allottees take possession of their flats/apartments during the Corporate Insolvency Resolution Process without any third party intervention. The Flat Buyers Association of Winter Hill 77 Gurgaon also accepted the aforesaid proposal. It is informed that 'JM Financial Credit Solutions Ltd' one of the financial institution has also agreed to cooperate in terms of agreement with the condition that they will get 30% the amount paid by the allottees at the time of the registration of the flat/apartment.”

21. It was further noticed that in the above case two allottees who have initiated the Section 7 application has also joined hands with the Appellant i.e. Flat Buyer Association of Winter Hill 77 Gurgaon and became member of the association and had taken possession of their respective flats and sale deed(s) have been registered in their favour, which fact is noticed in Para 14 of the order, which is to the following effect:

“14. The other development is that 'Rachna Singh' and 'Ajay Singh' (Allottees), who moved application under Section 7 of the I&B Code, joined hands with the Appellant - 'Flat Buyers Association Winter Hill-77, Gurgaon' and became its members. During the last few months the Corporate Insolvency Resolution Process has progressed and a number of allottees including 'Rachna Singh' and 'Ajay Singh' have already taken possession of their respective flats and sale deed(s) have been registered in their favour.”

22. In the above facts, this Tribunal also noticed that IRP who was present in person has also endorsed the facts. In the above background, directions were issued for completion of project. The judgment of this Tribunal in ***Flat Buyers Association Winter Hills – 77, Gurgaon vs. Umang Realtech Pvt. Ltd. (Supra)*** was the case where lender has come forward to infuse funds and financial institution has also agreed with the proposal and Applicants who were allottees has joined hands with the Appellant who have already handed over possession of their flats and there was agreement by all, which was also accepted by the IRP, direction was issued to proceed with the Reverse CIRP. Two distinct features from the

above case as compared to the present case need to be noticed, they are (i) Financial Creditor i.e. Bank of Maharashtra who has initiated Section 7 application has not agreed with the OTS proposal submitted by the Appellant; (ii) the homebuyers of the project are a divided lot. Learned counsel appearing for Supernova Apartment Owners Association has opposed the prayers of the Appellant and submitted that resolution applicant be selected as per the process prescribed in the I&B Code and CIRP Regulations whereas a set of another homebuyers who had filed I.A. No.2889 of 2025 has supported the Appellant and requested that the Appellant be permitted to carry on the project with M/s. Parmesh Construction Company Ltd. as Co-Developer. In the ***Flat Buyers Association Winter Hills – 77, Gurgaon vs. Umang Realtech Pvt. Ltd.***, in the background of the above case, this Tribunal has directed for Reverse CIRP. It is useful to notice paragraphs 21 and 25 of the order:

“21. In Corporate Insolvency Resolution Process against a real estate, if allottees (Financial Creditors) or Financial Institutions/Banks (Other Financial Creditors) or Operational Creditors of one project initiated Corporate Insolvency Resolution Process against the Corporate Debtor (real estate company), it is confined to the particular project, it cannot affect any other project(s) of the same real estate company (Corporate Debtor) in other places where separate plan(s) are approved by different authorities, land and its owner may be different and mainly the allottees (financial creditors), financial institutions (financial creditors, operational creditors are different

for such separate project. Therefore, all the asset of the company (Corporate Debtor) are not to be maximized. The asset of the company (Corporate Debtor – real estate) of that particular project is to be maximized for balancing the creditors such as allottees, financial institutions and operational creditors of that particular project. Corporate Insolvency Resolution Process should be project basis, as per approved plan by the Competent Authority. Any other allottees (financial creditors) or financial institutions/ banks (other financial creditors) or operational creditors of other project cannot file a claim before the Interim Resolution Professional of other project and such claim cannot be entertained.

So, we hold that Corporate Insolvency Resolution Process against a real estate company (Corporate Debtor) is limited to a project as per approved plan by the Competent Authority and not other projects which are separate at other places for which separate plans approved. For example – in this case the Winter Hill – 77 Gurgaon Project of the ‘Corporate Debtor’ has been place of Corporate Insolvency Resolution Process. If the same real estate company (Corporate Debtor herein) has any other project in another town such as Delhi or Kerala or Mumbai, they cannot be clubbed together nor the asset of the Corporate Debtor (Company) for such other projects can be maximised.

25. In the light of aforesaid discussion, as we find it is very difficult to follow the process as in normal course is followed in a Corporate Insolvency Resolution Process, we are of the view, that a

‘Reverse Corporate Insolvency Resolution Process’ can be followed in the cases of real estate infrastructure companies in the interest of the allottees and survival of the real estate companies and to ensure completion of projects which provides employment to large number of unorganized workmen.”

23. Directions were issued by this Tribunal in ***Flat Buyers Association Winter Hills – 77, Gurgaon vs. Umang Realtech Pvt. Ltd.*** in the above background which directions were in the background of the facts of that case, as noted above.

24. The next judgment which has been relied by learned counsel for the Appellant was order of this Tribunal in ***“Company Appeal (AT) (Ins.) No.406 of 2022, Ram Kishor Arora Suspended Director of M/s Supertech Ltd. vs. Union Bank of India & Anr.”*** where by order 10.06.2024, this Tribunal issued direction for carrying out the project except for the project Eco Village II Project with regard to which CoC was directed to be constituted and Form-G directed to be issued. The construction was directed under supervision of the IRP. In the above case, this Tribunal has noted in the Para 24 that Corporate Debtor has submitted that they shall arrange for interim finance to support the ongoing construction of the different projects. In the above case, there were large number of projects, which fact is noticed in Para 19 of the order, hence, this Tribunal passed order that CIRP process, project-wise resolution to be started as a test to find out the success of such resolution. The said case

was thus case for project-wise resolution. With regard to one project Eco Village II, CoC was directed to be constituted and in the rest directions were issued. In the above background, various directions were issued in Para 25 of the order.

25. As noted above, reverse CIRP is although an accepted mechanism for resolution of a real estate company but said mechanism need to be followed in facts of each case on satisfaction of various preconditions.

26. Another judgment which has been relied by learned counsel for the Appellant is judgment of Hon'ble Supreme Court in ***"Anand Murti v. Soni Infratech (P) Ltd., (2023) 3 SCC 743"***. In the above case, a single homebuyer has filed an application under Section 7 for initiating CIRP against a real estate company – Soni Infratech (P) Ltd. In the above case, the Applicant has demanded refund of the amount and thereafter filed Section 7 application, which application was admitted on 22.11.2019 and CIRP was directed to be initiated by the NCLT, against which order an appeal was filed by the Suspended Director. In the appeal filed against Section 7 application, an interim order was passed by this Tribunal directing not to constitute the CoC. Appellant before this Tribunal submitted that project was completed almost 70-75% and the Appellant was ready to settle the matter with Respondent No.2 (who was the Applicant). This Tribunal passed an order on 31.01.2020 directing the Appellant to file the settlement. Resolution Professional also submitted a status report. Appellant settled the matter with Respondent No.2 but despite the settlement NCLAT vide order

dated 26.02.2020 has modified order dated 19.12.2019 and directed the Resolution Professional to go ahead with constitution of the CoC, against which order Civil Appeal No.1928 of 2020 was filed where the Hon'ble Supreme Court on 05.03.2020 permitted the Appellant to approach the NCLAT for modification of order dated 26.02.2020 on the ground that settlement plan filed on 13th February 2020 covers all the allottees. The NCLAT rejected the modification application, against which an appeal was filed, which came to be decided in Civil Appeal No.7534 of 2021 vide judgment dated 27.04.2022, in the above case. The Hon'ble Supreme Court noted that most of the issues have been resolved and NCLAT failed to take consideration of minutes of meetings. In Para 18 following has been noticed:

“18. It could thus be seen that though a meeting of various stakeholders was conducted on 23-10-2021 in pursuance of the directions issued by g NCLAT dated 29-9-20217 and in which meeting most of the issues stood resolved, NCLAT has failed to take into consideration the minutes of the said meeting dated 23-10-2021. Not only that, but NCLAT has also not taken into consideration the Revised Status Report dated 3-11-2021 submitted by the IRP.”

27. Before the Hon'ble Supreme Court, an application was also filed by the Appellant giving details of manner for stage-wise construction. It was noticed in the said judgment that out of 452 homebuyers only 7 has opposed the proposal, which fact has been noticed in Para 22 of the judgment, which is as follows:

“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 timeline 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.”

28. In the above background, the Hon'ble Supreme Court took the view that continuance of CIRP is not in the interest of the homebuyers since the homebuyers will have to pay higher amount in the said context. The appeal was allowed and the affidavit of Promoter was taken on record. In Para 23 of the judgment following was noted:

“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.”

29. The judgment of the Hon’ble Supreme Court in **Anand Murti’s case** was in the facts of that case, as noticed above. In appropriate case, direction can be issued for completion of project by reverse CIRP process but as noted above, for adopting reverse CIRP process facts of each case has to be noticed.

30. Another judgment relied by learned counsel for the Appellant is judgment of this Tribunal in **“Rajesh Goyal vs. Babita Gupta & Ors., Company Appeal (AT) (Ins.) No.1056 of 2019”**. In the above case, this Tribunal vide judgment dated 05.02.2020 after noticing the concept of **Flat Buyers Association Winter Hills 77, Gurgaon**, has directed for reverse CIRP, which has been noticed in Para 2 of the judgment, which is as follows:

“2. In Company Appeal (AT) (Insolvency) No. 1056 of 2019 decided on 5th of February, 2020, this Appellate Tribunal, while noticing that the concept of Reverse Insolvency Resolution Process conceived and introduced in Flat Buyers Association Winter Hills 77, Gurgaon (supra) had shown curtailment of period of resolution without asking for Resolution Plan from the third party and that the Resolution can be taken even during the CIRP if any promoter, as Investor agrees to invest the money for keeping the Company as a going concern and complete the project within the time frame, observed that since part of the infrastructure (Apartment/ Flats) has already been completed, the main beneficiaries being the allottees have already

reached settlement with the Promoter and the fact that the Promoter as an outsider-Financial Creditor has agreed to invest the amount from his own sources and not from the account of Corporate Debtor, proceeded to pass a slew of directions invoking Rule 11 of the NCLAT Rules, which are reproduced hereunder: -"

31. Subsequently, an application was filed being IA No.2166 of 2020 for extension of timelines as laid down in judgment dated 05.02.2020, which application has been allowed by the impugned order. There can be no dispute that in appropriate cases reverse CIRP can be resorted to.

32. The present is a case, where Appellant's case is that a real estate company - M/s. Parmesh Construction Company Ltd. has come up to join hands with the Appellant to complete the project. Appellant along with IA No.2842 of 2025 has brought on record the MOU dated 10.05.2025 entered between M/s. Parmesh Construction Company Ltd., the Appellant and M/s Supertech Realtors Private Limited, which has referred to Co-Development Agreement dated 11.11.2024. Appellant himself has brought on record the Co-Development Agreement dated 11.11.2024 along with the Convenience Compilation, which provides that the construction of the projects will be done by the Co-Developer - M/s. Parmesh Construction Company Ltd. Learned counsel for the Bank of Maharashtra as well as learned counsel appearing for the L&T Finance and Supernova Apartment Owners Association has opposed the act of Appellant in engaging a Co-Developer for completion of the project. It is submitted that Appellant who himself is a

Suspended Director cannot be allowed to choose a Co-Developer who is nothing but a Resolution Applicant for completing the project. It is submitted that in event, the Resolution Applicants are invited as per the CIRP process, there may be better Applicants who may come to complete the project offering better terms and conditions.

33. The I&B Code is a complete Code in itself and provides for mechanism for resolution of a Corporate Debtor including a Corporate Debtor which is a real estate company. In the CIRP process as per CIRP Regulations, 2016 after issuance of Form G, all eligible Resolution Applicants can submit their Expression of Interest and offer their terms and conditions and it is thereafter the commercial wisdom of CoC to take a decision. M/s. Parmesh Construction Company Ltd., who has been sought to be brought in by the Appellant is also free to participate in the process for completion of the project.

34. Learned counsel for the Bank of Maharashtra has also placed reliance on judgment of the Hon'ble Supreme Court in ***"E.S. Krishnamurthy and Others vs. Bharath Hi-Tech Builders Pvt. Ltd., (2022) 3 SCC 161"***. In the above case, the NCLT declined to admit Section 7 application by its order dated 28.02.2020 by directing the Respondent to make efforts to settle the dispute regarding the remaining claims but not later than three months and with such direction Section 7 application was disposed of. In Para 11 and 12 of the order, the order of the Adjudicating Authority has been noticed, which is to the following effect:

“11. Thus, the adjudicating authority decided to dispose of the petition based on the following factors:

(i) that respondent's efforts to settle the dispute were bona fide, as evinced by the fact that they had already settled with 140 investors, including 13 petitioners before it; (ii) the settlement process was underway with 40 other petitioners; (iii) the procedure under IBC was summary in nature, and could not be used to individually manage the case of each of the 83 petitioners before it; and (iv) initiation of CIRP in respect of the respondent would put in jeopardy the interests of homebuyers and creditors, who have invested in the respondent's project, which was in advanced stages of completion.

12. In disposing of the petition, the adjudicating authority issued the following directions: (E.S. Krishnamurthy case², SCC OnLine NCLT para 8)

“8. ...(a) The corporate debtor is directed to settle the remaining claims as expeditiously as possible, but not later than 3 months, and communicate this decision to all the parties concerned.

(b) If aggrieved by the settlement process of the corporate debtor, the remaining petitioners, if any, would be at liberty to approach this adjudicating authority again, in accordance with law.””

35. An appeal was filed in this Tribunal which appeal was also dismissed, against which, appeal was filed in the Hon'ble Supreme Court. The Hon'ble Supreme Court in the above background, has held that the Adjudicating Authority is empowered only to verify whether a default has occurred or if a default has not occurred. It was held that the Adjudicating Authority cannot compel a party to the proceeding before it to settle a dispute. In Paras 34, 35 and 36 following has been held:

“34. The adjudicating authority has clearly acted outside the terms of its jurisdiction under Section 7(5) IBC. The adjudicating authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the adjudicating authority must then either admit or reject an application, respectively. These are the only two courses of action which are open to the adjudicating authority in accordance with Section 7(5), The adjudicating authority cannot compel a party to the proceedings before it to settle a dispute.

35. Undoubtedly, settlements have to be encouraged because the ultimate purpose of IBC is to facilitate the continuance and rehabilitation of a corporate debtor, as distinct from allowing it to go into liquidation. As the Statement of Objects and Reasons accompanying the introduction of the Bill indicates, the objective of IBC is to facilitate insolvency resolution "in a time-bound manner" for maximisation of the value of assets, promotion of entrepreneurship, ensuring the availability of credit and balancing the interest of all stakeholders. What the adjudicating authority and appellate authority, however, have proceeded to do in the present case is to abdicate their jurisdiction to decide a petition under Section 7 by directing the respondent to settle the remaining claims within three months and leaving it open to the original petitioners, who are aggrieved by the settlement process, to move fresh proceedings in accordance with law. Such a course of action is not contemplated by IBC.

36. *IBC is a complete code in itself. The adjudicating authority and the appellate authority are creatures of the statute. Their jurisdiction is statutorily conferred. The statute which confers jurisdiction also structures, channelises a and circumscribes the ambit of such jurisdiction. Thus, while the adjudicating authority and appellate authority can encourage settlements, they cannot direct them by acting as courts of equity. In Pratap Technocrats¹³, a two-Judge Bench of this Court, speaking through D.Y. Chandrachud, J., held: (SCC pp. 652 & 654, paras 44 & 47)*

“44. These decisions have laid down that the jurisdiction of the adjudicating authority and the appellate authority cannot extend into entering upon merits of a business decision made by a requisite majority of the CoC in its commercial wisdom. Nor is there a residual equity based jurisdiction in the adjudicating authority or the appellate authority to interfere in this decision, so long as it is otherwise in conformity with the provisions of IBC and the Regulations under the enactment.

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47. Hence, once the requirements of IBC have been fulfilled, the adjudicating authority and the appellate authority are duty-bound to abide by the discipline of the statutory provisions. It needs no emphasis that neither the adjudicating authority nor the appellate authority have an uncharted jurisdiction in equity. The jurisdiction arises within and as a product of a statutory framework.”

(emphasis supplied)”

36. In the present case, as noted above, the revised OTS proposal which was submitted by the Appellant was considered and ultimately was not accepted by the Consortium of Banks which was communicated to the

Appellant on 15.07.2025. It is also noticed that one OTS proposal was approved in 2022, which was not adhered to and the said OTS proposal was cancelled by the Financial Creditor. Another OTS proposal was submitted during the pendency of Section 7 application with investor – M/s Kotak Advisors Ltd. also could not be accepted and the revised OTS proposal which has been submitted by the Appellant with M/s. Parmesh Construction Company Ltd. as Co-Developer has ultimately not been accepted by Consortium of Banks, as noted above.

37. Learned counsel for the Appellant has sought to challenge the decision of the Financial Creditor not accepting the OTS proposal submitted by the Appellant. We are of the view that reasons which persuaded the Banks to not accept the OTS proposal cannot be gone into in these proceedings. Present is not a case, where an application filed under 12A for withdrawal of CIRP has not been approved by CoC with 90% vote share, which decision has been held to be subject to judicial review on limited grounds that the decision of CoC is arbitrary. Learned counsel for the Bank of Maharashtra submits that the dues of all Consortium Banks is above Rs.990 Crores and Banks in their Joint Lenders' Meeting held on 13.06.2025 has deliberated on all aspects of the matter and decided not to accept the OTS.

38. Learned counsel for the Appellant has also submitted that he was not communicated the decision taken by the Consortium Banks on 13.06.2025 in the Joint Lenders' Meeting. Learned counsel for the Respondent

submitted that the Appellant was communicated on 15.07.2025 of the above decision of the Consortium of Banks which was communicated by Union Bank of India, which is the lead bank of the consortium, which letter has been brought on record by the Appellant in its Convenience Compilation.

39. As noted above, in this appeal an interim order was passed on 03.07.2024 staying the constitution of CoC waiting the decision of Consortium of Banks on the OTS proposal submitted by the Appellant, which according to the Appellant was finally not decided on 12.06.2024, when impugned order was passed by the Adjudicating Authority. The interim order passed by this Tribunal has been extended from time to time in view of the subsequent development including submission of revised proposal. As noted above, the revised proposal submitted by the Appellant for settlement has not been accepted by the Consortium of Banks. The Bank of Maharashtra, who has filed the Section 7 application as well as Union Bank of India, who is the lead bank has opposed the appeal and prayed for CIRP to be continued to resolve the Corporate Debtor.

40. We are of the view that present is a case where resolution of the Corporate Debtor has to be undertaken as per the I&B Code and CIRP Regulations, 2016 in accordance with law. We, thus, upheld the order of the Adjudicating Authority admitting Section 7 application and dismiss the appeal. The period during which this appeal remained pending i.e. from 18.06.2024 till today, shall be excluded from the CIRP process. The IRP

may constitute the CoC and proceed with the CIRP in accordance with law.
Subject to above, the appeal is dismissed. All pending IAs are disposed of.

Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

13th August, 2025

Archana