



NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI BENCH (COURT-II)

IA-3816/2022, IA-6240/2023, IA-1452/2024 & IA-3753/2024

IN

Company Petition No. (IB)-597(PB)/2021

IN THE MATTER OF CP(IB) - 597(PB)/2021:

(Under Section: 7 of IBC, 2016)

Sachin Singh & Ors.

**... Applicants/
Financial Creditors**

Versus

M/s Three C Properties Private Limited

**... Respondent/
Corporate Debtor**

AND IN THE MATTER OF IA. NO. 3816/ND/2022:

(Under Section: 60(5) r/w 65 of IBC, 2016)

Ashmeet Singh Bhatia

12-A, Savitri Sahini Enclave,
New Hyderabad,
Lucknow-226007

... Applicant

Versus

1. Mr. Sachin Singh

P-26, Sector-12
Noida, U.P.-201301

2. M/s Three C Properties Pvt. Ltd.

Flat No. 14, Ground Floor,
Pul Pehlad Pur, DDA Migsuraj Apartment,
New Delhi-110044

3. Mr. Nirmal Singh

House No. N-104, Panchsheel Park
New Delhi-110017

4. Mr. Vidur Bhardwaj

House No. 51-B,
New Friends Colony (East),
New Delhi-110065

5. Mr. Surpreet Singh Suri

House No. 192-B, Sainik Farms,
New Delhi-110062

IA-3816/2022, IA-6240/2023, IA-1452/2024 & IA-3753/2024 in CP(IB)-597/PB/2021
Mr. Sachin Singh & Ors. vs. M/s. Three C Properties Pvt. Ltd.



6. Mr. Harkaran Singh Upal

House No. N-104, Panchsheel Park,
New Delhi-110017

7. New Okhla Industrial Development Authority

(Through its Chief Executive Officer)
Main Administrative Block,
Sector-6, Noida, U.P.-201301

8. Uttar Pradesh Real Estate Regulatory Authority

(Through its Chairman)
H-169, Chitvan State Road,
Estate Sector, Block-H,
Greater Noida, U.P.-201308

... Respondents

AND IN THE MATTER OF IA. NO. 6240/ND/2023:

(Under Rule 11 r/w 131 of NCLT Rules, 2016)

Ashmeet Singh Bhatia

... Applicant

Versus

Mr. Sachin Singh & Ors.

... Respondents

AND IN THE MATTER OF IA. NO. 1452/ND/2024:

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

Ashmeet Singh Bhatia

... Applicant

Versus

Mr. Sachin Singh & Ors.

... Respondents

AND IN THE MATTER OF IA. NO. 3753/ND/2024:

(Under Rule 11 of NCLT Rules, 2016)

Ashmeet Singh Bhatia

... Applicant

Versus

Mr. Sachin Singh & Ors.

... Respondents

Order Delivered on: 09.08.2024



CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)
SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Ranjana Roy Gauri, Adv. Pervinder, Adv. Vivek, Adv. Shikher Upadhay, Adv. Jayant, Adv. Piyush Singh, Adv. Vivek Kumar, Adv. Akshay Srivastava, IA-3753/2024 - Adv. Sonam Sharma, Ms. Riddhi Jain, Mr. Yash Srivastava, Advocates

For the Respondent : Adv. Ranjana Roy Gauri, Adv. Pervinder, Adv. Vivek, Adv. Shikher Upadhay, Adv. Jayant, Adv. Piyush Singh, Adv. Vivek Kumar, Adv. Akshay Srivastava

For the Noida Authority : Adv. Abdhesh Chaudhary, Adv. Geetanjali Setia

For the Intervener : Mr. Gaurav Mitra, Mr. Sonam Sharma, Ms. Lavanya Pathak and Mr. Yash Srivastava Advocates

ORDER

IB-597/PB/2021

The captioned petition has been preferred by 51 Petitioners, in whose favour 29 units in 'Lotus Isle' project were allotted. As has been espoused in the synopsis filed by the Applicants along with the application, in terms of lease dated 26.04.2011, the Corporate Debtor was allotted land admeasuring 24,000 sq. mtrs. comprised in Plot No. H-10, Sector 98, Noida by the New Okhla Industrial Area Development Authority (NOIDA).

2. It is the case of the Applicants that as per the sanctioned layout plan of the project 'Louts Isle', launched and developed by the Corporate Debtor, the total sanctioned residential units therein are 255. The Corporate Debtor received substantial amounts from the Applicant Allottees towards the sale consideration,

but failed to repay the same, as it failed to handover the possession of the allotted IA-3816/2022, IA-6240/2023, IA-1452/2024 & IA-3753/2024 in CP(IB)-597/PB/2021 Mr. Sachin Singh & Ors. vs. M/s. Three C Properties Pvt. Ltd.



flats which were required to be delivered within the stipulated period i.e. 48 months (in some cases the possession was promised to be delivered within a period of 23 months from the date of execution of the agreement). The agreements in respect of flat (in case of 24 apartments) were executed between 9th January, 2015 to 10th March, 2016 and for flats (in case of 5 apartments) between 3rd April, 2017 to 10th June, 2019. Thus, the possession of the flats was required to be handed over between January, 2019 to 10th March, 2020 and 3rd April, 2021 to 19th March, 2021 respectively.

3. It is the case of the Applicants that till date the Corporate Debtor has not handed over the possession of even a single flat to either of the Applicants. According to Applicants, they made all the payments in terms of the Agreement to Corporate Debtor from time to time. The Petitioners have further complained that with ill motive, the Corporate Debtor could bifurcate the project in two parts i.e. residential and commercial and it has not yet cleared the payment of NOIDA which is amounting to Rs. 290,16,69,872/-. The Applicants have also alleged that the Corporate Debtor is in the process of transferring the rights of the office buildings to its subsidiaries which is apparent from the developments at the project site. They have also questioned the intention of Corporate Debtor by pointing out that when the office building at the project is complete and lease/transfer deeds pertaining to the same have been executed with big brands like 'Shopper's Stop' etc., the homebuyers like the Applicants in the captioned petition are left high and dry. When the Corporate Debtor received an amount of Rs. 174.34 Crores from the allottees till March, 2020, it spent only Rs. 77.54



Crores on the construction and the project is only complete to the extent of 46%, while the possession of the complete flats was required to be handed over to the allottees from the date starting from January, 2019. Here, it would be pertinent to note that in terms of explanation to Section 7(1) of IBC, 2016, a default in respect of financial debt includes not only the debt owed to applicant financial creditor but to any other financial creditor of the Corporate Debtor. The Explanation reads thus:- *“For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.”* According to the Petitioners, the Corporate Debtor committed default in terms of the provisions of Section 5(8)(f) of IBC, 2016. The Section 5(8)(f) of IBC reads thus:-

“5. Definitions.—*In this Part, unless the context otherwise requires,—*
.....

(8) *“financial debt” means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—*

(f) *any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*

[Explanation.—For the purposes of this sub-clause,—

(i) *any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and*

(ii) *the expressions, “allottee” and “real estate project” shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]*”



4. The amount of debt and the details of the default are mentioned in Part-IV of the petition which reads thus:-

PART-IV

PARTICULARS OF FINANCIAL DEBT	
1.	<p>TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT*</p> <p>Total Amount of Debt is Rs. 37,26,12,949/- (Rupees Thirty Seven Crores Twenty Six Lakhs Twelve Thousand Nine Hundred Forty Nine Only), which is the principal amount paid to the Corporate Debtor.</p> <p>True Copy of the cumulative chart of the payments by the financial creditors is attached and marked hereto as <u>ANNEXURE A-9.</u></p> <p>True and correct copy of the ledger/ payment receipts issued by the Corporate Debtor to the Financial Creditors detailing all the payments made are provided herewith the Application and marked as <u>ANNEXURE A-10.</u></p> <p>The Applicants/Financial Creditors have approached this Hon'ble Tribunal by way of the present Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (<i>hereinafter referred to as "IBC"</i>) against the Corporate Debtor. The Applicants herein are Financial Creditors who are allottees (homebuyers) of residential apartments, having purchased the same in the real-estate project 'Lotus Isle' (<i>hereinafter referred as "the project"</i>), being developed by the Corporate Debtor namely M/s Three C Properties Private Limited. As per the Master Data pertaining to the Corporate Debtor, available on the website of Ministry of Corporate Affairs, the registered address of the Corporate Debtor is Flat No. 14, Ground Floor, Pul Pehlad Pur, DDA MIG Suraj Apartment, New Delhi- 110044. A copy of the Master</p>



data of the Corporate Debtor is attached and annexed hereto as **Annexure A-1**.

That *vide* lease deed 26th April, 2011, the Corporate Debtor was allotted land admeasuring 24,000 sq. mtrs. bearing Plot No. H-10, Sector 98, Noida by the New Okhla Industrial Area Development Authority (hereinafter referred to as "**the NOIDA Authority**"). That the Corporate Debtor, pursuant to execution of the aforesaid lease deed stated to have received requisite authority to construct, develop and execute the Project and undertake allotment of the apartments in the project.

That as per the lease deed, the Corporate Debtor, M/s Three C Properties Pvt. Ltd., is a Special Purpose Company of M/s Vistar Communications Pvt. Ltd. -55%, M/s Three C Universal Developers Pvt. Ltd. - 25%, M/s Advance eGraphics Complogic Solutions Pvt. Ltd. -15% and M/s Jakson Limited -5%. A copy of the lease deed in favour of the Corporate Debtor is attached and annexed hereto as **Annexure A-2**.

That the Applicants herein are allottees in the real-estate project 'Lotus Isle', being developed by the Corporate Debtor and as



per the explanation attached to clause (1) of Section 5(8) of the Code and the light of observations of the Hon'ble Supreme Court in the case of *Pioneer Urban Land & Infrastructure Ltd. (Supra)*, the amount collected from them by the Corporate Debtor is a 'Financial Debt' and the Applicants are Financial Creditors. Further, the instant application meets the criteria under the proviso of the amended Section 7(1) of the Code, pertaining to the minimum threshold requirements of at least 100 allottees to support the application or 10 per cent of the total allottees whichever is less, belonging to the same real-estate project.

It is submitted that as per the sanctioned layout plan of the project 'Lotus Isle' available on the website of Uttar Pradesh Real Estate Regulatory Authority (*hereinafter referred to as "UP RERA"*), the total number of sanctioned residential flats in the project is 255. Therefore, the total number of allottees in the instant petition meets the 10% threshold provided in proviso to amended Section 7(1) of the Code. A copy of the sanctioned layout plan of the project 'Lotus Isle' is attached and annexed hereto as **Annexure A-3**.

That in terms of the respective Allotment Letters and Flat Buyer Agreements (*hereinafter referred to as "the agreement"*), the Corporate Debtor received substantial amounts from the Applicant Allottees towards sale consideration and in turn failed to repay the debt by handing over possession of complete flats. That as per the clauses of the Agreement, the possession of the allotted flats was to be delivered within 42 months (plus 6 months grace period) from the execution of the Agreement (except in the case of Applicant No. 43 and 44, Mrs Renuka Narang & Mr. Luv Kumar Narang, where the possession was promised to be delivered within a period of 17 months (plus 6 months)). It is



submitted that agreements for flats in the case of 25 apartments which are part of the instant petition (constituting more than 10% of the total allottees) were executed between 9th January, 2015 to 10th March, 2016 and agreements for flats in the case of 5 apartments were executed between 3rd April, 2017 to 10th June, 2019, and therefore the possession of complete flats as per the agreement was to be handed over between January, 2019 to 10th March, 2020 and 3rd April, 2021 to 19th March, 2021 respectively. However, till date not even a single apartment has been delivered by the Corporate Debtor in the project. A bare perusal of the photographs reflecting the current status of the project makes it clear that the project is still far from completion. A copy of the photographs clicked on 16.09.2021 reflecting current status of the project is attached and annexed hereto as **Annexure A-4.**

That the Financial Creditors which are part of the instant petition have paid all payments which are due and payable as per their respective agreements in a timely manner, however, the Corporate Debtor has not paid any heed to its contractual obligation of timely handing over possession of the flats. It is submitted that the Corporate Debtor was not prevented by any 'force majeure' event and the delay in completion of the project is solely attributable to the Corporate Debtor and its present management. The concerned Financial Creditors believe that the management of the Corporate Debtor has siphoned off the amounts collected from Allottees and diverted the same for purposes other than completion of the project.

That not only has the Corporate Debtor ostensibly diverted funds collected from



the Allottees but has also sought to divest a valuable asset of the Corporate Debtor with an intention to defraud its creditors. Pursuant to perusal of the lease deed of the project as uploaded on the website of UP RERA (Annexure A-2), it was learnt that the Corporate Debtor sought a bifurcation of Plot No. H-10, Sector 98, Noida on which the project 'Lotus Isle' was to be constructed. That as visible from the sanctioned plan of the project (revised sanction on 11.05.2015) (Annexure A-3), total land parcel area of the project is 24,000 sq. mts. and the project encompasses 3 residential towers (containing 85 apartments each) and 2 office buildings. It is submitted that the integrated nature of the project (office cum residential) was one of the key features of the project which attracted the Applicant Allottees. However, the Corporate Debtor subsequently vide an application dated 17.01.2016 sought that portion of the plot land wherein the office buildings were to be constructed, be bifurcated and development rights in the same be transferred in favour of two subsidiary companies of the Corporate Debtor, i.e. M/s Dwelling Star Developers Pvt. Ltd. and M/s Fling Creators Pvt. Ltd. That a perusal of the letter dated 31st January, 2017 issued by NOIDA Authority annexed with the copy of the lease deed uploaded on the website of UP RERA, reflects that the permission to bifurcate the project was given to the Corporate Debtor, however, on the condition that the amounts received by the Corporate Debtor by virtue of such bifurcation shall be used firstly to clear the NOIDA Authority as owed by the Corporate Debtor. A copy of the letter dated 21st January, 2017 issued by NOIDA Authority and uploaded on the website of UP RERA is attached and annexed hereto as Annexure A-5.



That not only is the act of the Corporate Debtor of bifurcation of a valuable portion of the project land is in the nature of 'asset stripping' and any permission received in relation to the same in violation of statutory permissions (the Applicants reserve the right to take suitable legal recourse against the illegitimate grant of permission by the NOIDA Authority), the Corporate Debtor did not even fulfil the condition of payment of dues of the NOIDA Authority from the amounts received in pursuance of the transaction resulting in bifurcation of the project land. That letter dated 27th May, 2019 (received in response to RTI) issued by the NOIDA Authority to the Corporate Debtor clearly reflects that the Corporate Debtor has not cleared its dues pertaining to purchase of additional FAR which resulted in sanctioning of revised plan on 11.05.2015. In fact, as per response to RTI, as on 19.03.2021, an amount of Rs. 290,16,69,872 (Rupees Two Hundred and Ninety Crores Sixteen Lakh Sixty Nine Thousand Eight Hundred and Seventy Two) is payable by the Corporate Debtor to the NOIDA Authority. A true copy of the letter dated 27th May, 2019 is attached and annexed hereto as **Annexure A-6**. A true copy of the letter dated 19.03.2021 is attached and annexed hereto as **Annexure A-7**.

That the ill design of the Corporate Debtor in bifurcating the office buildings from the residential buildings and transferring the rights of the office buildings to its subsidiaries is clearly visible from a mere visit to the project site. It is submitted that as reflected in the photographs clicked during the site visit by Allottees on 16.09.2021 (**Annexure A-4**), while the office buildings in the project are complete and lease/transfer deeds pertaining to the same have been signed with big brands such as 'Shopper's Stop', the residential buildings are still far from completion. It is submitted that not



only a valuable asset of the Corporate Debtor was stripped and transferred to subsidiaries with intent to defraud creditors of residential apartments, but even the amounts collected from the residential allottees has not been entirely utilised for construction of residential buildings and siphoned off for other purposes.

That a perusal of the certificate of Chartered Accountant dated 8th April, 2020, uploaded by the Corporate Debtor itself on the website of the UP RERA, reflects that while the Corporate Debtor had received a sum of Rs. 174. 34 Crores from the allottees till March, 2020, it spent only Rs. 77.54 Crores on construction. That the certificate also adduces that even as per the Corporate Debtor's own claim, the project is only 46% complete, when the possession of complete flats was to be handed over to allottees starting January, 2019 as per agreements entered with the Applicant Allottees. A copy of the certificate of Chartered Accountant dated 8th April, 2020 is attached an annexed hereto as **Annexure A-8.**

That from the facts stated above, it is evident that there is a wilful default by the Corporate Debtor in terms of Section 3(12) of the IBC. It is reiterated that as per agreement entered with the Applicants, the Corporate Debtor was obliged to handover possession of complete apartments within 42 months (plus 6 months grace period) from the date of execution of the agreement. It is submitted that agreements for flats in the case of 24 apartments which are part of the instant petition (constituting more than 10% of the total allottees) were executed between 9th January, 2015 to 10th March, 2016 and agreements for flats in the case of 5 apartments were executed between 3rd April, 2017 to 10th June, 2019, and therefore the possession of complete flats as per the agreement was to be handed over between 9th January, 2019 to 10th March, 2020 and 3rd April, 2021 to



19th March, 2021 respectively Corporate Debtor. The Corporate Debtor has therefore been in default since January, 2019. That the Applicants herein have made payments timely in accordance with their respective agreed payment plan and the delay, as visible from the facts narrated above, is a result of the management of the Corporate Debtor diverting amounts collected from allottees to purposes other than construction. Therefore, the Corporate Debtor can have no reasonable justification for such wilful inordinate delay. It is submitted that even presently, the project in question is at best only 46% complete.

That the Applicant Allottees have held many meetings with the present management of the Corporate Debtor drawing its attention to the continuing default and seeking remedial measures. The Applicant Allottees have even initiated proceedings before consumer forums/real estate authorities seeking timely delivery of their apartments and/or compensation/refund on account of the repeated malpractices of the Corporate Debtor. However, the present management of the Corporate Debtor chose to ignore such legitimate concerns and instead drag the Corporate Debtor to the present state where it is neither in a position to complete the project nor refund the money paid by the Financial Creditors, and only a corporate insolvency resolution process under IBC can possibly cure the default of the Corporate Debtor and provide relief to the pained allottees/homebuyers.

That as visible in the computation sheet, a 'default' amounting to Rs. 70,93,58,956/- (Rupees Seventy Crores Ninety Three



Lakhs Fifty Eight Thousand Nine Hundred Fifty Six only) been committed by the Corporate Debtor and hence the present petition satisfies the threshold limit prescribed under Section 4 of the IBC. The amounts paid as reflected in the computation sheets are derived from the Ledger and/or Payment receipts issued to the Financial Creditors by the Corporate Debtor itself. Further, it is submitted that the 'default' in the instant case is prior to 25.03.2020 and hence, the present application does not attract the provisions of Section 10A of the IBC. That the present application under Section 7 of the IBC is complete and no disciplinary proceedings are pending against the proposed interim resolution professional, Mr. Chandra Prakash (Registration Number: IBBI/IPA-002/IP-N00660/2018). A copy of the detailed chart pertaining to the financial creditors is attached and annexed hereto as **Annexure A-9**. A copy of the Ledger/ Receipts pertaining to financial creditors is attached and annexed hereto as **Annexure A-10**.

That as enumerated above, the present management has managed the business of the Corporate Debtor in a manner which has not only resulted in the Corporate



		Debtor committing wilful default but by divesting valuable assets of the Corporate Debtor, the present management is also continuing to cause prejudice to the interests of hundreds of allottees/financial creditors who have paid their hard earned money to the Corporate Debtor. It is therefore imperative that corporate insolvency resolution process be initiated in respect of the Corporate Debtor at the earliest so that the losses of innocent allottees like the Applicants can be mitigated as well as past fraudulent actions of the present management of the Corporate Debtor are brought before this Hon'ble Tribunal for corrective action. In light of the repeated indifference of the Corporate Debtor, the present application is preferred in the interest of securing the hard earned money of the Applicants as well as other similar placed allottees and with the <i>bonafide</i> intent of resolving the insolvency of the Corporate Debtor.
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	Total amount claimed is Rs. 70,93,58,956/- (Rupees Seventy Crores Ninety Three Lakhs Fifty Eight Thousand Nine Hundred Fifty Six only) includes interest @ 18% per annum, as on 15.08.2021. Date of Default: 09.01.2019 and subsequent dates on which possession was to be delivered as per agreements entered with financial creditors. (Detailed chart is attached herewith and marked as ANNEXURE A-6)

5. It is worth taking note that the another set of Allottees qua the Corporate Debtor have also preferred the IB-463/ND/2022 (Ashok Chand Srivastava and Ors. vs. M/s. Three C Properties Pvt. Ltd.), initiating CIRP qua the Corporate Debtor and have prayed for issuance of an order by this Tribunal in terms of the



provisions of Section 5(12) read with Section 7(5)(a) of IBC, 2016, directing commencement of the CIRP.

6. In the reply filed on behalf of the Corporate Debtor, it has raised the following pleas:

- a) The Corporate Debtor is a special purpose company for a consortium of real estate companies namely, M/s. Vistar Constructions Pvt. Ltd., M/s. Three C Universal Developers Pvt. Ltd., M/s. Advance Graphics Complogic Solutions Pvt. Ltd. M/s. Capital Infra Projects Pvt. Ltd. and M/s. Jakson Limited.
- b) The Applicants are not Financial Creditors; thus the present Application is not maintainable.
- c) The proceedings under Section 7 of IBC, 2016, cannot be resorted to as debt recovery proceedings.
- d) The Respondent company is not able to commence the project only because of their being no clear title qua the allotted Plot No.10, Block H, Sector 98, Noida, U.P. admeasuring about 24,000 sq. mtrs., and only the paper possession of the plot has been handed over to the Corporate Debtor.
- e) The Applicants who are joint allottees qua the same units have projected themselves as separate allottees just to ensure that the threshold limit as stipulated in Second proviso to Section 7(1) of IBC, 2016 is fulfilled.
- f) After the lease deed dated 26.04.2011 executed in favour of the Respondent Company, the Plot No. H-10 was divided into three parts viz. Plot No. H-10 area 10240 sq. meter, H-10A Area 8825 sq. meter and H-10B Area 4935 sq.



meter and in respect of Plot No. H-10A and H-10B the Sub lease deed were also executed on 27.06.2017. The land which was allotted to the Respondent Company was acquired by the State Government in terms of the notification dated 10/11.02.1994 and 18.07.1994 respectively.

- g) The Respondent Company has also suffered from unforeseen circumstances as also the orders from Hon'ble National Green Tribunal passed on 14.08.2013, 17.09.2013 and 28.10.2013 concerning the Okhla Bird Sanctuary located in proximity of the project. The order dated 14.08.2013 passed by Hon'ble National Green Tribunal prevented the Respondent Company from carrying out any development activity within 10 km radius of the Okhla Bird Sanctuary without obtaining a prior environmental clearance. The order was modified only on 28.10.2013, which prohibited from issuing any occupancy/completion certificate in respect of the projects which were within 10 km radius of the Okhla Bird Sanctuary, and made certain observation reproduced in the reply of the Respondents.
- h) The NOIDA has a policy, in terms of which, any land or project threatened or encumbered are covered by Zero Period Policy i.e. till the period the encumbrance and/or the dispute is resolved, the allottee qua the land is exempted from the payment of any ground rent, interest, levies etc. for the entire period of encumbrances till the dispute exist. The Respondent Company and the land in question are squarely covered under the Zero Period Policy and the Petitioners are entitled to 'payment free' period from 26.04.2011 to 19.08.2015.



- i) That the Corporate Debtor has preferred W.P.C. No. 20043 of 2017 before Hon'ble Allahabad High Court and has been seeking the declaration of the intervening period from 2011 till 2015 as Zero Period with consequential benefits to it. Upon considering the prayer made by the Respondent Company, Hon'ble Allahabad High Court passed an order, directing the CEO/Noida Authority to decide the representation of the Corporate Debtor/Respondent Company within a period of 2 months from the date of filing of the representation. In terms of the order, the Noida cannot take any coercive step against the Corporate Debtor till the disposal of the petition. The Respondent has already preferred a representation in terms of the order passed by the Hon'ble High Court, but the representation made on 25.05.2017 has not yet been decided. Thus, the Respondent Company/Corporate Debtor preferred W.P.C. 2824 of 2018 before Hon'ble Allahabad High Court and it again directed the Noida to decide the representation and not to take coercive step against the Corporate Debtor till disposal of the representation.
- j) During the pendency and consideration of the representation by the Noida Authority certain developments could take place as enumerated in para gg of the petition.
- k) On 27.04.2018, a comprehensive Report was submitted by the Standing Committee — which Committee comprises of six (6) Members — (i) Assistant General Manager; (ii) Finance Controller; (iii) Chief Legal Advisor; (iv) Chief Architect Planner; (v) Chief Engineer — Civil; and (vi) Additional Chief



Executive Officer. The Standing Committee, while taking note of the agitating farmers', the various litigation pending against the said Land, all Reports submitted by various Officials, was of the view that the said Land was affected by the litigations pending before the Hon'ble Supreme Court of India and Hon'ble Allahabad High Court. The Standing Committee further observed that these circumstances may be taken into consideration while deciding the Zero Period for the said Land. True copy of the comprehensive report of the standing committee dated 27.04.2018 is annexed as

ANNEXURE R-11.

- l) The Noida did not deal with the representation of the Corporate Debtor made against cancellation of the plot fairly.
- m) The Corporate Debtor is entitled to Zero Period benefit, for the period from 26.04.2011 till 19.08.2015, in terms of the report of the committee constituted to examine the issues related to legacy start the real estate projects. Viz. Amitabh Kant Committee.
- n) Even if no Zero Period Policy of Noida is in existence, in terms of the principle of natural justice, the Corporate Debtor is entitled to Zero Period benefit i.e. for the period from 26.04.2011 till 19.08.2015 and it should not be made liable to pay any extra charge for default/delaying in paying the premium.
- o) The application is not joined by minimum 10% homebuyers.

7. One Mr. Ashmeet Singh Bhatia preferred IA-6240/2023, seeking production of certain documents referred to in Para 20 of the application.



8. Mr. Ashmeet Singh Bhatia also filed IA-1452/2024, seeking to place on record the judgments of Hon'ble Supreme Court. He could also prefer IA-3816/2022, alleging collusion between the Financial Creditor in a class and the Respondent. In the IA-3816/2022 filed by him, Mr. Ashmeet Singh Bhatia has alleged as under:-

- a) The hidden agenda behind the collusive petition is to legitimise and legalise the intentional and criminal siphoning off of Rs.100 of Crores by the promoters viz, Mr. Nirmal Singh and his family members.
- b) The Applicant Ashmeet Singh Bhatia has also preferred the IA-4971/2020 in C.P. (IB)-849/PB/2020, alleging collusion between the Creditor and the Debtor.
- c) He could also prefer an IA in C.P. (IB)-463/ND/2022, questioning the maintainability of the same against the Corporate Debtor.
- d) The GGPPL, a Group Company of the Corporate Debtor could siphon off about Rs. 3000 Crores of about 7000 homebuyers.

9. In the application filed by him, Mr. Ashmeet Singh Bhatia has broadly espoused the frauds and irregularities committed by the promoters qua the GGPPL which according to him was promoted by the promoters qua the Corporate Debtor. The allegations made by him also concerns GGPPL.

10. During the course of hearing, Mr. Gaurav Mitra, the Ld. Counsel for the Applicant in IA-3816/2022 could oppose the captioned petition i.e. IB-597/PB/2021, by raising almost same arguments, which were raised by the Ld.

Counsel for the Corporate Debtor. Only one different argument raised by the IA-3816/2022, IA-6240/2023, IA-1452/2024 & IA-3753/2024 in CP(IB)-597/PB/2021 Mr. Sachin Singh & Ors. vs. M/s. Three C Properties Pvt. Ltd.



Corporate Debtor was that the Corporate Debtor was entitled to the benefit of the report of Amitabh Kant Committee. During the course of hearing, the Ld. Counsel, Mr. Gaurav Mitra did not make any reference to IA-1452/2024 and IA-6240/2023. He did not even press the applications. The relevance of the documents, sought to be produced by the Applicant in IA-6240/2023 could also be relevant to buttress the plea of the Corporate Debtor that a residential project could not be bifurcated into two.

11. During the course of hearing, the Ld. Counsel for the Applicant in IA-1452/2024 did not refer to any of the judgments enclosed with the IA. His repeated argument was only that the 60% of the portion of the project in question being utilised for commercial purpose, the Applicants being only 10% of those who are allotted residential unit could not maintain the petition. As has been noted hereinabove, more or less, similar were the submissions put forth on behalf of the Corporate Debtor.

12. The issue as to whether the Applicants in the present application constitute 10% of the homebuyers is concerned, it can be seen from Annexure A-3 (Page 207) of the petition, that the total residential unit qua the project are 255, thus the allottees of 29 units would constitute 10% of total number of allottees.

13. The Ld. Counsel for the Corporate Debtor and the intervener could argue with vehemence that once a project comprised, both the residential and commercial space, the allottees of the 10% of the total space would specify the



threshold limit of home buyers, as stipulated in second proviso to Section 7(1) of IBC, 2016 and the Applicants who are allottee only of 10% of residential unit cannot maintain the present petition. It is not in dispute that the project in question was divided in residential and commercial and the residential part of the project was treated as separate project. The averments made in this regard, in the application filed by the Applicants was not disputed by the Corporate Debtor.

14. From the aforementioned, it is clear that the residential project was started from the commercial project. During the course of hearing, no one pleaded that the project was not bifurcated in two parts. As has been defined in Section 2(d) of Real Estate (Regulation and Development) Act, 2016, “allottee” in relation to real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may, be is given on rent. The Section 2(d) of the Act reads thus:-

“2. Definitions.—*In this Act, unless the context otherwise requires,—*
.....

(d) “allottee” in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;”



15. The Real Estate Project has been defined in Clause (zn) of Section 2 of the Real Estate (Regulation and Development) Act, 2016. In terms of the definition, the “Real Estate Project” means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto.

16. As can be seen from the Second proviso to Section 7(1) of IBC, 2016, for Financial Creditors who are allottee in a Real Estate Project an application for initiating Corporate Insolvency Resolution Process against the Corporate Debtor shall be filed jointly or by not less than 100 of such allottees under the same real estate project or not less than 10% of the total number of such allottee under the same Real Estate Project whichever is less. The proviso to Section 7(1) of the code reads thus:-

“7. Initiation of corporate insolvency resolution process by financial creditor.—

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less”



17. As has been noted hereinabove, in terms of the definition of the Real Estate Project given in clause (zn) of Section 2 of Real Estate (Regulation and Development) Act, 2016, Real Estate Project includes even the conversion of an existing building or a part thereof into apartments. Thus, the 10% allottees qua the Real Estate Project can maintain the present petition. The issue could be addressed by Hon'ble Supreme Court in **Manish Kumar vs. Union of India** 2021 (5) SCC 1. Para 176 and 177 of the judgment reads thus:-

“176. We have referred to the definition of the word “allottee” in Section 2(d) of the RERA. In regard to a real estate project, all persons, who are treated as allottees, as per the definition of allottee would be entitled to be treated as allottees, for the purpose of Section 5(8)(f) (Explanation) and also, for the purpose of the impugned provisos. All that is required is that the allottees must relate to same real estate project. In other words, if a promoter has a different real estate project, be it in relation to apartments, in the case of an application under Section 7, those would not be reckoned in computing one-tenth as well as the total allotments.

177. The rationale behind confining allottees to the same real estate project is to promote the object of the Code. Once the threshold requirement can pass muster when tested in the anvil of a challenge based on Articles 14, 19 and 21, then, there is both logic and reason behind the legislative value judgment that the allottees, who must join the application under the impugned provisos, must be related to the same real estate project. The connection with the same real estate project is crucial to the determination of the critical mass, which legislature has in mind, as a part of its scheme, to streamline the working of the Code. If it is to embrace the total number of allottees of all projects, which a promoter of a real estate project, may be having, in one sense, it will make the task of



the applicant himself, more cumbersome. It becomes a sword, which will cut both ways. This is for the reason that the complaints, relating to different projects, may be different. With regard to one project of a promoter of real estate project, maybe, in the advanced stage, the allottees in a particular project, may not have much of a complaint. The complaint, in relation to yet another project, may be more serious. If the complaint in respect of the latter, attracts the attention of a critical mass of allottees, and the proposed applicant is part of that project in the said project, then, it may be easier for the allottees to fulfil the statutory mantra in the impugned provisos, with the junction of likeminded souls. If, on the other hand, the requirement was to make a search for allottees of different projects, as would be the case, if the entirety of the allottees, under different projects, were to be reckoned, the task would have been much more cumbersome. The requirement of the allottees, being drawn from the same project, stands to reason and also does not suffer from any constitutional blemish, as pointed out.”

18. Here, we may not be oblivious of the fact that another set of allottees qua 21 units have also preferred a separate petition against the Respondent viz. IB-463/ND/2022.

19. As far as the plea raised on behalf of the Corporate Debtor, regarding the benefit of zero liability of the Corporate Debtor for certain period is concerned, in terms of the provisions of Section 17 r/w Section 20 of IBC, 2016, it would be for the IRP and in terms of Section 25 of the Code, for the RP to look after the management and affairs of the Corporate Debtor, on commencement of CIRP. In the process, the IRP/RP would very much be obliged to take steps to take benefit of the report of Amitabh Kant Committee for the benefit of the Corporate Debtors and its Creditors. Regarding the plea of the Corporate Debtor that no default has
IA-3816/2022, IA-6240/2023, IA-1452/2024 & IA-3753/2024 in CP(IB)-597/PB/2021
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yet been committed, it can be seen from the Flat Buyer Agreement placed on record as Annexure A-12 Colly to the petition, the possession of the apartment was to be given within 42 months with a grace period of 6 months from the date of the execution of the agreement. The clause 5.1 of the agreement reads thus:-

“5.1 Subject to Clause 5.2 and subject to the Buyer making timely payments, the Company shall endeavor to complete the construction of the tower in which the Apartment is situated within 42 months, with a grace period of 6 (six) months from the date of the execution of this Agreement provided that all amounts due and payable by the Buyer has been paid to the Company in timely manner. The Company shall be entitled to reasonable extension of time for the possession of the Apartment in the event of any default or negligence attributable to the Buyer's fulfillment of terms & conditions of this Agreement.”

20. The date of agreement is 28.09.2015. Thus, when the Corporate Debtor failed to handover the possession of the allotted units by 27th September, 2019, it committed the default. The present petition was filed in the year 2021.

21. Apparently, the Corporate Debtor committed default in giving possession of the allotted units qua the residential project to the Homebuyers and has committed a default in terms of the provisions of Section 7 of IBC, 2016, read with explanation to Section 5(8)(f) thereof.

22. While considering an application filed under Section 7(2) of IBC, 2016, what we need to see as to whether there is a debt and default committed in repayment of the same. Apparently, the Corporate Debtor has committed default in terms of the provisions of Section 7(5) read with explanation to Section 5(8)(f),



IBC, 2016 and deserves to be admitted. Regarding the concern raised by the intervener, despite our repeated asking, the Ld. Counsel for the intervener who preferred the IA-1452/2024, IA-6240/2023 and IA-3816/2022 could not indicate that in what manner the Applicants or Homebuyers can be in collusion with the Corporate Debtor and what can be their interest to drive the Corporate Debtor in CIRP, except looking for the possession of their dwelling units. We do not see any material on record, which could persuade to take as a view that the Applicants preferred the present proceedings with an intent to defraud any person or with malicious intent or for any purpose other than for the Resolution of Insolvency or liquidation as the case may be. The averments made by the Applicant in IA-3816/2022 do not satisfy the requirement/ingredients of Section 65 of IBC, 2016. The Section 65 of the Code reads thus:-

“65. Fraudulent or malicious initiation of proceedings.—(1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.

(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.

[(3) If any person initiates the pre-packaged insolvency resolution process—

(a) fraudulently or with malicious intent for any purpose other than for the resolution of insolvency; or



(b) with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.]”

23. As far as the other concern raised by the Applicant in IA-3816/2022 i.e. the fraud committed by the promoters of GGPPL and the Corporate Debtor being Group Company of GGPPL is concerned, we believe that the concern would be addressed by appointing same IPE qua the Corporate Debtor, which was appointed in respect of GGPPL. With the wake, the application is admitted and the IPE, **ARCK Resolution Professionals LLP** [IBBI/IPE-0030/IPA-1/2022-23/50013] is appointed as RP qua the Corporate Debtor. In the backdrop of the admission of the application and in view of the provisions of Section 7 (6) of IBC, 2016, the CIRP qua the CD stands commenced. It is made clear that if for any reason the IPE qua the GGPPL is replaced, the new RP would also replace it qua the present proceedings also.

24. The Corporate Debtor has raised concern regarding various difficulties faced by it in taking possession of the allotted plot. Indubitably, in the present proceedings initiated under Section 7 of IBC, 2016, we are not expected to go into the difficulties faced by the Corporate Debtor, which led to default. We need to see only the criteria indicated in Section 7(3) and (5) of IBC, 2016.

25. **In the wake of commencement of CIRP, moratorium as provided under Section 14 of IBC, 2016 is declared qua the CD and** as a necessary consequence thereof 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 IA-3816/2022, IA-6240/2023, IA-1452/2024 & IA-3753/2024 in CP(IB)-597/PB/2021 Mr. Sachin Singh & Ors. vs. M/s. Three C Properties Pvt. Ltd.



against the Respondent 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 Respondent 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 Respondent 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 Respondent.

26. The IPE appointed would appoint a Competitive Auditor and get the thorough Forensic Audit qua the Corporate Debtor being conducted. It will get its assets valued in all respects. The IPE would be entitled to approach the local administration to recover the possession of the assets of the Corporate Debtor. On being so approached, the local administration would act in due deference to the provisions of Section 424 of the Companies Act, 2013 and Regulation 30 of IBBI (CIRP) Regulations, 2016. The RP would also take steps to secure the benefit of the report of Amitabh Kant Committee to maintain the Corporate Debtor as a going concern.

27. The Petitioner is directed to deposit Rs. 2,00,000/- only with the IPE to meet the immediate expenses. The amount, however, will be subject to



adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

28. A copy of this Order shall immediately be communicated by the Registry/Court Officer of this Tribunal to the Petitioner /Financial Creditor, the Respondent/Corporate Debtor and the IRP mentioned above.

29. In addition, a copy of this Order shall also be forwarded by the Registry/Court Officer of this Tribunal to the IBBI for their records.

30. **IA-1452/202 and IA-3816/2022** both these applications stand disposed of in terms of the aforementioned order. **No Cost.**

IA-3753/2024

After we reserved the order in IB-597/PB/2021 on 19.07.2024, the present application filed by Mr. Ashmeet Singh Bhatia was listed before us on 01.08.2024. The prayer made in the present application is for passing an order in I.A No. 6240/2023 before passing the order in IA-3816/2022.

2. According to the Applicant, this Tribunal need to ask the land-owning agency i.e. NOIDA to produce before it the copy of application filed by Corporate Debtor before NOIDA for conversion or sanction of 'Lotus Isle' residential/the Project Land. The documents sought to be discovered in the IA-3753/2024 are copies of by-laws, rules, regulations and amongst the other regulations framed under UPIAD Act that allows sub-division and bifurcation of a commercial integrated project into two separate residential and commercial projects as has



been done in the case of the project in question. The para 6 of the application wherein the list of documents are referred to reads thus:-

“6. Thus, in light of the above stated facts, it is prayed that the documents sought vide the Discovery Application are essential for sound adjudication of I.A. NO. 3816 of 2022 in C.P.(IB) 597 of 2021 AND the C.P.(IB) 597 of 2021 and thus the order on merits in the discovery application ought to be passed prior to consideration of the merits of the Other Application as otherwise the reliefs sought in the Discovery Application would become infructuous as mentioned hereinabove. At the cost of brevity, the list of documents sought by way of the Discovery Application are mentioned below:

- i. Copy of the Application filed by Corporate Debtor, if any, for conversion or sanction for construction of Lotus Isle residential project on otherwise commercial plot, i.e. the Project Land.*
- ii. Copies of the bye-laws, rules, regulations framed under UPIAD Act that allows sub-division and bifurcation of a commercial integrated project into two separate residential and commercial projects as has been done in the case of the project in question.*
- iii. Copies of the applications filed by Dwelling and Fling, in compliance with Clauses III. 28 & 29 of the Sub Lease Deeds dated 27.06.2017, for approval of any subsequent layout plans for constructing the commercial towers on H-10A and H-10B subplots, Sector 98 Noida, as an integrated commercial project, or as a stand alone commercial tower(s), after executing the sub-lease deed from the NOIDA Authority and copies of any such approvals if granted by NOIDA Authority.*
- iv. Approval granted by the official of the NOIDA Authority for waiver of condition imposed under Clause II.(a) & III 27 of the lease deed 26.04.2011 and the sub-lease deed dated 27.06.2017, for*



maintenance of minimum shareholding of 30% by the lead member, i.e. M/s Vistar Constructions Pvt. Ltd. in the CD, & for maintenance of Dwelling and Fling to be 100% subsidiaries of the CD.

- v. Completion and Occupations Certificates issued by the NOIDA Authority in respect of the commercial project build on H-10/A and H-10/B sub-plots along with relevant order/rule/regulation permitting issuance of a separate standalone completion certificate for the subdivided plot on the Project Land, directly in the names of the subsidiary companies, Dwellings and Fling, whose Plot Nos. H10/A and H-10/B, do not have the separate mandatory common facilities on either of these two sub-divided plots.*
- vi. Actions taken by NOIDA against the CD, Dwelling and Fling for the gross violations of the terms of the Lease Deed, Brochure and Sub Lease Deeds.*
- vii. Actions taken by RERA against non-registration of commercial project developed on Plot H-10A and H-10B Sector 98 Noida.*
- viii. Copies of the relevant provisions of the RERA Act or UP RERA Rules, whereunder the UP RERA is empowered to register the “Lotus Isle Residential” Project, in its present form and manner on just 10,240 sqm. part land, admittedly of commercial land use; on the basis of the Lease Deed dated 26.04.2011 and the revised layout plan, dated 19.05.2015, issued by the NOIDA Authority for the entire Integrated Commercial Project on land comprising of a total of 24,000 sq. mtrs.”*

3. The applicant wants us to consider the aforementioned documents to decide the issue as to whether the NOIDA could approve the plan, permitting



sub-division or bifurcation of an integrated project into two separate residential and commercial projects as has been done in the present case. As can be seen from the provisions of Section 7(3) and (5)(8)(f) of IBC, 2016, what we need to see, while considering admission of an application filed under Section 7(1) and (2) of IBC, 2016, is whether default has occurred, no disciplinary proceedings are pending against the proposed Resolution Professional and the application is complete. While exercise our jurisdiction in terms of Section 7 of IBC, 2016, it is not open for us to go into the issue of validity or permissibility of bifurcation of a commercial integrated project. With this view, **both IA-3753/2024 and 6240/2023 are rejected.**

**Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)**

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