

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

Inv. Pett. No. 35/ND/2023, I.A. No. 3628/ND/2023 and I.A.
No. 2935/ND/2023

IN

Company Petition No. (IB)-129(ND)/2023

IN THE MATTER OF (IB)-129(ND)/2023:

(SECTION: 7 of IBC, 2016)

Sh. Suresh Kumar Verma & Ors.

**... Applicants/
Financial Creditors**

Versus

Eco Green Buildtech Private Limited

**... Respondent/
Corporate Debtor**

AND IN THE MATTER OF INV. PETT. NO. 35/ND/2023:

(Section: 60(5) of IBC, 2016)

SBICAP Ventures Limited

202, Maker Tower, E, Cuffe Parade,
Colaba, Mumbai-400005

... Applicant

Versus

Eco Green Buildtech Private Limited

Sikka House, C-60, Preet Vihar,
Vikas Marg, New Delhi-110092

**... Respondent/
Corporate Debtor**

AND IN THE MATTER OF IA. NO. 3628/ND/2023:

(Section: 65 of IBC r/w Rule 11 of NCLT Rules, 2016)

Eco Green Buildtech Pvt. Ltd.

(Through its Authorised Representative
Mr. Puran)
C-60, Preet Vihar, Vikas Marg,
New Delhi-110092

... Applicant

Versus

1. Suresh Kumar Verma

k-8081, 16th Avenue Gaur City-2,
Greater Noida West, GB Nagar,
Uttar Pradesh-201009

2. Vishal Pratap Singh

M 902, Monarch Tower,
Ajnara GenX, Crossing Republik,
Ghaziabad, Uttar Pradesh-201016

... Respondents

AND IN THE MATTER OF IA. NO. 2935/ND/2023:

(Section: 60(5) of IBC, 2016)

Suresh Kumar Verma

K-8081, 16th Avenue Gaur City-2,
Greater Noida West, GB Nagar,
Uttar Pradesh-201009

... Applicant

Versus

Eco Green Buildtech Private Limited

Sikka House C-60,
Preet Vihar, Vikas Marg,
New Delhi-110092

... Respondent

Order Delivered on: 12.03.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

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

PRESENT:

For the Petitioner : Adv. Aditya Dewan, Adv. Parth Tiwari

For the Respondent : Adv. Rashmi Chopra, Adv. Vaibhav

For the Intervener : Adv. Prashant Kumar

ORDER

The captioned petition has been preferred by as many as 189 applicants viz. the Financial Creditors in a class for initiation of CIRP qua the Corporate Debtor i.e. Eco Green Buildtech Pvt. Ltd. It is the case of the Petitioners that the CD could commit default on 15.04.2019, as it failed to deliver the possession of the flats/units allotted to the Petitioners. The notice qua the petition was issued to CD on 09.03.2023.

Inv. Pett.-35/ND/2023, I.A.-3628/ND/2023 and I.A.-2935/ND/2023 in (IB)-129/(ND)/ 2023
Suresh Kumar Verma & Ors. vs. Eco Green Buildtech Pvt. Ltd.

2. On 09.08.2023, Mr. P. Nagesh Ld. Senior Counsel appearing for the Corporate Debtor submitted that the CD is prepared to refund the amount paid by the Applicant to CD along with interest @ 3% per annum and is willing to settle the default alleged in the petition. The order dated 09.08.2023 passed by this Tribunal reads thus:-

IB-129/ND/2023: *Mr. P. Nagesh, Ld. Sr. Counsel appearing for the CD submitted that the CD is prepared to refund the amount paid by the Applicants to CD along with interest @ 8.3% and is willing to settle the defaulted amount with them. It is for the Ld. Counsels for the parties to take steps in the direction. As prayed by Mr. P. Nagesh, Ld. Sr. Counsel for the CD, hearing in the captioned petition is deferred to 28.08.2023.*

IA-2935/2023: *By way of the captioned application, the Applicant has sought the deletion of the name of six of the Applicants from the array of parties (referred to in Annexure R-1 to the application). Indubitably, the reply to the application filed is not by either of the said six Petitioners but by the Applicants other than those mentioned in Annexure R-1. Ld. Counsel for the Applicants seeks an opportunity to file an affidavit of the six Applicants referred to Annexure R-1 to espouse that no settlement has taken place between CD and the said individuals. At his request, the hearing in the captioned application is deferred to 28.08.2023.*

IA-3628/2023: *List on 28.08.2023.*

3. Subsequently, the Ld. Sr. Counsel for the CD could propose that the CD was prepared to enter into settlement with the Petitioners as also to redress the grievance of all the allottees. In the wake, we passed the order dated 31.08.2023, which reads thus:-

“While referring to the proposal given by the CD as recorded in the order dated 09.08.2023, Ld. Counsel for the Applicant submitted that the

said proposal can be considered by the Applicants subject to the conditions that: a) The offer should come by way of an affidavit duly sworn by all the directors of the CD, b) Instead of cheques, the CD should offer the refund in the shape of demand drafts in the name of allottees, and c) The Applicants should be given options i.e. whether they want the possession of the allotted unit or the refund of the money.

Confronted with the stand taken on behalf of the Applicants, Ld. Counsel appearing for the CD undertook to convene a meeting of all the Applicants herein on 02.09.2023. In the meeting so scheduled, the CD will carry the original demand drafts, as also, the duly sworn-in affidavit regarding their offer to refund the money to the applicants, which will also be filed concurrently before this Adjudicating Authority. In order to enable the Applicants herein to exercise options, during the meeting, the CD would keep two separate registers for recording their options for refund of their money or for getting possession of the allotted unit. In the registers, the Applicant allottees shall enter their respective exercised option with their signature, which will be countersigned by the representative Director of the CD. Both parties shall file the joint report/minutes of the meeting scheduled to be held on 02.09.2023. Ld. Counsels for the parties shall also make it convenient to remain present and ensure the orderly conduct of the meeting.

In view of the aforementioned, the hearing in the captioned petition is deferred to 18.09.2023. It is made clear that in the event of failure of the aforesaid arrangement/compromise sought to be made by the counsels for the parties, the captioned petition shall be heard on the next date on merits. List on 18.09.2023.

Copy of the order be given Dasti.

Invt. Pett.-35/2023, IA-3628/2023 & IA-2935/2023: List on 18.09.2023.”

4. Later, in the wake of willingness of the parties to enter into settlement, we appointed Court Commissioner as suggested by the counsels for the parties to take stock of the situation regarding the meeting of the parties rescheduled to be held on 23.09.2023. The order dated 18.09.2023 reads thus:-

“Inv. Petition-35/2023, IA-3628/2023 & IA-2935/2023: *As prayed by the Ld. Counsels for the parties jointly, the exercise which was scheduled on 02.09.2023 would now take place on 23.09.2023. As suggested by the Ld. Counsels for the parties Mr. Rachit Mittal (E-mail rachit@rmlawchambers.in) (Mobile No. 9873997047) is appointed as Court Commissioner to take stock of the situation in the meeting and file his report within 10 days from the meeting. The fees of the Court Commissioner as suggested by the Counsels for the parties is fixed Rs. 1,00,000/-.*

It would be open to parties to put their queries before Mr. Rachit Mittal, the Court Commissioner who will take note of the same and would ensure that the queries and response thereto are made part of the report.

In the meantime, the CD would file an affidavit indicating the present status of the tower/project.

List on 18.10.2023.”

5. The SBICAP Ventures Limited (Fund Manager of SWAMIH Investment Fund I, a private trust registered with the Securities and Exchange Board of India, as a category, II Alternative Investment Fund), preferred Intervention Petition-35/2023, espousing therein:- (i) SWAMIH Investment Fund I (“SWAMIH Fund”) which is an alternate investment fund was set up to provide priority debt financing for completion of stalled housing projects and the Applicant i.e. SBICAP Ventures Limited was assigned the role of investment

manager for the fund; (ii) a Debenture Trust Deed dated 29.03.2022, was executed by and between Catalyst Trusteeship Limited (“Debenture Trustee”), Corporate Debtor, the promoters of the Corporate Debtor and the Corporate Guarantor, in terms of which 1595 unlisted, unrated, senior, secured, redeemable, transferable, non-convertible debentures each with value of Rs. 10,00,000/- (Rupees Ten Lakhs) for an aggregate amount not exceeding the limit of Rs. 159,50,00,000/- (Rupees One Hundred Fifty-Nine Crores Fifty Lakhs Only) were proposed to be issued by the Corporate Debtor and subscribed by the Applicant in I.A. being the Initial Debenture Holder in two or more tranches on the terms and conditions recorded in inter alia, the Trust Deed; (iii) the Applicant in the IA has extended financial assistance to the CD in the form of subscription to the debentures; (iv) the Corporate Debtor is solvent and financially healthy; (v) the Corporate Debtor is expected to complete the construction of the Project in phases, and the last phase would be completed by May 2025. Having espoused the aforementioned factual position, the Applicant in the Intervention Petition has prayed for rejection of the C.P. (IB)-129/2023 i.e. the captioned petition. The paras 6 and 7 of the IP-35/2023 reads thus:-

“6. The brief facts that led to the filing of the present application are elaborated in detail below:

*i. Catalyst Trusteeship Limited (**“Catalyst/ Debenture Trustee”**) is a company incorporated under the provisions of the Companies Act, 1956 and is engaged in providing corporate trusteeship services. Catalyst was appointed as a debenture trustee by the Corporate Debtor under the Debenture Trustee Agreement dated March 29, 2022, read with the First Amendment to the Debenture Trustee*

*Appointment Agreement i.e., Financial Creditor herein. A true copy of the Debenture Trustee Appointment Agreement dated March 29, 2022, is annexed herewith and marked as **Annexure-A/2**. A true copy of the First Amendment to the Debenture Trustee Appointment Agreement dated November 10, 2022, is annexed herewith and marked as **Annexure-A/3**.*

- ii. The Corporate Debtor is a company incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of, inter alia, development and construction of real estate projects.*

- iii. A Debenture Trust Deed ("**Trust Deed**") dated March 29, 2022, was executed by and between the Debenture Trustee, the Corporate Debtor, the promoters of the Corporate Debtor and the Corporate Guarantors by which 1595 unlisted, unrated, senior, secured, redeemable, transferable debentures each with face value of Rs. 10,00,000/- (Rupees Ten Lakhs only) each for an aggregate amount not exceeding the limit of Rs. 159,50,00,000/- (Rupees One Hundred Fifty-Nine Crores Fifty Lakhs Only) ("**Debentures**") were proposed to be issued by the Corporate Debtor and subscribed by the Applicant, being the Initial Debenture Holder in two or more tranches on the terms and conditions recorded in inter alia, the Trust Deed. A true copy of the Debenture Trust Deed dated March 29, 2022, is annexed herewith and marked as **Annexure-A/4**.*

- iv. In terms of the Trust Deed, the Applicant had extended financial assistance of Rs. 1,59,00,00,000/- (Rupees One Hundred Fifty Nine Crores Fifty Lakhs Only) to the Corporate Debtor for meeting its funding requirements for*

the residential project, namely, Sikka Kaamyra Greens (“the Project”).

- v. Thereafter, on November 10, 2022, a First Amendment Debenture Trust Deed was executed, wherein the Initial Debenture Holder i.e., the Applicant herein increased the financing provided to the Corporate Debtor from an amount aggregating up to Rs. 1,59,50,00,00/- (Rupees One Hundred Fifty-Nine Crores Fifty Lakhs only) to an amount aggregating up to Rs. 207,00,00,000/- (Rupees Two Hundred Seven Crores only) by agreeing to subscribe up to 2070 unlisted, unrated, senior, secured, redeemable, transferable non-convertible debentures which shall be issued as per the terms and conditions of the Debenture Trust Deed, as amended by the First Amendment Debenture Trust Deed. A copy of the First Amendment Debenture Trust Deed dated November 10, 2022, is annexed herewith and marked as **Annexure A/5**. Pursuant to the financial assistance granted by the Applicant, a sum, of Rs. 41.66 Crores have been used towards land payments and the sum of Rs. 24.28 Crores have been used towards construction, which clearly shows the intent towards the completion of the project in a timely manner.*
- vi. The aforesaid financial assistance in the form of subscription to the debentures has been granted by the Applicant to the Corporate Debtor after conducting a detailed commercial, technical and legal due diligence of the viability of the Project and the credentials of the Corporate Debtor. It was only after being satisfied with respect to the construction of the Project, the possibility of its completion and the final objective of providing homes to the buyers who had invested their hard-earned money, the*

Applicant had disbursed the amounts and subscribed to the debentures issued by the Corporate Debtor.

vii. The financial assistance so granted by the Applicant to the Corporate Debtor was secured by: -

A. First ranking charge and mortgage over the mortgaged property in favour of the Applicant.

B. First ranking charge by way of hypothecation on the receivables dated March 29, 2022 and all rights of the company over the sold units and unsold units forming part of the project except excluded units set out in Schedule 16 of the Debenture Trustee Deed read with the First Amendment to the Deed of Hypothecation on the receivables dated November 10, 2022, as well as first ranking charge by way of Hypothecation on all assets including current and non-current assets pertaining to the Project, including without limitation to receivables, bank accounts, documents, rights/interests of the company under the Transaction Documents, authorizations pertaining to the project and insurance policies etc. except the Excluded Units.

C. First ranking exclusive pledge of Equity Shares representing 100% Share Capital of the Company read with the First Amendment to the Share Pledge Agreement dated November 10, 2022.

D. Personal Guarantees executed by the Personals Guarantors i.e., Mr. Harvinder Singh Sikka, Mr. Gurneet Singh Sikka and Mr. Gurinder Singh Sikka dated March 29, 2022, in favour of the Debenture Trustee read with the First Amendments to Personal Guarantees dated November 10, 2022.

E. Corporate Guarantee executed by the Corporate Guarantor i.e., Sikka Promoters Private Limited dated March 29, 2022, in favour of the Debenture Trustee read with the First Amendment to Corporate Guarantee dated November 10, 2022.

F. Demand Promissory Note dated March 29, 2022, executed by the Corporate Debtor read with the Demand Promissory Note dated November 10, 2022.

viii It is submitted that while the Project was under development and subsequent to the financial assistance granted by the Applicant to the Corporate Debtor, the Petitioners/ allottees have filed the Section 7 Application claiming to be financial creditors of the Corporate Debtor, on the basis various Flat Allotment Agreements executed between the Petitioners / allottees and the Corporate Debtor.

ix. In this respect it may be noted that the Section 7 Application is based on the alleged defaults committed by the Corporate Debtor under the flat allotment agreements, which were executed between the Petitioners/allottees and the Corporate Debtor.

x. It is imperative to note that the Corporate Debtor is a solvent and financially healthy company, which is the beneficiary of a fresh infusion of funds by the Applicant herein. It is pointed out that the construction of the Project is well under way, and the Corporate Debtor is expected to complete the construction of the Project in phases, and the last phase being may 2025. It is further pertinent to mention that large number homebuyers have invested their hard-earned money into the Project, and such

homebuyers will be negatively affected if the application filed by the Allottees is admitted.

xi. The said Section 7 Application came up for hearing before this Hon'ble Tribunal for the first time on March 9, 2023, wherein notice was issued to the Corporate Debtor. It is imperative to state that the filing of the Section 7 Application directly impacts the rights and interest of the numerous homebuyers who have invested their hard-earned life savings into the Project as well as the Applicant herein who is a secured financial creditor of the Corporate Debtor.

7. The Applicant respectfully submits that from a bare reading of the Section 7 Application filed by the Petitioners/allottees, it is clear that they are not concerned with achieving a resolution for the Corporate Debtor, rather owing to their own vested interests and in order to assert pressure, they have filed the instant Section 7 Application, which is vexatious and deserves outright dismissal.”

6. The Corporate Debtor preferred IA-3628/2023, espousing therein that the management of SWAMIH has extended financial support to it, but the Petitioners in the captioned petition i.e. Respondents in IA could impress upon the management of the SWAMIH Fund not to grant funding to the CD. Para 4 to 8 of the application reads thus:-

*“4. Prior to the filing of the instant Petition, there had been another Application filed under Section 7 of the Code bearing CP No. (IB) 109/ND/2022 (**1st Petition**’), by purported homebuyers. In the said Application as well, the Respondents herein had sought authorisation from alleged allottees and filed the 1st Petition. It is submitted that the same was dismissed as withdrawn on 12.09.2022. It is submitted*

that the alleged allottees had claimed that the intention of the allotment was possession and that the failure of in being handed over the same is the reason for pursuing the said Petition, whereas their conduct reflected otherwise.

5. During the pendency of the 1st Petition, the Respondents through its Association vide its email dated 28.06.2022 had written to the representatives and management of SWAMIH Fund to not grant funding to the Corporate Debtor to complete the Project, the same seems dubious in as much as the ultimate purpose of any allottee ought to be receiving their unit. It became clear that the Respondents were acting with the intent to defeat the completion of the Project and to not receive possession of their unit, thereby, taking away the rights of various other allottees who had invested in the said Project. Copy of the email dated 28.06.2022 issued by Sikka Kaamya Greens Buyers Unity Association is annexed herewith and marked as **Annexure A-2.**

6. In the 1st petition hearing, the said issue of writing emails to the Financer of the Corporate Debtor (SWAMIH Fund) was raised, it is submitted that the Respondent had at the said time, denied writing such emails. Copy of the order dated 11.07.2022 passed by this Ld. Tribunal is annexed herewith and marked as **Annexure A-3.**

7. Ultimately, on account of the Applicants/Financial Creditors not having made the required threshold of 10% or 100 allottees in terms of the Code, the said Petition was dismissed as withdrawn by this Hon'ble Tribunal vide its order dated 12.09.2022. Copy of the said order dated 12.09.2022 passed by this Ld. Tribunal is annexed herewith and marked as **Annexure A-4.**

8. It is pertinent to state that the Respondent No. 2 herein, who was the Financial Creditor No. 1 in the 1st Petition had settled the matter with the Corporate Debtor and received a complete refund of the money(s) paid by it and after having received the said payments, again started threatening the Corporate Debtor. The malicious conduct

of the Respondent No. 2 continued from when he had initiated the 1st Petition against the Corporate Debtor. The Corporate Debtor was further threatened with further civil and criminal proceedings for reasons best known to him, it is submitted that the Respondent No. 2 has taken the complete refund from the Corporate Debtor.”

7. Prior to the filing of the instant Petition, there had been another Application filed under Section 7 of the Code bearing CP No. (IB) 109/ND/2022.

8. The IA-2935/2023 was preferred by the Corporate Debtor for deletion of the name of certain applicants from the array of parties. The Annexure R-1 to the applications contains the name of such Applicants. The list of members as mentioned in the Annexure reads thus:-

LIST OF MEMBERS

S. No.	TOWER	APPLICATION NUMBER	CUSTOMER NAME	REMARKS	REMARKS-2
1.	PEARL	SKG/PEARL/1203	JITENDRA KUMAR PATHAK	DD DEPOSITED IN BANK AC	RERA ORDERED FOR REFUND
2.	PEARL	SKG/Pearl/1206	PRAVIN KUMAR SHRIVASTAVA	DD DEPOSITED IN BANK AC	RERA ORDERED FOR REFUND
3.	PEARL	SKG/PEARL/705	VIDIT LAL	DD DEPOSITED IN BANK AC	RERA
4.	OPAL	SKG/OPAL/701	RAJAN	DD DEPOSITED IN BANK AC	RERA ORDERED FOR REFUND
5.	JADE	SKG/JADE/1101	SURESH KUMAR VERMA	DD DEPOSITED IN BANK AC	RERA ORDERED FOR REFUND
6.	OPAL	SKG/OPAL/304	SANTOSH KUMAR	DD DEPOSITED IN BANK AC	RERA ORDERED FOR REFUND
7.	PEARL	SKG/PEARL/706	SARITA	DD SUBMITTED TO RERA	RC
8.	SAPPHIRE	SKG/SAPPHIRE/2004	LALIT SINGH RATHORE	DD SUBMITTED TO RERA	RERA-RC
9.	OPAL	SKG/Opal/501	PRADEEP KUMAR	DD SUBMITTED TO RERA	RC
10.	JADE	SKG/Jade/106	JITENDER SINGHAL	DD SUBMITTED TO RERA	RC
11.	PEARL	SKG/PEARL/604	HARSH CHADHA	DD SUBMITTED TO RERA	RC
12.	JADE	SKG/JADE/404	JAYANT KUMAR SAHOO	SETTLED	SETTLED
13.	RUBY	SKG/RUBY/1206.	RAGHAVENDRA GIRI	Settled	RC
14.	DIAMOND	SKG/DIAMOND/505	GEETA	DD DEPOSITED IN TEHSILDAR	RERA- RC
15.	RUBY	SKG/RUBY/506	VIJAY PRATAP SINGH GHUGHTYAL	DD DEPOSITED IN TEHSILDAR	RC

16.	JADE	SKG/JADE/1005	MANISH AGGARWAL	DD DEPOSITED IN TEHSILDAR	RC
17.	DIAMON D	SKG/DIAMOND/1 701	ADITYA VASHISHT	DD DEPOSITED IN TEHSILDAR	RC

9. Referring to the judgment of Hon'ble Supreme Court in **Amit Katyal vs. Meera Ahuja and Ors.** [Civil Appeal No. 3778 of 2020, IA Nos. 105732/2021 and 18679/ 2022] passed on 03.03.2022, Ms. Rashmi Chopra, the Ld. Sr. Counsel appearing for the CD contended that in such cases where the home buyers are likely to get possession of the flats in near future, the CIRP may be allowed to be withdrawn. Paras 9, 10, 12 and 13 of the judgment reads thus:-

“9. Therefore, in the peculiar facts and circumstances of the case, where out of 128 home buyers, 82 home buyers will get the possession within a period of one year, as undertaken by the appellant and Respondent No.4 – Corporate Debtor, coupled with the fact that original applicants have also settled the dispute with the Appellant/Corporate Debtor, we are of the opinion that this is a fit case to exercise the powers under Article 142 of the Constitution of India read with Rule 11 of the NCLT rules, 2016 and to permit the original applicants to withdraw the CIRP proceedings. We are of the opinion that the same shall be in the larger interest of the home buyers who are waiting for the possession since more than eight years.

10. If the original applicants and the majority of the home buyers are not permitted to close the CIRP proceedings, it would have a drastic consequence on the home buyers of real estate project. If the CIRP proceedings are continued, there would be a moratorium under Section 14 of the IBC and there would be stay of all pending proceedings and which would bar institution of fresh proceedings against the builder, including proceedings by home buyers for compensation due to delayed possession or refund. If the CIRP is successfully completed, the home buyers like all other creditors are subjected to the pay outs provided in the resolution plan approved by

the COC. Most often, resolution plans provide for high percentage of haircuts in the claims, thereby significantly reducing the claims of creditors. Unlike other financial creditors like banks and financial institutions, the effect of such haircuts in claims for refund or delayed possession may be harsh and unjust on homebuyers.

On the other hand, if the CIRP fails, then the builder-company has to go into liquidation as per Section 33 of the IBC. The homebuyers being unsecured creditors of the builder company stand to lose all their monies that are either hard earned and saved or borrowed at high rate of interest, for no fault of theirs.

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12. *In the present case, as observed hereinabove, out of the total 128 home buyers of 176 units, 82 homebuyers are against the insolvency proceedings and the original applicants have also settled their dispute with the appellant and corporate debtor. Even the object and purpose of the IBC is not to kill the company and stop/stall the project, but to ensure that the business of the company runs as a going concern.*

13. *In view of the aforesaid facts and circumstances, more particularly when the withdrawal of the CIRP proceedings initiated by the original applicants is allowable by the NCLT in exercise of its powers under Rule 11 of the NCLT rules, 2016 and in the peculiar facts and circumstances of the case, instead of relegating the original applicants to approach the NCLT/Adjudicating Authority by moving an application under Section 12A of the IBC, we are of the opinion that this is a fit case to exercise powers under Article 142 of the Constitution of India as the settlement arrived at between the home buyers and the appellant and corporate debtor – company shall be in the larger interest of the home buyers and under the settlement and as undertaken by the Appellant/corporate debtor, out of 128 home buyers, 82 home buyers are likely to get possession within a period of one year, for which they are waiting since last more than eight*

years after they have invested their hard earned money. This shall be in furtherance of the object and purpose of IBC.”

10. We heard the counsels for the parties and perused the record. It is not gainsaid that the object of IBC, 2016, is to rescue the Corporate Debtor and put it back to its feet. When an order in terms of the provisions of Section 7(5)(a) of IBC, 2016 is passed and the CIRP is commenced, the IRP appointed undertakes exercise in terms of the provisions of Section 13, 15, 17, 18, 20 and 21. Then, the CoC, appointed in terms of the provisions of Section 21 of IBC, 2016, discharges its functions under Section 22. At this stage, the RP is appointed, who discharge function in terms of the provisions of Section 23, 24, 25, 26 and 29 of IBC, 2016. The CoC also discharges its functions in terms of the provisions of Section 27 and 28 of the Code. After preparation of the Information Memorandum, invitation of Expression of Interest, submission of EOI, issuance of RFRP, submission of PRP (Resolution Plan), voting by CoC and approval of plan by it, this Adjudicating Authority finally approves the plan. The process itself takes a very long period. Still, it is not certain that the culmination of exercise would result in putting the CD back to its feet. The SRA takes very long in executing the Resolution Plan. Besides, there is no assurance that the CD is revived. There are possibilities that the CD may go in liquidation.

11. Once, the object of the IBC is to ensure that the CD is put back to its feet by infusion of external aid, may be by change of management, once the manager of SWAMIH Investment Fund has undertaken to infuse the required funds to ensure the revival of the CD, of course, without changing the management, in a way the object sought to be achieved by IBC is achieved. Inv. Pett.-35/ND/2023, I.A.-3628/ND/2023 and I.A.-2935/ND/2023 in (IB)-129/(ND)/ 2023
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The CD can be kept alive, by submission of Resolution Plan, introducing scheme in terms of the provisions of Section 2B of IBBI (Liquidation Process Regulations 2016) and disposal of the CD in terms of the Regulation 32A of the IBBI (Liquidation Process Regulations 2016) i.e. sale of the CD as a going concern.

12. As can be seen from Section 19 of The Sick Industrial Companies (Special Provisions) Act, 1985 (since repealed), where the scheme relates to preventive, ameliorated, remedial, and other measures with respect to any Sick Industrial Company, the scheme may provide for financial assistance by way of loans, advances or guarantees or reliefs or concessions or sacrifices from the Central Government, a State Government, any scheduled bank or other bank, a public financial institution or State level institution or any institution or other authority (any Government, bank, institution or other authority required by a scheme to provide for such financial assistance, viz. the person required by the scheme to provide financial assistance to the sick industrial company).

13. Thus, when apparently, the object of the statute regarding the Sick Industrial Companies either in terms of the old regime or new regime is to extend financial assistance to the CD by way of schemes/plans and such is also the object of Resolution Plan, it would not be advisable to order commencement of CIRP in respect of the CD, to which the special window for affordable and mid income housing (SWAMIH) Investment Fund has extended financial assistance. We may also be not oblivious of the fact that the SWAMIH is a government backed scheme introduced in the year 2019. The financial

assistance through a government backed scheme is always more reliable than the private resolution plans. One may wonder that with approval of Resolution Plan, the management qua the CD is changed, which may not be the situation where the financial assistance to CD is extended in terms of SWAMIH scheme. The concerns may be addressed by making reference to Chapter 3A of IBC, 2016, which entitles the MSME to initiate a process with the approval of Creditors for resolution of its insolvency, without change of management, lest its base plan is rejected by the Creditors.

14. In **E.S. Krishnamurthy & Ors. vs. M/s Bharath Hi Tech Builders Pvt. Ltd.** [Civil Appeal No. 3325 of 2020] Hon'ble Supreme Court also indicated that it is not always necessary to send the Corporate Debtor to CIRP. Para 28 of the judgment reads thus:-

“28 Undoubtedly, settlements have to be encouraged because the ultimate purpose of the 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 the IBC is to facilitate insolvency resolution “in a time bound manner” for maximization 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 the IBC.”

15. In CP(IB)-500 of 2018 in **State Bank of India vs. M/s Krishidhan Seeds Pvt. Ltd.**, this Tribunal after acknowledging the earnest effort of the Corporate Debtor Management to extricate the company from its debt predicament and opted not to immediately admit the CD to CIRP. The relevant excerpt of the judgment reads thus: - reading done (order dated 18.07.2022)

“Clarification Order

This matter was heard and reserved for order. However, in view of the latest judgment of the Hon’ble Supreme Court in the case of “Vidarbha Industries Power Limited vs. Axis Bank Limited” the proceeding is reopened for submission of both the counsels on the points/issues raised by the Hon’ble Supreme Court on the points whether rulings applies to the facts of this case.

Hence, we release this matter for clarification on 21/07/2022.”

16. In view of the aforementioned, we dispose of the present petition, giving opportunity to the manager of SWAMIH Fund – I, to put the CD back to its feet and ensure that the petitioners herein before us are given possession of the units allotted to them, by 25.05.2025. If the default qua the Petitioners continues after said date, they would be entitled to seek revival of the petition. No cost.

17. In view of the aforementioned order passed in C.P. (IB)-129/ND/2023, the Intervention Petition-35/2023, IA-3628/2023 and IA-2935/2023 are disposed of.

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

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