



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH, COURT-III

IA-1006/2024

In

IB-654(PB)/2019

IN THE MATTER OF IB-654(PB)/2019:

VISHAL FABRICS & ORS.

.... FINANCIAL CREDITORS

VERSUS

M/s AVJ DEVELOPERS (INDIA) PVT. LTD.

.... CORPORATE DEBTOR

AND IN THE MATTER OF IA-1006/2024:

BANK OF BARODA

Through its Authorized Representative Mr. Anirudh Sharma.

Having its Head Office at:

7th Floor, Baroda Bhavan, R. C. Dutt Road, Vadodara- 390007.

Having Branch Office at:

ROSARB, 4th Floor, Rajender Bhawan, Rajender Place, New Delhi-110008.

..... APPLICANT BANK

VERSUS

MR. VIVEK KUMAR

(Resolution Professional of AVJ Developers (India) Pvt. Ltd.

R/o C-604, Rosewood Apartments,

Mayur Vihar-I, Ext., New Delhi-110091.

.....RESPONDENT

Order Pronounced On: 14.11.2025

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For Applicant : Mr. Sougat Sinha, Adv.

For Respondent : Mr. Saurabh Kalia, Ms. Mani Gupta, Mr. Aman
Choudhary, Advs. Mr. Vivek Kumar (RP)

ORDER



PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. The present Application has been filed by Bank of Baroda under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016 and is seeking the following reliefs: -
 - “i) Allow the present application and Direct the Respondent to accept the claims of the Applicant; or*
 - ii) To secure the assets charged to the Bank; or*
 - iii) Pass such other directions/orders as this Hon'ble Tribunal may deem fit in the interest of justice.”*
2. The case of the Applicant Bank is that this Adjudicating Authority vide Order dated 21.10.2019 initiated Corporate Insolvency Resolution Process against the Corporate Debtor i.e. M/s. AVJ Developers (India) Private Limited and the Respondent namely Mr. Vivek Kumar was appointed the Resolution Professional of the Corporate Debtor vide Order dated 04.10.2022 replacing Mr. Anil Tayal, the erstwhile Resolution Professional of the Corporate Debtor.
3. It is submitted that on 29.12.2022, the Applicant Bank vide six separate claim forms filed its claim as a Financial Creditor for an amount of Rs. 3,07,71,916.55/- (Rupees Three Crore Seven Lacs One Thousand Nine Hundred Sixteen and Fifty Five Paise), with respect to the amounts disbursed for allotment of units to homebuyers in the Project. The claims relate to the flats bearing flat nos. D-1007, K-1805, K-1807, B- 1701, A-1907, A-2104.
4. It is submitted that the Respondent/Resolution Professional vide email dated 28.04.2023 rejected the claim of Applicant on two grounds as mentioned below:
 - (i) That the last date of submission of claim expired on 07.10.2021, and
 - (ii) That, an Application bearing No. IA 5385/2021 has been filed under section 30(6) of the IBC, 2016 before the Hon'ble NCLT for approval of the Resolution Plan.



5. It is submitted that the Applicant had sanctioned a Housing loan facility to the allottees of Corporate Debtor for purchase of flats in AVJ Heights situated at Plot No. GH-12/2, Sector Zeta -1, Greater Noida UP 201201. The details of units and names of Allottees are mentioned below:

S. No.	Name of Allottee/ Account No. /Suit Details	Unit No. in Plot No. GH-12/2, Sector Zeta- 1, Greater Noida, UP-201301	Amount o/s as on 24.12.2022 (In Rs.)
1.	Mr. Rajat Arora/ 60220015181219/ OA no. 95/2018 DRT – I, Delhi.	D-1007, 10 th Floor, Tower D, AVJ Heights	71,82,668.79/-
2.	Sudhir Sethi/ 07920600000993/ OA No. 952/2019 DRT-II, Delhi.	K-1805, 18 th Floor, Tower-K, AVJ Heights	45,77,008.96/-
3.	Sharan Gopal/ 12870600001172/ OA No.195/2018 DRT-I, Delhi.	K- 1807, 18 th Floor, Tower-K, AVJ Heights	69,17,781.69/-
4.	Satyanand Singh/ 51780600000462/ OA No. 186/2018DRT- I, Delhi.	B- 1701, 17 th Floor, Tower-B, AVJ Heights	56,05,594.08/-
5.	Rahul Tyagi/ 51770600000460/ OA No. 897/2017 DRT-I, Delhi.	A-1907, 19 th Floor, Tower-A, AVJ Heights	63,92,048.35/-
6.	Himanshu Prabhakar/ 010706000003397/ OA No. 18/2018 DRT-III, Delhi.	A- 2104, 21 st Floor, Tower-A, AVJ Heights	57,02,408.76/-

6. It is submitted that the flats which were funded by the Applicant and were under construction and therefore the registration of said flats could not have been made in favour of the Allottees/Borrowers. Consequently, the security in favour of the Applicant Bank by way of deposit of title deeds could not have been complied with by the Allottees as the Corporate Debtor has delayed the construction and granting of the occupancy certificate in respect of the said flats. Therefore, in order to ensure security, Tripartite Agreements with common contents were executed between the Allottees/Borrowers, the Applicant and the Corporate Debtor. It is submitted that the Applicant is entitled to step into the shoes of the homebuyer/borrower in case the Corporate Debtor fails to execute the sale deed or handover possession of the property to the Homebuyer/Borrower.



7. It is submitted that the Obligations of the Corporate Debtor have been enumerated in Clause 3(c) of the Tripartite Agreement executed between the Homebuyers, the Applicant Bank and the Corporate Debtor. The terms of the said Tripartite Agreements are binding on the Corporate Debtor, the Resolution Professional as well as the Successful Resolution Applicant who are not entitled to either amend, modify or exhaust the rights of the Applicant as agreed therein.

8. It is submitted that the Corporate Debtor agreed that in case of any delay on the part of the Corporate Debtor or if the Corporate Debtor fails or refuses to execute sale deed in favour of the Borrower and hand over the possession of property even after the date of final disbursement of loan within a period not exceeding 365 days; the Applicant shall have all the rights to take all requisite steps for getting the sale deed executed in its favour and/or take possession of the Property. Further, it was prescribed that if the builder fails to execute the sale deed with the Borrower or in the event of any litigation affecting the said property, the Builder shall immediately refund all the monies disbursed by the Bank together with interest at the rate accrued on such loans including penal interest applicable. As per the Tripartite Agreement, if the borrowers fail to pay his stipulated margin amount the entire amount advanced by the Bank will be refunded by the Builder to the Bank, together with interest due including penal interest if any. The Builder also undertakes to obtain completion certificate and certificate issued by the competent Authority in respect of the property and also undertakes he shall not handover the possession/Conveyance Deed of the property to the Borrowers without the consent of the Bank.

9. It is submitted that since the Corporate Debtor failed to complete the construction of the project and consequently the Borrowers have stopped payment of EMIs, the above-mentioned accounts of the Borrowers have turned NPA. The Applicant had filed the Original Applications (“**OA**”) against the Corporate Debtor in respect of the abovementioned four Borrowers wherein the Ld. DRT was pleased to issue Notice in the respective OAs and stay any transfer, creation of third-party rights in respect of the allotted flats.



Respondent/Resolution Professional's Case

10. The Respondent/Resolution Professional filed reply affidavit dated 27.02.2025 and submitted that the present Application is devoid of any substance and merit and is liable to be dismissed *in limine*.
11. It is submitted that the Erstwhile Resolution Professional made a public announcement dated 22.10.2019 in Form-A as per the terms of Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process) Regulations, 2016 ("**CIRP Regulations**"). In terms of Regulation 6(2)(c) of the CIRP Regulations, the last date for submission of proof of claim was specified as 05.11.2019. Further, the said public announcement was duly uploaded on the website of the Insolvency and Bankruptcy Board of India ("IBBI"). The Applicant filed its claim on 29.12.2022, i.e. after more than 3 years from the last date of submission of claim i.e. 05.11.2019. Further, the resolution plan of the Corporate Debtor submitted by Mr. Vinay Jain with a voting share of 72.661% was approved by the CoC in its 14th Meeting conducted on 11.10.2021, e-voting concluded on 16.10.2021. Thereafter, on 09.11.2021, the Erstwhile Resolution Professional filed an application bearing I.A. No. 5385 of 2021 under Section 30(6) of the Code seeking approval of the Resolution Plan. In light of the judgment passed by Hon'ble Supreme Court in **Greater Noida Industrial Development Authority vs. Prabhjit Singh Soni and Another**, 2024 SCC OnLine SC 122, the Resolution plan was sent back to CoC for fresh consideration. The Resolution Plan was amended and again approved with voting share of 75.963% by the CoC in its 26th CoC meeting held on 26.06.2024, e-voting concluded on 04.07.2024. Thereafter, on 12.07.2024, the Resolution Professional filed an application bearing I.A.(Plan) No. 33 of 2024 seeking approval of the resolution plan which is pending before this Adjudicating Authority. Therefore, the claim filed by the Applicant Bank with a considerable delay cannot be admitted.
12. It is submitted that as per Regulation 12 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations"), a creditor is required to file its claim



on or before the last date mentioned in the public announcement. The proviso to Regulation 12(1) of CIRP Regulations provides as follows:

“Provided that a creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit his claim with proof to the interim resolution professional or the resolution professional, as the case may be, up to the date of issue of request for resolution plans under regulation 36B or ninety days from the insolvency commencement date, whichever is later:

Provided further that the creditor shall provide reasons for delay in submitting the claim beyond the period of ninety days from the insolvency commencement.”

The above regulation came into effect on 18.09.2023, by way of an amendment to the CIRP regulations. However, prior to the amendment, a creditor was required to submit a claim on or before the ninetieth day of the insolvency commencement date. The last date for submission of Resolution Plan in the present case was 04.03.2020 and the Applicant had filed its claim on 29.12.2022. It is contended that the said amendment is prospective in nature and cannot be applied retrospectively. Thus, the CIRP Regulation, as it stood prior to the amendment, ought to be applied in the present case. Hence, it is evident that the Applicant failed to file its claim within the stipulated timeline.

13. The Respondent/Resolution Professional submitted that the claim of the Applicant is not maintainable as the same does not qualify as a debt in terms of the definition of the financial debt as defined under section 5(8) of the Code as the claim has been filed with respect to the amounts disbursed for allotment of units to Homebuyers in the Project. The Applicant Bank is neither a secured nor a Financial Creditor of the Corporate Debtor. A bare reading of the Tripartite Agreement, clearly indicate that the Applicant had granted loan to Home Buyers and not to the Corporate Debtor.

14. It is contended by the Resolution Professional that the Applicant herein relied upon the Tripartite Agreements executed amongst the Homebuyer, the



Applicant and the Corporate Debtor for establishing its status as "secured creditor" of the Corporate Debtor. However, the Applicant has conveniently ignored the fact that Builder's liability to refund the amount arises only if -

- a. the builder fails to provide the original, executed, duly stamped and registered agreement for sale, original registration receipt and letter of authority from Sub-registrar and/or sale deed in favour of the Borrower(s); or*
- b. the builder fails to ensure that effective security is created in favour of the Bank in the manner prescribed by the Bank; or*
- c. if the Borrower fails to pay his stipulated margin amount.*

15. It is submitted that The Builder has neither failed to provide the original, executed, duly stamped and registered agreement for sale, original registration receipt and letter of authority from Sub-registrar and/or sale deed in favour of the Borrower(s) nor failed to ensure that effective security is created in favour of the Bank in the manner prescribed by the Bank. Infact, clause 6.11 of the Resolution Plan specifically provides for handing over of flats to the homebuyers and as such, security in favour of the bank can only be created thereafter. Furthermore, the Applicant has not given any detail in its application as to how the borrower has failed to pay the margin money and as such, the Applicant cannot rely on the same without any specific pleading to that effect.

16. It is submitted that the Respondent has already admitted the claim of four flats out of six flats, for which the Applicant has filed the present Application. Furthermore, the Said Flats, for which the Applicant has sanctioned loans have been allotted multiple times by Mr. Vinay Jain. Clause 9.5(v) of the Resolution Plan provides for submission of claims by allottee/unit holder/flat/shop owner who had failed to file the same with the Resolution Professional or who had filed it but the same was under verification, within 45 days of the approval of the Resolution Plan. Thus, once the plan is approved, the home-buyers would have the opportunity to file the claims and there is no extinguishment of the claims during such protected period. The rest of the Homebuyers (i.e. remaining two homebuyers out of six financed by the Applicant) who have not filed their claims with respect to the units



financed by the Applicant may file their claims within 45 days of approval of Resolution Plan and this would lead to duplicity of claims with respect to same flats in case Applicant's claim is admitted by the Ld. Adjudicating Authority. Further, the Applicant has the option to recover its dues from the borrower i.e. the homebuyer and it is not remediless if its claim is rejected by this Adjudicating Authority.

17. Analysis and Findings

- i. Heard the Ld. Counsel appearing for both the parties and have perused the records.
- ii. In the instant case, the Applicant Bank has sought a direction to the Resolution Professional to admit the claim of the Applicant Bank with respect to 6 accounts i.e. with respect to 4 Homebuyers. It is seen from the records that out of these 6 home buyers, the 4 home buyers have filed claims. The Resolution Professional has admitted 4 claims. The remaining 2 Home buyers have not filed any claims so far.
- iii. It is the case of the Applicant that in view of the specific terms of the Tripartite Agreement entered between the Applicant Bank, Homebuyers and the Corporate Debtor, the Applicant assumes the character of the Financial Creditor in terms of Section 5(8) of the Code and therefore, the claim filed by the Applicant ought to be admitted by the Respondent.
- iv. The Applicant Bank relies upon the Clause 3(c) and (e) of the Tripartite Agreement dated 18.06.2015 which are reproduced as under: -

“c. The Builder undertakes to provide the original, executed, duly stamped and registered agreement for sale original registration receipt and letter of authority from Sub-registrar and/or sale deed in favour of the Borrower(s) within a period not exceeding 365 days from the date of final disbursement of the loan to the Builder by the Bank. The Builder shall ensure that effective security is created in favour of the Bank in the manner prescribed by the Bank. In the event of failure of the above or in event of any litigation affecting the said property, the Builder shall promptly and immediately refund all the



monies disbursed by the Bank together with interest at the rate accrued on such loans including penal interest applicable thereon.

In the event, the Borrower(s) requests for cancellation of the allotment/ Agreement for sale, the Builder shall obtain Bank's prior written No Objection Certificate as also remit the loan amount disbursed by the Bank with interest at the rate accrued on such loan including penal interest applicable thereon from the proceeds of the cancellation of Agreement to sale and remit the same directly to the Bank by Banker's Cheque or Demand Draft, favouring the Bank for credit to the Borrower(s) Home loan account and to remit the residual amount to the Borrower/shall arrange to refund the proceed of cancellation of Agreement to sale directly to the Bank under advice to the borrower. If the Borrower(s) fails to pay his stipulated margin amount, the entire amount advanced by the Bank will be refunded by the Builder to the Bank, together with interest due including penal interest, if any. The Builder undertakes to obtain completion certificate and certificate of occupation issued by the Competent Authority in respect of the property and also undertakes that Builder shall not hand over the possession/conveyance deed of the property to the Borrower(s) without the prior written permission of the Bank. The Builder agrees/undertakes and confirms to obtain such written consent from the Bank.

e. The Builder hereby undertakes to issue a letter favouring the Bank inter-alia, giving its No Objection for the Borrower(s) creating security in favour of the Bank, by way of mortgage, of the right, title, interest of the Bank in the shares allotted to him/her/them and of the said flat for repayment of the loan and all amounts in respect thereof by the Borrower(s), to note the charge of the Bank on the said flat(s) in its records as security against the Loan advanced by the Bank to the



Borrower(s) and not to permit the Borrower(s) to transfer/encumber the said property, without prior written permission of the Bank. The Builder hereby irrevocably and unconditionally guarantees the due repayment to the Bank of all the amounts disbursed to the Builder together with all interests and all other monies, owing and payable by the Borrower's to the Bank, in the event of any breach by the builder of any warranty, representation covenant, or agreement contained herein.

- v. The Ld. Counsel for the Applicant Bank submitted that since the Corporate Debtor failed to provide original sale deed in favour of the Borrower and/or create any security in favour of the Bank in absence of registered sale deed, the Corporate Debtor is liable to repay the debt in terms of the irrevocable and unconditional guarantee provided in the clauses above. Therefore, the Applicant Bank assumes the character of the Financial Creditor in terms of Section 5(8) of the Code.
- vi. The Ld. Counsel for the Applicant placed reliance upon the Order dated 09.01.2025 in the case of Canara Bank vs. Sh. Vivek Kumar, Resolution Professional of M/s AVJ Developers (India) Private Limited, Comp. App. (AT)(Ins) 390 of 2023, wherein the Hon'ble NCLAT referred to Clause 16 of the Tripartite Agreement executed by Canara Bank, the Corporate Debtors and the Allottees therein, to hold that there is a clear obligation to repay upon the Corporate Debtor, albeit in the event of default. It is submitted that the said Clause 16 of the Tripartite Agreement is similar to the Clause 3 of the Tripartite Agreement executed by Bank of Baroda to the extent it captures the obligation of the Corporate Debtor to pay under crystalized events.
- vii. In reply, the Ld. Counsel for the Respondent/Resolution Professional submitted that the above clause applies only in the event of the failure of the builder to create a security in favour of the bank. Such an occasion would only arise after approval of the resolution plan as the builder (as Successful Resolution Applicant), would handover the possession of the flats to the homebuyers as per clause 6.11 of the Resolution Professional.



- viii. The Ld. Counsel for the Respondent submitted that the Hon'ble NCLAT vide its Order dated 09.01.2025 remanded the matter back to this Adjudicating Authority to decide the issue.
- ix. The Ld. Counsel for the Respondent/Resolution Professional submitted that Clause 4 of the Recital and Clause 2 of the Tripartite Agreement, makes it is clear that the loans were disbursed to the individual homebuyers and not the Corporate Debtor as per the law laid down by the Hon'ble Supreme Court in the case of ***Pioneer Urban Land and Infrastructure Ltd. v. Union of India, (2019) 8 SCC 416.***

The relevant clause of the Tripartite Agreement are reproduced as under:

“Clause 4 of the Recital to the Tripartite Agreement,
which state that the borrower authorised the Applicant to disburse the loan amount directly to the Corporate Debtor and the sum advanced by the Applicant to the borrower and remitted by the Applicant directly to the Corporate Debtor shall be deemed as disbursed by the Applicant to the borrower.

Clause 2 of the Tripartite Agreement:

Obligations of the Borrower(s):

The Borrower(s) shall unconditionally consent for disbursement to the entire loan amount upfront/in instalments as per agreement for sale dated/allotment letter dated 27.05.2015 to the Builder on the basis of the demand notice issued by the Builder. The Borrower(s) will arrange to remit the margin amount directly to the Builder and furnish receipt issued by the Builder evidencing remittance of margin amount/will arrange to remit the margin amount to the credit of Home Loan Account to enable the Bank to pay the consolidated amount (margin and loan) directly to the Builder.

1. The Borrower(s) undertakes to create and complete the equitable mortgage formalities immediately on receipt of the conveyance/sale deed duly executed, stamped and registered.



2. *The Borrower(s) shall execute all necessary loan documents at the time of sanction of Home Loan for purchase of the said property.*

3. *The Borrower(s) undertakes to liquidate the loan sanctioned to him on demand by the Bank regardless of the progress in construction/ completion of the project and indemnify the Bank for any loss occasioned on account of delay in construction of the house/flat in terms of the construction schedule in the Agreement for sale/Allotment letter by the Builder, including but limited to claims of the Bank for interest, penal interest, damages, costs, etc. on the outstanding amount of the loan extended to the said Borrower(s) by the Bank for purchase of flat/house in terms of construction schedule as mentioned in the Agreement for Sale/Allotment letter dated 27.05.2015.”*

- x. At this juncture, it may be noted that an amendment was made in Section 5(8)(f) of the Code to enable the Homebuyers/allottees to act as Financial Creditor and to participate in the CoC. The Applicant Bank's case is that Clause 3 of the Tripartite Agreement in the present case agrees for payment in favour of the Applicant in terms of Section 3(6) of the Code and since, the Applicant gets a right to payment, it has to be classified as Financial Creditor to the extent of its money due to be paid by the Corporate Debtor in terms of Clause 3 of the Tripartite Agreement.
- xi. It may also be noted that the amendment brought under Section 5(8)(f) of the Code which classified the homebuyers/allottees as Financial Creditors was challenged before the Hon'ble Supreme Court and the constitutional validity of Section 5(8)(f) of the Code was upheld by the Hon'ble Supreme Court in the case of ***Pioneer Urban Land and Infrastructure Limited & Anr. Vs. Union of India & Ors.***, reported in ***(2019) 8 SCC***.
- xii. The Clause 4 of the Recital to the Tripartite Agreement in the present case is reproduced hereunder for ready reference.



“Clause 4 of the Recital to the Tripartite Agreement: -

The Borrower(s) has requested Bank of Baroda to sanction/disburse loans in favour of the Borrower(s) on the basis of the agreement for sale dated/allotment letter dated 27.05.2015. No Objection Certificate issued by the Builder, receipts issues by the Builder favouring the purchaser of property evidencing payment of margin money.

- xiii. The Recital to the Clause 4 of the Tripartite Agreement provides that it is the Borrower/Homebuyer and not the Builder/Corporate Debtor who has approached the Bank seeking loan for purchasing the flat. It is the Borrower/Homebuyer who has authorized the Bank to disburse the above said loan amount directly to the Builder/Corporate Debtor. This shows that the Bank has acted on the instruction of the Homebuyer and not otherwise. Therefore, the submissions made on behalf of the Applicant-Bank that the Applicant assumes the character of Financial Creditor defined under Section 5(7) of the Code just because the Builder takes the liability/responsibility to repay the debt amount to the Bank in case of default cannot be accepted.
- xiv. It will also be pertinent to refer to Section 5(8) of the Code at this stage, which defines the word “Financial Debt” as well as Clause (a) and (f) of Section 5(8) of the Code, which read as under: -
- “financial debt” means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—*
- (a) money borrowed against the payment of interest;*
-*
- (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*



- xv. From the plain reading of the above definition of '*Financial Debt*' under Section 5(8) of the Code, 2016, it is evident that the first and foremost ingredient/requirement for classifying a debt as a '*financial debt*' is that the money must be disbursed against the consideration for the time value of money, involving borrowing with an obligation to pay interest. In the present case, the amount is raised by the Corporate Debtor from the Homebuyer and therefore, the real Financial Creditors in terms of Section 5(8)(f) of the Code are the Homebuyers as the loan was availed by the Homebuyers from the Bank which has not directly advanced the money to the Corporate Debtor and only acted on instructions of the Homebuyers in disbursing the loan amount to the Builder. The Clause 3 of the Tripartite Agreement stipulating that the Builder would be liable to repay the loan to the Bank in event of default, entitles the Bank to recover the same can only be termed as an indemnity clause under the tripartite agreement. The mere existence of a clause in the Tripartite Agreement stipulating that the Builder would be liable to repay the loan to the Bank in event of default, does not alter the intrinsic nature of the transaction between the Bank and the Homebuyer. It is a settled principal of law that that terms of a contract/agreement cannot override or supersede statutory provisions. The provisions in a contract/agreement that conflicts with statutory mandate are generally considered invalid and unenforceable.
- xvi. It may further be added that the debt in question has been disbursed by the Bank to the Corporate Debtor on the instructions of the homebuyer so as to enable the homebuyer to purchase the flat. Such an arrangement made by the Bank and the Homebuyer will not change the character of the financial debt and place the bank in the category of a Financial Creditor. The relevant clauses in the tripartite agreement have been incorporated for the sake of convenience of the Bank. Under the Tripartite Agreement, it is the homebuyer who is availing the finance from the Bank and creating the charge in favour of the Bank by giving an undertaking to keep the bank indemnified against any loss.



Therefore, the Bank cannot be termed as the Financial Creditor of the Corporate Debtor and the claim of the bank cannot be accepted as the Financial Creditor as no facility has been disbursed to the Corporate Debtor.

xvii. In order to ascertain the treatment given to the Homebuyers who have either submitted belated claims or have not submitted any claims as well as that of the bank who is claiming to be given the status of the financial creditor in place of such Homebuyers, I have perused the Resolution Plan which is already on record and filed along with the IA (R.Plan)-33/(PB)/2024 filed by the Resolution Professional seeking approval of the Resolution Plan and pending before this Adjudicating Authority. Although the copy of the Resolution Plan has not been placed on record in the instant application, however, in order to determine the issue involved, it is appropriate to refer and rely on the Resolution Plan which is part of the IA (R. Plan)-33/(PB)/2024.

xviii. The relevant paragraph of the Resolution Plan is Para 9.7 of Chapter 9: -

“Settlement of Outstanding Liability of the Resolution Plan, deals with the claims of the Banks against Homeloans and Tripartite agreement with Flat owners.”

Sub-clause (a) of Paragraph 9.7 of the Resolution Plan reads as under:

“(a) The separate details in this regard has not been given in the IM, but the claim lodged or to be lodged by the bank on the strength of Tripartite Agreement shall be treated as unsecured creditor and shall be settled by Resolution Applicant which will be paid in 2 quarterly equal instalments after 365 days from the date of approval of the Resolution Plan by the Hon'ble NCLT.”

Sub-clause (b) of Paragraph 9.7 of the resolution plan reads as under:

“(b) For the banks who have been subrogated in the position of flat owners by virtue of right exercised under tripartite agreement are unsecured financial creditors and for the



satisfaction of the debt, the same shall be pay off as unsecured creditors as mentioned in Chapter-6.”

- xix. A perusal of the sub clause (a) of Para 9.7 of the Resolution Plan shows that the claim, if any be lodged by the Bank on the strength of Tripartite Agreement shall be treated as unsecured creditor. The clause (b) of Para 9.7 of the Resolution Plan stipulates that banks who have been subrogated in the position of flat owners by virtue of right exercise under the tripartite agreement are unsecured financial creditors and for the satisfaction of the debt, the same shall be paid off as unsecured creditors as mentioned in Chapter VI of the Resolution Plan.
- xx. At this stage, it may be clarified that no view or opinion is being expressed with respect to the Resolution Plan, even though certain paragraphs of the Resolution Plan have been referred to.
- xxi. In view of the foregoing discussion, the prayers of the Applicant-Bank in the present case cannot be allowed. Therefore, the present application is **dismissed**.

No order as to costs.

-Sd/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**