IN THE NATIONAL COMPANY LAW TRIBUNAL

JAIPUR BENCH (RAJASTHAN)

CP No. (IB)-170/7/JPR/2019

**Coram: SHRI P.S.N. PRASAD,
HON'BLE JUDICIAL MEMBER**

**SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER**

IN THE MATTER OF SECTION 7 OF IBC, 2016.

IN THE MATTER OF:

**AU Small Finance Bank Limited
19-A, Dhuleshwar Garden, Ajmer Road,
Jaipur- 302001 (Rajasthan)**

...FINANCIAL CREDITOR/ APPLICANT

VERSUS

**Coral Infragold Private Limited
Daga Chowk, Near Mahesh Bhawan,
Bikaner -334001 (Rajasthan)**

...CORPORATE DEBTOR/ RESPONDENT

FOR PETITIONER (S)	:	**Sandeep Taneja, Adv.** **Puneet Maheshwari, Adv.**
FOR RESPONDENT (S)	:	**Sahaj Sharma, Adv.**

ORDER PRONOUNCED ON: - 25.11.2020

ORDER

Per: Shri Raghu Nayyar, Technical Member

1. This Application is filed by AU Small Finance Bank Limited ('Applicant'), through its Authorised Signatory Mr. Rakesh Jain vide Delegation of Authority letter dated 11.06.2019, claiming to be a Financial Creditor, against Coral Infragold Private Limited ('Respondent'), under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('IBC, 2016') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of Corporate Insolvency Resolution Process ('CIRP'), pursuant to default in repayment of loan amount by the Respondent to the Applicant.

2. The Applicant is a Banking Company bearing CIN: L36911RJ1996PLCO11381. The Registered Office of the Company is at 19-A, Dhuleshwar Garden, Ajmer Road, Jaipur (Rajasthan) - 302001.

3. The Respondent is a Private Limited Company, incorporated under the Companies Act, 1956, on 21.05.2007 and duly registered with the Registrar of Companies, Jaipur bearing CIN: U45201RJ2007PTC024455. The Registered Office of the Company is at Daga Chowk, near Mahesh Bhawan, Bikaner (Rajasthan) - 334001. The authorized share capital of the

Respondent Company is Rs. 10,00,000/- (Rupees Ten Lakhs Only) and paid up share capital is Rs. 2,00,000/- (Rupees Two Lakhs Only).

4. It is the case of the Applicant/ Financial Creditor that the Respondent/ Corporate Debtor along with its directors as co-borrowers, had availed a revolving term loan facility of Rs. 4,25,00,000/- (Rupees Four Crores Twenty Five Lakhs Only) vide Sanction Letter dated 27.05.2016. In this respect, the Respondent had executed a Loan Agreement dated 08.06.2016, to secure the Term Loan. It is inferred from the said Agreement that the Term Loan is to be repaid by the Respondent/ Corporate Debtor within 42 months including moratorium on principal repayment for an initial period of 18 months which was to expire on 05.12.2017. However, the moratorium was extended for a period of 12 months vide e-mail dated 29.11.2017. As per the Sanction Letter, the Respondent was to make payment of monthly interest @ 17% p.a., even during the moratorium period. After the moratorium period, regular EMI at Rs. 21,01,297/- on monthly basis was to be started which comprised of principal and interest.

5. The Applicant/ Financial Creditor has pivoted its case upon occurrence of default in repayment against the aforesaid Sanction Letter (Annexure No. 4) and Loan Agreement (Annexure No. 5). Recital C of the Loan Agreement reads as follows:

> *"C. The Borrower has also represented to the Lender that it is the sole and absolute owner of a Residential (residential or commercial) land measuring 43886 sq. ft. bearing ________ situated at Flat no. 101, 102, 103, 104, 106, 107, 108, 109, 201, 202, 203, 204, 206, 207, 208, 209, 301, 302, 306, 307, 308, 408, 509, 608, 701, 702, 707, 709, 801, 802, 807, 808, 809, 205- Coral Radha Krishna, Plot No. 8, Green Triveni Marg, Sikar Road, Jaipur. (more particularly detailed in Schedule B attached hereto and hereinafter referred to as the "Project Land") which is available for development of a _____________ project and the Borrower has obtained necessary approvals from the concerned authorities for the development of ______________ project comprising of ________________ upon the Project Land in the name of __________________ (hereinafter referred to as the "Project")."*

It is against the mortgage of the aforesaid 34 flats mentioned in recital C totalling to an area of 43886 area sq. ft., with pro-rata undivided interest in the underlying land admeasuring 2952 sq. yds., that the loan has been advanced. The said Loan Agreement is a pre-printed format for Builder Funding and contains blanks as enunciated above in recital C.

6. The Applicant stated that as per the terms and conditions mentioned in the Sanction Letter, the Respondent along with the co-borrowers agreed to pay interest thereon, costs, charges, expenses and all other monies in respect of the aforesaid loan facility granted by the Financial Creditor.

7. The Applicant submitted that a sum of Rs. 3,65,88,396/- was disbursed on 06.06.2016 and further a sum of Rs. 59,17,329/- was disbursed on 16.07.2016 to Respondent's Loan Account bearing No. 1721900010003602

(Old A/c No. LSJGP03016-170441265), which was maintained with the Applicant.

8. However, the Respondent did not maintain financial discipline and failed to make regular payment of interest as per the agreed terms. The first default in repayment of interest occurred on 31.08.2017. Thereafter, there had been subsequent defaults, resulting in classification of the Loan Account of the Respondent as NPA on 31.07.2018. The Applicant/ Financial Creditor stated that turning of a loan account as NPA itself is sufficient to establish that the Respondent has committed default in payment of the due amount. Consequently, the Applicant issued notice dated 27.08.2018, under Section 13(2) of SARFAESI Act, 2002 to the Respondent. However, the Respondent still did not pay the due amount. Thereafter, the Applicant issued demand notice dated 10.12.2018, to the Respondent to make the payment of outstanding amount of Rs. 4,48,22,900/- within a period of 7 days. Despite the service of the said notice, the Respondent failed to repay the outstanding amount.

9. As a consequence of default, this Application was filed. As claimed by the Applicant/ Financial Creditor, the Respondent/ Corporate Debtor is liable to pay Rs. 4,43,22,944/- as on 14.06.2019, as an outstanding amount, as reflected in Part IV of the Form - 1 filed.

Part IV

S. no.	Particulars of Financial Debt	
1.	Total amount of debt granted date(s) of disbursement.	Amount of Term Loan granted: - Rs. 4,25,00,000/-
2.	Amount claimed to be in default and the date on which the default occurred	Outstanding Amount as on 14.06.2019: Rs. 4,43,22,944/- • Date of First Default in repayment of interest - 31.08.2017 • The date on which loan account was declared as NPA-. 31.07.2018.

10. The Respondent filed reply to the Application on 09.09.2019 stating that the Applicant/ Financial Creditor has not furnished any record of default recorded with the Information Utility. However, it is seen that the Applicant had reported the information regarding the aforesaid default to the Information Utility which is evident from the letter dated 24.09.2019, issued by National E-Governance Services Limited ('NeSL'). The Applicant in its rejoinder submitted a copy of Commercial Credit Information Report by the Credit Information Bureau (India) Limited ('CIBIL') of the Respondent that has recorded the default in payment of the outstanding amount, on the part of the Respondent.

11. The Respondent submitted that it is mentioned in the notice issued under Section 13(2) of SARFAESI Act, 2002 dated 27.08.2018 and the demand notice dated 10.12.2018, that the account became NPA on 31.07.2018 but as evident from the copy of the ledger account, the Applicant has received payment till 20.06.2019. It is noted by this Adjudicating Authority that the ledger account contains entries upto 31.01.2019 only and does not contain any further transactions evidencing payment to the Applicant.

12. The Respondent also stated that notice under Section 13(2) of SARFAESI Act, 2002 and the demand notice do not mention the date from which the debt fell due. Moreover, these notices were signed by Mr. Rakesh Jain, employee of the Applicant/ Financial Creditor, who was not duly authorised. The delegation of authority in his favour to initiate CIRP was made subsequently vide letter dated 10.06.2019. The Applicant in rejoinder stated that there is no mandatory requirement under provisions of Section 7 of IBC, 2016 to issue demand notice to the Corporate Debtor for payment of outstanding amount and the same is not *sine qua non* for initiating proceeding under the aforesaid provision. It is seen that the Application under Section 7 was filed on 02.07.2019 and delegation of authority in favour of Mr. Rakesh Jain was made well in advance on 10.06.2019. Moreover, the notice under Section 13(2) and demand notice were issued to the Respondent after its loan account tuned into NPA. The Respondent was

well aware of the default and the liability of outstanding loan amount towards the Applicant/ Financial Creditor. Therefore, the objection raised by the Respondent/ Corporate Debtor holds no ground.

13. The Respondent/ Corporate Debtor further submitted that the amount claimed to be in default is arbitrary because the Applicant/ Financial Creditor has not clarified as to what rate of interest and penal interest has been made applicable to the default amount. However, from the perusal of the Application it is seen that the Applicant has annexed the working for computation of the default amount, including the number of days of default, penalty charges and other pending charges. Further, the Applicant in its rejoinder has stated that the Respondent was well aware of the terms and conditions of the Loan Agreement and Sanction Letter and the manner in which the payment was to be done towards the outstanding loan amount and when it became due.

14. Furthermore, the Respondent submitted that the mortgage in favour of the Applicant has not been registered under the provisions of the Indian Registration Act, 1908 and hence cannot be used against the Respondent for any purpose. On perusal of the records, it is seen that the loan amount extended by the Applicant to the Respondent was secured by way of equitable mortgage by deposit of original title deeds of the land comprised in the Project, duly executed and registered on 12.07.2016 with Sub-

Registrar-II, Jaipur (Raj.). The Applicant has submitted the E-Form CHG-1 which was filed by the Respondent with the Registrar of Companies, Rajasthan evidencing the creation of charge in favour of the Applicant on the aforesaid immovable property.

15. The Respondent further submitted that the Applicant issued the possession notice under Section 13(4) of SARFAESI Act, 2002 on 23.07.2019, after filing the present Application, which implies that the Applicant is trying to avail two parallel remedies for the same debt. It is pertinent to mention here that in terms of Section 238 of IBC, 2016, the provisions of this Code shall have an overriding effect over other laws. Moreover, there is no bar under IBC, 2016 which restricts the proceedings under the SARFAESI Act, 2002 till the admission of the Application filed under Section 7 of the Code.

16. The Respondent/ Corporate Debtor has filed written submissions stating that there is a genuine dispute between the Applicant and the Respondent. The Respondent claims to be still solvent and mere delay in payment of few EMIs does not render it liable to be declared as insolvent. The Corporate Debtor submitted that in the Hon'ble Supreme Court case of ***Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited (AIR 2017 SC 4532)***, it was held that IBC is not intended to be substitute to a recovery forum. Moreover, whenever there is existence of real dispute, the IBC provisions cannot be invoked. It is pertinent to mention here that the

case referred by the Respondent/ Corporate Debtor deals with existence of dispute in applications filed under Section 9, IBC, 2016. There is no provision under IBC that provides for pre-existing dispute under Section 7, as claimed by the Respondent/ Corporate Debtor. Moreover, there seems to be no pre-existing dispute between the Financial Creditor and the Corporate Debtor. Thus, the observations in the instant case are of no relevance herein and do not support the contentions raised by the Corporate Debtor.

17. It is noted that efforts were made for settlement of the matter, through the course of the case, but did not bear fruit. The Respondent/ Corporate Debtor submitted that it is still interested in settling the matter amicably and made a settlement proposal in the past on 24.01.2020, wherein the Respondent offered to make payment of Rs. 10,00,000/- at once and the remaining payment was offered to be made from the balance inventory in the Project. The Respondent further submitted that an inventory of approximately Rs. 7,50,00,000/- is still available in the said Project whereas the debt claimed by the Applicant is only for Rs. 3,40,00,000/- which can be easily paid off by selling the inventory. But the Applicant had rejected the proposal vide e-mail dated 30.01.2020. It is pertinent to mention here that the debt claimed by the Applicant is Rs. 4,43,22,944/- and not Rs. 3,40,00,000/- as claimed by the Respondent in its written arguments.

18. The Applicant has filed written submissions and referred to the case of ***Innoventive Industries Ltd. Vs. ICICI Bank & Another (AIR 2017 SC 4084)***, wherein the Supreme Court held that:

> *"On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the Financial Creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due", i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date."*

The Applicant submitted that conditions laid down in the instant case are satisfied, i.e. the debt is due and payable; and there is occurrence of default.

19. This Adjudicating Authority perused all the relevant papers and found them to be in order. The Registered Office of the Corporate Debtor is situated in Jaipur and therefore this Adjudicating Authority has jurisdiction to entertain and try this Application. The matter is within the limitation period as per Law of Limitation.

20. While this Adjudicating Authority was going through the final stages of hearing of the matter at hand, the Hon'ble National Company Law Appellate Tribunal ('NCLAT') was seized of a matter (***Flat Buyers Association Winter Hills – 77, Gurgaon Vs. Umang Realtech Pvt Ltd through IRP & Ors.* in *Company Appeal (AT) (Insolvency) No. 926 of 2019***) (MANU/NL/0077/2020), related to a real estate project, order in

which was pronounced on 04.02.2020. The Hon'ble NCLAT considered therein, specifically with respect to real estate projects, divergent interests of parties in an Insolvency Process. The Hon'ble NCLAT stated the following:

> *"9. In terms of the 'I&B Code' and the decisions of the Hon'ble Supreme Court, the 'Resolution Plan' must maximise the assets of the Corporate Debtor and balance the stakeholders (secured and unsecured creditors- Financial Creditors/ Operational Creditors).*
>
> *10. The Infrastructure which is constructed for the allottees by Corporate Debtor (Infrastructure Company) is an asset of the Corporate Debtor. The assets of the Corporate Debtor as per the Code cannot be distributed, which are secured for 'Secured Creditors'. On the contrary, allottees (Homebuyers) who are 'Unsecured Creditors', the assets of the Corporate Debtor which is the Infrastructure, is to be transferred in their favour ('Unsecured Creditors') and not to the 'Secured Creditors' such as Financial Institutions/ Banks/ NBFCs. Normally, the Banks/ Financial Institutions/ NBFCs also would not like to take the flats/ apartments in lieu of the money disbursed by them. On the other hand, the 'unsecured creditors' have a right over the assets of the Corporate Debtor i.e. flats/ apartment, assets of the Company.*
>
> *11. In most cases, the Committee of Creditors take 'haircut'. The Resolution Applicants satisfy them most of the time with lesser amount than the amount as determined. In the case of allottees (Financial Creditors), there cannot be a haircut of assets/ flats/ apartment."*

As observed in the findings, the Hon'ble NCLAT recorded as follows:

> *"21. In Corporate Insolvency Resolution Process against a real estate, if allottees (Financial Creditors) or Financial Institutions/Banks (Other Financial Creditors) or Operational Creditors of one project initiated Corporate Insolvency Resolution Process against the Corporate Debtor (real estate company), it is confined to the particular project, it cannot affect any other project(s) of the same real estate company (Corporate Debtor) in*

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

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

22. Further, a 'Secured Creditor' such as 'financial institutions/ banks', cannot be provided with the asset (flat/apartment) by preference over the allottees (Unsecured Financial Creditors) for whom the project has been approved. Their claims are to be satisfied by providing the flat/apartment. While satisfying the allottees, one or other allottee may agree to opt for another flat/apartment or one tower or other tower if not allotted to any other. In such case their agreements can be modified by the Interim Resolution Professional/ Resolution Professional with the counter signature of the Promoter and the allottees, so that the allottees (financial creditors), who are on rent or paying interest to banks may like to get earlier possession and are relieved from paying rent or interest to banks.

23. There may be some allottees who may ask for refund. But that prayer cannot be allowed by the Adjudicating Authority (National Company Law Tribunal) or by this Appellate Tribunal in view of the decision of the Hon'ble Supreme court in "Pioneer Urban Land and Infrastructure Limited & Anr. v. Union of India & Ors.- MANU/SC/1071/2019"...

24. However, after offering allotment it is open to an allottee to request the Interim Resolution Professional/Promoter, whoever is in-charge, to find out a third party to purchase said flat/apartment and get the money back. After completion of the flats/project or during the completion of the project. It is also open to an allottee to reach agreement with the Promoter (not Corporate Debtor) for refund of amount.

25. In the light of aforesaid discussion, as we find it is very difficult to follow the process as in normal course is followed in a Corporate Insolvency Resolution Process, we are of the view, that a 'Reverse Corporate Insolvency Resolution Process' can be followed in the cases of real estate infrastructure companies in the interest of the allottees and survival of the real estate companies and to ensure completion of projects which provides employment to large number of unorganized workmen."

21. It is noted by this Adjudicating Authority that the Loan Agreement in the instant case pertains to a specific project at a particular location, i.e. plot no. 8, Green Triveni Marg, Sikar Road, Jaipur, measuring 2952 sq. yds. Even though recital C of the Loan Agreement may be slightly inelegantly or deficiently hand-written and filled out, the inescapable conclusion is that loan financing under the relevant Agreement is linked to a specific project. Even if it is asserted/ argued by the Applicant/ Financial Creditor that it covers a wider canvas, it must be measured against the touchstone of the doctrine of *contra proferentem*, being a pre-printed agreement that could not

have allowed much flexibility to a borrowing executant. The said conclusion is also corroborated by definition of 'Project Land' in Article 1.1(u) of the Loan Agreement, which ascribes meaning thereof by a cross reference to recital C which has been extracted hereinbefore, and Schedule B of the Agreement which reiterates and reinforces the same as aggregation of the 34 flats as stated in recital C, besides at other places in the Loan Agreement and other documents.

22. Further, Article 2.1 of the Agreement elaborates the nature of loan facility and reads as follows:

> *"2.1. The Borrower has borrowed from the Lender and the Lender has agreed to lend to the Borrower a sum upto a maximum principle amount as stated in the Schedule C attached hereto in accordance with and subject to the terms and conditions contained herein for the purpose of meeting the development cost, construction cost and all such other costs involved in the development of the Project upon the Project Land and for no other purposes whatsoever."*

The said Article also cross refers to Schedule C of the Agreement, which clarifies that the purpose of the loan is 'BT', which in financial parlance means Balance Transfer. The Agreement is else replete with instances, references and implications of words and phrases that the Loan Agreement essentially pertains to a specific project. Clause 1.2 (f) of the Agreement refers to the Sanction Letter, which is to be construed as forming a part of the Agreement including all terms and conditions thereof. The Sanction

Letter confirms that the loan is in the nature of Balance Transfer Plus top up. Some extracts from the Sanction Letter are as follows:

S. No.	*Particulars*	*Description*
12.	*Repayment*	*1. Escrow Account for deposition of sale proceeds from the Project shall be opened.* ……… *4. During the tenure of the Facility, Principal Repayment through sale receipts in Escrow account pertaining to project in the ratio of 60:40 between lender and borrower respectively from day 1st of the disbursement.*
21.	*Sanction and Disbursement Conditions*	……… • *Signage of "AU Financiers Ltd." is to be kept at the project of the Builder.* • *Builder will have to take NOC prior to sale of any of the unit in the project & will have to deposit proportionate receivables in the loan A/c.* ………
22.	*Applicant's Covenants*	……… • *Applicant will submit quarterly certificate about status of project construction/ completion from approved architecture/ technical firm.* • *Applicant will submit monthly statement of inventory or unit sold and unsold, proceed received and receivables certified by statutory auditor of the Applicant as per annexure- 1.*

An equitable mortgage by deposit of title deeds has been registered and corresponding charge has also been registered with the Registrar of Companies, Jaipur. The First Schedule of the Mortgage Deed, copy attached as Annexure 7, refers to the description of 34 flats which co-relates with the description of the Project Land in the Agreement and the Sanction Letter. The Second Schedule of the Mortgage Deed states that the original documents are required to be deposited for creation of registered mortgage over the 34 flats. The original documents relate to the title chain of the plot of land measuring 2952 sq. yds. approximately underlying the Project. Perhaps no individual title deeds of the flats existed then, since the Project may have been in early stages of pre-construction or under construction.

23. Upon detailed consideration of the Application and documents filed by the Applicant/ Financial Creditor, it is apparent that the payment of claim amount has been defaulted by the Corporate Debtor in terms of the provisions of IBC, 2016. The Financial Creditor has placed on record the Sanction Letter, Loan Agreement, Mortgage Deed, copy of the statement of account of the Corporate Debtor along with Certificate under Section 2A of the Banker's Book Evidence Act, 1891, and NeSL and CIBIL report, which conclusively establish default on part of the Corporate Debtor. It is also abundantly clear that the financing arrangement related to a specific real estate Project of the Corporate Debtor as mentioned hereinabove.

24. The inevitable conclusion is that while the matter under consideration is an apt case for CIRP under provisions of IBC, 2016, the same shall be centred around the particular Project of the Corporate Debtor at hand, i.e. Coral Radha Krishna, Plot No. 8, Green Triveni Marg, Sikar Road, Jaipur, in view of the judgement of the Hon'ble NCLAT in the matter of ***Umang Realtech (supra)***, which has established the approach to be followed in such matters.

25. Consequently, while this Adjudicating Authority is inclined to initiate CIRP against the Corporate Debtor under provisions of IBC, 2016, it is required that the concerned Interim Resolution Professional / Resolution Professional ('IRP / RP') shall keep specific focus on the aforesaid real-estate Project of the Corporate Debtor and in context follow directions of this Adjudicating Authority throughout the process of CIRP, which are inter-alia as follows:

    a. The IRP/ RP shall look after the management of the Corporate Debtor in view of provisions of IBC, 2016, and list and segregate accounts/ ledgers, including investments, expenditures, expenses, receipts, profits, overheads, allocations, vouchers, journals, operating bank accounts and cashflows of this Project at Coral Radha Krishna from the other activities of the Corporate Debtor. Specific bank accounts with respect to the Project, if any, shall only be operational to deposit amounts for the purposes of completion or any other realizations of this Project and for presentation of cheques for encashment for Project expenditure/ expenses only with counter signature of IRP/ RP. Further, any transactions in such bank accounts shall be brought to the notice of IRP/ RP by means of periodic weekly/ fortnightly status updates or otherwise as required by IRP/ RP. Moreover, any money pertaining to this Project that has been transferred out to any other account of the Corporate Debtor or otherwise, or any other amount not pertaining to this Project which is lying in any Project related bank account, shall be immediately brought to the knowledge of IRP/ RP. The said amount(s) shall be reconciled at the earliest with report/ application of the IRP/ RP to the Adjudicating Authority.

b. The IRP/ RP shall be provided a fortnightly/ monthly statement of account of all bank accounts of the Corporate Debtor other than the Project related bank accounts to ascertain funds flow or any cross flows.

c. All accounts related to the Project shall be segregated and be treated as if on a stand-alone basis, akin to an internal undertaking or division. However, the IRP/ RP shall have full access to and visibility of all the accounts, dealings, systems and processes of the Corporate Debtor.

d. The IRP/ RP shall complete the Project on priority basis through existing promoter(s) acting in the capacity of independent financers and not promoters, to ensure that the Corporate Insolvency Resolution

Process reaches success and the allottees take possession of their flats/ apartments during CIRP as envisaged in the case of ***Umang Realtech (supra)***. In the absence of any promoter so stepping forward, the IRP/ RP is free to consider the Financial Creditor in such avatar, independently, failing which he shall look at any other white knight / third party. This Project of the Corporate Debtor shall be / remain insulated and independent from other activities of the Corporate Debtor.

e. As part of completion of the Project, the IRP/ RP shall check the status of formal sanctions / approvals and necessary certification for smooth completion of the Project. The IRP/ RP shall examine the status of completion of the Project and calculate an estimate of residual/ remaining amount required for the completion of the Project and a tentative plan for the same.

f. The IRP/ RP shall prepare a status report of the Project and shall include the status of flats which are already sold, or under agreement of sale, and whether corresponding approval of the Financial Creditor is/ was required or not and if the same is in hand.

g. An initial update on status of the Project shall be provided to this Adjudicating Authority at the earliest and at periodic intervals during the course of ongoing events and in any case, on fortnightly basis for the first two months and on a monthly basis thereafter. The update shall include an assessment of unsold inventory and any amount that should be kept in escrow from realizations on sale of such inventory in view of loan burden or for any other reasons.

h. Any accruals on/ of the Project shall be banked separately and repayment from such accretion to the Financial Creditor, if any, shall be made only after obtaining prior permission of the Adjudicating Authority. The Financial Creditor is expected to exhibit certain forbearance in this regard in their calculations with a view to effect orderly closure of the matter. In case any accounts of the Corporate Debtor are operational with the Financial Creditor, the Financial Creditor shall facilitate their smooth functioning.

i. In view of the decision of the Hon'ble Supreme Court in ***Pioneer Urban Land and Infrastructure Limited & Anr. v. Union of India & Ors***. (AIR 2019 SC 4055), no allottee shall be allowed to seek any refund in respect of the flats allotted to them. However, in case any allottee requests the IRP/ RP to find out potential flat buyers and get their money back, the IRP/ RP is at liberty to do so.

j. Upon completion of the buildings at the site, even pending formal certification in this regard, the IRP/ RP shall work towards release of the mortgage charge on the Project Land, and the title/ interest thereof shall thereafter stand clear but held/ apportioned as indivisible, impartible pro-rata share of respective flats or any other construction in the Project Land or in favour of the Flat Buyers/ owners association/ society in conformance with applicable laws. Resultantly, flat buyers/ owners shall not be burdened with any lien of Financial Creditor on the Project Land.

k. Simultaneously with release of mortgage charge on the Project Land, title deeds or individual mortgage deeds in respect of the flats under lien of the Financial Creditor, as per the Loan Agreement, shall be prepared in favour of the Financial Creditor or upon/ to its directions. Except for any variations of physical dimensions or layout as per architectural plans, in terms of derivation of antecedent title, these flats shall be no different than flats that were not earmarked with lien of the Financial Creditor under the Loan Agreement.

l. If the Project plans permit any construction other than residential flats, the IRP/ RP shall seek construction/ completion of the same and utilize proceeds thereof for completion of the Project. If any such construction has already been done and proceeds thereof have already been realized, then such details shall be included in reports to the Adjudicating Authority. This, however, shall be at a relatively lower priority as compared to construction/ completion of flats.

26. In view of the foregoing, CIRP of the Corporate Debtor is ordered by this Adjudicating Authority rooted on the said real-estate Project and above-mentioned directions. The consequences of initiation of CIRP shall be inter-alia as follows:

   (i) The IRP proposed by the Applicant is Mr. Mahesh Chandra Purohit who is an Insolvency Professional registered with ICSI Insolvency Professional Agency with Registration No. IBBI/IPA-002/IP-N00690 /2018-19/12202 (email: mcpurohit1107@gmail.com, Mobile No.: 8003966888). The Applicant has filed consent in Form 2 under Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016, stating therein that no disciplinary proceedings are pending against the named IRP. He is hereby appointed as the IRP to take over the affairs of the Corporate Debtor with focus on the aforesaid real-estate Project and duties as required to be performed by him under the provisions of IBC, 2016 including issue of publication in widely circulated newspapers, including one in English and one in Hindi, as contemplated under the provisions of IBC, 2016 and calling for claims from the creditors of Corporate Debtor and collation of the same. The claims related to the pertinent real-estate Project shall take precedence and be segregated,

(ii) Further, as a sequel of admission, moratorium as envisaged under Section 14 of IBC, 2016 is invoked in relation to the Corporate Debtor, which will be in vogue during the Corporate Insolvency Resolution Process of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of IBC, 2016 in relation to the Corporate Debtor.

(iii) The said IRP shall act strictly in compliance with the provisions of IBC, 2016 and with a view to defray his expenses to be incurred and fees on account, the Applicant is directed to deposit a sum of Rs. 2,00,000/- (Rupees Two Lakhs Only) to the account of IRP within three days from the date of this order. The IRP shall duly file a status report from time to time appraising this Adjudicating Authority about the progress of CIRP unfolding in relation to the Corporate Debtor. The first report, including details about the status of the relevant real-estate Project, shall be filed, in any case within 21 days of commencement of CIRP.

(iv) In terms of sections 17 & 19 of IBC, 2016 all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP. This order is being passed in an Application filed under Section 7 of IBC, 2016 with a view to bring about resolution of the Corporate Debtor with focus on specific real-estate Project in question and the energies of the IRP/ RP are expected to be channelized accordingly. However, in the event of non-cooperation by the Corporate Debtor or its directors or its employees, the expanse of resolution shall encompass the entire gamut of operations of the Corporate Debtor upon the report/ application of the IRP/ RP and directions in this regard of the Adjudicating Authority.

(v) In terms of Section 7 of IBC, 2016, this order shall be communicated to the Applicant, Corporate Debtor as well as the Interim Resolution Professional (IRP) appointed by this Adjudicating Authority to carry out the CIRP at the earliest, not exceeding one week from today. A copy of this order shall also be communicated to IBBI for its records.

27. Accordingly, CP No. (IB)-170/7/JPR/2019 is admitted.

Sd/-

SHRI RAGHU NAYYAR,
MEMBER (TECHNICAL)

Sd/-

SHRI P.S.N. PRASAD,
MEMBER (JUDICIAL)