

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1422 of 2024

(Arising out of Order dated 19.07.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Court VI, New Delhi in I.A. No.2497 of 2024 in IB-682/PB/2021)

IN THE MATTER OF:

Dinesh Kumar

...Appellant

Versus

Narendra Kumar Sharma & Ors.

...Respondents

Present:

For Appellant : Dr. U.K. Chaudhary, Sr. Advocate with Mr. Mansymer, Mr. Praney, Advocates

For Respondents : Mr. Deep Bisht with Mr. N.K. Sharma, Advocates for R1/IRP

Mr. Raghavendram Bajaj, Mr. Kumar Karan and Mr. Zeeshan Ahmed, Advocates for Intervenors in I.A. 7379 of 2024

Mr. Arun Kathpalia, Sr. Advocate with Mr. Gaurav H. Sethi and Mr. Rahul Pawar, Advocates for Intervenor in I.A.849 of 2024

Ms. Prachi Johri and Ms. Abhipsa Sahu, Advocates for Intervenor in I.A. 7547 of 2024

Mr. Sahil Sethi, Mr. Samriddh Bindal and Mr. Vikash Kumar, Advocates for R- 2 to 4.

With

Company Appeal (AT) (Insolvency) No.1434 of 2024

(Arising out of Order dated 19.07.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Court VI, New Delhi in in IB-682/PB/2021)

IN THE MATTER OF:

Aman Sehgal

...Appellant

Versus

Narendra Kumar Sharma & Ors.

...Respondents

Present:

For Appellants : Mr. Arvind Nayar, Sr. Advocate with Mr. Lokesh Bhola, Mr. Akshay, Ms. Sanjana Manchanda, Advocates

For Respondents : Mr. Deep Bisht with Mr. N.K. Sharma, Advocates for R1/IRP

Mr. Sahil Sethi, Mr. Samriddh Bindal and Mr. Vikash Kumar, Advocates for R- 2 to 4.

With

Company Appeal (AT) (Insolvency) No.1573 of 2024

(Arising out of Order dated 19.07.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Court VI, New Delhi in in IB-682/PB/2021)

IN THE MATTER OF:

Ravi Kumar

...Appellant

Versus

Narendra Kumar Sharma & Ors.

...Respondents

Present:

For Appellant : Mr. Vikas Nautyal, Advocate

For Respondents : Mr. Deep Bisht with Mr. N.K. Sharma, Advocates for R1/IRP

Mr. Sahil Sethi, Mr. Samriddh Bindal and Mr. Vikash Kumar, Advocates for R- 2 to 4.

J U D G M E N T

ASHOK BHUSHAN, J.

These three Appeal(s) by the Suspended Directors of three Corporate Debtors (“CDs”) have been filed challenging the same order dated 19.07.2024 passed by National Company Law Tribunal, Court VI, New Delhi in admitting Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “IBC”) filed by the Financial Creditors in a class and rejecting IA Nos.293 and 2497 of 2024 filed by the Corporate Debtor – M/s Mist Direct Sales Pvt. Ltd.

2. Brief facts of the case necessary to be noticed for deciding the Appeal(s) are:

- (i) By Lease Deed dated 21.08.2008, New Okhla Industrial Development Authority ("**Noida**") allotted land in favour of Anand Infoedge Pvt. Ltd., the land owning Company for 90 years. Anand Infoedge Pvt. Ltd. the land owning Company entered into Collaboration Agreement dated 26.10.2012 with a developer in the name and style of Mist Avenue. The project is situated at Plot No.1, at Sector 143, Noida District, Gautam Budh Nagar. The developer Mist Avenue made allotment in the year 2012 of various units and entered into Builder Buyers Agreement, providing for handing over units within 36 months with grace period of 12 months.
- (ii) There being no progress in the construction of the Project, the land owning Company entered into another Collaboration Agreement dated 27.07.2017 with another Company namely – Mist Direct Sales Pvt. Ltd., a subsidiary of Anand Infoedge Pvt. Ltd. The previous Collaboration Agreement was also cancelled on 27.07.2017. The developer Mist Direct Sales Pvt. Ltd. informed the allottees that the Project shall now be constructed by Mist Direct Sales Pvt. Ltd. and all liabilities and responsibilities have been undertaken by the Mist Direct Sales Pvt. Ltd.
- (iii) In the year 2019, complaints were filed before the Uttar Pradesh Real Estate Regulatory Authority ("**UP RERA**") and UP RERA issued show-cause notice to Mist Direct Sales Pvt. Ltd. (hereinafter referred to as the "**Developer**"). There being

certain dispute with regard to part of land, which was allotted to Anand Infoedge Pvt. Ltd. a Writ Petition No.15503 of 2019 was filed by the land owning Company before the Allahabad High Court. On 07.12.2019, the UP RERA deregistered the Project against which an Appeal was filed before the Appellate Tribunal, Lucknow. UP RERA Appellate Tribunal also disposed of the Appeal of the Developer, against which order an Appeal has also been filed in the Allahabad High Court, which is claimed to be pending.

- (iv) The allottees of the Project – Festival City filed Section 7 Applications, jointly against three developers namely – (1) Anand Infoedge Pvt. Ltd.; (2) Mist Avenue Pvt. Ltd.; and (3) Mist Direct Sales Pvt. Ltd. The Application was filed by 115 allottees, through their representative. In Section 7 Application, all the three Corporate Debtors raised objection regarding maintainability of the petition, taking various grounds. One of the grounds raised was threshold as required under the IBC of 100 allottees or 10% of the total number of allottees, is not fulfilled, hence, the Application under Section 7 deserves to be rejected. Further, objection was that the joint application against three CDs is not maintainable. There were various other objections raised by the three CDs, who were Respondent Nos.1, 2 and 3 in Section 7 Application.

- (v) The Adjudicating Authority heard the joint company petition and the objections raised by three CDs and by order dated 21.10.2022 held that company petition is maintainable and directed the matter to be listed for hearing on 10.11.2022. Aggrieved by the order dated 21.10.2022 passed by Adjudicating Authority in Section 7 Application, all the three CDs filed Appeal(s). The Company Appeal (AT) (Ins.) No.1506 of 2022 filed by Anand Infoedge Pvt. Ltd.; Company Appeal (AT) (Ins.) No.1478 of 2022 was filed by Mist Direct Sales Pvt. Ltd.; and Company Appeal (AT) (Ins.) No.127 of 2023 by Mist Avenue Pvt. Ltd. All the three Appeal(s) came to be heard by this Tribunal and by a detailed judgment dated 17.11.2023, all the Appeal(s) were dismissed, upholding order of Adjudicating Authority that Section 7 Application filed by the allottees is maintainable. Challenging order of this Tribunal dated 17.11.2023, all the three Appellant(s) filed Appeal(s) before the Hon'ble Supreme Court being Civil Appeal Nos.7958-7959 of 2023, Civil Appeal Nos. 7950-7951 of 2023 and Civil Appeal No.7980 of 2023. All the Appeal(s) were disposed of by the Hon'ble Supreme Court by order dated 11.12.2023. The Hon'ble Supreme Court refused to interfere with the orders passed by NCLT and NCLAT, holding Section 7 Application maintainable. The Hon'ble Supreme Court further observed that Section 7 Application being pending for two years, NCLT may take up the Application at the earliest

date and to endeavour an expeditious disposal within two months.

- (vi) Applications were filed in Section 7 Application by Developer before the Adjudicating Authority seeking a direction to dismiss the Company Petition, it was further prayed that proceedings under Section 340 CrPC read with Section 195(1)(b) of the CrPC be initiated against the Petitioners. Prayer was also made to impose penalty on the Petitioners under Section 65 of the IBC. In the Application objections regarding swearing of the affidavit with regard to at least six Applicants was also raised. It was pleaded that affidavits of allottees were notarized in August/ September 2021 and the Petition under Section 7 was filed in October 2021. It was alleged that fraud was played by the allottees on the Court. All the Applications came to be heard by the Adjudicating Authority and by a detailed order dated 05.01.2024, all the Application were dismissed. Mist Direct Sales aggrieved by the order dated 05.01.2024 passed by Adjudicating Authority, filed an Appeal before this Appellate Tribunal, being Company Appeal (AT) (Ins.) No.96 of 2024, which Appeal was also heard and dismissed by this Tribunal on 29.01.2024.
- (vii) Certain Intervention Petition P/11/2024 and Intervention Petition P/12/2024 were filed in Section 7 proceedings by M/s Disire Retail Pvt. Ltd. and three Ors. and M/s. Grand

Developers Pvt. Ltd. claiming that they are holders of several units. Intervenors prayed for intervention. The Adjudicating Authority vide order dated 27.02.2024 dismissed both the Intervention Petition P/11 and P/12 of 2024.

- (viii) Against the order, which was passed by this Tribunal on 29.01.2024, dismissing the Company Appeal (AT) (Ins.) No.96 of 2024 an Appeal was filed by Mist Direct Sales Pvt. Ltd. being Civil Appeal No.5018 of 2024 before the Hon'ble Supreme Court, which Appeal was dismissed as withdrawn on 29.01.2024.
- (ix) Another IA was filed being IA No.1808 of 2024 in Section 7 petition by M/s Dheeraj Sharma and Ors. praying for certain reliefs and raising objection to Section 7 petition, which Application was also dismissed in limine on 02.05.2024.
- (x) The order passed by Adjudicating Authority in Intervention Petitions on 27.02.2024 in P/12/2024 was also challenged by filing Appeal, i.e. Company Appeal (AT) (Ins.) No.899 of 2024 by Grand Developers Pvt. Ltd., which was dismissed by this Tribunal on 15.05.2024.
- (xi) The Adjudicating Authority proceeded to hear Section 7 Petition. Developer also filed a criminal complaint against the Financial Creditors in a class on 04.01.2024 alleging false, forged and fabricated affidavits filed before the Tribunal, on which complaint an FIR No.102/2024 was registered on 21.03.2024 under Section 420/467/471 and 34

of the Indian Penal Code. On 24.01.2024, Developer filed an IA No.293 of 2024 seeking direction from the Tribunal to enable the Developer to settle amicably the dispute between the Appellant and the Financial Creditors. Developer offered to refund 70% of the principal amount to all the contesting Financial Creditors, which offer was not accepted on instructions by Counsel for the Financial Creditors. In the meantime, CA (CAA)/10/ND/2024 was filed by Mist Direct Sales Pvt. Ltd. before NCLT seeking compromise and arrangement. In the FIR, which was registered as FIR No.102/2024 a Status Report was submitted by Investigation Officer (“IO”). An IA No.1860 of 2024 was also filed by Developer, relying on the FIR and the Status Report submitted before NCLT, which IA was also came to be dismissed on 13.05.2024.

- (xii) Another IA No.2497 of 2024 was filed by Developer before the Adjudicating Authority praying to submit a Demand Draft for an amount of Rs.22,10,43,647/- towards the principal and some delay charges, seeking acceptance of the amount and dismissal of Section 7 Application. The Adjudicating Authority by an order dated 25.05.2024 granted opportunity to the parties to settle. When the matter came for consideration before the Adjudicating Authority on 28.05.2024, counsel for the Financial Creditors reported that no settlement between the parties could take place. The

Adjudicating Authority thereafter on 29.05.2024 reserved the order on IA No.2497 of 2024. The Adjudicating Authority by the impugned order dated 19.07.2024 admitted Section 7 Application and rejected IA No.2497 of 2024 and IA No.293 of 2024.

(xiii) Aggrieved by the aforesaid order of the Adjudicating Authority, these Appeal(s) have been filed. Company Appeal (AT) (Ins.) No.1422 of 2024 has been filed by Suspended Director of Mist Direct Sales Pvt. Ltd. Company Appeal (AT) (Ins.) No.1434 of 2024 has been filed by Suspended Director of Anand Infoedge Pvt. Ltd. and Company Appeal (AT) (Ins.) No.1573 of 2024 has been filed by Suspended Director of Mist Avenue Pvt. Ltd.

3. We have heard Dr. U.K. Chaudhary, learned Senior Counsel appearing for Appellant in Company Appeal (AT) (Ins.) No.1422 of 2024; Shri Arvind Nayar, learned Senior Counsel appearing for Appellant in Company Appeal (AT) (Ins.) No.1434 of 2024; Shri Vikas Nautyal, learned Counsel appearing for the Appellant in Company Appeal (AT) (Ins.) No.1573 of 2024; Shri Sahil Sethi, learned Counsel appearing for Financial Creditors in a class. Various Intervention Applications have also been filed in these Appeal(s). We have also heard learned Counsel appearing for Intervenors in the above three Appeal(s).

4. Dr. U.K. Chaudhary, learned Senior Counsel appearing for the Mist Developer submits that among affidavits, which were filed along with

Section 7 Application, some were forged and fabricated. An FIR No.102/2024 was also registered on a complaint filed by the Developer. A Status Report has also been filed in the FIR that 20 affidavits in the Application are forged affidavits. It is submitted that threshold of minimum 100 allottees or 10% has not been fulfilled in Section 7 Application, hence, it deserves to be rejected, there being total units of 1500. It is further submitted that Company Petition under Section 230 has also been filed by the Developer before the NCLT. It is submitted that objective of IBC is not to send a Company to CIRP, rather to resolve it. There are 1500 homebuyers and only 115 have initiated CIRP. It is submitted that Appellant was restrained by force majeure in carrying out the Project. It is submitted that Appellant has given three options for resolution by an affidavit, which need to be accepted.

5. It is submitted by Shri Arvind Nayar, learned Senior Counsel appearing for land owning Company that there was dispute regarding title of some Khasra, which was in the midst of land allotted to land owning Company and was not in the name of Noida. On account of the dispute, the Project could not proceed. A suit has already been filed in the Civil Court of Gautam Budh Nagar, which is pending consideration. It is submitted that on account of there being title dispute, the Project could not be completed and Adjudicating Authority committed error in initiating Section 7 Application. There is no question of timeline when title of the land itself is defective. It is submitted that land owning Company has no

privity of contract with Financial Creditors in a class who have filed Section 7 Application.

6. Learned Counsel appearing for the Appellant in Company Appeal (AT) (Ins.) No.1573 of 2024 submits that the Collaboration Agreement in favour of Mist Avenue was cancelled in the year 2017 and the Mist Avenue has no liability or responsibility.

7. Shri Sahil Sethi, learned Counsel appearing for Financial Creditors opposing the submission of learned Counsel for the Appellant(s) submits that present is a case where Company Petition was filed by the Financial Creditors in a class in the year 2021 and for last three years, the Corporate Debtors by one or other means have been trying to scuttle and derail the disposal of Section 7 Application. The Corporate Debtors objected to the maintainability of Section 7 Application on various grounds, which grounds were considered and finally rejected by the Adjudicating Authority vide order dated 21.10.2022. Challenge to set aside the said order was also repelled by this Tribunal vide order dated 17.11.2023. The Corporate Debtors also filed an Appeal in the Hon'ble Supreme Court of India and the Hon'ble Supreme Court of India also dismissed the Appeal on 11.12.2023 and has held the issue regarding maintainability of Section 7 Application treated to have become final for NCLT and NCLAT and the Hon'ble Supreme Court of India also directed the NCLT to decide the Application within two months. Even after the said order of the Hon'ble Supreme Court of India, the Corporate Debtors continued to file various Applications raising objection. Application

seeking direction to initiate proceedings under Section 340 CrPC read with 195(1)(b) alleging fraud and forgery was also dismissed. The Company Petition filed by the Developers in the year 2024 under Section 230 of the Companies Act, 2013 was another attempt to delay the disposal of Section 7 Application, which Application has been subsequently dismissed by the NCLT on 19.07.2024. The FIR No.102/2024 and Status Report are wholly irrelevant to decide Section 7 Application, where debt and default has to be looked into. The debt and default being fully proved, Section 7 Application ought to have been admitted, which could not be admitted on account of various dilatory tactics adopted by the Corporate Debtors. It is submitted that offer of the Corporate Debtors made in the end to pay the principal amount with some interest has been considered and rejected by the Financial Creditors in class. The principal amounts were paid in the year 2012 and refund of the principal amount with some meagre amount, which amount to interest @ 1-2% per annum was considered and rejected by Financial Creditors in a class, which is recorded in the order of the Adjudicating Authority. The Financial Creditors in a class do want the insolvency proceedings to commence, so that they may be able to get the units. It is submitted that there is no error in order of the Adjudicating Authority. It is further submitted by Financial Creditors that CAG has submitted an Audit Report that amount of Rs.401 crores was collected from the allottees and amount of Rs.302 crores were transferred to various sister Companies of the Corporate Debtors. It is submitted that title in respect

of land in dispute was not for Phase-1. Hence, the construction with regard to Phase-1, could have been very continued.

8. Learned Counsel appearing for the Intervenor in the Intervention Applications filed in the Appeal(s) are divided in two groups. One group of the Intervenor support the Financial Creditors in a class and submitted that insolvency may proceed. Another group of Intervenor prayed that a solution be found out and if there is a fair proposal, it should be put for vote before all the allottees of units, not only the Financial Creditors, who have initiated the proceedings.

9. Dr. U.K. Chaudhary, learned Senior Counsel submits that no pleadings have been filed by the Respondents and the threshold issue has never been decided. Out of 115 affidavit of the Financial Creditors, 20 affidavits are forged and fabricated, hence, threshold limit is not fulfilled. Section 230 proceedings has not yet been decided. In rejoinder, Shri Arvind Nayar, learned Senior Counsel submits that Writ Petition filed in the Allahabad High Court is pending. There is no finding regarding debt and default qua the land owning Company. The land owning Company filed a suit in 2017 against Noida, which is pending.

10. We have considered the submissions of learned Counsel for the parties and have perused the records.

11. The challenge in these Appeal(s) is to an order admitting Section 7 Application filed by Financial Creditors in a class. Section 7 Application was filed on behalf of 115 unit holders through their Authorized

Representative. The first submission, which has been raised by learned Counsel for the Appellant challenging the order of admission is that threshold of 100 allottees is not fulfilled. The argument advanced by learned Counsel for the Appellant is that Financial Creditors have filed forged and fabricated affidavits in an endeavour to comply with the provisions of Section 7 of the IBC. Mr. Yogender Singh, Advocate (Notary) issued a Certificate dated 31.07.2023 that affidavits filed by six Financial Creditors have not been attested by him and that no entries were made by him in his register. A submission was also made by one of Financial Creditors Ajay Khajuria, who made a declaration that affidavit filed in his name before the Tribunal is forged and the same has not been signed by him and there is a visible difference in signatures. Reference to FIR No.102/2024 dated 21.03.2024 has also been made. The submission is that Investigation Officer (“IO”) has filed a Status Report dated 01.05.2024 stating that 20 affidavits are forged and fabricated and further investigation is going on. Hence, in view of the said Status Report, 20 affidavits being forged and fabricated, it is only 95 Applicant/allottees, who can be said to have filed the Application. Hence, threshold limit under Section 7 is not met and the Application was not liable to be admitted.

12. We have noticed above that in Section 7 Application objections were raised by the Corporate Debtors regarding non-fulfillment of threshold. The said objection was noticed in the order dated 21.10.2022 passed by the Adjudicating Authority. All the above objections were noticed and

dealt by Adjudicating Authority in paragraph 9, 10 and 11 of the order. The argument raised by the Appellant on non-fulfillment of threshold was considered and rejected by the Adjudicating Authority. The Appeal was filed by all the three Corporate Debtors, challenging order dated 21.10.2022 of the Adjudicating Authority, rejecting objections on threshold. In the Appeal again the argument was raised that threshold of 100 allottees is not fulfilled, hence Section 7 Application deserves to be rejected. Issue No.(ii) was framed in the Appeal, i.e. *“(ii) Whether Section 7 Application filed by the allottees fulfils the threshold as prescribed under the IBC?”*. The said issue was considered and decided by this Tribunal. This Tribunal in its judgment and order dated 17.11.2023 again considered all submissions raised, questioning the threshold of 100 allottees, who has filed Section 7 Application. Finding of the Adjudicating Authority that Section 7 Application fulfilled the threshold was affirmed. In judgment dated 17.11.2023, all arguments attacking the threshold was examined and repelled. Against the order passed by this Tribunal dated 17.11.2023, Civil Appeal No.7958-7959 of 2023 was filed, in which Appeal the Hon’ble Supreme Court took the view that issue of maintainability stand concluded by the order dated 17.11.2023 insofar as the NCLT and NCLAT is concerned. The Hon’ble Supreme Court further held that since Applications under Section 7 is pending over two years, NCLT to take up the Application and decide and dispose of within two months. The order of the Hon’ble Supreme Court dated 11.12.2023 is as follows:

- “1 The impugned order of the National Company Law Appellate Tribunal¹ dated 17 November 2023 is admittedly only at the stage where the maintainability of the application under Section 7 of the Insolvency and Bankruptcy Code 2016 was questioned. The application under Section 7 is still awaiting a hearing on merits, though it is common ground that nearly two years have gone by in the interregnum. Hence, we are not inclined to entertain these proceedings at the present stage.
- 2 After the application under Section 7 is heard and disposed of on merits, should it become necessary to do so, the parties would be at liberty to take recourse to all appropriate proceedings in accordance with law. At that stage, should it become so necessary, this Court will enquire into both the merits and maintainability. However, we also clarify that the issue of maintainability shall stand concluded by the impugned order dated 17 November 2023 insofar as the National Company Law Tribunal and NCLAT is concerned.
- 3 Since the application under Section 7 is pending for over two years, we request the NCLT to take up the application at the earliest possible date and to endeavour an expeditious disposal within two months.
- 4 Subject to the aforesaid, the Civil Appeals are dismissed.
- 5 Pending application, if any, stands disposed of.”

13. We have also noticed above that several IAs were filed by the Corporate Debtors before the Adjudicating Authority being IA Nos.5400 of 2023, 4121 of 2023, 4122 of 2023 and 4312 of 2023, where Corporate Debtors had prayed for initiation of proceedings under Section 340 of CrPC read with Section 195(1)(b) and dismiss petition under Section 7 on the ground of playing fraud on the Tribunal. It is useful to notice the

prayers made in one of the Application, which has been noted in paragraph 1 of the order dated 05.01.2024, which are as follows:

- “(a) Pass necessary orders and directions, thereby dismissing the present Company Petition filed under Section 7 of IBC by the Applicants/ Financial Creditors on the ground of playing fraud on this Tribunal;*
- (b) Initiate proceeding u/s Section 340 r/w section 195(1)(b) CrPC and other provisions of law against the Applicants/ Financial Creditors;*
- (c) Impose penalty u/s 65 of the IB Code 2016, on the Applicants/ Financial Creditors for initiating proceedings fraudulently and with malicious intent;*
- (d) Take the Information provided by the Respondent No.3 to this Tribunal on record, for making a reference to the Hon'ble High Court under Section 15 (2) of the Contempt of Court Act, 1972, for initiating criminal contempt proceedings against the Applicants/ Financial Creditors;*
- (e) Pass necessary orders and directions thereby deciding the present Application as a preliminary issue;*
- (f) Pass necessary orders and directions, thereby deciding the present Application first, before proceeding with the main company petition as the same is in relation to administration of justice;*
- (g) Take such other actions and pass order as this Tribunal may deem fit and proper in the interest of justice.”*

14. The contents of the Application were also noticed by the Adjudicating Authority in order dated 05.01.2024, which were allegations that false and fabricated affidavits were filed. The said submission have been noted in paragraph 3 of the order, which is as follows:

“3. The brief facts as averred by the Applicant for filing the present Application are as follows:

- i. That the present application is being filed by and on behalf of the Respondent No. 3, seeking dismissal of the present Company Petition on the ground that the Applicants/Financial Creditors have played fraud upon this Adjudicating Authority in view of filing of false affidavits in an endeavor to comply with the provisions of Section 7 IBC by applicants.
- ii. That vide IA No.4121/2023 and 4122/2023, the Respondent No. 3 (Applicant herein) had brought to notice of this Adjudicating Authority that at least 6 (six) applicants/financial creditors to the knowledge of the Respondent No. 3 out of total 143 Applicants/Financial Creditors as mentioned in the Memo of Parties have filed false affidavits. Further, vide IA No. 4312/2023, the Respondent herein had brought to notice of this Adjudicating Authority that the affidavits of most of the allottees were notarised in August or September 2021. whereas the Application u/s 7 IBC was filed much later in October 2021. Thus. there was no accompanying application under Section 7 of the Code at that point in time when the affidavits were notarised. Further, it has come to the knowledge of the respondent herein that another applicant named Ajay Khajuria (Applicant No.106 as per the memo of parties in the company petition) has provided a declaration that the affidavit filed before Adjudicating Authority in the present matter has not been signed by him and there is a visible difference in signatures.
- iii. That the Applicants/ Financial Creditors have initiated the proceeding before this Adjudicating Authority fraudulently and with malicious intent and

the Adjudicating Authority has power within Section 65 of the Code to impose penalty upon such person.

- iv. That affidavit of one of the Applicants, i.e. Mr. Ajay Khajuria has been forged and declaration to that effect has been given by such Applicant. v. That the affidavits are false and not notarized.”

15. The Adjudicating Authority considered all objections in the Application, including the Application filed by Ajay Khajuria, who has filed the Application for withdrawal of his claim from Section 7 Application. The Application was rejected by Adjudicating Authority. In paragraphs 11 and 12, the Adjudicating Authority made following observations:

“11. Further, prior to admission of Section 7 Application making attempts to seek dismissal of the application by the applicant is not a practice which in consonance with the provisions of IB Code, 2016 as well as the objects sought to be achieved by the said legislation.

12. From the prayers made at (a) to (g) in the application it transpires that the applicant is attempting to drag on the proceedings and build an approach to have a road-way for forum shopping, therefore, the IA/5400/2023 is dismissed.”

16. Company Appeal (AT) (Ins.) No.96 of 2024 was filed, challenging the order dated 05.01.2024 of the Adjudicating Authority, which Appeal also came to be dismissed by this Tribunal by its order dated 29.01.2024.

17. The Appellant(s), thus, had raised various allegations including forged and fabricated affidavits before the Adjudicating Authority in Section 7 Application and withdrawal of claims by some of the Applicants. All such objections were considered on merits and were rejected. The

prayer of the Appellant(s) to initiate proceedings under Section 340 CrPC was also rejected. The learned Counsel for the Appellant has also placed reliance on FIR registered against some of the Financial Creditors being FIR No.102/2024. The fact is that after the Application filed by the Corporate Debtors in Section 7 Application, making various allegations to reject Section 7 Application, including filing of forged and fabricated affidavits having been rejected, the Corporate Debtor thereafter filed a FIR alleging forgery and fabrication of the affidavits. Reliance has been placed by learned Counsel for the Appellant on some Status Report submitted in the said criminal proceedings, in which Status Report submitted by IO, it was stated that 20 affidavits are forged and fabricated.

18. Before the Adjudicating Authority, reliance on the FIR and the Status Report submitted therein, was also pressed. The Adjudicating Authority has rightly not placed any reliance on the Status Report in a criminal proceedings initiated by Corporate Debtors against Financial Creditors in a class. As noted above, an Application for initiating criminal proceedings against Financial Creditors in a class was filed in Section 7 Application and was rejected, which order was unsuccessfully challenged in the Appeal before this Tribunal. The effect and consequence of the order, rejecting the Application to initiate criminal proceedings against the Financial Creditors in a class, cannot be bypassed by the Appellant(s) by filing First Information Report or complaints against Financial Creditors. Any Status Report submitted in such criminal proceedings can have no bearing on proceedings, which was taken by Financial Creditors

in a class under Section 7. Reliance on Status Report submitted by Appellant(s) in a criminal proceeding can have no bearing while deciding Section 7 Application. The said Status Report is not an evidence on which it can be pronounced that threshold of 100 allottees was not complete in filing of Section 7 Application. We, thus, are of the view that submission raised by the Appellant(s) that threshold of 100 is not complete has no legs to stand and has to be rejected.

19. The Adjudicating Authority has returned a finding that there was debt and default on the part of the Corporate Debtors in delivering the units within 36 months with grace period of 12 months. It is also relevant to notice that in the year 2024, attempts made by Corporate Debtors failed to scuttle and derail the proceedings in Section 7 Application, IAs 293 of 2024 and 2497 of 2024 were filed seeking direction to amicable settle the matter and in IA No.2497 of 2024, the Corporate Debtor offered to refund 100% principal amount with certain amount towards the delayed payment. The Adjudicating Authority gave opportunity to the parties to consider the said proposal. Learned Counsel for the Financial Creditors in a class communicated to the Adjudicating Authority that offer made by the Corporate Debtors is not acceptable, which has been noticed in paragraph 23 of the impugned order of the Adjudicating Authority, which is as follows:

“23. Now coming to the present case, as far as the two applications are concerned, the Parties appeared before this Tribunal on 28.05.2024 and submitted that they have not

come to any settlement. The relevant extract is reproduced as under: -

Ld. Counsels for both the parties have appeared. As per order dated 15.05.2024 Ld. Sr. Counsel for the R3 has submitted that they were willing to consider improvement of their offer to the Financial Creditors for settlement of the matter and for this purpose they wish to hold the meeting between the parties and their Counsels. In view of the above, this Tribunal had granted time to the parties and fixed the matter for 28.05.2024. We have heard Ld. Counsels for both the parties. It transpires that the parties have not come to any settlement in this regard.

The Financial Creditors have submitted that the offer was too low, as it was marginally over the principal amount (1%-2% interest p.a.). From the records, it appears that most of the bookings were made in the year 2012, and approximately 12 years have passed without any possession being offered to any of the allottees. Furthermore, this Adjudicating Authority cannot direct the parties to settle. The offer has already been rejected. Therefore, in view of the same, the applications IA/1808/2024 & IA/1860/2024 are dismissed.”

20. When the present Appeal (Company Appeal (AT) (Ins.) No.1422 of 2024) was taken, learned Counsel for the Appellant offered to deposit the amount of Rs.22,10,43,647/-. Noticing the aforesaid submission of the Appellant, the Appellant was permitted to deposit the aforesaid amount within 30 days, in pursuance of which order dated 25.07.2024, the aforesaid amount was deposited by the Appellant in Company Appeal (AT) (Ins.) No.1422 of 2024.

21. During hearing of the present Appeal also learned Counsel for the Respondents, i.e. Financial Creditors in a class specifically submitted that the Financial Creditors are not agreeable to accept the amount, which was offered to be deposited by the Appellant. The unit holders have been waiting for their units for last more than a decade and the amount, was paid in the year 2012 by the allottees, the Appellant cannot be absolved by permitting them to deposit the amount with meagre interest, which was received in the year 2012. The findings recorded by the Adjudicating Authority regarding debt and default and Application filed by the Corporate Debtors itself being IA Nos. 293 and 2497 of 2024 proves beyond doubt that debt and default is admitted on the part of the Corporate Debtor. In Section 7 Application, the Adjudicating Authority has rightly placed reliance on ***M. Suresh Kumar Reddy v. Canara Bank – (2023) 8 SCC 387***, where the Hon'ble Supreme Court in paragraphs 11 and 12 has laid down following:

“11. Thus, once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application under Section 7. “Default” is defined under subsection (12) of Section 3 IBC which reads thus:

3. Definitions.—In this Code, unless the context otherwise requires—

(12) “default” means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not [paid] by the debtor or the corporate debtor, as the case may be;”

Thus, even the non-payment of a part of debt when it becomes due and payable will amount to default on the part of a corporate debtor. In such a case, an order of admission

under Section 7 IBC must follow. If NCLT finds that there is a debt, but it has not become due and payable, the application under Section 7 can be rejected. Otherwise, there is no ground available to reject the application.”

22. The learned Counsel for the Developer submits that they have also submitted revised proposal to resolve the dispute and has given option 1, 2 and 3. The proposal given for resolution and options given by the developer by means of an affidavit has been refuted and rejected by learned Counsel appearing for the Financial Creditors in a class. It is submitted that the Appellant having not completed the Project within the time allowed and registration of the Project having already been cancelled, Financial Creditors in a class have no confidence that Corporate Debtors shall be able to complete the Project. Hence, only route open for completion of the Project and handing over the units to the Financial Creditors in a class is through insolvency resolution process, which this Court may direct to be completed in accordance with law.

23. Learned Counsel for the Developer as well as learned Counsel for land owning Company have submitted that there being dispute regarding title of Noida and Greater Noida, the Project, could not proceed. It is submitted that in the Projects land there are Khasra Nos.877 and 888, which are registered in the name of Sammiti and there being dispute of title, Developer was unable to carry on with the Project. It is further submitted that Writ Petition has already been filed in the Allahabad High Court with regard to land dispute and Civil Suit No.662/2017 has also been initiated before the Ld. District Court, Gautam Budh Nagar, in

which a written statement was filed by the Noida, where it was mentioned that aforementioned Khasras was not in the name of Noida. Learned Counsel for land owning Company has referred to series of litigations initiated with regard to issues pertaining to certain plots, which are in the midst of the Projects, with regard to which there are dispute between Noida and Greater Noida. Learned Counsel for the Financial Creditors in a class has submitted that with regard to construction of Project Phase-1, there was no issue pertaining to the land of Phase-1 Project, which could have very well be constructed. Civil Suit has been filed before the District Court Gautam Budh Nagar in the year 2017 and the Writ Petition No.1553/2019 has been filed before the Allahabad high Court in the year 2019. Other Writ Petitions filed by Sammiti were in the year 2019 and 2020. The Project was launched in the year 2012, in which year the amounts were collected from the allottees. Litigation which commenced in the year 2019 and 2020, cannot be a ground to absolve the Corporate Debtor from its responsibility and obligation to complete the Project within the time as contemplated in the Builder Buyers Agreement with the allottees. The fact that litigations are pending with regard to two of the Khasras, which is also included in the Project land, cannot be a ground to absolve the Corporate Debtor from its obligation, nor that can be a reason for not completing the Project. We, thus, are of the view that on the ground that litigations filed by the Corporate Debtor for resolution of the issue with respect to title of land are pending, cannot be a ground to reject Section 7 Application, which was filed by the Financial Creditors in a class for initiating CIRP against the Corporate Debtor.

24. Learned Counsel appearing for land owning Company, i.e. Anand Infoedge Pvt. Ltd. submits that there is no privity of contract between land owning Company and the Financial Creditors in a class and in fact creditors in a class, i.e. allottees are not Financial Creditors insofar as Anand Infoedge Pvt. Ltd. is concerned. The learned Counsel for the land owning Company has relied on the judgment of the Hon'ble Supreme Court in **Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. vs. Axis Bank – (2020) SCC OnLine SC 237** and judgment of this Tribunal in **Gp. Capt Atul Jain (Retd.) vs. Tripathi Hospital Pvt. Ltd. & Ors. – Company Appeal (AT) (Ins.) No.655 of 2020**. The Hon'ble Supreme Court in **Ajuj Jain's** case has laid down the conditions, which need to be fulfilled for declaring a creditor as a Financial Creditor. It is submitted that Corporate Debtor, who does not owe a financial debt, cannot become its Financial Creditor for the purpose of Part II of the IBC. The present is a case where joint CIRP commenced against all the three Corporate Debtors, i.e., Anand Infoedge Pvt. Ltd. – land owning Company, Developer and erstwhile Developer Mist Avenue. One of the objections raised by the Corporate Debtors was regarding maintainability of the joint application against the three Corporate Debtors, which objection was rejected by Adjudicating Authority vide order dated 21.10.2022, against which Company Appeal (AT) (Ins.) No.1506 of 2022 was filed, where again the objection was raised that joint petition under Section 7 is not maintainable against three Corporate Debtors. This Tribunal while deciding Company Appeal (AT) (Ins.)

No.1506 of 2022 has examined the question. One of the questions, i.e. Question No.(i) was:

“(i) Whether the joint application under Section 7 against ‘Anand Infoedge Pvt. Ltd.’, ‘Mist Avenue’ and ‘Mist Direct’ is maintainable? Three Respondents- Appellants herein being separate corporate entities.”

25. This Tribunal considered the entire facts, including the lease granted in favour of Anand Infoedge Pvt. Ltd., Collaboration Agreement in favour of Mist Avenue and the second Collaboration Agreement dated 27.07.2017 executed in favour of Mist Direct Sales Pvt. Ltd. In paragraphs 15 and 16 of the judgment, following was observed:

“**15.** When we take a holistic view of the matter, it is clear that all three Appellants had joined hands to develop the project. Present is a case of Real Estate Project and the project cannot be successfully developed by any one of the Appellants who were Respondents in Section 7 application. Under the Collaboration Agreement, ‘Anand Infoedge Pvt. Ltd.’ and developers have undertaken several responsibilities towards the allottees. The construction of Real Estate Project will not be achieved in event joint insolvency is not initiated against all the three Corporate Debtors who are Appellants before us, the allottees will put to severe loss and hardship. CIRP in the Real Estate Project has different contours and ramification. It is also on the record that at a time when 2nd Collaboration Agreement was entered between ‘Anand Infoedge Pvt. Ltd.’ and ‘Mist Direct’, ‘Anand Infoedge Pvt. Ltd.’ has 99.99% shareholding in ‘Mist Direct’. All three companies who are impleaded as Respondents in Section 7 Application and Appellants before us are closely connected with the construction and implementation of the project. The developer who have issued allotment letter and executed Builder Buyer Agreement was acting

on behalf of 'Anand Infoedge Pvt. Ltd.' who has given authority to 'Mist Direct'.

16. From the above facts and sequence of events, it is clear that all the three Appellants i.e. Anand Infoedge Pvt. Ltd., Mist Direct Sales Pvt. Ltd. and Mist Avenue Pvt. Ltd. are intrinsically interwoven with the project in question i.e. Festival City in which the Respondents allottees were allotted units. Collaborator No. 1 and 2 are part of project who were entrusted with the development and sale of units. It was collaborator No. 1 who received the payment from the allottees towards allotment of units in favour of the Respondents. All the three Appellants being involved with the one single project in which the allottees have been allotted units, all are necessary ingredients of any resolution which may help the allottees to receive their units, in absence of any of the appellants in Corporate Insolvency Resolution Process, Resolution of project and revival of the Resolution of project is impossible.”

26. All the three Corporate Debtors had joined hands to develop the Project. The Corporate Debtors being closely connected with the construction and implementation of the Project, it is not open for the land owning Company to say that there is no financial debt. We, thus, do not find any substance in submission of the learned Counsel for the Appellant that there being no privity of contract between the land owning Company and the allottees, there is no liability on the land owning Company towards the Project. Learned Counsel for land owning Company has placed reliance on the judgment of this Tribunal in **Gp. Capt Atul Jain (Retd.) vs. Tripathi Hospital Pvt. Ltd. & Ors. – Company Appeal (AT) (Ins.) No.655 of 2020**. In the above case in Section 7 Application, the Applicant has not made any payment to the Corporate Debtor Tripathi Hospital Pvt. Ltd., but the amount was paid to

D.K. Chaturvedi and other individuals. The Adjudicating Authority rejected Section 7 Application on the ground that there was no financial debt. This Tribunal in the aforesaid judgment also came to the conclusion that there was no evidence of any direct transaction to have taken place between the Appellant and the Corporate Debtor and the insolvency resolution can be triggered where there is a financial debt owed to a person. It was held that Appellant was not able to prove that he is a Financial Creditors. This Tribunal affirmed the judgment of the Adjudicating Authority rejecting Section 7 Application. The above judgment does not in any manner help the Appellant in the facts of the present case.

27. Reliance has been placed on two more judgments of this Tribunal namely – ***Pravesh Magoo vs. Iroe Grace Realtech Pvt. Ltd. – Company Appeal (AT) (Ins.) No.1141 of 2019***. The above was a case where Adjudicating Authority has rejected Section 7 Application filed by a Financial Creditor. The Adjudicating Authority has rejected Section 7 Application on the ground that time for handing over the possession was there till 27.11.2019. Relevant facts have been noticed in paragraphs 5 and 6 of the judgment. In the Appeal before this Appellate Tribunal, this Tribunal also noted that letter for handing over possession was already issued to the Appellant. The dismissal of the Appeal and affirming rejection of Section 7 Application was in the facts of the above case and can have no bearing on the issues, which has arisen in the present case.

28. Another judgment relied by learned Counsel for the Appellant is the judgment of the Hon'ble Supreme Court in **Anand Murthi vs. Soni Infratech pvt. Ltd. and Ors. – Civil Appeal No.7534 of 2021** decided on 27.04.2022. In which case, order under challenge of the NCLT was order rejecting modification application filed by the Appellant. An Appeal was filed by Suspended Director of the Corporate Debtor pleading that Respondent who has booked a flat in the housing Project has cancelled the booking and demanded refund of the amount from the Corporate Debtor and thereafter filed Section 7 Application. An affidavit was filed by the Promoter before the Hon'ble Supreme Court making various undertakings and making statement. The settlement plan submitted by the Promoter was accepted by 452 Homebuyers and only seven were opposed to settlement. In the above background, the Hon'ble Supreme Court observed that Promoter be permitted to build the Project. The Hon'ble Supreme Court in paragraph 22, 23 and 24 had made following observations:

“22. Taking into consideration the salient features of the undertaking given on affidavit by the Promoter, Shri Kashi Nath Shukla and the fact that there are only seven out of the 452 home-buyers, who opposed the Settlement Plan, we find that it will rather be in the interest of the home-buyers that the appellant/promoter is permitted to complete the project as undertaken by him. It is pertinent to note that he has agreed that the cost of the flat will not be escalated. He has also given the time line within which the project would be completed. Not only this, but he has also undertaken to refund the amount paid by the seven objectors, if they so desire. He has further agreed that there shall be a team of 5 persons, 2 from the home buyer's side and 2

from the management side and that the entire process shall be monitored by the IRP.

23. We find that there is every possibility that if the CIRP is permitted, the cost that the home-buyers will have to pay, would be much higher, inasmuch as the offer made by the resolution applicants could be after taking into consideration the price of escalation, etc. As against this, the Promoter has filed a specific undertaking specifying therein that the cost of the flat would not be escalated and that he would honour the BBA signed by the previous management.

24. In that view of the matter, we are inclined to allow the present appeal. Accordingly, we pass the following order:

- A. The appeal is allowed. The impugned order dated 22nd November, 2021 passed by the National Company Law Appellate Tribunal, Principal Bench, New Delhi in I.A. No.1115 of 2020 in Company Appeal (AT) (Insolvency) No. 1507 of 2019 is quashed and set aside;
- B. The affidavit dated 27th December, 2021 filed by Shri Kashi Nath Shukla, the promoter of the respondent No.1 – Corporate Debtor is taken on record and treated to be an undertaking given to this Court;
- C. The appellant/promoter is permitted to complete the project as per the deliberations that took place in the Minutes of the Meeting dated 23rd October, 2021 and in accordance with the affidavit-cum-undertaking dated 27th December, 2021 of the Promoter, Shri Kashi Nath Shukla;
- D. The modification application being I.A. No.1115 of 2020 in Company Appeal (AT) (Insolvency) No. 1507 of 2019 before the NCLAT accordingly stands allowed.
- E. From the date of this order, the IRP shall submit quarterly reports to the National Company Law

Appellate Tribunal, Principal Bench, New Delhi with regard to the progress of the housing project;

- F. The matter be listed before the National Company Law Appellate Tribunal, Principal Bench, New Delhi for such first Status Report on 22nd August, 2022.”

29. The above judgment of the Hon’ble Supreme Court was delivered in the facts of the said case. In the present case, the proposal submitted by the Developers, have not been accepted by the Financial Creditors in a class, who are the Respondents herein, who had initiated proceedings under Section 7, both before Adjudicating Authority as before this Tribunal. When the proposal submitted by the Appellant(s) have not been accepted by the Respondents, who are Financial Creditors in a class, we in this Appeal, in the facts of the present case, cannot direct for proposal submitted by the Appellant(s) be implemented.

30. Learned Counsel for the Appellant submits that admission of insolvency shall lead to the corporate death of the Corporate Debtor. It is submitted that Appellant(s) are desirous for completion of the Project, who are also supported by several allottees, who have filed application for intervention in these Appeal(s).

31. One of the submissions, which has been advanced by learned Counsel for the Appellant is that due to “force majeure” the Project could not be completed. The Adjudicating Authority in the impugned order has noticed the submission raised by the learned Counsel for the Appellant with respect to force majeure, which argument was considered by the Adjudicating Authority in paragraphs 30 to 34. The discussion of

Adjudicating Authority on the said argument in paragraphs 30 to 34 are as follows:

“30. The Counsels for the Corporate Debtors have argued that due to Force Majeure project could not be completed. Force Majeure reasons cited are defective land title and cancellation of registration of the project by UPRERA. Hon’ble Supreme Court in the matter of Energy Watchdog v. CERC, (2017) 14 SCC 80 has held that a party can rely on a force majeure clause only if it shows that reasonable steps have been taken to avoid the effect of the force majeure event. In this context it would be worthwhile to peruse the relevant portion of the order of UPRERA dated 07.12.2019 by which the registration of the project was cancelled. (This was filed vide Additional Affidavit dated 07.07.2022 by the Financial Creditors):-

In proportion to the targeted completion date of the project, the progress of works of project is disappointing and at present work is stopped.

The date of initiation of project has been given as 26.10.2012, this position of work in almost 7 years is very disappointing. The action of Promoter is a clear proof of misappropriation of hard earned money of allottees and violation of commitment of Promoter to complete the project within time and to provide them possession within the time limit decided in the contract executed with the allottees.

Further the reasons for the cancellation given in the UPRERA order dated 07.12.2019 are as under: -

After careful consideration of the complete factual position in the meeting, the Authority has concluded the following :

1) Promoter has not complied to any of the instructions out of the total 06 instructions mentioned in Authority's

Order dated 11.07.2019. This act of him is a violation of Sections 4, 7 and 11 of the Act along with other relevant provisions of the Act and Manual.

2) As per Authority's Order dated 11.07.2019, Promoter M/s Mist Direct Sales Pvt Ltd was given time of 4 months under provisions of Section 7(3) of Rera Act to bring progress in the works of project but the Promoter himself is now saying that he is not able to complete the development works of the project. His actions are a violation of his responsibilities under the Act and amounts to breach of trust with the allottees as it is against the agreement and resolution done with the allottees.

3) Project was started 7 years back and the progress structure of the project is around 50 percent. Due to this attitude of Promoter the possibility of completion of project is almost nil. Therefore, for protection of allottees, for ensuring compliance of provisions of Rera Act and U.P. Rera and to complete the remaining development works of the project there is no other option than to cancel the registration of project under the provisions of Section 7 of the Rera Act.

From the above it is clear that the cancellation of the project, cited by the CD as a 'force majeure' reason was not a 'bolt from the blue' rather it was on account of CDs own mismanagement, misappropriation and failure to comply with directions of the NOIDA. The reason in respect of defective land has already been dealt with earlier. Thus, the defence related to 'force majeure' is only an afterthought and not tenable.

31. Besides, even if the CD was of the view that the project could not be completed for reasons beyond their control, they should have communicated this to the allottees and refunded their deposited amounts. On the contrary, M/s Mist Direct Sales (CD No. 3) itself sent a letter in December

2017 to the allottees/ Financial Creditors, which mentioned that M/s Mist Direct Sales has been monitoring the progress of the Project closely with an intention to expedite the construction to ensure delivery of the unit(s). Further it mentions that a new and efficient management, has been appointed for delivering the said project and accordingly, the earlier arrangement with Mist Avenue is terminated and a new management has entered with effect from 2017. The letter also mentions that M/s. Mist Direct Sales has also taken charge of the inventories already sold by the earlier company including the documents and the money paid by the allottees. The said letter does not anywhere mention that the delay in completing the project is because of the force majeure reasons, although it is the submission of the Corporate Debtors that the disputes with farmers arose in the year 2016. Instead, the Corporate Debtors sought a vote of confidence from the allottees, asking them to trust in their ability to complete the project.

32. It is also notable that on the one hand CD No. 1 submitted that the Project cannot be completed due to reasons of 'force majeure', while on the other hand CD No. 3 has filed a petition u/s 230 of the Companies Act, 2013 seeking approval of a 'Scheme of Arrangement and Compromise' with the allottees to complete the project.
33. The Corporate Debtor No. 1, M/s Anand Infoedge, placed reliance on the judgment passed by the Hon'ble NCLAT in the matter of Navin Raheja vs. Shilpi Jain & Ors. [Company Appeal (AT) (Insolvency) No. 864 of 2019], wherein relief was given to the Corporate Debtor and the CIRP was set aside by the Hon'ble NCLAT. However, the same is distinguishable from the present facts and circumstances. In Navin Raheja (supra), the project was complete in all respects, possession was offered to the allottees, and the Corporate Debtor requested the allottees to comply with formalities regarding the possession of the unit. The only issue was that the

Occupancy Certificate was not provided on time, which was applied for in time, and the delay was on the part of the Competent Authority. Despite receiving the notice of possession from the Corporate Debtor, the allottees chose to file a petition under Section 7 of the I&B Code, and the allotment letter was issued on 03.08.2012. In contrast, the current project appears far from completion. Furthermore, the delay in completion is not due to any Government Authority but due to gross mismanagement on the part of the Corporate Debtor, as highlighted by the UP RERA in their order mentioned in Para 30 of this Order. Therefore, we are of the view that the judgment of the Hon'ble NCLAT in Navin Raheja does not render any help to the Respondent in the present case.

34. From the above discussion, it is clear that the argument of the Corporate Debtor related to 'force majeure' is specious and unsustainable, and therefore, worthy of rejection."

32. We express our concurrence with the reasons given by the Adjudicating Authority in rejecting the argument of the Appellant based on force majeure. The present is a case of clear default of Appellant in not completing the Project and handing over the units within the time.

33. Now, coming to the submission of the Appellant that large number of Intervenor are interested in completion of the Project by accepting one or other options submitted by the Appellant. The challenge in the Appeal is order of the Adjudicating Authority passed in Section 7 Application, which was initiated by allottees of the Corporate Debtors, we do not find any sufficient ground to interfere with the order passed by Adjudicating Authority under Section 7. It is not for this Tribunal to consider the mode and manner for completion of the Project at this stage. The steps

shall be taken by Resolution Professional for completion of the Project in accordance with insolvency resolution process as per the IBC and Regulations.

34. In view of the foregoing discussions, we do not find any good ground to interfere with the impugned order. In result, the Appeal is dismissed. The amount deposited by the Appellant in Company Appeal (AT) (Ins.) No. 1422 of 2024 in pursuance of the interim order passed in the Appeal, be refunded to the Appellant. Consequently, pending IAs, if any, are also disposed of. There shall be no order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Arun Baroka]
Member (Technical)

NEW DELHI

23rd December, 2024

Ashwani