

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – III

C.P.(IB)-324(MB)/C-III/2023

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016.)

In the matter of

- 1. Abhishek Ranganathan**, Unit: T5- 604
1B 43 Kalpataru Aura, LBS Marg, Ghatkopar West, Mumbai- 400086.
- 2. Madhukar Vishwanath Hadkar**, Unit: T5-1106
Flat No.2, Madhukunj CHSL, Prathana Samaj Road, Vile Parle East Mumbai-400057
- 3. Mahesh Kailash Jha**, Unit: T4-1102
(Acting for himself and on behalf of Neeta Kakde)
23E-1402, Palazzio CHS, A S Marg, Near S.M. Shetty School, Powai, Mumbai-400076
- 4. Gaurav Mohta**, Unit: T5- 1005
(Acting for himself and on behalf of Anshu Mohta)
C2502, Oberoi Splendor, JVLR, Andheri(E), Mumbai 400060
- 5. Amol Nagraj Gaikwad**, Unit: T4-302
(Acting for himself and on behalf of Meera Gaikwad)
A-26, Rooftop Co. Op. HSG SOC., Mahakali Caves, Andheri (East), Mumbai: 400093
- 6. Anand Bajpal**, Unit: T4-2504
(Acting for himself and behalf of Aayushya Bajpai and Ajaya Bajpai)
X 401, Golden Rays Building Road No. 2, Shastri Nagar, Andheri (West) Mumbai 400053
- 7. Abhinav Singh Thakur**, Unit: T4-2606
1306, Samruddhi Elegance, Building No.54, Nehru Nagar, Kurla East, Mumbai 400024
- 8. Akansha Rathi**, Unit: T4-2604
Flat No.303 Shri Vijay Vihar, Adjacent to Powai Vihar, Powai, Mumbai 400076
- 9. Amita Rani Titoria**, Unit: T4-106
(Acting for herself and on behalf of Pankar Titoria)
Flat No. 203, Acme Elite, Opp Ongc Colony, Poonam Nagar, Andheri (East), Mumbai 400093

- 10. Arvind Kumar Singh**, Unit: T4-805
(Acting for himself and on behalf of Pooja Singh)
001 A Poonma Sagar Apartment, Poonam Nagar, Andheri East, Mumbai 400093
- 11. Ashvini Kumar Yograj Meshram**, Unit: T4-702
Sadhanapath, Sai Colony, Behind Mahavir Colony, Kudwa, Gondia: 441614
- 12. Beena Chandrashekhar Mhapadi**, Unit: T4-306
(Acting for herself and on behalf Chandrashekhar Vasant Mhapadi)
Vastu/B 301 Sankalp Sahaniwas, Near Infinity IT Park, Film City Road, Dindoshi, Goregaon (E) Mumbai 400065
- 13. Gauri Chaudhary**, Unit: T4-1806
(Acting for herself and on behalf of Kamlesh Chaudhary)
3A Vireshwar, Mahal, Tejpal Road, Vile Parle East, Mumbai 400057
- 14. Hitesh Basantilal Jain**, Unit: T4-1904
(Acting for himself and on behalf of Chetna Hitesh Jain)
5/3, Model Town Society, Off Mahakali Caves Road, Andheri East, Mumbai 400093
- 15. Joslyn Ignatius Pereira**, Unit: T4-601
(Acting for himself and on behalf of Tracy Ligory D'souza)
Plot 311, Shobana Building, Sher-E-Punjab Soc, Flat 11A Wing, M.C. Rd., Andheri (East) Mumbai 400093
- 16. Lisa D'sa**, Unit T4-1103
(Acting for herself and on behalf of Anil Royston George D'sa)
2/706, Solitaire 1, Poonam Garden, Mira-Bhayandar Road, Mira Road (E), Thane, Mumbai 401107
- 17. Manish Madhao Karande**, Unit: T4-1505
(Acting for himself and on behalf of Sheetal Manish Karande)
A707, Twin Towers, Manish Park, Rajmata Jijabai Road, Pump House, Andheri East, Mumbai: 400093
- 18. Naresh Bhikaji Pandi**, Unit: T4-2503
(Acting for himself and on behalf of Neha Naresh Pandit)
B-1-404, Ascent Residency CHSL, Near Poonam Nagar and ONGC Colony, Andheri (E), Mumbai: 400093
- 19. Parag Vilas Patil**, Unit: T4-804
(Acting on behalf of Sheetal Patil and Nitin)
D-904, Oberoi Splendor, JVLR, Andheri(E), Mumbai: 400060

- 20. Prasant Bapat**, Unit: T4-1702
Acting on behalf of himself and Pradyna Prashant Bapat)
Suyog CHS, Flat no. 25, B wing, 2nd floor,
Bimbisarnagar, Goregaon East, Mumbai: 400065
- 21. Preethi Dsouza**, Unit: T4-1304
(Acting on behalf of Nelson Dalmeida and Allwyn Almeida)
4/30 Sunder Nagar Colony, Mahakali Caves Road, Near
Trans Apartments, Andheri East, Mumbai: 400093
- 22. Presha D. Badiyani**, Unit: T4-1004
(Acting for herself and on behalf of Devang Badiyani)
902, Janardan, 6 Dada Bhai Road, Andheri(E) Mumbai
400058
- 23. Rishi Raj**
(Acting for herself and on behalf of Ritu Kashyap)
D-2301, Mahindra Windchimes Apartments, Arekere,
Bannerghatta Main Road, Bangalore 560076
- 24. Sabyasachi Dash**, Unit: T4-403
A/402, Divyasmruti Apartments, Link Road, Mindspace,
Malad West, Mumbai 400064
- 25. Sachin Ashok Gawade**, Unit: T4-2001
17B Takshila CHS, Andheri(E) Mumbai 400093
- 26. Samiksha Sandeep Wade**, Unit: T4-806
(Acting for herself and on behalf of Sandeep Chimanlal Wade)
703, B wing, Vaastu Apartment, Sankalp, Dindoshi,
Goregaon East Mumbai 400065
- 27. Santosh Choraria**, Unit: T4-701
38A, Lansdowne Terrace, 4th Floor, Kolkata 700026
- 28. Sarath Krishnan R**, Unit: T4-103
(Acting on himself and on behalf of Sowmya Pathiyil)
Flat No. 7, Lloyds Apartment, 149, Avvai Shanmugan
Salai, Royyapetah, Chennai 600014
- 29. Seema Mukesh Chawla**, Unit T4-102
(Acting on behalf of Varun Chawla)
3/501, Radha Krishna Nagar, Malpa Dongri No.3,
Andheri East, Mumbai 400093
- 30. Sheetal Shashikant Desai**, Unit: T4-1106
(Acting for herself and on behalf of Shailendra Shashikant Desai and Shreya Shailendra Desai)
Ambika Tower, B-303, Rajmata Jijabai Road, Near Pump
House, Andheri (East), Mumbai 400093

- 31. Sheojee Singh**, Unit: T4-201
(Acting on behalf of Samir Kumar)
Flat No. 707, Tower-C, Oberoi Splendor Complex, Near
Majas Depot, JVLR Andheri (East), Mumbai 400060
- 32. Shriraj Shivmurti Khalane**, Unit: T4-1503
(Acting for himself and on behalf of Mr. Shivmurti
Sadashiv Khalane and Mrs. Sunita Shivmurti Khalane)
D-401-A, D-GR, Railwaymens Apna Ghar CHSL, Shivaji
Nagar, Jogeshwari-East, Mumbai 400060
- 33. Sudhir Kumar Arora**, Unit: T4-905
(Acting for himself and on behalf of Niketa Arora)
Kalpataru Estate Building No. 2C, Flat No. 122, J.V. Link
Road, Andheri (East) Mumbai 400093
- 34. Supriya Thakur**, Unit: T4-2304
(Acting for herself and on behalf of Amitabh Thakur)
102 Acme Elite, Poonam Nagar, Andheri(E) Mumbai
400093
- 35. Sulabha Ajit Rane**, Unit: T4-1604
(Acting on behalf of Uday Vijay Parab and Sheetal
Uday Parab)
F-Wing, 804, Dheeraj Darshan, Kokan Nagar, Jogeshwari
(East), Mumbai 400060
- 36. Vaibhav Mittal**, Unit: T4-204
Vaikunth Bunglow No. 20, Road No. 8, Sindhi Society,
Chembur, Mumbai 400071
- 37. Vineet Patawari**, Unit: T4-1001
2C/52 Kalpataru Estate Building, Jogeshwari Vikhroli
Link Road, Andheri (East) Mumbai 400093
- 38. Vineet Patawari**, Unit : T4-1002
2C/52 Kalpataru Estate Building, Jogeshwari Vikhroli
Link Road, Andheri (East) Mumbai 400093
- 39. Abhijoy Choudhary**, Unit: T5-103
(Acting for himself and on behalf of Neha Duggal)
Building 14B, Flat No.1, Takshila CHS, Off Mahakali
Caves Road, Andheri (East), Mumbai 400093
- 40. Ajit Kumar Grover**, Unit: T5-1203
(Acting for himself on behalf of Neha Grover)
A-301, Trans Apartment, Mahakali Caves Road, New Sai
Temple Andheri (East) Mumbai 400093
- 41. Alfred Donald Dsouza**, Unit: T5-2506
(Acting for himself and on behalf of Sheryl Jyothi
Cornelio)

Dsouza Villa, Shantipura House, Pamboor, Post Udupi
District 576120

- 42. Aniruddha Vikram Singh**, Unit: T5-2406
(Acting for himself and on behalf of Asha V. Singh)
B-706 Hillside, Raheja Vihar, Powai, Mumbai 400072
- 43. Avinash Tiwari**, Unit: T5-2105
(Acting for himself and on behalf of Ruchita Mishra)
Building No. 337, Flat No. 201 Kalptaru Srishti, Sector 3,
Mira Road, Thane, Mumbai 401107
- 44. Bipul Sharma**, Unit: T5-106
Flat No. 1401, Tower 9, Amanora Park Town Hadapsar
Pune, Maharashtra, 411028
- 45. Chetan Bhansali**, Unit: T5-501
(Acting for himself and on behalf of Maria Bhansali)
A1/71, Avillion Greenfields CHS JVLR, Off Mahakali
Caves Road, Andheri (East) Mumbai 400093
- 46. Ekta Sawant**, Unit: T5-1305
26B Flat 11, Takshila Colony, Off Mahakali Caves Road,
Andheri (East) Mumbai 400093
- 47. Gangadhar Chaturbhuj Bhararia**, Unit: T5-1604
(Acting for himself and on behalf of Rohit Gangadhar
Bhararia)
701, Anand Plaza II, S.N. Dubey Road, Rawalpada,
Dahisar (East), Mumbai 400068
- 48. Gaurao Jayant Bhade**, Unit: T5-2205
(Acting for himself and on behalf of Manali Gaurao
Bhade)
B/603, Krishna Towers, Opp. Children's Academy,
Ashok Nagar, Kandiali (East) Mumbai 400101
- 49. Gaurav Nigam**, Unit: T5-202
(Acting for himself and on behalf of Sarvottama Nigam)
B 1801, Skyvistas, D N Nagar, Andheri (West), Mumbai
400053
- 50. Gitanjali Gaiind**, Unit: T5-701
(Acting for herself and on behalf of Capt Rakesh Gaiind)
C-4/201, Pawanhans Housing Complex, Santacruz West,
Mumbai 400054
- 51. Kedarnath S Mirajkar**, Unit: T5-2206
(Acting for himself and on behalf of Rohini K Mirajkar)
F12 Manish Complex, Convent Road, Bangalore 560025

- 52. Leena Dsouza**, Unit: T5-606
B/28 New Bilques CHSL, Off Mahakali Caves Road,
Andheri East, Mumbai 400059
- 53. Melita Sheela Alva**, Unit: T5-1503
C/O Mr. Thomas A. Cornelio, Behind Bharat Tile Factory,
PO Santhekatte, Udipi, Bangalore 576105
- 54. Milin Shirish Shah**, Unit: T5-1901
(Acting for himself and on behalf of Kunjal Milin Shah)
A/101, Oberoi Splendor, JVLR, Andheri(E) Mumbai
400060
- 55. Nilufer Shekhawat**, Unit: T5-804
(Acting for herself and on behalf of Gaurav Shekhawat)
B91/Andheri Greenfield Tower CHS Ltd. JVLR, Near
Majas Depot, Andheri (East) Mumbai 400093
- 56. P.K. Talukdar**, Unit T5-2602
(Acting for himself and on behalf of Jayashri Dasgupta)
Flat No. 33/3C, Kalpataru Estate, JVLR Andheri(E),
Mumbai 400093
- 57. Pankaj Kumar Mishra**, Unit: T5-503
1st Floor, Naman Chambers, G-Block, Bandra Kurla
Complex, Mumbai 400051
- 58. Paramjit Singh Uppal**, Unit: T5-2201
(Acting for himself and on behalf of Prital Singh Uppal
and Ravneet Kaur)
Tower No.16. Flat No. 2002, Vasant Oasis, Makwana
Road, Marol, Andheri (East), Mumbai 400059
- 59. Paramjit Singh Uppal**, Unit: T5-2202
(Acting for himself and on behalf of Prital Singh Uppal
and Ravneet Kaur)
Tower No.16. Flat No. 2002. Vasant Oasis, Makwana
Road, Marol, Andheri (East), Mumbai 400059
- 60. Poonam Yatin Samant**, Unit: T5-2106
(Acting for herself and on behalf of Yatin Suresh Samant)
3A/32, Takshila Colony, Vallabhai Patel Road,
Andheri(E), Mumbai 400093
- 61. Pravin Chandrakant Patil**, Unit: T5-1806
(Acting for himself and on behalf of Manisha Pravin Patil
and Pratik Pravin Patil)
D411, Vikasini CHS, Sector 8B, CBD Belapur, Navi
Mumbai 400614
- 62. Pritam Veerappa Salian**, Unit: T5-1301
(Acting for himself and on behalf of Sanjana Pritam
Salian)

A/6/19-49, Vima Vijay CHSL, LIC Colony, Borivali West,
Mumbai 400103

- 63. Reena Indira Mendonca, Unit: T5-406**
(Acting for herself and on behalf of Joy Mendonca)
403, Bindra Orchid CHSL, Mahakali Caves Road,
Andheri (East) Mumbai 400093
- 64. Ruchi Goel Chhatlani, Unit: T5-201**
(Acting for herself and on behalf of Manoj Kumar)
C-702, Bamanpuri CHS Ltd, Opp Kanti Nagr, Bada
Ganesh Temple, JB Nagar, Andheri (East), Mumbai
400059
- 65. Sanjay Suryadeo Upadhyay, Unit: T5-303**
(Acting for himself and on behalf of Heather Sanjay
Upadhyay)
A2-403, Ascent Residency, Poonam Nagar, Andheri(E)
Mumbai 400093
- 66. Sanjeev Kumar, Unit: T5-1402**
(Acting for himself and on behalf of Shivali Srivastav)
ACACIA-A, Flat 516, Dubai Hills Estate, Dubai UAE
- 67. Satinder Kaur Khanna, Unit-T5-2505**
(Acting for herself and Gurupreet Singh Khanna)
B4402, Oberoi Exquisite, Goregaon East, Mumbai
400063
- 68. Satwinder Singh Uppal, Unit: T5-2301**
(Acting for himself and on behalf of Sunaindeep Kaur and
Pritpal Singh Uppal)
Tower No. 16 Flat No. 2102, Vasant Oasis, Makwana
Road, Marol, Andheri (East) Mumbai: 400059
- 69. Satwinder Singh Uppal, Unit: T5-2302**
(Acting for himself and on behalf of Sunaindeep Kaur and
Pritpal Singh Uppal)
Tower No. 16 Flat No. 2102, Vasant Oasis, Makwana
Road, Marol, Andheri (East) Mumbai: 400059
- 70. Sanjibkumar Sachin Saha, Unit: T5-206**
(Acting on behalf of Shilpa Parikkhith Saha and
Parikkhita Saha)
Building No.3, Flat 304, Asmita Mogra CHSL, Shree Data
Jagadamba Mandir Rd, Andheri(E) Mumbai 400093
- 71. Shaily S. Nimodia, Unit: T5-1904**
(Acting for herself and on behalf of Rahul Gupta)
32, Sri Krishna Appt, Hindustan Colony, Amravati Road,
Nagpur, Maharashtra 440010

72. Sougato Shome, Unit: T5 -1103
(Acting for himself and on behalf of Dola Basu Shome)
2B/154, kalpataru Estate, JVLR, Andheri(E) Mumbai
400093

73. Susmeet Kaur, Unit: T5-403
(Acting for herself and on behalf of Arunjit Singh Talwar)
14/6 Ashok Nagar, New Delhi 110018

74. Usha Rani Behera, Unit T5-2102
(Acting for herself and on behalf of Puneet Behera) House
No. 1792, Housing Board Colony, Sector 6, Karnal-
132001 Haryana

75. Vikram Lilaram Mansukhani, Unit: T5-904
(Acting for himself and on behalf of Hansa Vikram
Mansukhani)
F604, Raheja Heights, Off Gen AK Vaidya Marg, near
Film City Road, Malad (East) Mumbai 400097

.....**Financial Creditors/Petitioners**

Vs

M/s. Acme Realities Private Limited

Having Registered Office at: Acme Ghar, 19, K.D. Road off
V.M. Road, Vile Parle (W) Mumbai- 400056.

.....**Corporate Debtor/Respondent**

Order Pronounced on: 21.02.2024

CORAM:

SHRI CHARANJEET SINGH GULATI
HON'BLE MEMBER (T)

SMT LAKSHMI GURUNG
HON'BLE MEMBER (J)

Appearances:

For the Financial Creditor: Adv. Shyam Kapadia a/w Vishnu Sriram

For the Corporate Debtor: Adv. Viraj Parikh

ORDER

Per: - Charanjeet Singh Gulati (Technical Member).

1. The Present **Company Petition (IB)-324(MB)/2023** has been filed under section 7 of Insolvency and Bankruptcy Code, 2016 ("IBC, 2016") by

Abhishek Ranganathan and Ors., (“Financial Creditors/Homebuyers /Petitioners”) for initiating Corporate Insolvency Resolution Process (“CIRP”) against **M/s. Acme Realities Private Limited (“Corporate Debtor/ Respondent”)** for a default in handing over possession of the flats/apartments to Financial Creditors.

Background Facts

2. The Petitioners herein are Financial Creditors/homebuyers/allottees, who have purchased residential units/apartments in the real estate project “**Boulevard Tower 4**” and “**Boulevard Tower 5**” being developed by the Corporate Debtor.
3. The Maharashtra Housing and Area Development Authority (“MHADA”) is the owner of land admeasuring 40,429.64 square meters, situated at Village Majas being part of CTS Nos. 160/A/1, 162, 163, 165 and 170/C, MHB Colony Sarvodayanagar, Jogeshwari (East), Mumbai 400060.
4. In the year 1980, MHADA had constructed 88 (eighty-eight) chawls (“Old Chawls”) on the afore-mentioned land and allotted 655 tenements in the Old Chawls to various allottees on hire purchase basis as per the rules and regulations of MHADA.
5. The occupants of the said chawls formed and registered as one federal society under the name “Majaswadi Sarvodayanagar Sahakari Grihnirman Sanstha Society” (subsequently renamed to Majaswadi Sarvodayanagar Co-operative Housing Society Limited) (“Apex Society”). In the year 2008, the members of the said Society decided to undertake the redevelopment of the Property, as a composite redevelopment scheme.
6. Subsequently, the said Society invited bids from various developers, with a view to appoint a competent developer to execute the redevelopment work of the Property. Bids were received from several developers, including one J.P. Infra (Mumbai) Pvt. Ltd. (“JPL”). Accordingly, JPL was appointed for redevelopment of the Property.

7. By and under two Development Agreements dated 06.03.2009 and 05.10.2009 read with Deed of Confirmation dated 06.08.2010 and Deed of Rectification dated 30.06.2010, (collectively, “Redevelopment Agreement”) granted development rights to and in favour of JPL in respect of a portion of the Property admeasuring 35,173.44 square meters. (“Redevelopment Property”).
8. By and under the terms of a First Supplemental Agreement dated 06.08.2010, the Apex Society granted its express consent to the proposed joint venture agreement to be entered between JPL, Keemaya Developers Pvt. Ltd. (previously known as Antara Infrastructure Private Limited) (“Keemaya”) and Acme Realities Pvt. Ltd. (“Corporate Debtor”) for carrying out redevelopment of the Redevelopment Property.
9. Pursuant thereto, a joint venture agreement dated 06.08.2010 was entered amongst JPL, Keemaya and the Corporate Debtor for redeveloping the Redevelopment Property in terms of the Redevelopment Agreements and outlining the roles of the Corporate Debtor, JPL and Keemaya in relation thereto (“Joint Venture Agreement”).
10. Simultaneously, MHADA and the Apex Society entered into an Agreement to Lease dated 06.08.2010 in terms of which MHADA agreed to lease the Redevelopment Property to the Apex Society for a period of 99 years upon fulfilment of the terms and conditions stipulated therein. Consequently, MHADA and the Apex Society entered into a Deed of Sale dated 20.12.2011 whereby MHADA sold, conveyed, transferred and assigned all its rights, title and interest in respect of the structures being Chawl Nos. 56 to 89, 95 to 101 and 109 to 143 on the Redevelopment Property to and in favour of the Apex Society for the consideration and terms contained therein.
11. Thereafter, by a Second Supplemental Agreement dated 08.05.2010 and Third Supplemental Agreement, to the Agreement dated 06.08.2010, both entered between JPL, Keemaya and the Corporate Debtor, the parties thereto have inter alia agreed that the Corporate Debtor shall construct and hand over the constructed portions to JPL and Keemaya.

12. Further, their respective entitlement in the residential premises in the new buildings was agreed to be 6.375% to JPL and 13.625% to Keemaya of the total built up area. As per the terms of the agreements between the said parties, the Corporate Debtor is entitled to sell and dispose of the remaining 80% of the built-up area in the new buildings in such manner as it may deem fit without any reference to JPL, and Keemaya.
13. Pursuant to the MHADA NOC, the Redevelopment Agreements, the Joint Venture Agreement, the Second Supplemental Agreement dated 08.05.2012 and the Third Supplemental Agreement, the Corporate Debtor proceeded to develop the Redevelopment Property in a phase-wise manner under the project name "Acme Boulevard".
14. In addition to the buildings to be constructed for residential/commercial purposes as ACME Boulevard, the Corporate Debtor was also required to construct buildings for rehabilitation of the existing tenants.
15. From the year 2013 onwards, the Corporate Debtor began marketing and taking bookings for flats/ apartments in Tower 4 and Tower 5 of the Acme Boulevard project and began issuing letters of allotment ("LOA") and entered into various agreements for sale of the flats/apartments ("ATS") in Tower 4 and Tower 5 of the Acme Boulevard project.
16. In pursuance of the aforesaid Redevelopment Agreements, the MHADA issued no objection certificate dated 28.03.2014 ("MHADA NOC"), granted permission to the Apex Society for redevelopment of the Redevelopment Property on the terms and conditions stated therein and further approved the scheme for redevelopment of the Redeveloped Property under applicable provisions of the Development Control Regulations for Greater Mumbai, 1991.
17. Accordingly, the Corporate Debtor began constructing the wing/Towers 4 and 5 on ACME Boulevard. Tower 4 is registered with the Maharashtra Real Estate Regulatory Authority ("MahaRERA") under the Real Estate (Regulation and Development) Act, 2016 ("RERA Act") as "Boulevard Tower

4” having project registration number P51800002133 dated 31.07.2017 and Tower 5 is registered with the MahaRERA under the RERA Act as “Boulevard Tower 5” having project registration number PS1800001690 dated 29.07.2017.

18. On account of the Covid-19 induced pandemic, fresh registration certificates dated 09.09.2021 were issued by MahaRERA in favour of the Corporate Debtor in respect of Boulevard Tower 4 and Boulevard Tower 5.
19. The Financial Creditors being the Petitioners to the present Company Petition comprise of 35 purchasers/homebuyers in Boulevard Tower 4 and 40 purchasers/homebuyers in Boulevard Tower 5. The Financial Creditors have purchased the flats/ apartments vide LOA/ ATS entered with the Corporate Debtor during the period from 2013 to 2021.
20. The Financial Creditors have agreed to purchase the flats/apartments from the Corporate Debtor relying on the representations and warranties made by the Corporate Debtor in the LOA/ATS, including with respect to the commitment to handover possession of the flats/apartments to the Financial Creditors.

Submission by the Petitioners:

21. The Petitioners submitted that the Corporate Debtor executed LOA/ATS containing totally arbitrary and one-sided terms wherein the date of possession in some cases is even contingent on completion of project which is grossly unacceptable. The Corporate Debtor has on multiple occasions admitted to its failure in obtaining necessary approvals and completing the construction of the project as per the agreed timelines. In fact, in some cases, the format of the LOA/ATS of the Corporate Debtor do not prescribe even a definite time frame for delivering possession of the flats/apartments and are one sided in favour of the Corporate Debtor, which is contrary to applicable provisions of MahaRERA.
22. The Petitioners further submitted that from a perusal of the correspondences exchanged between the Financial Creditors and the Corporate Debtor, the following position is borne out:

- a. That the Corporate Debtor was allegedly unable to obtain the necessary approvals from the concerned competent authorities for construction of the project which has contributed to the delay in handing over possession.
- b. It is an admitted fact that the obligation for obtaining the relevant approvals was solely on the Corporate Debtor. Therefore, the Corporate Debtor cannot be permitted to contend that the possession of the flats was not handed over on account of delay in obtaining approvals from the relevant authorities;
- c. In fact, the Corporate Debtor has unilaterally extended time for handing over possession of the flats from the original possession date of December 2019 to October 2020 and subsequently upto October-November 2021. The respective Financial Creditors have expressed concern that despite repeated commitments, the status of the project as per the details provided on the MahaRera website, is far from completion. In response, in certain cases the Corporate Debtor has confirmed that the handover of possession of the flats/ apartments will not exceed the MahaRera end date of 30 June 2022. In some cases, after repeated extensions, the Corporate Debtor committed to deliver possession of the flats/ apartments by October/ November 2022. However, despite repeated promises, the Corporate Debtor has defaulted on its commitment and has failed to handover possession of the flats/ apartments to the Financial Creditors;
- d. Sometime in September 2021, the Corporate Debtor has contended to some of the Financial Creditors that it is unable to continue construction of the project on account of stop-work notices issued by MHADA/ the Brihanmumbai Municipality Corporation. However, this belies the fact that the stop-work notice was allegedly issued on account of nonpayment of rent by the Corporate Debtor to the tenants of the Apex Society, which is nothing but another failure and breach by the Corporate Debtor of its contractual obligations for which the

Financial Creditors/ homebuyers cannot be fastened with the burden of delayed possession of the flats/ apartments;

- e. On the repeated failure of the Corporate Debtor to handover possession, some of the Financial Creditors sought refund of the purchase consideration paid to the Corporate Debtor, which too was not honoured.
23. The Petitioners further submitted that as per the terms of the LOA/ ATS with the Financial Creditors, the original date for handing over possession in most cases was December 2018 or December 2019. This possession date was excluding a grace period available to the Corporate Debtor, which in some cases was 6 months and in some other cases 12 months from the original possession date. It is a settled principle of law that a builder/developer is required to complete the construction of a real estate project within a reasonable period of time of 3 - 4 years. Despite the fact that the Corporate Debtor began marketing the Acme Boulevard project and entering into LOAs/ ATS for sale of the flats/ apartments of Boulevard Tower 4 and Boulevard Tower 5 since 2013, after the passing of nearly 10 years, there is still no sight of when the construction will be completed and possession will be handed over.
24. Additionally, in view of circulars dated 18.05.2020 and 06.08.2021 issued by the MahaRERA, the possession date stood extended by a further cumulative period of 12 months in view of the outbreak of Covid-19 and the subsequent Covid-19 induced pandemic. Even after taking into account the grace period and exclusion of time on account of the Covid-19 induced pandemic, the Corporate Debtor was obligated to handover possession of the flats/ apartments to the Financial Creditors latest by January 2021 or January 2022, as the case may be.
25. In certain cases, such as Petitioner Nos. 5, 20, 27, 37, 38, 45, 49, 55 and 61, the date for handover of possession is stated to be the date of completion on the MahaRERA website, in respect of which also the Corporate Debtor is in default. It is submitted that time is of utmost essence

in handing over possession of the flats/apartments to the Financial Creditors and the Corporate Debtor has violated and defaulted on its own obligations for grant of timely possession of the flats/ apartments to the Financial Creditors.

26. The Financial Creditors have paid approximately 90% of the purchase consideration to the Corporate Debtor as per the terms of the LOA/ATS in respect of the flat/ apartment which is also admitted by the Corporate Debtor as reflected in the ledger of the Corporate Debtor for each Financial Creditor. Some of the Financial Creditors have availed financial assistance under an interest subvention scheme, in terms of which the Corporate Debtor was obligated to reimburse the interest component of the loan availed by the Financial Creditor. However, not only has the Corporate Debtor failed to refund the interest component of the loan that was paid by the Financial Creditors, but the Corporate Debtor has also failed to reimburse the pre-EMI instalments to the Financial Creditors, which amount has been paid by the Financial Creditors to the banks/ financiers from whom they have availed home loans for the purchase of the flats.
27. Furthermore, on account of failure to handover possession of the flat/ apartment to the Financial Creditors, in addition to the amounts already paid by the Financial Creditors, the Corporate Debtor is also liable to pay interest to the Financial Creditors- on account of the delay in handing over possession of the flats/ apartments.
28. It is submitted that on account of the inordinate delay in handing over possession of the flats/ apartments by the Corporate Debtor some of the Financial Creditors approached the MahaRERA under the RERA Act seeking directions against the Corporate Debtor for handover of possession in a timebound manner or alternatively refund of the purchase consideration paid by the Financial Creditors along with interest. In such proceedings initiated under the RERA Act, the Corporate Debtor proposed to settle the matter with the Financial Creditors by proposing to handover possession to the concerned Financial Creditors in a time bound manner in terms of consent terms entered which were taken on record by the

Conciliation Forum of MahaRERA. Despite committing to handover possession of the flats/ units in a time bound manner, once again, the Corporate Debtor defaulted in handing over possession. It is pertinent to note that the Corporate Debtor is guilty of repeated default and failure to handover possession of the flats, including breach of the agreement and undertaking provided to the concerned Financial Creditors in proceedings under the RERA Act and is in violation of the said consent terms as well as orders of the MahaRERA.

29. As per the details submitted by the Corporate Debtor to MahaRERA as per its website, as on date, 299 flats in Boulevard Tower 4 and Boulevard Tower 5 have been booked, of which the Financial Creditors in the present Company Petition have booked 75 flats/apartment being 35 flats/apartments in Boulevard Tower 4 and 40 flats/ apartments in Boulevard Tower 5. Further, as per the details provided in the Independent Auditor's Report on the Statement of Account in respect of Boulevard Tower 4 dated 30.09.2021, the unutilised amount from the collection of purchase consideration from the homebuyers is INR 36,20,02,352 (Rupees Thirty-Six Crores Twenty Lacs Two Thousand Three Hundred and Fifty-Two). As per the details provided in the Independent Auditor's Report on the Statement of Account in respect of Boulevard Tower 5 dated 30.09.2021, the unutilised amount from the collection of purchase consideration from the homebuyers is INR 32,33,96,768 (Rupees Thirty-Two Crores Thirty-Three Lakhs Ninety-Six Thousand Seven Hundred and Sixty-Eight).
30. Further, the Financial Creditors submitted that vide email dated 02.09.2022, the Corporate Debtor requested its statutory auditor, M/s. Deloitte Haskins & Sells LLP for a reduction in the statutory audit fees for the year ended 31.03.2022 on account of financial constraints being faced by the Corporate Debtor and inability to pay the fee of the statutory auditor. Subsequently, M/s. Deloitte Haskins & Sells LLP submitted its resignation vide letter dated 07.09.2022. Evidently, the email dated 02.09.2022 shows beyond reasonable doubt that the Corporate Debtor is in dire financial crisis and unable to pay the fee.

31. Further, the strained financial position of the Corporate Debtor is also evident from the Financial Statement of the Corporate Debtor for the year ending 31.03.2021 as per which the Corporate Debtor has incurred losses of INR 94,07,83,270 (Rupees Ninety Four Crores Seven Lakhs Eighty Three Thousand Two Hundred Seventy only), as a result of which the erstwhile statutory auditor of the Corporate Debtor (M/s Deloitte Haskins & Sells LLP) has raised concerns over the going concern status of the Corporate Debtor.
32. In such circumstances and along with above-mentioned submissions, the Petitioners have filed the present Petition.

Reply filed by the Corporate Debtor:

33. In response to this, the Corporate Debtor has filed a detailed reply and raised certain objections as follows:
- I. The Corporate Debtor raised the first contention that the Petitioners failed to comply with Rule 4(3) of the Application to Adjudicating Authority Rules, 2016 and submitted that the Petition is defective as the Petitioners have failed to comply with the requirement of Rule 4(3) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 which require mandatory prior service to the Insolvency and Bankruptcy Board of India before filing of any Petition under Section 7 of the Code. The present Petition nowhere demonstrates that prior service has been made to the IBBI.
- II. The Second contention is that the present Petition must fail for failure to comply with the requirement for filing information of default with the Information Utilities under Regulation 20(1-A) of the IBBI (Information Utilities) Regulations, 2017. The present Petition has been filed without filing any information of default with the Information Utility. Clause (1-A) has been deliberately introduced into Regulation 20 as it is a mandatory requirement. Noncompliance with the requirement renders the Petition liable to be rejected outright.

- III. The Third contention raised by the Corporate Debtor is that the present Petition seeks to club allottees from different real estate projects, which is impermissible under the second proviso to Section 7 of the Code. The Petitioners have filed the present Petition claiming to be allottees under Section 7 of the Code. However, the Petitioners do not belong to the same real estate project. As per the averments in the Petition, 35 Petitioners belong to Tower 4 Project and 40 Petitioners belong to Tower 5 Project. Both these Projects are separate and have independent registrations with the Maharashtra Real Estate Regulatory Authority (“Maha RERA”). Further submitted that it is settled law that for a Petition filed by persons claiming to be allottees under Section 7 of the Code, such allottees must necessarily be from the same real estate project. It is impermissible for the allottees to be from multiple real estate projects. That being so, given that the present Petition seeks to club allottees from two separate real estate projects, the same is impermissible and for this reason alone, the Petition deserves to be rejected outright.
- IV. The fourth contention raised by the Corporate Debtor is that the Petition is barred under Section 10-A of the Code. The present petition includes Petitioners whose date of default has occurred between 25.03.2020 to 25.03.2021, and therefore, is expressly barred under Section 10-A of the Code. Further submitted that Exhibit P-14 which demonstrates the date of default of Petitioner Nos. 6-18, 25, 29, 31, 34, 35, 41-45, 47-48, 51, 53, 56, 58, 59, 60, 62, 63, 67-69 and 74 is January 2021 which squarely falls within the COVID -19 period. It is settled law that as per Section 10-A of the Code no Petition can ever be filed for any debt for which the date of default has arisen between 25.03.2020 to 25.03.2021. Further, the claims of 36 Petitioners being barred by Section 10-A of the Code, the entire Petition is tainted by the bar under Section 10-A and deserves to be rejected outright.

- V. The Fifth contention is that the Petition includes claims of allottees who are seeking to exit the Project and therefore, cannot be permitted to file under Section 7 of the Code. In fact, various Petitioners have filed complaints before MahaRERA and Consumer Courts seeking refund of their monies invested in the Project. Further submitted that the present Petition deserves to be dismissed outright, as it has been filed by a number of Petitioners who are not interested in seeking possession of their flats but only interested in seeking refund and therefore, barred from approaching this Tribunal under Section 7 of the Code.
- VI. The Sixth contention raised by the Corporate Debtor is that the present Petition is premature in nature and there is no default whatsoever on part of the Respondent. The Corporate Debtor further submitted that in order to determine the date of default, this Tribunal must consider the date of completion of project as stipulated by MahaRERA, who has extended the validity of the Projects from time to time, and the current last date for completion of the Tower 4 Project stands on 29.12.2023 and for Tower 5 Project stands on 30.12.2023, which is yet to pass. This amounts to a binding finding by the competent authority that there is no default on part of the Respondent and extension is necessary on account of force majeure. That being so, there is no default whatsoever on part of the Respondent as the date for completion of the Projects itself has not yet arrived.
- VII. The seventh contention raised by the Corporate Debtor is that there is no default whatsoever as the delay in completion of the Project, if any, is purely on account of force majeure. Further, its submitted the specific reasons for the delay in the projects, along with timelines, are as follows:
- i) Delay on account of non-cooperative members of Federal Society refusing to vacate their existing tenements (2012-2016)
 - ii) Suspension of work due to COVID-19 Pandemic

(March 2020-February 2023)

- iii) Non-cooperative attitude of the Federal Society, leading to 1st Stop work Notice and its subsequently withdrawal (May 2021 to Oct 2021)
- iv) Non-cooperative attitude of the Federal Society, leading to 2nd Stop Work Notice, threat of termination, and arbitration (June 2022 till date).

VIII. The Eighth and the last contention raised by the Corporate Debtor is that to push the Respondent into CIRP is not in the best interests of all the stakeholders. As on date, the Respondent has already completed about 85% of the work for both the Projects.

34. Considering all that is stated hereinabove, the Respondent prays to dismiss the present Petition with costs.

Written submissions on behalf of the Petitioners:

35. In response to these contentions, the Corporate Debtor has filed a detailed written submission stating that during the hearing of the Company Petition on 05.01.2024, the Corporate Debtor has admitted to the following:

- i. The Petitioners are allottees in the real estate projects being Acme Boulevard Tower 4 and Tower 5.
- ii. The total debt as claimed in the Petition is due and payable by the Corporate Debtor to the Petitioners.
- iii. The Petitioner satisfy and cross the 10% threshold in terms of Section 7(1) of the IBC in respect of both Tower 4 and Tower 5 taken individually and/or when taken together as a whole.
- iv. In the case of 65 of the 75 Petitioners, the date of possession has passed (even after taking into account all extensions and grace periods, including on account of time extended by MahaRERA due to Covid-19). Therefore, admittedly, there is default in handing over possession.
- v. It is also not in dispute that all of the defaults for the Petitioners occurred before the period contemplated under Section 10A of the

IBC. Even if one were to unilaterally grant extensions to the Corporate Debtor on account of Covid-19 which unilateral extensions would be contrary to the contract and the settled law, several of the defaults would still fall outside the period contemplated under Section 10A, each of which in fact would meet the threshold of Rs. 1 Crore.

- vi. Even in the case of homebuyers where the date of possession as per the ATS is the date of completion as mentioned on the website of MahaRERA, the MahaRERA completion date of 29.12.2023 has passed and there is default.

36. The Petitioners have submitted that the 68 out of 75 Applicant have filed the record of financial information with the Information Utility between 28.09.2023 to 03.10.2023 and all 68 Applicant have received the Record of Default showing that the debt and default is “deemed authenticated”. The Record of Default in respect of 68 Applicant is provided separately in an additional compilation of documents.

37. Further submitted that the Corporate Debtor’s share of units sold under Tower 4 and Tower 5 aggregate to 240 units. Accordingly, the present Applicant, comprising 75 in number, constitute 31.25% of the total allottees in the real estate project. Further it also submitted that even if Tower 4 and Tower 5 are considered to be separate real estate projects, the Applicant are 35 in number in Tower 4 which constitutes 29.41% of the total number of 119 allottees in Tower 4; and the Applicant are 40 in number in Tower 5 which constitutes 33.06% of the total number of 121 allottees in Tower 5.

38. Further, it also submitted that there is no bar under Section 10A applicable to the present Petition as even assuming without admitting that the dates of default in respect of the 36 Applicant alleged by the Corporate Debtor fall within the period prescribed under Section 10A of the IBC, the remaining 39 Applicant satisfy the

threshold of 10% in terms of the second proviso to Section 7(1) of the IBC as follows - (I) 39 allottees being 16.25% out of total 240 allottees: 17 being 14.28% of the total number of 119 allottees in Tower 4; and (ii) 22 allottees being 18.18% of the total number of 121 allottees in Tower 5.

39. Further submitted that, the date to be considered would be the completion date on the MahaRERA certificate as attached to the respective ATS and not the date on the website of the MahaRERA as extended from time to time. Therefore, it is submitted that the date of possession even in respect of the Applicants/homebuyers whose ATS provide that the possession date would be as per the MahaRERA website, the relevant date would be the contemporaneous date on the MahaRERA website at the time of execution of the relevant ATS and not the date of the MahaRERA website at the time of filing the present Petition under Section 7 of the IBC.
40. The Stop Work Notice (for the period from May 2021 - October 2021) and 2nd Stop Work Notice (issued in June 2022) do not in any manner dilute the obligation of the Corporate Debtor to handover possession of the flats to the financial Creditors herein. Further, the said Stop Work Notices do not alter the factum of default in terms of Section 3(12) of the IBC which has occurred and is continuing. It is submitted that the test required to be applied by this Hon'ble Tribunal for determining the admissibility of the petition under Section 7 of the IBC remains the twin test of debt and default as laid down by the Supreme Court in *Innoventive Industries v/s ICICI Bank Ltd* (2018) 1 SCC 407 and recently re-affirmed in *Axis Bank Limited v/s Vidarbha Industries Power Limited* (2023) 7 SCC 321.

Observations and Finding

41. Heard the Ld. Counsel for the Parties and also perused of the petition along with the Annexures attached to the Petition and reply.

42. The present application was filed on 27.03.2023 before this Tribunal on the ground that the Corporate Debtor failed to handover possession of the flats/apartment to the Financial Creditors. We find that the present petition is jointly filed on behalf of more than 10% of allottees, satisfies the minimum threshold required for filing a Section 7 petition in case of real estate allottees. In response to this the Corporate Debtor has raised few preliminary objections to the said petition.
43. Now we propose to deal with the contentions raised by the Corporate Debtor.
- a. Regarding the contention that the Petitioners have failed to comply with the requirement of Rule 4(3) of the IBBI (Application to Adjudicating Authority) Rules, 2016 which require prior service to the IBBI before filing of any Petition under Section 7 of the Code, it is noted that during the argument, the Ld. Counsel for the Petitioner submitted that the service was completed to the IBBI after the petition had been filed. This is evident from the copy of Form 1(IAAA), which is the form for serving a copy of the application for initiation of CIRP to the IBBI, annexed to the additional affidavit dated 06.10.2023 filed on behalf of the Petitioners. Therefore, the defect has been cured. Hence, such contention cannot be sustained.
 - b. Further, in relation to the contention that the Petitioners have failed to comply with the requirement for filing information of default with the Information Utilities under Regulation 20(1-A) of the IBBI (Information Utilities) Regulations, 2017, we rely on the judgement of ***Vijay Kumar Singhania vs. Bank of Baroda Company Appeal (AT) (Insolvency) No. 1058 of 2023***, order dated 13.12.2023, wherein, Hon'ble NCLAT held that failure to file record of default with the Information Utility cannot be a ground to deny admission of a petition under Section 7 of the IBC in the event the financial creditor has produced sufficient evidence to establish the existence of debt and default.

- c. The Record of Default in respect of afore mentioned Petitioners is provided separately in an additional affidavit dated 06.10.2023 filed on behalf of the Petitioners. In the present case, 68 out of 75 Petitioners have filed the record of financial information with the Information Utility and all of the 68 Petitioners have received the Record of Default showing that the debt and default is “deemed authenticated”.
- d. Further, in relation to the contention that petition seeks to club allottees from different real estate projects for the purpose of computation of the threshold of 10% under Section 7 of the IBC, we note that the Corporate Debtor’s share of units sold under Tower 4 and Tower 5 aggregate to 240 units. Accordingly, the present Petitioners, comprising 75 in number, constitute 31.25% of the total allottees in the real estate project. Even if Tower 4 and Tower 5 are considered to be separate real estate projects, the Petitioners are 35 in number in Tower 4 which constitutes 29.41% of the total number of 119 allottees in Tower 4; and the Petitioners are 40 in number in Tower 5 which constitutes 33.06% of the total number of 121 allottees in Tower 5.
- e. In view of the above, we hold that the Financial Creditors are 35 allottees in Boulevard Tower 4 and 40 allottees in Boulevard Tower 5 being developed by the Corporate Debtor and therefore fulfil criteria under the ambit of proviso of Section 7(1) of the being more than the minimum threshold requirement of at least 10% of the total allottees in the real estate project to support the application.
- f. Moreover, in relation to the contention that 36 out of the 75 Petitioners have dates of default allegedly falling during the period of Section 10A of the IBC. In response to this, the Petitioners have relied on **Neerav Bhatnagar & Ors. Vs. M/s. Sequel Buildcon Private Limited Company Petition (IB) No. 555(ND)/2021**, wherein Hon’ble Principal Bench has held that even those homebuyers whose dates of default falling within the period prescribed under Section 10A of the IBC would be taken into consideration for computing the threshold for

maintainability of the Petition in terms of the Second proviso of Section 7(1) of the IBC.

- g. Also, if we suppose that the date of default in respect of 36 Petitioners alleged by the Corporate Debtor fall within the period prescribed under Section 10A of the IBC, the remaining 39 Petitioners satisfy the threshold of 10% in terms of the second proviso to Section 7(1) of the IBC as follows:
- i. 39 allottees being 16.25% out of total 240 allottees;
 - ii. 17 being 14.28% of the total number of 119 allottees in Tower 4;
 - iii. 22 allottees being 18.18% of the total number of 121 allottees in Tower 5.
- h. In relation to the contention that the date of default/possession date in respect of 10 Petitioners, as per the ATS is the date as reflected on the website of MahaRERA, the Petitioners argued that as per the current status on the Maha RERA website, the completion date for the project was 29.12.2023 for Tower 4 and 30.12.2023 for Tower 5, which has already passed. Further argued that the date to be considered would be the completion date on the MahaRERA certificate as attached to the respective ATS, and not the date on the website of the MahaRERA as extended from time to time.
- i. In respect of the aforementioned contention, it is stated that even if such 10 Petitioners are excluded from the ambit of application, still the remaining would form a valid petition under proviso to section 7 of the IBC, 2016. In this respect, we rely on the judgement of ***Manish Kumar vs. Union of India (2021) 5 SCC 1***, wherein Hon'ble Supreme Court has held that even if the debt is barred against some of the financial creditors who are applicants, whereas the application by other applicants fulfill the requirement of default, both in terms of sum and number, the application would still lie.

j. Therefore, we are of the view that even assuming that the 10 Petitioners in respect of whom Corporate Debtor alleges that the date of default has not occurred, the remaining Petitioners would meet the 10% threshold. Similarly, the 36 Petitioners alleged to be barred under Section 10A of IBC. The remaining 39 Petitioners meet the threshold of 10% of the total allottees. Furthermore, the chart below illustrates that the petition remains valid even if we exclude the 36 Petitioners who are stated to be barred under Section 10A of IBC and the 10 Petitioners whose date of possession is in dispute.

S. No	Particulars	Tower 4	Tower 5	Total	Amount in Default (in Rs.)
1.	Petitioners whose ATS/LOA provide for date of possession as per MahaRERA	5, 20, 27, 37, 38 (5 Allottees)	40, 45, 49, 55, 61 (5 Allottees)	10	22,35,54,067
2.	% of allottees in respective tower	4.20% (5 allottees out of total 119)	4.13% (5 allottees out of total 121)	4.17%	
3.	Petitioners whose date of possession falls under Section 10A	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 25, 29, 31, 34, 35 (18 Allottees)	41, 42, 43, 44, 47, 48, 51, 53, 56, 58, 59, 60, 62, 63, 67, 68, 69, 74 (18 Allottees)	36	84,92,94,075
4.	% of allottees	15.12% (18 allottees out of total 119)	14.87% (18 allottees out of total 121)	15%	
5.	Petitioners who neither have date of possession	3, 19, 21, 22, 23, 24, 26, 28, 30, 32, 33, 36	1, 2, 4, 39, 46, 50, 57, 64-66, 70-73, 75	29	76,95,11,419

	falling under S. 10A nor have date of possession as per MahaRERA	(12 Allottees)	(17 allottees)		
6.	% of allottees	10.08% (12 allottees out of total 119)	14.05% (17 allottees out of total 121)	12.08%	

- k. Further in relation to the submission of the Corporate Debtor that in order to determine the date of default, this Tribunal must consider the date of completion of project as stipulated by MahaRERA, who has extended the validity of the Projects from time to time, and the current last date for completion of the Tower 4 Project stands on 29.12.2023 and for Tower 5 Project stands on 30.12.2023, we rely on the judgement of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union of India & Ors. 2017 SCC Online Bom 9302***, wherein it has been held that provisions of RERA do not override the agreement between the parties for completion of construction and handing over possession.
1. In view of the aforementioned judgement, the date for completion should not be changed if it is specifically mentioned in the Agreement. Moreover, in the present case, the date for completion of the Tower 4 Project if taken as 29.12.2023 and for Tower 5 Project is taken as 30.12.2023, both of which have already passed without the completion of the projects. In both the cases, there is a clear cut default on the part of the Corporate Debtor.
- m. Further, in relation to the contention that there is no default whatsoever as the delay in completion of the Project, if any, is purely on account of force majeure, we note that Force Majeure was invoked by the Maha Rera vide order no. 14/2020 and 21/2021 from 15.03.2020 to 14.09.2020 and 15.04.2021 to 14.10.2021 respectively. Therefore, apart from the aforementioned periods, the Corporate Debtor cannot

claim that the delay in completion of the Project is due to force majeure. In our view, the Corporate Debtor has had sufficient time both before and after the force majeure periods to complete the projects. Therefore, the aforementioned contention cannot be sustained.

- n. It is also mentioned that the contention that petition includes claims of allottees who are seeking to exit the Project and therefore, cannot be permitted to file under Section 7 of the Code was not pressed while arguing the matter by the Corporate Debtor.
44. We observe that the Corporate Debtor has failed to handover possession of the flats/ apartments within the promised time and even today. The Financial Creditors have made timely and substantial payments of the instalments towards purchase consideration of their respective flats/ apartments, which amount is a financial debt owed by the Corporate Debtor to the Financial Creditors within the meaning of Section 5(8) of the IBC.
45. In the judgement of the Hon'ble Supreme Court in the ***Innoventive Industries Limited vs. ICICI Bank and Another (2018)1 SCC 407***, it was held that-

“The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days receipt of a notice from the adjudicating authority.

*30. 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. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”*

(Emphasis Provided)

46. In view of the aforementioned judgement it is clear that the Adjudicating Authority only has to determine whether the “debt” was due and remained unpaid. If the adjudicating authority is of the opinion that a “default” has occurred, it has to admit the application. In the present case, sufficient evidence has been adduced by the Petitioner to prove the debt and default.
47. We are of the considered view that the Financial Creditors have proved existence of debt and default. Further the debt is in excess of Rs. 1 Crore and thus above the threshold limit mandated in Section 4(1) of the Code. Also the Petition filed is within limitation. Therefore, we hereby admit this company petition and also looking at the consent given by the Insolvency Professional, we hereby appoint **Mr. Subodh Kumar Agrawal** as an IRP, with a direction to the Financial Creditors to pay remuneration to the IRP and his expenses until the constitution of CoC.
48. Accordingly, this Company Petition is **admitted** with the following directions:
- a. **The above Company Petition (IB) 324(MB)/2023 is allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s. Acme Realities Private Limited.**
 - b. This Bench appoints **Mr. Subodh Kumar Agrawal**, having Registration No: **IBBI/IPA-001/IP-P-00087/2017-2018/10183**, email: **subodhka@gmail.com**; Address: **1, Ganesh Chandra avenue, 3rd Floor, Room No-301, Kolkata- 700013** as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
 - c. The Financial Creditor shall deposit an amount of Rs. 5 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

- d. That this Bench hereby directs operation of moratorium under section 14 of Insolvency and Bankruptcy Code, 2016 and prohibits the following:
- a. the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - b. transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - c. any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - d. the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
49. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.
50. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately. The Registry is further directed to send a copy of this order to the Insolvency and bankruptcy Board of India for their record.

Sd/-

CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)

Sd/-

LAKSHMI GURUNG
(MEMBER JUDICIAL)

Arpan, LRA