

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 103
CP(IB)-617/ND/2022
IA-3882/2024, IA-2789/2023

IN THE MATTER OF:

Three C Green Developers Pvt. Ltd.

... Financial Creditor

Versus

Three C Infratech Pvt. Ltd.

... Corporate Debtor

AND IN THE MATTER OF IA-3882/2024:

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

M/s Three C Green Developers Pvt. Ltd.

C-23, Greater Kailash Enclave, Part-I,
New Delhi-110048

... Applicant

Versus

Moon Light Prop Build Pvt. Ltd.

House No. 8, Block- B-6,
Rajouri Garden, New Delhi-110015

...Respondent

AND IN THE MATTER OF IA-2789/2023:

(Under Section: 65 of IBC, 2016)

Moon Light Propbuild Private Limited

House No. 8, Block- B-6, Rajouri Garden,
New Delhi-110015

... Applicant

Versus

1. M/s Three C Green Developers Pvt. Ltd. & Ors.

C-23 Greater Kailash Enclave, Part-I
New Delhi-110048

2. Three C Infratech Private Limited

C-23, Greater Kailash Enclave,
Part-I, New Delhi-110048

3. Registrar Of Companies

NCT of Delhi & Haryana
IFCI Tower, 4th Floor, 61,
Nehru Place Delhi—10019

... Respondents

Under Section: 7 of IBC, 2016

Order delivered on 12.03.2025

CORAM:

**SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)
MS. REENA SINHA PURI, HON'BLE MEMBER (T)**

PRESENT:

For the FC : Mr. Kailash Ram

For the CD : Adv. Abhay Kaushik

Hearing Through: VC and Physical (Hybrid) Mode

ORAL ORDER

IA-2789/2023 & IA-3882/2024: The IA-2789/2023 has been preferred by M/s Moonlight Propbuild Pvt. Ltd. under Section 65 of IBC, 2016, alleging therein that the application under Section 7 of IBC, 2016 has been preferred by Resolution Professional of Three C Green Developers Pvt. Ltd. fraudulently and with malicious intent. According to her, the purpose of application is other than that the resolution and insolvency or liquidation of the Corporate Debtor. Ms. Ridhima Verma, Ld. Counsel for the Applicant in IA-3882/2024 could draw our attention to Part-IV of the application to espouse that the financial facility extended by the Financial Creditor represented by Resolution Professional to Corporate Debtor does not amount to loan. Part-IV of the application preferred under Section 7 of IBC, 2016 referred to by Ms. Ridhima Verma, Ld. Counsel for the Applicant reads thus:-

PART-IV

PARTICULAR OF FINANCIAL DEBT		
1.	<p>TOTAL AMOUNT OF DEBT GRANTED</p> <p>DATE(S) OF DISBURSEMENT</p>	<p>Total Amount: Rs. Rs.55,20,27,315/-</p> <p>BRIEF DETAILS OF THE TRANSACTION ARE AS UNDER:</p> <ol style="list-style-type: none"> 1. Corporate Debtor is one of the sister concern of the Financial Creditor. Time to Time, as per request and requirement, certain advances by way of loan have been made by the Financial Creditor to the Corporate Debtor. 2. That the Financial Creditor has been admitted to Corporate Insolvency Process by the Hon'ble National Company Law Tribunal (NCLT), New Delhi vide its order dated 23.12.2021, passed in the matter of "IIFL Private Equity Fund V/s Three C Green Developers Pvt. Ltd" in IB/380/ND/2020 and accordingly Interim Resolution Professional was appointed. Later on Sh, Gyan Chand Misra was appointed as the Resolution Professional which has been confirmed vide order dated 7.03.2022 passed by this Hon'ble Tribunal. 3. The resolution professional of the financial creditor, upon examination of its the books of accounts found inter alia; that many financial transaction has taken place between the Financial Creditor and the Corporate Debtor. Upon close scrutiny of all accounts, ledger and available records, it is found that the Financial Creditor time to time has been advancing loan to the Corporate Debtor and accordingly informed the CoC for initiating of recovery proceedings or filing appropriate before Adjudicating Authority Copy of minutes of meeting dated 22.03.2022 informing the COC is marked as Annexure A-4. 4. That thereafter, the Resolution Professional, after going through and upon scrutinizing all books of accounts/ ledger, available with the Corporate Debtor issued a demand notice dated 7.5.2022 asking the corporate Debtor to refund the loan amount Rs.55,20,27,315/- along with interest @ 19% per annum

		<p>(till 23rd Dec,2021) Rs.28,73,02,909/- as such total amount Rs. 83,93,30,225/- (Rupees Eighty-Three Crore Ninety-Three Lakhs Thirty Thousand Two Hundred and Twenty-Five Only) to Financial Creditor.</p> <p>5. That by way of inter-company loan,the above said advances have been made to corporate debtor which are have been verified from the books of account of the applicant and there is no justification of non-payment despite notice which has been sent by the applicant on 7.5.2022 through <u>registered post and E-mail i.e. lotusrocrecords@gmail.com</u>. Copy of demand notice dated 7.5.2022 and Email dated 7.5. 2022 is annexed here with and marked as Annexure 5 and Annexure-6.</p> <p>6. Despite notice which has been duly served upon the Corporate Debtor, it has miserably failed to pay any amount to the Financial Creditor and did not offer any explanation towards non-payment. Further they have not disputed the above-said amount given to them as loan.</p> <p>7. That as per the records, as on date total debt due to the Financial Creditor is. Rs.83,93,30,225/- including interest @ 19% per annum (till 23.12.2021) on Rs.55,20,27,315/-.</p> <p>Dates of disbursement are reflected in the statement of account maintained by the Financial Creditor which is annexed as Annexure A-7.</p>
2.	<p>AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED</p> <p>(ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)</p>	<p>The total amount claims to be in default is Rs. 83,93,30,225/- (Rupees eighty three crore ninty three lakh thiry thousand two hundred twenty five only), alongwith interest @19% p.a.</p> <p>.The default occurred when the dues were not paid even after request were made on 07.05.2022</p> <p>True copy of working computation for the amount due and payable by the corporate debtor is annexed herewith and marked as Annexure-A-8.</p>

2. Having drawn our attention to additional affidavit dated 15.07.2024 she submitted that the Resolution Professional is relying upon the balance-sheet procured by him from the Directors of the Corporate Debtor who are only pantry boy and office clerk and are not taking any responsibility to the affairs of the Corporate Debtor in any manner. She could draw our attention to the balance-sheet of the Corporate Debtor to argue that as the amount paid by the Financial Creditor to Corporate Debtor is shown under the head “loans and advances taken” it cannot be said with certainty that the financial facility extended amounts to debt is covered under Section 5(8) of IBC, 2016. The relevant excerpt of the balance-sheet relied upon by the her reads thus:-

Three C Infratech Private Limited
CIN : U70101DL2010PTC205740
Notes to the financial statements for the year ended March 31, 2019
(All amounts are in Rupees (Lakhs) unless otherwise stated)

e. Individuals owning indirect interest in the voting power having control or significant influence and their relatives

S No.	Transactions during the year	March 31 2019	March 31 2018
1	Loan/advances given		
	Nirmal Singh	75.00	170.00
2	Loan/advances received back		
	Nirmal Singh	1,100.00	-

S No.	Balances at the end of the year	March 31 2019	March 31 2018
1	Loans and advances receivables		
	Nirmal Singh	3.68	1,028.68

f. Entities over which individuals mentioned in (vii) above are able to exercise control or significant influence along with their relatives and with whom transactions have taken place during the year

S No.	Transactions during the year	March 31 2019	March 31 2018
1	Loan/advances taken		
	Arena Superstructures Private Limited	350.00	700.00
	Tiger Plast Limited	25.00	-
	Piyush IT Solutions Private Limited	14.00	-
	Delight Outsourcing Private Limited	125.00	700.00
	Three C Green Developers Private Limited	4,228.37	650.50
	Three C Properties Private Limited	580.00	200.00
2	Loan/advances repaid		
	Three C Green Developers Private Limited	100.00	215.75
	Arena Superstructures Private Limited	945.56	105.00
	Piyush IT Solutions Private Limited	47.20	43.00
	Delight Outsourcing Private Limited	828.50	9.00
	Golfgreen Buildcon Private Limited	110.00	
	Three C Properties Private Limited	757.70	13.85
	Eminent Homes Private Limited	50.00	
	Xanadu Infratech Private Limited	188.00	
3	Loan/advances given		
	Lotus Greens Constructions Private Limited	200.00	50.00
	NS Global Private Limited	14.00	
	Lotus Greens Developers Private Limited	2,032.25	330.00
	Bright Buildtech Private Limited	14.29	13.15
	Apricot Buildcon Private Limited	-	2,091.10

4	Loan/advances received back		
	Perceptive Colonizers Private Limited	50.00	
	Lotus Greens LLP	498.03	
	Bright Buildtech Private Limited	145.56	2,086.00
	Apricot Buildcon Private Limited	2,090.94	-
	Allure Developers Private Limited	-	1.24
	Three C Town Planners Private Limited	-	170.00
	NS Global Private Limited	45.53	700.00
	Lotus Greens Constructions Private Limited	2,887.11	219.00
	Lotus Greens Developers Private Limited	5,294.21	233.27
5	Expenditure incurred on behalf of		
	Apricot Buildcon Private Limited	-	0.05

Three C Infratech Private Limited
CIN : U70101DL2010PTC205740
Notes to the financial statements for the year ended March 31, 2019
(All amounts are in Rupees (Lakhs) unless otherwise stated)

S No.	Balances at the end of the year	March 31 2019	March 31 2018
1	Amount receivables		
	Lotus Greens Constructions Private Limited	-	2,687.11
	Perceptive Colonizers Private Limited	-	50.00
	Lotus Greens Developers Private Limited	2.00	3,263.96
	Bright Buildtech Private Limited	-	131.26
	Lotus Greens LLP	-	498.03
	Cruze Properties Private Limited	-	0.06
	Manasvi Hotels Private Limited	0.11	0.11
	NS Global Private Limited	8.83	22.70
	Unique Realprojects Private Limited	40.00	40.00
	Apricot Buildcon Private Limited	-	2,090.94
2	Amount payables		
	Xanadu Infratech Private Limited	-	188.00
	Delight Outsourcing Private Limited	0.01	703.51
	Tiger Plast Limited	225.00	200.00
	Piyush IT Solutions Private Limited	-	33.20
	Golfgreen Buildcon Private Limited	-	110.00
	Eminent Homes Private Limited	-	50.00
	Arena Superstructures Private Limited	4.44	600.00
	Three C Green Developers Private Limited	4,628.11	499.74
	Three C Properties Private Limited	22.45	200.15

Terms and conditions of transactions with the related parties

i. All outstanding balances with these related parties are priced on an arm's length basis and are to be settled in cash. None of the balances are secured.

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3. She could also draw our attention to the Judgment of Hon'ble Allahabad High Court dated 24.02.2025 delivered in Writ C No. 31823/2019 (M/s Three C Green Developers Pvt. Ltd. And 8 Others vs. State of U.P. And 2 Others). She submitted that from the judgment delivered in the petition preferred by Financial Creditor herein before us has analysed in detail the entire affairs of the Three C Group Companies and even issued direction for CBI inquiry against all the conniving officials of NOIDA Authority and the allottees/builders involved in the allotment and development of Three C project and any other person who may be involved in the scam. According to her both the Financial Creditor and Corporate

Debtor are part of Three C Group Companies and the Corporate Debtor is 100% subsidiary of Three C Universal Development. In her submission all the companies of Three C Group are involved in round tripping and are in deep rooted conspiracy to cheat not only home buyers but all those who are concerned with it. Paras 3 to 6, 17, 92 to 102 and 108 to 115 of the Judgment of Hon'ble Allahabad High Court reads thus:-

“3. As per the formulated scheme, New Okhla Industrial Development Authority¹ sometime in the year 2011 launched the project of “Sports City” which was to be developed in Sectors 78, 79 and 150 of NOIDA. The scheme was launched on 03.03.2011 and closed on 24.03.2011. As per the scheme, a Sports City was to be developed on a land parcel of 72.75 hectare (7,27,500 sqm) in Sector 78 and 79 and another sports city in Sector 150.

4. The reserve price for the scheme was set at Rs. 11,500/- per square metre. The developer was supposed to create sports facilities over 70% of the entire land area, which was not marketable, and to set off this expense in developing the sports city, the developer was allowed to construct group housing on 28% and commercial on 2% of the total land with FAR of 1.5. The scheme clearly stated that the population density in this Sports City would be 1650 people per hectare. The open/green area of the recreational component (i.e. sports activities such as Golf course, stadium etc. and open spaces) was to be considered as open green areas for the entire land. The relevant conditions in the Brochure were as follows:—

** The shareholding of the lead member in the consortium shall remain at least 30% till the temporary occupancy/completion certificate of at least one phase of the project is obtained from the Noida.*

** SPCs that will subsequently carry out all its responsibilities as the allottee, and will have to construct on their own a minimum of 30% of the total permissible FAR on allotted area.*

****The “Lead Member” shall continue to hold at least 30% of the shareholding in the SPC till the temporary occupancy/completion certificate at least one phase of the project is obtained from the NOIDA***

**In case of default in depositing the instalments or any payment, interest @ 14% compounded half yearly shall be leviable for defaulted period on the defaulted amount.*

**The Lessee shall be required to complete the construction of minimum 15% of the permissible area earmarked for sports, institutional and other facilities within a period of 3 years from the date of execution of Lease Deed and shall complete the project in phases within 5 years. However, the residential and commercial development/construction may be completed in phases within 7 years.*

**Further more, the lessee has to develop residential and commercial component in the project in proportion to area earmarked for recreational uses.*

** The ‘Completion Certificate’ will be issued by the NOIDA on the completion of the project or part thereof in phases and on the submission of the necessary documents required for certifying the completion of the project or part thereof.*

**The lessee shall execute an Indemnity bond Indemnifying the NOIDA against all disputes arising out of non-completion of the project.*

** Without obtaining the completion certificate the lessee shall have the right to sub-divide the allotted plot into suitable smaller plot as per the planning norms of the NOIDA only for the area available for residential and commercial use and to transfer the same to the interested parties, if any, with the prior approval of the NOIDA on payment of transfer charges at the rate prevailing on the date of transfer.*

**After the written approval of the Lessor/NOIDA Authority, the lessee can implement/develop the project through its multiple*

subsidiary companies in which the allottee/lessee company shall have minimum 90% equity share holdings Choose an account

** Sub lease of land/built-up area shall be allowed on the basis of approved layout and building plans by NOIDA.*

** NOIDA will monitor the implementation of the project. Applicants who do not have a firm commitment to implement the project within the time limits prescribed are advised not to avail the allotment.*

(Emphasis supplied)

5. *In response to the application only two companies applied for the allotment of Sports City, first being M/s. Wave Pvt. Ltd., which had applied at the reserve price and the second was a consortium of companies led by one M/s. Xanadu Estates Pvt. Ltd. (being the Lead Member) along with 8 other companies (being the Relevant Members). The bid of the consortium of M/s. Xanadu Estates Pvt. Ltd. being the highest was allotted the sports city project (SC-01 sector 78-79).*

6. *The Noida Authority issued an Acceptance Letter on 28.03.2011 and informed the lead member about the allotment, thereafter, Noida Authority issued Allotment-cum-Reservation Letter dated 04.05.2011 and called upon the Consortium to deposit reservation money. It was informed to the Consortium that total land parcel ad-measuring 7,27,500 square metres as Plot No. SC-01, Sector 78 & 79 was reserved in favour of the Consortium as per the terms and conditions of the Scheme.*

X X X

17. *The petitioner again sought benefit of Zero Period, which was granted vide letter dated 30.12.2026 on 5,50,729.30 square meters of land parcel up to 31-01-2017. The petitioner further submitted that even after the additional land 48,520 square meters was allotted, still there were certain encroachments and the actual physical possession of the plots were not handed over free from all encumbrances.*

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92. *Since in this case there has been a web of companies incorporated by the same promoters and all of his newly incorporated companies applied as a consortium, and there after the share holdings have changed in certain companies without the permission of the authority, contrary to the provisions of the sports city scheme. Hence it is necessary to pierce the corporate veil and see who are the people/ entity responsible for the fraud/ scam.*

I. INSOLVENCY-LIFTING OF CORPORATE VEIL

93. *In this case the project was allotted to a consortium, surprisingly all the members of the consortium companies were incorporated after the scheme was launched and the promoters of all the companies were same, which goes to show the consortium was not a genuine consortium but was made of a group of companies owned by same set of people, who after getting the allotment, got it sub-divided and a development plan was applied and approved in such a way, that all the assets of the Sports City were kept in by various small companies and the liability of developing the sports facility was kept with two companies.*

94. *Few of the companies in this consortium have gone into insolvency. The insolvencies of these companies were designed only to avoid payment to Noida Authority, banks/financial institutions, State of U.P. to find out the actual accused person who was involved in this bungling/fraud, which resulted into the insolvency, it is necessary to lift the corporate veil of the web of these companies. And to see whether they are trying to hide their fraudulent activities and themselves under the mask of the company being a separate juristic personality.*

95. *Out of all the companies, who are involved in the development of the Sports City following four companies have gone into insolvency, which are M/s. Sequel Buidcon Pvt. Ltd., M/s. Arena Super Structure Pvt. Ltd., M/s. Kindle Developers Pvt. Ltd. M/s. Three C Green Developers Pvt. Ltd.*

(petitioner herein). The first three companies named above were assigned the task of developing residential part of sports city. They were the original members of the consortium or their 100% subsidiary companies of the allottees and had only one business of developing the sports city. Surprisingly in all these companies the original promoters were the same (i.e. Niramal Singh, Surpreet Singh Suri and Vidur Bharadwaj). They have collected huge amount of money by selling part of the project to various other entities (by share transfer of various small holding companies). Obviously, this would have been sold at a price. The money would have come in the vendor company/or any other of its concern or in personal accounts of the promoters (i.e. Nirmal Singh, Vidur Bhardwaj and Surpreet Singh Suri). Now the question is where did the sale consideration go. This money was for the land which was to be used for generating the revenue to construct the sports facilities. No such facility has been made. The entire sale proceeds were syphoned off and thereafter allowed the petitioner company to slip into insolvency. Definitely, this insolvency is a tailor-made insolvency just to avoid civil and criminal liabilities and to avoid payment of the dues and completing the obligation of developing the Sports City. This is nothing but just a fraud played on Noida Authority as well as on the State and other stakeholders/creditors.

96. *Due to the occurrence of the above instances of fraud and irregularities, the law has taken change with its earlier exception that, a company is a separate juristic personality and the liability of the company cannot be recovered from the property of directors. In due course of time, certain exceptions have been carved out in the doctrine of separate juristic personality of the company. The doctrine of ‘piercing of corporate veil’ was initially crystallized in *In Salomon v. Salomon & Co. Ltd.* [*Salomon v. Salomon and Co. Ltd.*, the House of Lords had observed, the company is at law, a different person altogether from the subscriber. However, the courts have come to recognise several exceptions to the*

said rule. While it is not necessary to refer to all of them, the one relevant to us is ‘when the corporate personality is being blatantly used as a cloak for fraud or improper conduct’.

97. This doctrine of lifting corporate veil was carved out to be used whenever and wherever the situation so warranted. Lord Denning in *Littlewoods Stores v. I.R.C.*, held:—

“The doctrine laid down in Salomon's case has to be watched very carefully. It has been supposed to cast a veil over the personality of a limited company through which the Courts cannot see. But that is not true. The Courts can, and often do, draw aside the veil. They can, and often do, pull off the mask. The way with group accounts and the rest. And the Courts should follow suit.....”

98. On the doctrine of ‘piercing of corporate veil’ the Hon'ble Supreme Court in the matter of *State of U.P. v. Renusagar Power Co.* has held that, in the expanding horizon of modern jurisprudence, the lifting of the corporate veil is not only permissible, its frontiers are unlimited and ever expanding. It further significantly observed that the lifting of the corporate veil was a changing concept and of expanding horizons.

99. The Hon'ble Supreme Court in *State of Rajasthan v. Gotan Lime Stone Khanij Udyog Private Limited* has held as under:—

“The principle of lifting the corporate veil as an exception to the distinct corporate personality of a company or its members is well recognized not only to unravel tax evasion[7] but also where protection of public interest is of paramount importance and the corporate entity is an attempt to evade legal obligations and lifting of veil is necessary to prevent a device to avoid welfare legislation[8]. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected etc.”

100. *The principle of lifting the veil of corporate personality has been upheld in Subhra Mukharjee v. Bharat Cooking Coal Ltd.; Calcutta Chromotype Ltd. v. Collector of Central Excise Kolkata, New Horizon Ltd. v. Union of India, C.I.T. v. Meenakshi Mills Ltd. Madura; Telco v. State of Bihar; Juggi Lal Kamlapat v. Commissioner of Income Tax, U.P..*

101. *Hon'ble Supreme Court in the matter of Delhi Development Authority v. Skipper Construction Company (P) Ltd. has been pleased to hold that lifting the corporate veil of the companies, forfeiture and attachment of property acquired by illegal and corrupt means by the builder behind the corporate veil as also properties of the family members can also be ordered by the Court.*

102. *The modus operandi of the promoters of the petitioner company is consistent. They get the plot allotted from Noida, do not pay the dues of Noida Authority, syphon of the money from the company and then push the company, which is to execute the public facilities part of the project into insolvency to avoid implementing the project and to avoid payment to the creditors and also to avoid civil and criminal liabilities. The High Court, in the matter of Nirmal Singh v. State of U.P. bearing Writ C no. 41110 of 2019, had noticed the same trend by the same set of promoters in the judgment and order dated 29.02.2024.*

X X X

J. ZERO PERIOD

108. *The most surprising thing is that on 70% of the land area sports facility was to be developed and on the remaining 30% residential/commercial activity was permitted. Every builder is seeking benefit of zero period on the ground of encroachment. The question arises, as to how the encroachment were on an area where he was supposed to develop sports facility and there was no encroachment on the area where residential/commercial structure had to come up. When*

there was an opportunity to collect money by launching residential/commercial tower there was no encroachment or unavailability of infrastructure by Noida Authority, but when it came to develop sports facility, there was an excuse of encroachments. This theory set up by the builder are not at all believable. If there was no infrastructure available or there was encroachment, then they ought not have sold/booked the flats and if they were doing so without informing the homebuyers, then that amounts to committing a fraud on the homebuyers.

109. *Further the affidavit filed by the Noida Authority shows the date on which each of the allottee were given possession and the same was clear of any encroachment only in few cases there were very small encroachments. Had the builders started construction of sports facility on other areas and had they come to the Court with clean hands, this Court would have certainly treated the cases of the builders sympathetically. But, this is not a case here, the builders are raising this ground just to buy further time. Their conduct right from the day one was to deceive the homebuyers, banks, Noida Authority and not to pay them and not to carry out their obligations and for that they are playing every possible tricks.*

110. *As per the scheme, three years' time was granted for developing the first phase and five years for the development of the entire sports facility. This delay could not be explained. Even assuming there were some encroachments still major portion of the sports city project land were handed over to the allottees and the allottees, who had bifurcated the land amongst themselves, could have started development of project on the land over which there was no encroachment. However, they chose not to do so and Noida Authority also did not ask them to do so.*

K. SCAM

110. *This is a case where every action of the Noida Authority smacks of corruption and scam in collusion with the builders since inception of the Sports City Project. The entire process of development of the Sports City including conceiving the scheme, allotment, execution of the lease deed, sanction of map/plan, and implementation of just one part of the sports city was all an outcome of malafide intentions. The allottees/builder in connivance with the NOIDA official had played a huge fraud and victims are Noida Authority, State of U.P. and the Home buyers.*

111. *The most shocking part is the entire scam and fraud were carried under the aegis of the Noida Authority and, one after another, the officials kept mum and allowed the scam to continue. The allotment was made in the year 2011 and for the first time it was unearthed sometime in the year 2020, when the CAG carried out an audit. Shockingly for the last 9 years, the senior officials of the Noida Authority and the State were well aware of the scam and fraud and they allowed the affairs to continue and no action has been taken against them. They failed to see that the allottees were doing nothing towards the development of the sports facility, whereby the group company of the petitioner kept on selling to the subsidiary companies, which made huge amount by way of sale of land (by transferring the shareholdings of the subsidiary companies), but did not pay the dues of the Noida authority.*

112. *Even after the Master Plan was sanctioned on 16.06.2014, neither there was development of any sports facility over the project land nor the officers of Noida Authority even bothered to insist for the same from the allottees/builders. When the entire land was given, then why the allottee did not complete the sports facility within the stipulated time. Nothing has been done for development of sports facilities and the officers of Noida Authority kept their eyes closed and none of them ever made any serious and sincere effort to get the sports facilities developed.*

At the same time they chose to be mute spectators and allowed the builders/sub-lessees to start construction of ancillary part of the project (residential). Construction of multi-storey buildings commenced right under their nose and still they did not make any effort to ensure development of the sports facilities which was the main part of the project.

L. FRAUD

113. *The corporate frauds specially in the insolvency case happens when the management/individuals within or associated with the company are engaged in illegal practices and had failed to fulfil their fiduciary duty, which ultimately leads to insolvency and in such a case the stakeholders affected by such fraud including creditors and consumers become the victim of such fraud. Addressing this issue requires multifaceted approach.*

114. *It is apparent from the scheme that when it was formulated and allotment was made it was pre meditated design, wherein allottee wanted to get the land allotted only by paying 10% then get the benefit of zero period, in the meanwhile collect money from various financial institutions and without even developing the project go into insolvency. The officers of Noida Authority were completely hand in glove to this sinister design. They were part of fraud. They had approved the first consolidated lay out Plan wherein they have individually recognized the role of different companies and knowingly kept the development of all sports facilities in two companies, never followed on the development of the sports facilities in the sports city, never asked the allottees to pay their dues, and allowed the haphazard constructions which were completely contrary to the scheme, brochure conditions, and the conditions of the allotment and lease deed.*

115. Fraus Omnia Vitiat-Fraud vitiates everything:—*The corporate fraud, which includes malpractices, breach of financial duty, financial manipulation, asset diversion siphoning off funds and the government failure, which results into undue advantage and illegal gains to the people calling the sort in the company would come under the ambit of corporate fraud.”*

4. Ms. Ridhima Verma could also draw our attention to the Judgment dated 20.03.2025 passed by Hon’ble Delhi High Court in **Suresh Kumari vs. RoC & Ors..** In her submission, the said judgment is also qua the Three C Group Companies only. She submitted that in the judgment of Hon’ble Delhi High Court, remarks have been made regarding the affairs of the directors of Corporate Debtor. Paras 64 and 75 of the judgment of Hon’ble Delhi High Court reads thus:-

*“64. **The bottom line is** that the petitioner is espousing her personal cause and, in doing so, has also espoused the cause of the similarly placed investors/claimants/homebuyers, who form a distinct class and whose long-promised dream of owning residential flats remains unfulfilled, as construction has been stalled for over thirteen years now. Their contributions towards construction, amounting to more than nearly Rs. 1500 crores, have been evidently siphoned off by adopting various dubious means by the unscrupulous promoters and directors of respondent No. 3/TCSPL, viz., respondent No. 6/Mr. Nirmal Singh, respondent No.7/Mr. Vidur Bhardwaj and respondent No.8/Mr. Surpreet Suri, respondent No.9/Mr. Rajeev Bisoya and respondent No.10/Mr. Girish Chander Joshi, who have since abandoned the project and roaming around Scot free. The **modus operandi** adopted by them in defrauding the homebuyers has been exposed even in the above referred directions by the Allahabad High Court, the foot prints of which are evidently visible in the instant matter too.*

75. In view of the foregoing discussion, in modification of earlier order dated 02.02.2024, the following directions are passed:

- (i) CM APPL. 10599/2024 moved on behalf of the applicant/respondent No.7, Mr. Vidur Bhardwaj, for recalling of order dated 02.02.2024 is hereby dismissed;
- (ii) The Central Government is hereby directed that the investigation be conducted into the affairs of the respondent No.3/Three C Shelters Pvt. Ltd. besides its Ex-Promoters and Directors/Management viz. respondent No.6/Mr. Nirmal Singh, respondent No.7/Mr. Vidur Bhardwaj, respondent No.8/Mr. Surpreet Suri and respondent No.9/Mr. Rajeev Bisoya besides respondent No.10/Mr. Girish Chander Joshi through the SFIO to unearth the manner in which the funds generated from the petitioner and other homebuyers have been siphoned off to the detriment of its secured and unsecured creditors including the homebuyers;
- (iii) In so far as respondent No.11/Orris, as well as ACE Group of Companies represented by applicants/respondents No. 12 and 13 are concerned, the said companies shall be outside the purview of investigation by the SFIO;
- (iv) However, respondents No.1 & 2 shall continue to investigate the matter with regard to ascertaining the genuineness of the transactions between respondent No. 11/Orris and respondent No. 3/TCSPL in accordance Sections 206, 209, 216, 217, 219 and 224 of the Companies Act, 2013, and take the matter to its logical end;
- (v) As regards respondent No. 11/Orris, respondent Nos. 1 & 2 while conducting investigation shall have due deference to various judgments/orders/directions passed on the judicial side as well by the quasi-judicial authorities;

- (vi) *As regards ACE Group of Companies too, respondent Nos. 1 & 2 shall have due deference to various judgments/orders/directions passed on the judicial side as well by the quasi-judicial authorities*
- (vii) *Respondent Nos. 1 & 2 shall investigate the matter against the ACE Group of Companies uninfluenced by the findings in the report of the IRP dated 09.08.2023 in accordance with Sections 206, 209, 216, 217 and 224 of the Companies Act, 2013;*
- (viii) *In case the Investigating Officer appointed by respondent Nos. 1 & 2 finds that there has been any connection between the Management of respondent No3/TCSPL as well as ACE Group of Companies with regard to M/s. Bright Buildtech Pvt. Ltd.; M/s. Mega Town Planners Pvt. Ltd.; Three C Residency Pvt. Ltd; Three C City Developers Pvt. Ltd., he shall be empowered to inquire into the same and examine and satisfy himself about the genuineness of such acquisitions in accordance with law, except for those companies where recourse could be taken under section 65 & 66 of the IBC before the NCLT.”*

5. To espouse that it is not always necessary for this Tribunal to admit petition under Section 7 of IBC, 2016, and having come across the circumstances which have surfaced in the present matter it can issue investigation qua the affairs of Financial Creditor and Corporate Debtor, she has relied upon the order dated 18.07.2022 passed by NCLT Kolkata Bench. Para-32 of which reads thus:-

“32. We, therefore, pass the following orders:-

a) The entire transaction as narrated in the Section 7 application is plainly imaginary, concocted and fraudulent. The CD does not appear to have had any genuine liability towards the alleged FC and the entire documentation has evidently been prepared by the alleged FC in collusion with Videocon Group entities. The alleged documents

disclosed in the Supplementary Affidavit of the alleged FC, far from helping its case, further demonstrate the fraudulent nature of the documents.

b) In the circumstances, the alleged FC is guilty of practicing and committing fraud on this Tribunal and therefore, as per Section 65 of the Code, penalty of Rs.50 lakh is imposed on the alleged FC and the CIRP stands vitiated and terminated due to the fraud committed. In any event, even apart from the aspect of fraud as discussed above, the Section 7 petition was not maintainable due to the prohibition in Section 10A of the Code.

c) There is no question of allowing any "settlement" to take place based on the alleged documents disclosed in the Supplementary Affidavit of the alleged Financial Creditor, since the same is evidently a sham and a mala fide ruse to avoid adverse scrutiny by this Tribunal on the wholly fraudulent action of the alleged FC in instituting the section 7 petition and initiation of CIRP based thereon by practicing fraud on the Tribunal. The story of settlement also clearly appears to be an afterthought.

d) Apart from the consequences under Section 65 of the Code, by reason of which the CIRP stands vitiated and terminated and penalty imposed on the alleged Financial Creditor as stated above, in view of the glaringly fraudulent actions of the alleged Financial Creditor as discussed above, it appears that the same would have far reaching implications going even beyond this case and therefore, it would be proper for a full investigation to be conducted into the transaction set up by the alleged Financial Creditor in the Section 7 petition. In view of the same, the Registry of this Tribunal is directed to send a copy of this order to the Secretary, Ministry of Corporate Affairs, Central Government for further action at their end."

6. Per contra, Mr. Kailash Ram, Ld. Counsel appearing for the Applicant in IA-3882/2024 filed for dismissing IA-2789/2023 could draw our attention to Memorandum of Association of Financial Creditor and submitted that one of the object of the Financial Creditor was to advance money either with or without security and to such persons and with such terms and conditions as the Company could deem fit and also to invest and deal with the money of the company not immediately required in or upon any such investment and in such manner as from time to time may be determined, provided that the Company could not carry on the business of banking as provided in the Banking Regulations Act, 1949. Clause 16 of the Memorandum of Association reads thus:-

16. To advance money either with or without security, and to such persons and upon such terms and conditions as the Company may deem fit and also to invest and deal with the money of the Company not immediately required in or upon such investments and in such manner as, from time to time, may be determined, provided that the Company shall not carry on the business of banking as provided in the Banking Regulations Act, 1949.

7. He could also submit a note of argument mentioned therein, the particulars of the application preferred under Section 7 of the Code, details of debt, recovery of frauds, supporting financial record etc. He could also espouse that IA-2789/2023 has been moved by M/s Moonlight Propbuild Private Limited not with clean hands. The brief note submitted by him across the Bar reads thus:-

BRIEF ARGUMENTS

Locus of Moonlight Propbuild Private Limited

1. At the outset, an Application u/s 65 of the Code is invariably filed by a third party and/ or any party to bring on record material facts regarding malicious or fraudulent initiation of CIRP for purposes other than insolvency resolution. *Refer to SREI Infrastructure Finance Ltd. v. Right Tower Pvt. Ltd. & Anr., Company Appeal (AT) (Ins.) No. 38 of 2019 (Paras 5-6)*. Even otherwise the prayer in a section 65 Application is merely *in rem* and no *in personam* reliefs are sought as such.

2. However, Corporate Debtor holds 4.9% shareholding in M/s Moonlight Propbuild Private Limited (Refer Pleadings @ *para 5 of I.A. 2789 of 2023 [CC Pg. No. 2] and chart showing shareholding @ page 58 of Vol.1 of I.A. 2789 of 2023 [CC Pg. No. 3]*).
3. Mr. Amarjit Singh Chatha was approached repeatedly in the year 2009 by Mr. Nirmal Singh (Promoter of Three c Group) for real estate business in Mohali and Punjab. However, over the course of the years, in and around 2016, when the promoters began defaulting and multiple complaints were filed against them, Mr. Chatha also filed a criminal complaint against them with the SSP, Mohali, Punjab, owing to which, he was lured in to being offered shareholding in some LLP's and companies including the Applicant (total -5) i.e. M/s Moonlight Propbuild Private Limited and Mr. Chatha was further lured into depositing more than 16 crores in this regard in the said 5 entities which was duly undertaken. (Refer pages 14-17 of Reply to I.A. 3882 of 2024 for detailed facts in this regard [CC Pg. No. 5-8], Refer page 430, volume.3 of Reply to I.A. 3882 of 2024 for the bank certificates showing investment by Mr. Chatha to the tune of 16 crores). [CC Pg. No.9].
4. However, after being sold the shareholding, Mr. Chatha realised that M/s Moonlight Propbuild had been used as a vehicle for large scale siphoning off by the Three C Group to their group companies. Refer summary of Kotak Mahindra Account of Moonlight Propbuild Private Limited @ 456 volume.3 of Reply to I.A. 3882 of 2024 which show more than 100 crores siphoned off using Moonlight Propbuild Private Limited by the Promoters of Three c prior to the coming of Mr. Chatha. [CC Pg. No.14].
5. Owing to the above and various other frauds kept under the wraps by the promoters including the existence of an award against M/s Moonlight for an amount of INR 485,49,08,353 alongwith interest, Mr. Chatha filed a Petition under section 241-242 against of the Companies Act 2013 bearing C.P. No. 22/2020 *inter alia* against the Corporate Debtor, i.e. Three c Infratech Private Limited and others- Refer CP @ page 201 of Vol.2 of Reply to I.A. 3882 of 2024 [CC Pg. No.19] which is pending before this Hon'ble Tribunal.
6. Thus, the Applicant company even otherwise has locus to file the present section 65 Application.
 - A. The section 7 Petition is ex-facie illegal and collusive.
 7. Refer Part IV- Details of Debt (page 9 of C.P. 617 of 2022) [CC Pg. No. 22] (i) no loan agreement attached with the Petition to substantiate debt (ii) content of part IV also merely states that Corporate Debtor is a sister concern to whom alleged loans were advanced from time to time. Further Refer Annexure A-7 @ pages 42 and 43 of C.P. 617 of 2022 [CC Pg. No. 26], only one ledger filed with the section 7 Petition which was (i) illegible as such and (ii) not supported with any other document to verify the debt. (Page 26,27).
 8. Thus, this Hon'ble Tribunal as well on 20.01.2023, sought further evidence from the Financial Creditor, i.e. M/s Three c Green Developers Private Limited to substantiate debt being vary of the Petition- Refer copy of order dated 20.01.2023 @ page 345 of Volume 3 of Reply to I.A. 3882 of 2024). [CC Pg. No. 28]
 9. Further, the FC vide additional documents dated 25.01.2023 placed on record bank statements of 4 accounts of the FC for various periods to substantiate debt, however, a bare look of the same would also show round tripping (*dealt with in detail hereinbelow*).
 10. It is only when the aforesaid anomalies were pointed out by the counsel for the Applicant time and again that the counsel for the FC, out of nowhere in a surreptitious manner filed some financial statements of the FC and CD to substantiate the debt amount of INR 83,93,30,225 (*Principle of INR 55,20,27,315 and interest of INR 28,73,02,909*) vide Additional affidavit dated 15.07.2024 wherein once again the alleged interest amount is still not established in any manner whatsoever. Following maybe noted in the Financial Statements of the FC and the CD filed by the counsel for the FC vide the affidavit dated 15.07.2024 (including statements which have appeared out of nowhere as they are not filed on ROC till date):

- a. Refer para 4 of the Affidavit dated 15.07.2024 [CC Pg. No.30]- Admittedly balance sheets of the CD for the FY ending 2019 which are not on record with MCA have allegedly been handed over to the FC and now filed by FC before this Tribunal. Further, even the balance sheet of the FC for the FY 2019-2020 which are not filed on MCA have been filed only with this Affidavit, both of which are essential to establish the so-called debt amount.
- b. Even though the aforesaid balance sheet for the CD having been signed on 21.09.2019 has yet never been uploaded till date and even the Financial statement of the FC for the FY ending 2020, has not been uploaded with MCA by even the Ld. RP despite being in power over 30 months. It has been alleged that the Directors of the CD handed over the financials to the FC, whereas admittedly the company was struck off for non-filing. If UDIN was created and they were signed in September 2019 why were the same not filed, whereas, financials signed by same directors for FC as mentioned above for the same financial year have been signed and filed.
- c. Further, *Refer Page 36 of Reply to I.A. 3882 of 2024* [CC Pg. No.31] for comparison between Financial Statement of FC for the year ending 2019 and 2020 [CC Pg. No.32 and 34]. A conjoint reading of the above reflects that the alleged outstanding amount as on 31.03.2019 of the alleged FC, allegedly recoverable from the alleged CD is INR 42.28 Crores approximately. However, as per the *ex-facie* fudged and forged Balance sheet of the alleged FC, for the Financial Year ending 31.03.2020, it may be noted that the auditors remarks show that (a) No related party transaction took place during the year, yet (b) the notes to accounts shows that an advance of INR 55.20 crores has been given by the alleged FC to the alleged CD. It is submitted that in the absence of any related party transaction in the said Financial Year, it is strange to imagine how the loan amount has suddenly shot up from INR 42.28 crores to 55.20 crores, without any proof whatsoever.
- d. It may be noted in this regard that the directors of the FC and the CD (who signed the financial statement for the year ending 31.03.2019) are the same, i.e. (i) Girish Chandra Joshi and (ii) Anand Ram (Refer to balance sheet of CD with their signature @ page 77 of the Additional Affidavit [CC Pg. No. 35] and refer @ page 140 [CC Pg. No. 36] for Balance sheet of the FC with the same directors signatures).
- e. It is highly pertinent to note that the subject matter debt amount did not reflect in the last balance sheet of CD filed on ROC but has only been validated on the basis of the dubious balance sheet filed by the FC vide the Additional Affidavit dated 15.07.2024. Refer relevant portion of the CD balance sheet showing stark increase @ page 104 of the Additional Affidavit [CC Pg. No. 37].
- f. Refer order passed by Delhi High Court in *W.P. (C) No. 174 of 2024 titled Nishit Badola v. Union of India Through Ministry of Corporate Affairs & Anr. (paras 9,16,17)* Refer order passed by Hon'ble Supreme Court in *Civil Appeal No(s).7704-7708/2023* summoning one other director namely Rajeev Besoya. Refer judgment by Allahabad High Court in *Nirmal Singh – paras 24,75,92- Anand Ram* who swore before court of being a storekeeper has signed the financial statements of FC and CD both.

B. Subject matter of debt is a result of round tripping, not a genuine debt and default.

11. Refer Bank statements of the CD @ page 507 of I.A. 2789 of 2023 [CC Pg. No. 39] onwards and bank statement of FC @ page 528 of I.A. 2789 of 2023 onwards [CC Pg. No. 59]. Refer Chart @ page 348 of Volume 3 of Reply to I.A. 3882 of 2024 [CC Pg. No. 119] which shows round tripping, i.e. funds came from related party companies of the Three c Group into Three c Green Developers Private Limited/ FC and were sent to Three c Infratech Private Limited/CD, who further on the same day further transferred the money to related party companies. In this regard Refer *Ocean Deity (NCLAT judgment- relevant paras 24, 27-28.)* that makes it clear that round tripped funds cannot be subject matter of debt in a section 7.
12. The aforesaid gets further established on reading the ledger annexed by FC in the Additional Affidavit dated 15.07.2024 @ pages 111 and 112 [CC Pg. No. 121-122] wherein the entries therein tally with the bank transactions of the shady bank accounts in SBI of the FC/(Page 121,122 of CC). Refer comparison table @ page 33 of Reply to I.A. 3882 of 2024 [CC Pg. No. 124].

C. Corporate Debtor is a shell company with no business whatsoever hence no revival possible and the Petition has been filed for purposes other than revival.

13. **Refer the Financial Statement of the CD @ page 78 of the Additional Affidavit dated 15.07.2024 [CC Pg. No. 126]**, admittedly, the CD has no revenue for both the years ending 2018 and 2019, however, the only activity in the CD is giving and taking of loans, thus, the CD is created as a 100% subsidiary of Three C Universal Developers Private Limited only to siphon funds and has no operations.

14. Three C group of companies being pushed into CIRP in a domino effect.

- a) **Refer list of companies undergoing CIRP in para 10 (i) @ page 18 of pleadings. [CC Pg. No. 127]**
- b) **Refer list of companies against whom applications have been filed to initiate CIRP in para 10 (ii) @ page 19 of pleadings [CC Pg. No. 128]**
- c) **Submissions by the CD's in Petitions under category a. show that debt was admitted in order to expedite CIRP. Refer list @ para iii on page 20 onwards [CC Pg. No. 129] (Refer orders showcasing the said admissions from page 60 to page 134) [CC Pg. No. 135-210].**

15. The aforesaid a strategy to evade all actions against the CD and related parties, such as the Award dated 02.07.2019. **(Similar submissions as Cloud 9)**

16. Infact, the relatedness so writ large that the Reply filed by the CD to the section 65 Application is also parametria to the Reply filed by the Holding Company, M/s Three c Universal Developers Private Limited to another I.A. filed by Moonlight. **Refer chart showing comparison @ page 10 of the Rejoinder filed by Moonlight to the Reply by CD to I.A. 2789/2023 [CC Pg. No. 211].**

D. Asset of CD also a means to siphon off funds.

17. Three C Infratech Pvt. Ltd. was made to purchase 9.20 acres Agricultural land, by paying a whopping Rs. 43.90 crores, @ Rs. 4.77 crores per acre, while its market value @ Rs.16 lakhs per acre was only about Rs.1.50 crores. Thus more than Rs.40 crores have been illegally and fraudulently siphoned off from Three C Infratech Pvt. Ltd.

E. CIRP initiated with a hidden agenda as law is clear on the role of a related party in the CIRP of its sister concern.

Purpose of section 7 questionable on account of having been filed by a related party FC as:

- **As per Phoenix Arc Pvt. Ltd. v. Spade Financial Services Ltd. & Ors., Civil Appeal No. 2842 of 2020 (Paras 75-77)** Related party FC cannot be a member of the COC.
- **As per M.K. Rajagopalan v. Dr. Periasamy Palani Gounder & Anr., Civil Appeal Nos. 1682-1683 of 2022 (Paras 54.1 and 54.2)** related party claims may be admitted but the plan may provide nothing against the same as it would amount to unfair treatment. In this case, CD ONLY has related party claims.
- **Thus, purpose of filing section 7 petition here is to (i) evade liabilities of proceedings filed against CD and (ii) put a closure to the round tripping.**
- Similar approach even in the case of Holding Company, i.e. Three c Universal Developers Private Limited wherein nothing was given against related party claims in the Resolution Plan. **Refer relevant pages of the Resolution Plan @ page 784 onwards of Volume 5 of Reply to I.A. 3882 of 2024 [CC Pg. No. 214 onwards].**

F. Other Submissions which are noteworthy while adjudicating the section 7 Petition to adjudge whether the Financial Creditor has approached this Hon'ble Tribunal with clean hands:

i. Concealment of material facts in I.A. 3882 of 2024 to buttress reliefs which are otherwise not maintainable in law;

1. The Ld. RP has not only filed the Application bearing I.A. 3882 of 2024 in a belated manner, almost after 15 months but, despite being a statutory authority has intentionally concealed material information.

- ii. **RP of FC who has filed the Application on their behalf has himself not taken a single step to file avoidance applications in the CIRP of the FC and cherry picked this single transaction with a hidden agenda. The following are some illustrations which raise an eyelid on the conduct of the RP:**
- a. *Sports City Fraud*
 - b. *Ownership of FC hived off by Promoter for a pittance*
 - c. *Investments made by FC in Kolkata based shell companies*

THROUGH

**SHASHWAT TRIPATHI/ RIDHIMA VERMA/
MADHU AYACHIT/ APARAJITA SINGH
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**PLACE: NEW DELHI
DATE: 12.03.2025**

8. The Counsels for the parties are ad idem, that the sole property of Corporate Debtor i.e. 9.2 acre land located in Ambala has been attached by ED and is subject matter of the proceedings under PMLA. The case espoused in the petition preferred under Section 7 of IBC, 2016 Part-IV of which has been taken into account above, is that the Corporate Debtor is one of the sister concern of the Financial Creditor and it requested from Financial Creditor time to time for certain advances by way of loan facility which was extended to it. It is the case of the Applicant that the request for repayment of the amount of financial facility extended was made on 07.05.2022 and when the request was not expedited, the present petition could be preferred. The particulars of the document filed by Financial Creditor/Applicant to substantiate its plea are mentioned in Part-V of the petition which reads thus:-

PART – V

PARTICULARS OF FINANCIAL DEBT [DOCUMENTS, RECORDS AND EVIDENCE OF DEFAULT]	
1.	Particular of security held, if any, the date of its creation, its estimated value as per the creditor.
Inter Company Loan.	
2.	Particulars of an order of a court, tribunal or arbitral panel adjudicating on the default, if any
Not Applicable	
3.	Record of default with the information utility, if any
Not Applicable	
4.	Details of succession certificate, or probate of a will, or letter of administration, or court decree (as may be applicable), under the
	Indian succession act,1925 (10 of 1925)
Not Applicable	
5.	The latest and complete copy of the financial contract reflecting all amendments and waivers to date
Resolution Professional of the Financial Creditor has no access to the contract /loan documents since the same has not been provided to him by ex-management/Directors/ Interim Resolution Professional. As per information there is no waiver.	
6.	A record of default as available with any credit information company
Not Applicable	
7.	Copies of entries in a bankers book in accordance with the Bankers Books Evidence Act,1891 (18 of 1891)
Not applicable	
8.	List of other documents attached to this application in order to prove the existence of financial debt, the amount and date of default
<p>1. The Annexures have been numbered and annexed as mentioned in the index separately.</p> <p>2. Copy of order dated 23.12.2021 passed by NCLT, Delhi in IBNo.380/2020 is marked as Annexure A-1.</p> <p>3. Copy of Order dated 07.03.2022, passed by NCLT Delh in “IIFL Private Equity Fund V/s Three C Green Developers Pvt. Ltd” in IB/380/ND/2020 is marked as Annexure A-2.</p> <p>4. True Copy of the company mater data of the Corporate Debtor as available on the website of ministry corporate affairs has been annexed herewith and marked as ANNEXURE A-3.</p> <p>8. Copy of minutes of meeting dated 22.03.2022 informing the COC is marked as Annexure A-4.</p> <p>9. Copy of demand notice dated 7.5.2022 is marked and annexed herewith as ANNEXURE-5</p>	

5. A copy of E-mail dated 07.05.2022 of demand notice requesting corporate debtor for repayment of dues is marked and annexed herewith as Annexure A-6
6. Copy of Dates of disbursement are reflected in the statement of account maintained by the Financial Creditor which is annexed as Annexure A-7.
7. True copy of working computation for the amount due and payable by the corporate debtor is annexed herewith and marked as Annexure-A-8

9. While examining an application preferred under Section 7 of IBC, 2016, what we need to satisfy ourselves about is evidence supporting disbursement of debt and default, the fact that no proceedings are pending against the IP proposed to be appointed as IRP and the application preferred is complete in all respects. In other words in a petition under Section 7 of IBC, 2016 the order of admission of the application can be passed if there is an amount of debt which could be defaulted to be paid. The documents which can be sufficient evidence to prove that the debt and default are mentioned in Regulation 2A of CIRP Regulations, 2016. The regulation reads thus:-

“2A. Record or evidence of default by financial creditor.— For the purposes of clause (a) of sub-section (3) of section 7 of the Code, the financial creditor may furnish any of the following record or evidence of default, namely:-

- (a) certified copy of entries in the relevant account in the bankers’ book as defined in clause (3) of section 2 of the Bankers’ Books Evidence Act, 1891 (18 of 1891);*
- (b) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, where the period of appeal against such order has expired.”*

10. As can be seen from aforementioned regulation, for the purpose of clause (a) of sub-section (3) of section 7 of the code, the financial creditor is required to

furnish record or evidence of default namely:- a) certified copy of entries in the relevant account in the bankers' book as defined in clause (3) of section 2 of the Bankers' Books Evidence Act, 1891 or b) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, where the period of appeal against such order has expired. However, if we look at Section 7(3) of the Code, the financial creditor along with the application preferred under Section 7(1) of the Code, need to furnish record of default recorded with the information utility or such other record or evidence of default as may be specified. Section 7(3)(a) reads thus:-

7. Initiation of corporate insolvency resolution process by financial creditor.—

(3) The financial creditor shall, along with the application furnish—

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

11. In the present case, the Applicant has filed the additional affidavit, placing on record additional document i.e. balance-sheet as evidence to establish the debt and default. Thus, apparently requirement of Section 7(3) of IBC, 2016 are satisfied. We could have found force in the submissions put forth by Ms. Ridhima Verma, Ld. Counsel for the Applicant in IA- 2789/2023, that if the application under Section 7 of IBC, 2016 could be preferred by the promoters of Financial Creditor i.e. Three C Green Developers Pvt. Ltd. When the application has been preferred by a Resolution Professional appointed by this Tribunal, qua the Financial Creditor i.e. Three C Green Developers, there is hardly any scope for us to take a view that he could prefer the application in collusion with the

Corporate Debtor or for any purpose other than resolution of insolvency of the Corporate Debtor or for liquidation process.

12. Even otherwise also if we look at the object and intent of IBC, 2016 the same is to rescue the Corporate Debtor and to put back to its feet. When the condition of Corporate Debtor is such that its Directors who are admittedly pantry boy and office clerk and are profiled directors only are not taking any responsibility and in different proceedings, this Tribunal had to appoint observers to ensure that the interest of the company is looked after, we believe that the circumstances are such where an order need to be passed to rescue the Corporate Debtor and to put it back to its feet.

13. Maybe the sole asset of the Corporate Debtor has been attached by ED under PMLA but the issue can be addressed by making reference to the judgment of Hon'ble Delhi High Court in **Rajiv Chakraborty RP of EIEL vs. Directorate of Enforcement** (2022 SCC OnLine Del 3703), wherein the Hon'ble Delhi High Court could rule that moratorium declared under IBC, 2016 will not apply to the proceedings under PMLA. Paras 104 and 105 of the judgment reads thus:-

“104. More importantly and while dealing with the question which arises for determination in this case, the court would have to bear in mind the undisputed fact that while the Prevention of Money-Laundering Act was originally promulgated on July 1, 2005, the Insolvency and Bankruptcy Code came to be enforced with effect from May 28, 2016 and on subsequent dates when its various provisions were separately enforced. Section 238 of the Insolvency and Bankruptcy Code came to be energised in terms of the notification dated November 30, 2016 and was ordained to come into effect from December 1, 2016. Section 32A of the

Insolvency and Bankruptcy Code on the other was introduced by Amending Act No. 1 of 2020 with retrospective effect from December 28, 2019.

105. *The introduction of section 32A constitutes an event of vital import since it embodies a provision which effectively shut out criminal proceedings including those under the Prevention of Money-Laundering Act upon the corporate insolvency resolution process reaching the defining moment specified therein. However, when the Legislature introduced the said provision, it was conscious and aware of the fact that the provisions of the Prevention of Money-Laundering Act could be enforced against the properties of a corporate debtor notwithstanding the pendency of the corporate insolvency resolution process. This the court notes in light of the extent to which section 14 could be recognised to legally operate under the statutory scheme and as has been explained hereinabove. Notwithstanding the above, the Legislature chose to structure that provision in a manner that the authorities under the Prevention of Money-Laundering Act would cease to have the power to attach or confiscate only when a resolution plan had been approved or where a measure towards liquidation had been adopted. The statutory injunct against the invocation or utilisation of the powers available under the Prevention of Money-Laundering Act was thus ordained to come into effect only once the trigger events envisaged under section 32A came into effect. The Legislature thus in its wisdom chose to place an embargo upon the continuance of criminal proceedings including action of attachment under the Prevention of Money-Laundering Act only once a resolution plan were approved or a measure in aid of liquidation had been adopted.”*

14. A reference may also be made to the order passed by this Tribunal while approving a resolution plan in a case where the properties of the Corporate Debtor were attached by the ED. In the said case, it could be ruled that the

property attached by Corporate Debtor may not be entitled even to the benefit of Section 32A of IBC, 2016. Para 60 of the order reads thus:-

“60. In sum and substance, the SRA/CD would be entitled to no other relief/concession/waiver except those, which are available to it as per the provisions of Section 31(1) and 32A of IBC, 2016. Nevertheless, the properties which are already attached by ED, under PMLA would not be released and it would be for the SRA to resort to the appropriate proceedings to seek remedy in this regard. In any case, the changed management covered under Sec. 32A(1)(a) & (2)(i) of IBC, 2016, would not be entitled for any criminal consequences for the offences committed by the ex-management of the CD prior to commencement of the CIRP. It is also noticed that though in the certificate furnished by the RP in Form-H prescribed under Regulation 39(4) of IBBI (CIRP) Regulations, 2016, as also in the Affidavit filed by him, the RP has authenticated that the SRA does not suffer any ineligibility under Sec. 29A of IBC, 2016, but in terms of provisions of Sec. 30(1) of the Code, a Resolution Applicant should submit the Resolution Plan along with an affidavit stating that he is eligible under Sec. 29A to submit a Resolution Plan, to the Resolution Applicant. We could not find any such affidavit filed by SRA on record. Nevertheless, in the interest of justice we deem it appropriate to give an opportunity to SRA to file the affidavit required in terms of provisions of Sec. 29A read with Sec. 30(1) of the IBC, 2016.”

15. Though initially the aforementioned Para 60 of the order was set aside by Hon'ble NCLAT vide its order dated 13.08.2024, but subsequently on an application moved by ED, the order passed by it setting aside Para 60 of the order could be recalled by Hon'ble NCLAT vide order dated 09.01.2025. The relevant part of order dated 13.08.2024 setting aside order of NCLT and order

dated 09.01.2025 recalling order dated 13.08.2024 of Hon'ble NCLAT reads thus:-

“23. In result, we allow the Appeal, set aside the findings recorded in the impugned order in paragraph 60 and observations made in the judgment, denying the benefit of Section 32-A to the SRA. The SRA is entitled to relief of extension of benefit of protection of Section 32-A to lift the attachment by Enforcement Directorate over the assets of the Corporate Debtor. We allow the reliefs as prayed in the Appeal and set aside the findings in paragraph 60 of the judgment and the observations in the judgment, denying the protection of Section 32-A of the IBC. The Appeal is allowed accordingly. There shall be no order as to costs.

X X X

16. We, thus, are of the view that ends of justice will be served in recalling judgment dated 13.08.2024 and giving an opportunity to the Applicant to be heard before the Appeal is decided afresh. We, however, make it clear that in the Appeal, there was no challenge to the approval of the Resolution Plan., which was approved by the Adjudicating Authority vide order dated 04.07.2024 allowing IA No.01 of 2024. The Company Appeal (AT) (Ins.) No.1495 of 2024 was filed on limited issue as noted above. We, thus, make it clear that the recall of the judgment dated 13.08.2024, shall have no bearing on the implementation of the Resolution Plan as approved on 04.07.2024 and the recall of judgment dated 13.08.2024 is only with respect to limited issue raised in the Appeal regarding withdrawal of the attachment by the ED on the assets of the CD.

17. In result, IA No.6625 of 2024 is allowed. The judgment dated 13.08.2024 is recalled. We make it clear that recall of judgment dated 13.08.2024, shall have no effect on the order dated 04.07.2024 passed by Adjudicating Authority approving the Resolution Plan and the Resolution Plan shall be implemented as approved on 04.07.2024 and

the recall of this judgment is only for consideration of limited issue as noted above. IA No.7235 of 2024 is accordingly disposed of.”

16. One may wonder that when both the Financial Creditor and Corporate Debtor are group companies and Financial Creditors is also in insolvency and the affairs of most of the Three C Group Companies are under scan by different investigating agencies, what object and purpose could be achieved by admitting the application preferred under Section 7(1) of IBC, 2016 and why the exercise should be resorted to.

17. The doubt can be clarified by expressing that presently when the Financial Creditor is under insolvency and it is Resolution Professional who is performing function in terms of Section 7 of IBC, 2016, he needs to see the fate of Financial Creditor and if any of the debtor qua the Financial Creditors has committed default it is for him to take appropriate steps.

18. The Resolution Professional who steps into shoes of Corporate Debtor could take a conscious decision by moving an application under Section 7 of IBC, 2016. When he can endeavour the resolution of insolvency of Corporate Debtor, the Creditors qua the Financial Creditor would also be benefited. Besides when the condition of company is such as that of the Corporate Debtor, there may be different options such as the RoC may strike of the company from the Register of Companies which may result into dissolution or a petition under Section 271-272 of Companies Act, 2013 for winding up the company, etc.

19. As far as the question of removal of the name of the Corporate Debtor from Register of Company is concerned, it is stare decisis that if a company possess

certain assets, its name should not be deleted from the Register of Company and as and when the company is deleted from the Register of Company, same is always put back by this Tribunal by passing order under Section 252 of Companies Act, 2013. For winding up process, the criteria are different and thus may not be met/satisfied in all such cases where the requirement of Section 7(3) & (5) of IBC, 2016 are met. Even otherwise also as per Section 434 of the Companies Act, 1956, even when the petition under Section 403 of Companies Act, 1956 or under Section 271/272 of Companies Act, 2013 are filed before Hon'ble Delhi High Court, the same need to be dealt with as per Form-1 prescribed under Application to Adjudicating Authority Rules and parties are required to file Form-1. In this regard a reference may be made to Rule 5 of Companies (Transfer of Pending Proceedings) Rules, 2016 which reads thus:-

“5. Transfer of pending proceedings of Winding up on the ground of inability to pay debts.—(1) All petitions relating to winding up under clause (e) of section 433 of the Act on the ground of inability to pay its debts pending before a High Court, and where the petition has not been served on the respondent as required under rule 26 of the Companies (Court) Rules, 1959 shall be transferred to the Bench of the Tribunal established under sub-section (4) of section 419 of the Act, exercising territorial jurisdiction and such petitions shall be treated as applications under sections 7, 8 or 9 of the Code, as the case may be, and dealt with in accordance with Part II of the Code:

Provided that the petitioner shall submit all information, other than information forming part of the records transferred in accordance with Rule 7, required for admission of the petition under sections 7, 8 or 9 of the Code, as the case may be, including details of the proposed insolvency professional to the Tribunal within sixty days from date of this notification, failing which the petition shall abate.

(2) All cases where opinion has been forwarded by Board for Industrial and Financial Reconstruction, for winding up of a company to a High Court and where no appeal is pending, the proceedings for winding up initiated under the Act, pursuant to section 20 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall continue to be dealt with by such High Court in accordance with the provisions of the Act.”

20. So as per present regime, even the liquidation/dissolution of a company travels through the insolvency resolution process. Thus, one may not view that the Applicant, i.e. Resolution Professional in the present case is not justifiable to prefer the present proceedings. It was for Resolution Professional to take a view whether to move application under Section 66 or under Section 67 of the Code. Once he has moved the application under Section 7 of the IBC, merely on the ground that he could also prefer application under Section 66 of IBC, 2016, we cannot deny the admission of the application. In the totality of the facts and circumstances noted herein above, we allow IA-3882/2024, reject IA-2789/2023 and admit IB-617/ND/2022. It is made clear that while rejecting the IA-2789/2023 we have not commented upon correctness of any of the plea raised in the application and the brief view, we have only viewed that the requirement of admission of IA is satisfied.

21. To address the concern of the Applicant in IA-2789/2023 i.e. by using the CIRP, the suspended promoters of Financial Creditor may abuse the process of the Code, we refuse to appoint the IP proposed to be appointed as IRP by the RP for the Financial Creditor which is group company of the Corporate Debtor and appoint Ms. Pooja Bahry having registration no. IBBI/IPA-003/IP-N00007/

2016-17/10063 and email pujabahry@yahoo.com as IP. She would be paid Rs. 2,00,000/- by Applicant as initial expenses, which would subsequently adjusted against the CIRP cost.

22. It is made clear that in due deference to the aforementioned judgment, no moratorium would apply to the property i.e. 9.2 acres land located in Ambala/ Haryana and the proceedings under PMLA would continue unhindered. It is further directed that in addition to his normal duties required to be performed under Section 13, 15, 17 and 18, 19(2), 20 and 21 of IBC, 2016 in the present case, Ms. Pooja would take all steps to ensure that the investigation ordered by Hon'ble Allahabad High Court in Writ No.-31823/2019 and by Hon'ble Delhi High Court in a batch of petitions i.e. W.P.(C)-1567/2024 are carried effectively and logically. She should extend all assistance to the investigating agencies and provide all relevant material to them. She should take proactive steps to ensure that the investigation continue effectively. Additionally, the IRP would also act in terms of the provision of Regulation 4 and 30 of the IBBI (CIRP) Regulations, 2016.

23. As during the course of her arguments, Ms. Ridhima Verma, Ld. Counsel for the Applicant in IA-2789/2023 submitted that when the proceedings under PMLA are pending qua the assets of Corporate Debtor, the application should not be admitted and such is the spirit of the judgment of Hon'ble Allahabad High Court in Writ C No. 31832/2019, we may refer to para-150 of the judgment of Hon'ble High Court wherein Hon'ble High Court allowed the CIRP to continue

but made certain recommendations for guidance of IRP. Para-150 of the judgment reads thus:-

“150. On the basis of analysis of law made in the foregoing paragraphs, we consider it appropriate to lay down the following recommendations in response to the question framed in Para 148:-

“(a) As a measure of first recourse, the IRP shall communicate to the company and the Authority for seeking Company’s willingness to continue to perform its functions/ obligations in the contract awarded to the consortium of which the said company is a member. This would be in furtherance of the functions of the IRP under Section 20 of the IBC. This communication shall be done within a maximum period of 4 weeks of commencement of CIRP and shall be independent of the constitution of CoC. If no such intention is communicated within the said period, it will be presumed that the company is unwilling to participate in the subject project.

(b) If the IRP, on an assessment of the capabilities of the Company (consortium member facing CIRP), is of the opinion that the said company cannot usefully or meaningfully participate in the business of the consortium, he shall so communicate to the other consortium members and the Authority (for the said project) within the period provided in para (a) above. The other consortium members (jointly or severally) shall then have an option to undertake the remaining project on their own and complete the same. The exercise of the option by the consortium members to complete the project shall be done within a period of 4 weeks, which shall commence either from the expiry of the 4 week period mentioned in para (a) above (in the event no communication is received from the IRP) or within 4 weeks from the communication of the IRP to the effect that the said company is not in a position to participate in the business of the consortium.

(c) If the consortium members fail to communicate their willingness to complete the project on their own and without the participation of the member facing CIRP or express their inability to complete the said project, the Authority shall make

alternate arrangements to ensure timely completion of the project.”

24. Subject to aforementioned observations/direction, the IB-617/ND/2022 is admitted and IA-2789/2023 and IA-3882/2024 **stands disposed of.**

**Sd/-
(REENA SINHA PURI)
MEMBER (T)**

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

Iqraa/Ruchita