



IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH, COURT-III

IA-6672/2023

In

IB-654(PB)/2019

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

VISHAL FABRICS & ORS.

..... FINANCIAL CREDITORS

VERSUS

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

..... CORPORATE DEBTOR

AND IN THE MATTER OF IA-6672/2023:

KOTAK MAHINDRA BANK LIMITED

Through its Authorized Representative Mr. Somesh Sundriyal.

Having its Registered Office at:

27 BKC, C 27, G Block, Bandra Kurla Complex,

Bandra (E), Mumbai, Maharashtra-400051.

Having Branch Office at:

G-9, Vikas Puri, New Delhi-110018.

..... APPLICANT BANK

VERSUS

1. Mr. ANIL TAYAL

(Earlier RP of AVJ Developers (India) Pvt. Ltd.)

R/o 201, Sagar Plaza, District Centre,

Laxmi Nagar, New Delhi-110092.

..... Respondent No.1

2. Mr. VIVEK KUMAR

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

R/o C-604, Rosewood Apartments,

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

.....Respondent No.2

3. COMMITTEE OF CREDITORS (CoC)

(CoC of AVJ Developers (India) Pvt. Ltd.)

Office No. 106, D-248 Gali No. 10, Laxmi Nagar, Delhi-110092.

..... Respondent No.3



Order Pronounced On: 14.11.2025

CORAM:

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

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

PRESENT:

For Applicant : Mr. Gulshan Kumar Sachdev

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

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. The present Application has been filed by Kotak Mahindra Bank under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016 and is seeking the following reliefs: -

“A) Condone the delay of 1480 days in filing claim before the Respondent being the Resolution Professional; or

B) To direct to the RP to confirm whether PNBHFL filed a claim before the IRP/RP regarding the above-mentioned units/ Borrowers.

C) To direct the RP to provide the status of the above-mentioned units and whether the above-mentioned units namely- 1701,17, Tower D, AVJ Heights, Plot No. GH-12/2, Sector- Zeta-1, Greater Noida, Uttar Pradesh- 201310 have been listed for claims under the Resolution Plan.

D) To Direct the RP to accept the claims of the Applicant to the tune of Rs. 57,90,947/- (Rupees Fifty-Seven Lacs Ninety Thousand Nine Hundred Forty Seven Only) in stipulated FORM CA as an allottee of the Corporate Debtor in respect of the Units stated above.

E) Pass any further orders as Hon'ble Bench deem fit and proper.”



2. The case of the Applicant Bank is that this Adjudicating Authority vide Order dated 21.10.2019 initiated Corporate Insolvency Resolution Process against the Corporate Debtor i.e. M/s. AVJ Developers (India) Private Limited and the Respondent namely Mr. Vivek Kumar was appointed the Resolution Professional of the Corporate Debtor vide Order dated 04.10.2022 replacing Mr. Anil Tayal, the erstwhile Resolution Professional of the Corporate Debtor.
3. It is submitted that pursuant to requests of interested individuals, various credit/financing facilities were sanctioned and disbursed to fund the allotment of a few units in the project of Corporate Debtor by Punjab National Bank Housing Finance Limited (PNBHFL). Thereupon, in view of the mortgage rights created by the allottee and the permission to mortgage being granted by the Corporate Debtor having the development rights over the units after having parted with the ownership over the unit's consequent to its allotment, PNBHFL disbursed the funds directly to the Developer/Corporate Debtor for its aid and benefit. The Corporate Debtor as the developer acknowledged the valid and subsisting charge over such flats/units of PNBHFL.
4. It is submitted that the details of the Borrowers and their corresponding unit/flat details along with their Loan Account Number are mentioned in the table below: -

S. No	Loan Account Number	Name of Borrowers	Unit/ Flat Details	Amount Disbursed
1.	HOU/GHA/071 5/2306/77	Ranjan Chandra Dey & Smriti Dasgupta	1701, 17, Tower D, AVJ Heights, Plot No- GH- 12/2, Sector-Zeta-1, Greater Noida, Uttar Pradesh-201310.	43,41,000/-

5. It is submitted that the allottees failed to maintain the financial discipline towards the said loan accounts and in pursuance of the same, the facility accounts of the borrowers were classified as Non- Performing Asset (NPA) by PNBHFL. Further, vide Deed of Assignment dated 04.03.2023, the original lender PNBHFL assigned all the rights, title and interest in the aforesaid loan accounts along with all the underlying securities to Kotak Mahindra Bank Limited (Applicant herein) and thus the applicant has charges over all the above-mentioned units.



6. It is submitted that the applicant through various communications through E-mails and through phone raised certain queries to the resolution professional as to whether PNBHFL has filed any claim for the above-mentioned borrowers, but the IRP had never taken heed of the same.
7. It is submitted that the Applicant/Kotak Mahindra Bank Limited, being a Claimant, filed its claim aggregating to Rs. 57,90,947/- (Rupees Fifty-Seven Lacs Ninety Thousand Nine Hundred Forty-Seven Only) in Form F under Regulation 9A of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 on 23.11.2023.
8. It is submitted that the Resolution Professional has not replied to any of the queries raised by the applicant and neither has accepted or rejected the claim of the applicant. Hence, the present application.
9. It is submitted that in view of the mortgage rights created by the allottee and the permission to mortgage being granted by the Corporate Debtor having the development rights over the units and having parted with the ownership over the unit's subsequent to its allotment, PNBHFL disbursed the funds directly to the Developer/ Corporate Debtor for its aid and benefit. The Corporate Debtor as the developer acknowledged the valid and subsisting charge over such flats/units of PNBHFL.
10. It is submitted that the Tripartite Agreement determines the relationship between the Corporate Debtor (Builder), the allottees/Homebuyers (Borrower) and PNBHFL. As per Clause 5 of the agreement, the Corporate Debtor had specifically agreed that if borrowers fail to pay the balance amount or in case of cancellation and/or termination of the agreement between the Builder and the Borrower and/or in the event of death of the Borrower, the entire amount advanced by the PNBHFL will be refunded by the Builder to PNBHFL forthwith. Moreover, the Builder has given its consent that PNBHFL shall have a lien on the Property. The Borrowers have to furnish the Property as security for loan to PNBHFL and create mortgage in favour of the PNBHFL, as and when the sale deed/lease deed of the Property is executed it will be sent directly to PNBHFL. Moreover, from the reading of the contents of the agreement it is crystal clear that PNBHFL has lien over all the units and also builder cannot transfer any such unit which can be transferred by the builder without getting NoC from the PNBHFL.



11. It is submitted that since the Corporate Debtor failed to complete the construction of the project and consequently the Borrowers have stopped payment of EMIs, the above-mentioned accounts of the Borrowers have turned NPA. The Applicant had filed the following Original Applications against the Corporate Debtor in respect of the abovementioned Borrowers in respect of unit D- 1701.

Respondent/Resolution Professional's Case

12. The Respondent/Resolution Professional filed reply affidavit dated 10.09.2024 and submitted that the present Application is devoid of any substance and merit and is liable to be dismissed *in limine* by this Adjudicating Authority.

13. It is submitted that the Erstwhile Resolution Professional made a public announcement dated 22.10.2019 in Form-A as per the terms of Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process) Regulations, 2016 ("**CIRP Regulations**"). In terms of Regulation 6(2)(c) of the CIRP Regulations, the last date for submission of proof of claim was specified as 05.11.2019. Further, the said public announcement was duly uploaded on the website of the Insolvency and Bankruptcy Board of India ("IBBI"). The Applicant filed its claim on 23.11.2023, i.e. after more than 1480 days from the last date of submission of claim i.e. 05.11.2019. Further, the resolution plan of the Corporate Debtor submitted by Mr. Vinay Jain with a voting share of 72.661% was approved by the CoC in its 14th Meeting conducted on 11.10.2021, e-voting concluded on 16.10.2021. Thereafter, on 09.11.2021, the Erstwhile Resolution Professional filed an application bearing I.A. No. 5385 of 2021 under Section 30(6) of the Code seeking approval of the Resolution Plan. In light of the judgment passed by Hon'ble Supreme Court in **Greater Noida Industrial Development Authority vs. Prabhjit Singh Soni and Another**, 2024 SCC OnLine SC 122, the Resolution plan was sent back to CoC for fresh consideration. The Resolution Plan was amended and again approved with voting share of 75.963% by the CoC in its 26th CoC meeting held on 26.06.2024, e-voting concluded on 04.07.2024. Thereafter, on 12.07.2024, the Resolution Professional filed an application bearing I.A.(Plan) No. 33 of



2024 seeking approval of the resolution plan which is pending before this Adjudicating Authority. Therefore, the claim filed by the Applicant Bank with a considerable delay cannot be admitted.

14. It is submitted that as per Regulation 12 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“CIRP Regulations”), a creditor is required to file its claim on or before the last date mentioned in the public announcement. The proviso to Regulation 12(1) of CIRP Regulations provides as follows:

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

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

The above regulation came into effect on 18.09.2023, by way of an amendment to the CIRP regulations. However, prior to the amendment, a creditor was required to submit a claim on or before the ninetieth day of the insolvency commencement date. The last date for submission of Resolution Plan in the present case was 04.03.2020 and the Applicant had filed its claim on 23.11.2023. It is contended that the said amendment is prospective in nature and cannot be applied retrospectively. Thus, the CIRP Regulation, as it stood prior to the amendment, ought to be applied in the present case. Hence, it is evident that the Applicant failed to file its claim within the stipulated timeline.

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



the Tripartite Agreement, clearly indicate that PNBHFL had granted loan to Home Buyers and not to the Corporate Debtor.

16. It is contended by the Resolution Professional that the Applicant herein relied upon the Tripartite Agreements executed amongst the Homebuyer, the Applicant and the Corporate Debtor for establishing its status as "secured creditor" of the Corporate Debtor. However, the Applicant has conveniently ignored the fact that Builder's liability to refund the amount arises only if -

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

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

18. It is submitted that the Respondent has already admitted the claim of one homebuyer being Mr. Mohammad Adnan in respect of unit D-1701. However, the unit being D-1701 was allotted multiple times by the suspended management of the Corporate Debtor. In this regard, even though the names of the Borrowers, Ranjan Chandra Dey and Smriti Dasgupta, appear in the records of the Corporate Debtor, they have not filed their claims as allottees of the unit D-1701, before the Respondent. The Respondent has also submitted an affidavit dated 12.09.2023, in this regard, before this Adjudicating Authority.



19. Analysis and Findings

- i. Heard the Ld. Counsel appearing for both the parties and have perused the records.
- ii. In the instant case, the Applicant has sought for condonation of delay in filling the claim with the Resolution Professional in terms of the loan account of Ranjan Chandra Dey & Smriti Dasgupta. The Resolution Professional has already admitted the claim of one homebuyer being Mr. Mohammad Adnan in respect of unit D- 1701. However, the unit being D- 1701 was allotted multiple times by the suspended management of the Corporate Debtor. In this regard, even though the names of the persons who were financed by Applicant appear in the records of the Corporate Debtor, they have not filed their claims as allottees of the unit D-1701, before the Resolution Professional.
- iii. It is the case of the Applicant that in view of the specific terms of the Tripartite Agreement entered between PNBHFL, Homebuyers and the Corporate Debtor, the Applicant assumes the character of the Financial Creditor in terms of Section 5(8) of the Code and therefore, the claim filed by the Applicant ought to be admitted by the Respondent.
- iv. The Applicant Bank relies upon the Clauses of the Tripartite Agreement dated 13.08.2015 which are reproduced as under: -

“5. If the Borrowers desire to withdraw and/or in case of death of Borrowers and/or if Borrowers fail to pay the balance amount representing the difference between the Loan sanctioned by PNBHFL and the actual purchase price of the Property, the entire amount advanced by the PNBHFL will be refunded by the Builder to PNBHFL forthwith.

7. Further, the Builder, in the event of default of repayment of Loan by the Borrowers, shall on written intimation/ instructions of PNBHFL cancel the allotment of the Property of the Borrowers and refund, the entire amount advanced/funded by PNBHFL directly to PNBHFL, and the builder shall have right to recover/ forfeit the earnest money from the borrower.



12. *The Builder has given its consent that PNBHFL shall have a lien on the Property. That the Borrowers have to furnish the Property as security for loan to PNBHFL and create mortgage in favour of the PNBHFL, as and when the sale deed/lease deed of the Property is executed it will be sent directly to PNBHFL.*

13. *The Builder will not transfer the said Property to any other member or other person without obtaining the previous written consent/NOC from PNBHFL.*

14. *Without prejudice to the rights available to PNBHFL under Clause 5 and 7 herein, in the event of default by the buyer/s or Mortgagor/s or Borrowers, if PNBHFL exercise its right to enforce the security by sale/transfer to any third party including transferring to itself, the Builder would accept the purchaser/s of the Property/PNBHFL as a the buyer (as the case may be), on such purchaser(s) /transferee complying with the necessary formalities which are required by the builder to become a transferee/ purchaser/ allottee/ owner of the property.”*

- v. The Ld. Counsel for the Applicant Bank submitted that since the Corporate Debtor failed to provide original sale deed in favour of the Borrower and/or create any security in favour of the Bank in absence of registered sale deed, the Corporate Debtor is liable to repay the debt in terms of the irrevocable and unconditional guarantee provided in the clauses above. Therefore, the Applicant Bank assumes the character of the Financial Creditor in terms of Section 5(8) of the Code.
- vi. The Ld. Counsel for the Applicant placed reliance upon the Order dated 09.01.2025 in the case of Canara Bank vs. Sh. Vivek Kumar, Resolution Professional of M/s AVJ Developers (India) Private Limited, Comp. App. (AT)(Ins) 390 of 2023, wherein the Hon’ble NCLAT referred to Clause 16 of the Tripartite Agreement executed by Canara Bank, the Corporate Debtors and the Allottees therein, to hold that there is a clear obligation to repay upon the Corporate Debtor, albeit in the event of default. It is submitted that the said Clause 16 of the Tripartite Agreement is similar



to the Clause 5 and 7 of the Tripartite Agreement executed by PNBHFL to the extent it captures the obligation of the Corporate Debtor to pay under crystalized events.

- vii. In reply, the Ld. Counsel for the Respondent/Resolution Professional submitted that the above clause applies only in the event of the failure of the builder to create a security in favour of the bank. Such an occasion would only arise after approval of the resolution plan as the builder (as Successful Resolution Applicant), would hand over the possession of the flats to the homebuyers as per clause 6.11 of the Resolution Professional.
- viii. The Ld. Counsel for the Respondent also submitted that the Hon'ble NCLAT vide its Order dated 09.01.2025 remanded the matter back to this Adjudicating Authority to decide the issue.
- ix. The Ld. Counsel for the Respondent/Resolution Professional submitted that Clause D, E and F of the Recital and Clause 1 and 4 of the Tripartite Agreement, makes it is clear that the loans were disbursed to the individual homebuyers and not the Corporate Debtor as per the law laid down by the Hon'ble Supreme Court in the case of **Pioneer Urban Land and Infrastructure Ltd. v. Union of India, (2019) 8 SCC 416**. The relevant clauses of the Tripartite Agreement are reproduced as under:

“D. The Borrowers are short of finance for purchasing the Property hence in order to make up their finance for the purchase approached PNBHFL for grant of Housing Loan. The Borrowers under the provisions of the housing loan scheme framed by the PNBHFL have applied to PNBHFL for a loan for the purchase of the Property and PNBHFL has agreed to grant a loan of Rs. _____ (Rupees _____ Only) to the Borrowers (hereinafter referred to as the "Loan") subject to the terms and conditions applicable to the Loan for Purchase of Property. The Borrowers have represented that they have not availed any loan from anywhere.

E. PNBHFL has considered the said request with a clear understanding and an irrevocable undertaking by the Borrowers that subsequent to the disablements as requested by the Borrowers, there would be no repayment default for



any reason whatsoever including but not limited to any concern/issues by and between the Borrowers and the Builder/Developer;

F. The Borrowers have represented, and such representation being a continuing representation, that Borrower's obligation to repay the Loan shall be a distinct and independent obligation more particularly independent of any issues/concern/ dispute of whatsoever nature between the Borrowers and Builder:

NOW THEREFORE, IN CONSIDERTAION OF MUTUAL COVENANTS HEREIN THE PARTIES HERETO AGREE AS FOLLOWS:

1. That on application for grant of Loan of the Borrowers and on receipt of intimation from the Builder that the Property has been allotted to the Borrowers, PNBHFL has sanctioned the loan for purchase of Property of Rs. _____ (Rupees _____ Only) to the Borrowers according to its rules, but the actual payment in instalments will be made by PNBHFL directly to the Builder as per the norms of PNBHFL Any amount. towards purchase price in excess of the "Loan for purchase of Property" sanctioned .by PNBHFL will be paid by the Borrowers directly to the Builder as per sale agreement between the Builder and 'the Borrowers and original money receipts will be submitted to PNBHFL.

4. That irrespective of the stage of construction of the Project and irrespective of the date of handing over the possession of the Property to the Borrowers by the Builder. the Borrowers shall 'be liable to pay to PNBHFL regularly each month the Pre-EMIs/EMIs as laid down in the Loan Agreement signed by and between PNBHFL and the Borrowers. The Borrowers shall execute an indemnity and such other documents as may be required by PNBHFL in favour of PNBHFL in this regard.

- x. It may be noted that an amendment was made in Section 5(8)(f) of the Code to enable the Homebuyers/allottees to act as Financial Creditor



and to participate in the CoC. The Applicant Bank's case is that Clause 5 and 7 of the Tripartite Agreement in the present case agrees for payment in favour of the Applicant in terms of Section 3(6) of the Code and since, the Applicant gets a right to payment, it has to be classified as Financial Creditor to the extent of its money due to be paid by the Corporate Debtor in terms of Clause 5 and 7 of the Tripartite Agreement.

- xi. It may be noted that the amendment brought under Section 5(8)(f) of the Code which classified the homebuyers/allottees as Financial Creditors was challenged before the Hon'ble Supreme Court and the constitutional validity of Section 5(8)(f) of the Code was upheld by the Hon'ble Supreme Court in the case of ***Pioneer Urban Land and Infrastructure Limited & Anr. Vs. Union of India & Ors.***, reported in **(2019) 8 SCC**.
- xii. The Clause 1 and 4 of the Recital to the Tripartite Agreement in the present case is reproduced hereunder for ready reference.

“1. That on application for grant of Loan of the Borrowers and on receipt of intimation from the Builder that the Property has been allotted to the Borrowers, PNBHFL has sanctioned the Loan for purchase of Property of Rs. __ (Rupees ____ Only) to the Borrowers according to its rules, but the actual payment in instalments will be made by PNBHFL directly to the Builder as per the norms of PNBHFL. Any amount towards purchase prices in excess of the “Loan for purchase of Property” sanctioned by PNBHFL will be paid by the Borrowers directly to the Builder as per sale agreement between the Builder and the Borrowers and original money receipts will be submitted to PNBHFL.

4. That irrespective of the stage of construction of the Project and irrespective of the date of handing over the possession of the Property to the Borrowers by the Builder, shall be liable to pay to PNBHFL regularly each month, the pre-EMIs/EMIs as laid down in the Loan Agreement signed by and between PNBHFL and the Borrowers. The Borrowers shall execute an indemnity and such other documents as maybe required by PNBHFL in favour of PNBHFL in this regard.”



xiii. Upon perusal of the relevant clauses of the tripartite Agreement, it is evident that the Borrower/Homebuyer has authorized the Bank to disburse the above said loan amount directly to the Builder/Corporate Debtor. This shows that the Bank has acted on the instruction of the Homebuyer and not otherwise. Therefore, the submissions made on behalf of the Applicant-Bank that the Applicant assumes the character of Financial Creditor defined under Section 5(7) of the Code just because the Builder takes the liability/responsibility to repay the debt amount to the Bank in case of default cannot be accepted.

xiv. It will be pertinent to refer to Section 5(8) of the Code at this stage, which defines the word “Financial Debt”. Clause (a) and (f) of Section 5(8) reads as under: -

“financial debt” means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—

(a) money borrowed against the payment of interest;

....

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

[Explanation. - For the purposes of this sub-clause-

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

xv. From the plain reading of the above definition of ‘Financial Debt’ under Section 5(8) of the Code, 2016, it is evident that the first and foremost ingredient/requirement for classifying a debt as a financial debt is that the money must be disbursed against the consideration for the time value of money, involving borrowing with an obligation to pay interest. In the present case, the amount is raised by the Corporate Debtor from the Homebuyer and therefore, the real Financial Creditors in terms of Section 5(8)(f) of the Code are the Homebuyers as the loan was availed by the Homebuyers from the Bank which has not directly advanced the money to the Corporate Debtor and only acted on instructions of the



Homebuyers in disbursing the loan amount to the Builder. The Clause 5 and 7 of the Tripartite Agreement stipulating that the Builder would be liable to repay the loan to the Bank in event of default, entitles the Bank to recover the same can only be termed as an indemnity clause under the tripartite agreement. The mere existence of a clause in the Tripartite Agreement stipulating that the Builder would be liable to repay the loan to the Bank in event of default, does not alter the intrinsic nature of the transaction between the Bank and the Homebuyer. It is a settled principal of law that that terms of a contract/agreement cannot override or supersede statutory provisions. The provisions in a contract/agreement that conflicts with statutory mandate are generally considered invalid and unenforceable.

- xvi. It may further be added that the debt in question claimed by the PNBHFL is a Financial Debt which has been disbursed to the Corporate Debtor on the instructions of the homebuyer so as to enable the homebuyer to purchase the flat. Such an arrangement made by the Bank and the Homebuyer will not change the character of the financial debt and place the bank in the category of a Financial Creditor, as can be seen in the various clauses in the Tripartite Agreement (*supra*). These clauses in the tripartite agreement have been incorporated for the sake of convenience of the Bank. Under the Tripartite Agreement, it is the homebuyer who is availing the finance from the Bank and creating the charge in favour of the Bank by giving an undertaking to keep the bank indemnify against any loss. Therefore, the Bank cannot be termed as the Financial Creditor of the Corporate Debtor and the claim of the bank cannot be accepted as the Financial Creditor as no facility has been disbursed to the Corporate Debtor.
- xvii. In order to ascertain the treatment given to the Homebuyers who have either submitted belated claims or have not submitted any claims as well as that of the bank who is claiming to be given the status of the financial creditor in place of such Homebuyers, I have perused the Resolution Plan which is already on record and filed along with the IA (R. Plan)-33/(PB)/2024 filed by the Resolution Professional seeking approval of the Resolution Plan and pending before this Adjudicating Authority.



Although the copy of the Resolution Plan has not been placed on record in the instant application, however, in order to determine the issue involved, it is appropriate to refer and rely on the Resolution Plan which is part of the IA (R. Plan)-33/(PB)/2024.

xviii. **The relevant paragraph of the Resolution Plan is Para 9.7 of Chapter**

9: -

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

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

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

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

“(b) For the banks who have been subrogated in the position of flat owners by virtue of right exercised under tripartite agreement are unsecured financial creditors and for the satisfaction of the debt, the same shall be pay off as unsecured creditors as mentioned in Chapter-6.”

xix. A perusal of the sub clause (a) of Para 9.7 of the Resolution Plan shows that the claim, if any be lodged by the Bank on the strength of Tripartite Agreement shall be treated as unsecured creditor. The clause (b) of Para 9.7 of the Resolution Plan stipulates that banks who have been subrogated in the position of flat owners by virtue of right exercise under the tripartite agreement are unsecured financial creditors and for the satisfaction of the debt, the same shall be paid off as unsecured creditors as mentioned in Chapter VI of the Resolution Plan.

xx. At this stage, it may be clarified that no view or opinion is being expressed with respect to the Resolution Plan, even though certain paragraphs of the Resolution Plan have been referred to.



xxi. In view of the foregoing discussion, the prayers of the Applicant-Bank in the present case cannot be allowed. Therefore, the present application is **dismissed.**

No order as to costs

-Sd/-

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