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**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, BENCH-VI**

IB-487/ND/2023

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

IN THE MATTER OF:

1. Mr. Raj Kumar Shrivastava and Ms. Anita Shrivastava

Resident of 9/112, Vasundhra,
Ghaziabad, Uttar Pradesh—201012.

...Financial Creditor No. 1

2. Mr. Man Singh Jaswal

Resident of 141, Arunachal Apartments,
Pocket 16, Sector 7,
Dwarka, New Delhi—110075.

...Financial Creditor No. 2

3. Mr. Tripat Kumar Arora and Ms. Sukhvinder Arora

Resident of 12/06, West Patel Nagar,
New Delhi, Delhi—110008.

...Financial Creditor No. 3

4. Mr. Sanjeev Sood and Mrs. Kuldeep Zadoo

Resident of Flat No. 2301, Plot No. 95
Golf Link Apartment, Nagina CGHS



Amish A.
3.5.24

Sector-54 Gurgaon, Haryana—122011.

...Financial Creditor No. 4

5. Mr. Archana Sood

Wife of Mr. Sanjeev Sood

Resident of Flat No. 2301, Plot No. 95,

...Financial Creditor No. 5

6. Mr. Raj Singh

House No. 357/58, Ashok Vihar,

Gurgaon, Haryana—124001.

...Financial Creditor No. 6

7. Mr. Rohtas

Son of Sh. Rattan Singh

Resident of VPO- Kathura, The

Gohana, Sonipat, Haryana

...Financial Creditor No. 7

8. Mrs. Vandana Gaba and Mr. Aman Gaba

Wife of Mr. Aman Gaba


Resident of B-14, Block- B, Bhagwan Das Nagar,

East Punjabi Bagh, Delhi.

...Financial Creditor No. 8

9. Mrs. Balbir Kaur





Wife of Mr. Kanwal Jit Singh
Resident of 636, Sector- 14;
Gurgaon, Haryana—122001,

...Financial Creditor No. 9

10. Mrs. Arvind Pahwa

Wife of Mr. Manmohan Singh
Resident of 249, IInd floor, Bhera Enclave,
Paschim Vihar, New Delhi,
Delhi—110087.

...Financial Creditor No. 10

11. Mrs. Asha Verma

Resident of House No. 918/4,
Arjun Nagar, Gurgaon,
Haryana—122001

...Financial Creditor No.11

12.Mr. Hemant Saini

Son of Mr. Rajinder Saini
Resident of 2021/221, Chander Nagar,
Tri Nagar, New Delhi—110035 .

...Financial Creditor No.12

13.Mr. Ashok Kumar Singh

Resident of Tower-B, Flat No. 703
Amrapali Sapphire, Sector-45



Noida- 201303

...Financial Creditor No.13

14.Mr. Dheeraj Kumar

Son of Mr. Ram Lal Singh
Resident of Karan Sarai,
Guru Nanak Pura, Sasaram,
Distt. Rohtas, Bihar—821115.

...Financial Creditor No.14

15.Mrs. Prativa Renu

Wife of Vijay Prakash Singh
Resident of Guljaro Devi, Memorial Hospital,
Post office – Kochas, Rohtas,
Bihar—821107.

...Financial Creditor No.15

16.Mr. Ritesh Kumar and Mr. Sachin Kumar

Resident of Ward No. 4, House No. 7/3
Poly Pana Pataudi,
Gurgaon, Haryana—122503.

...Financial Creditor No.16





17.Mrs. Seema Chakarpani

Wife of Mr. Kailash Chander Bhardwaj
Resident of House No. 1673. GF, Housing Board Colony,
Sector 10-A, Gurgaon,
Haryana—122001

...Financial Creditor No.17

18.Mr. Om Prakash and Mr. Raj Pal Singh

Son of Mr. Sher Singh
Resident of House No. A-14, Phase-V,
Aya Nagar, Extn. Colony,
New Delhi—110047.

...Financial Creditor No.18

19.Mr. Kishore Kumar Bhimwal

Son of Rameshwar Dayal Bhimwal
Resident of H. No. 1588, Urban Estate, Sector-45
Gurgaon, Haryana—122001.

...Financial Creditor No.19

20.Mr. Ravindra Kumar Gupta

Son of Late Shri M. L. Gupta
Resident of A-20, F.F. GITANJALI ENCLAVE, Block-A





Delhi, New Delhi—110017.

...Financial Creditor No.20

21.Mr. Ashish Khanna

Son of Late Shri O.P. Khanna
Resident of MK Residency, B-14, Plot No. 8 B,
Sector 11, Dwarka, New Delhi—110075.

...Financial Creditor No.21

22.Mr. Pushkar Mishra

Resident of 712, New Millennium Appt.,
Pocket 2, Sector 23,
Dwarka, New Delhi—110077.

...Financial Creditor No.22

23.Mrs. Sudesh

Wife of Mr. Shanti Kumar Tyagi
Resident of 70, Tyagi Maholla,
V.&P.O., Jhatikra,
New Delhi—110043.

...Financial Creditor No.23

24.Mr. Deepak Tyagi





Son of Mr. Subhash Chandra
Resident of V & P.O. Jhatikra,
New Delhi—110043.

...Financial Creditor No.24

25.Mr Shalinder Kumar Narula

Son of Late Sh. M.L. Narula
Resident of A1/203, Milan Vihar Apartments,
I.P. Extension, New Delhi—110092.

...Financial Creditor No.25

26.Mr. Rajbir

Son of Shri Man Singh
Resident of 328, Harijan Mohalla,
Village Ghotorni, New Delhi—110030.

...Financial Creditor No.26

27.Mr. Manoj Kumar

Son of Mr. Thakur Lal
Resident of H. No. 54/2, 4/8,
Marla Model Town, Gali Arya Samaj Mandir,
Gurgaon, Haryana—122001.

...Financial Creditor No.27





28.Mr. Manjeet Singh Manchanda

Resident of R-106, GF, GK-1
Delhi- 110048

...Financial Creditor No.28

29.Ms. Reena Goel

Daughter of Sh. Pawan Kumar Gupta
2366/16, Faridabad, Haryana.

...Financial Creditor No.29

30.Mr. Allanki Sree Veera Venkateshwar

Son of Sh. A. K. Sambasiva Rao
Resident of CC-29E, 3rd Floor, Ghanta Ghar,
Hari Nagar, New Delhi—110064.

...Financial Creditor No.30

31.Mr. Saravjit Singh


Son of Sh. Trilochan Singh
Resident of C-142, 2nd Floor,
Moti Nagar, New Delhi.

...Financial Creditor No.31

32.Mr. Suresh Kumar Yadav

Son of Sh. Tejpal Singh Yadav
Resident of DX-157, Kendriya Vihar, Sector-56,





Gurgaon, Haryana.

...Financial Creditor No.32

33.Mr. Mann Singh Yadav

Son of Attar Singh Yadav
Resident of House No. 108, Sector-27,
Gurgaon, Haryana.

...Financial Creditor No.33

34.Ms. Prerna Detwani

Daughter of Mr. Sudama Mal Detwani
B-1/209, Paschim Vihar,
New Delhi, Delhi—110063

...Financial Creditor No.34

35.Ms. Jasmine Detwani

Wife of Sh. Siddharth Detwani
B-1/209, Paschim Vihar,
New Delhi, Delhi—110063

...Financial Creditor No.35

36.Mr. Brijkishore

Son of Sh. Bhagirath Prasad
Resident of H. No. 2, VPO-Bhangrola,
Gurgaon, Haryana





...Financial Creditor No.36

37.Mr. Sanjeev Sood and Ms. Archana Sood

Resident of Flat No. 2301, Plot No. 95,
Golf Link Apartment, Nagina CGHS,
Sector-54, Gurgaon, Haryana—122011.

...Financial Creditor No.37

VERSUS

M/S. Imperia Wishfield Pvt. Ltd.

Registered Office at:

A-25, Mohan Co-operative Industrial Estate,
Mathura Road, New Delhi-110044.

Email: info@imperiastructures.com

...Respondent/ Corporate Debtor

CORAM:

SHRI. MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

SHRI. RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Counsel for Petitioner:

: Mr. Lokesh Bhola and Mr. Aakash
Bhatt, Advs.

Counsel for Respondent:

: :Adv. Sandeep Bhuraria, Adv.
Monish Surendran and Adv. Arinjay
Singh





ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

Date: 29.05.2024

1. The present petition has been filed by Mr. Raj Kumar Shrivastava and others, i.e., the allottees who have been allotted units in 2013 to 2016 in a commercial project under the name and style of "Elvedor" ("Project") being developed by the Imperia Wishfield Private Limited ("Corporate Debtor") to initiate Corporate Insolvency Resolution Process ("CIRP") against M/s. Imperia Wishfield Private Limited, in accordance with Section 7 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as "the Code") for the alleged default on the part of the Respondent in repayment of debt of INR 7,97,22,190/- (Rupees Seven Crores Ninety Seven Lakhs Twenty Two Thousand One Hundred and Ninety).
2. The details of transactions leading to the filing of this application as averred by the Applicant are as follows –
 - i. The Financial Creditors herein are the allottees who have been allotted units in 2013 to 2016 in a commercial project under the name and style of "Elvedor" ("Project") being developed by the Imperia Wishfield Private Limited ("Corporate Debtor") on land admeasuring 16 kanals in the revenue estate of Garauli Khurd, Tehsil and District Gurgaon, Haryana and comprised in Sector 37-C of Gurgaon-Manesar Urban Master Plan, 2021.





- ii. The land bearing Rect. No. 8 Killa No. 12/1(4-0) measuring 4 kanals situated in the revenue estate of Garauli Khurd, Tehsil and District Gurgaon and comprised in Sector 37-C of Gurgaon-Manesar Urban Master Plan, 2021 was owned and in possession of Mr. Devi Ram. Further, M/s Prime IT Solutions Private Limited had the physical possession of land bearing Rect. No. 8 killa nos. 12/2(4-0), 13/1(5-8), 19/1(4-0) measuring 13 kanals 8 marlas in the revenue estate of Garauli Khurd, Tehsil and District Gurgaon and comprised in Sector 37-C of Gurgaon-Manesar Urban Master Plan, 2021.
- iii. Mr. Devi Ram entered into a registered Collaboration Agreement dated 15.05.2010 with M/s Prime IT Solutions Private Limited in respect of the aforesaid parcels of lands for development of commercial colony.
- iv. Subsequently, with the intent to develop the Project, M/s Prime IT Solutions Private Limited and the Corporate Debtor entered into Collaboration Agreement dated 06.12.2012 and Agreement to Sell dated 06.12.2012.
- v. In furtherance of the same, the Corporate Debtor undertook the implementation of the Project over the Project Land and executed various Retail Buyers' Agreement ("RBA")/ Builder Buyers' Agreement ("BBA")/ Studio Apartment Buyers' Agreement ("SBA") with the allottees of the Project between 2013 to 2016.





- vi. As on date, the Financial Creditors together have paid a total sale consideration amount of Rs. 6,97,08,167/- (Rupees Six Crores Ninety Seven Lakh Eight Thousand One Hundred Sixty Seven) to the Corporate Debtor in terms of the RBS/BBA / SBA for their units.
- vii. Further, as per Clause 14 of the RBA / BBA / SBA, in case there is any delay by the Corporate Debtor in completion of the said unit beyond 6 months from the date of expiry of the said 60 months, the Corporate Debtor is liable to pay compensation @Rs. 215.28/- per sq. mt. (Rs. 20/- per sq.ft. approx.) of the Super Area per month to the allottee. However, the Corporate Debtor has even failed to pay the delay compensation as per Clause 14 of the RBA/BBA/SBA. In light of the above, interest of Rs. 1,00,14,023/- (Rupees One Crore Fourteen Thousand Twenty-Three Only) is also payable by the Corporate Debtor to the Financial Creditors.
- viii. In terms of the RBA/BBA/SBA executed between 2013 to 2016, the Corporate Debtor was duty bound to deliver the possession of the units to the Financial Creditors between 2018 to 2021 as per the RBA/BBA/SBA. However, the Corporate Debtor failed to deliver the possession of the unit on the promised date of delivery. The last date of default out of all of the BBA / RBA / SBA executed between the Corporate





Debtor and the Financial Creditors is 08.12.2021. Hence, the date of default is being taken as 08.12.2021.

- ix. The FC have made a substantial portion of the payments much prior to the stipulated date of delivery of possession of the units. Further, the present application is being preferred by over 10% of the total allottees of the Project.
- x. In view of the facts and submissions stated hereinabove, it is submitted that the present Application is maintainable and has fulfilled the threshold provided under Proviso (2) to Section 7(1) of the Code. The Financial Creditors fall under the definition of Financial Creditor provided Section 5(7) of the Code. That the instant debt of the Financial Creditor is in nature of a financial debt and falls squarely under Section 5(8)(f) of the Code.

3. The Corporate Debtor filed its reply in which the following contentions were raised –

- i. In accordance with the terms of Clause 11(a) of the Agreements executed by the Corporate Debtor with the Financial Creditors, the Corporate Debtor agreed to give possession of the respective units to the Financial Creditors in a time-bound manner, i.e., within 60 months from the date of execution of the said Agreements.





- ii. However, as per the Clause 1.4 of the Agreements, the delivery of the respective units of the Financial Creditors was subject to payment of the consideration to the Corporate Debtor by the Financial Creditors in a timely manner. The CD has contended that the Financial Creditors failed to make the payments in due time (in accordance with the mutually agreed upon timeline) owing of which the Project was stalled.
- iii. That the default was on the part of the allottees of the Project including the Financial Creditors. Hence, it is evident that the Financial Creditors have approached this Tribunal to misuse the provisions of the Code even though the default is on their part.
- iv. The COVID-19 lockdown led to a severe impact on the economy and created a recession-like situation all over India. The impact of COVID-19 lockdowns on the real estate market was unprecedented and was even worse compared to other sectors of business. Moreover, due to the complete lockdown, no construction work was allowed to be carried out and the situation worsened as there was a mass migration of laborers, which proved to be the final stone for the real estate projects across the country.
- v. Further, the customers started defaulting on their installments and potential buyers decided against investing in the Project of the Corporate Debtor. As a result, the Corporate Debtor along





with all other real estate developers across the country had to face a lot of financial problems.

vi. That if present application is allowed, it will derail the Corporate Debtors progress in completing the other projects of the Corporate Debtor and such a derailment will be heavily prejudicial to the allottees of the projects who would be left in lurch once the management of Corporate Debtor is replaced.

4. We have perused the documents placed on record by all the parties to the present case and heard the arguments made by the counsels of both the parties. The Applicant has claimed the default on part of the Respondent for the amount of INR 7,97,22,190/-.

5. Section 5(7) of IBC, 2016 deems a Financial Creditor to be -


“any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.”

Further, Section 5(8)(f) of the IBC, 2016 extends the ambit of the term Financial Debt to -

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

6. In the instant case the CD sought money from the FCs in lieu of allotment of units in the commercial project under the name and style of "Elvedor". In pursuance of the aforesaid allotment, the CD executed myriad Retail Buyers' Agreement ("RBA")/ Builder Buyers'





Agreement ("BBA")/ Studio Apartment Buyers' Agreement ("SBA"). The applicants have paid a total amount of INR 6,97,08,167/- towards their obligations laid out in the agreements. In addition to the aforesaid amount, an interest of INR 1,00,14,023/- has also be levied on the CD owing to the non-delivery of the units within the stipulated time period in accordance with clause 14 of the RBA/BBA/SBA.

7. The Corporate Debtor, in its reply, has contended that the delay in delivery of the units can be attributed to two main reasons –

- i. The allottees/applicants failed to pay the requisite amount of money towards their obligations in accordance with agreements within the stipulated time period. The said nonpayment of dues by the applicants resulted in the CD failing to defray the costs pertaining to the timely completion of the project. Consequently, the project stalled.
- ii. The COVID-19 pandemic led to multiple supply chain snags, inflated material and labor costs and unwarranted delays in the completion of the project owing to the lockdown being enforced. The CD states that the aforesaid unforeseen circumstances were beyond its control. Further, the CD states that the pandemic also eroded the ability of its customers to discharge their dues towards the CD. In light of the said issues the CD failed fulfill its obligations and deliver the units in due time.





8. A mere reading of the provision under Section 7 of the IBC shows that in order to initiate CIRP under Section 7, the Applicant is required to establish that there is a financial debt and that a default has been committed in respect of that financial debt
9. It has been contended by the Corporate Debtor that the structure has been completed to the extent of 90%. However, the quantum of completion of the project has no bearing on the existence of debt and the corresponding default by the Corporate Debtor.
10. It has been stated in section 7(1) proviso (2) of the IBC, 2016, that

“Provided that for the financial creditors, referred to in clauses (a) and (b) of subsection (6A) of section 21, an application for initiation corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten percent of the total number of such creditors in the same class, whichever is less”

11. Further, it has been established by the Hon’ble Supreme Court in *Innoventive Industries Limited v. ICICI Bank and Another*¹ that –

When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the

¹ 2018 1 SCC 407





corporate debtor — it need not be a debt owed to the applicant financial creditor.

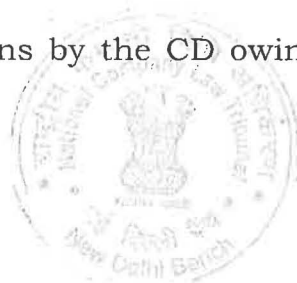
Additionally, the Hon'ble Supreme Court in the aforesaid judicial precedent also held that –

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

12. It can be inferred from the aforementioned excerpt that the Section 7 of the IBC, 2016 has clearly laid down the ambit of the Adjudication Authority while considering applications filed under section 7. The role of the Adjudicating Authority has been confined to establishing if a financial debt exists within the purview of the code and the CD has defaulted while discharging the corresponding debt.

13. In light of the aforesaid judicial precedents, this Adjudicating Authority considers it to be imprudent to delve into the contractual obligations of either party at this juncture, as existence of the financial debt and default against the corresponding debt has already been established.

14. Additionally, the Corporate Debtor has contended that the delays in delivery of the units in accordance with the stipulated timeline cannot be attributed to deliberate actions by the CD owing to the





fact that the COVID – 19 pandemic affected real estate sector and all the allied sectors adversely. The said contention does not hold water in light of the fact that the CD initiated construction in 2015 and was obligated to deliver the units within 60 months from the commencement of construction. Consequently, the delay in delivery of the units transpired prior to the COVID – 19 pandemic.


15. It is pertinent to note that the IBC, 2016 has conferred temporary relief upon the Corporate Debtors, in accordance with section 10-A by the virtue of a bar on filing of CIRP applications under sections 7,9 and 10 starting from 25th March 2020 to 24th March, 2021. The said bar on filing of fresh applications was implemented in light of the COVID – 19 pandemic. However, the aforesaid bar on filing of new applications is not applicable in the present case owing to the fact that the date of default has been taken as 08.12.2021, the present filing does not come under the purview of section 10-A.

16. Moreover, the present application was filed in 2023, it can be concluded that the CD had ample time to deliver the units post pandemic.

17. Consequently, we are satisfied that the present application is complete in all respects and the applicant financial creditor has outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.

18. It has been observed that there are two other projects of the Corporate Debtor (CD) which the CD has stated are progressing at a






steady pace. If the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor is initiated, then these two projects will also be dragged into the CIRP proceedings, which will adversely affect the allottees of these projects. The Corporate Debtor has also pleaded for a project-specific CIRP with respect to one of its projects. Furthermore, the CD has stated that this project is 90% completed and that if project-specific insolvency is initiated, there is a good chance of a successful resolution.

19. The Hon'ble National Company Law Appellate Tribunal in the matter of *Flat Buyers Association Winter Hills vs. Umang Relatech Private Limited.*, [C.A. (AT) (Ins) No. 926 of 2019] has held that the CIRP proceedings ought to be limited just to the project in default and should not include other projects of the Corporate Debtor. The relevant para is reproduced as under:

25. In Corporate Insolvency Resolution Process against a real estate, if allottees (Financial Creditors) or Financial Institutions/Banks (Other Financial Creditors) or Operational Creditors of one project initiated Corporate Insolvency Resolution Process against the Corporate Debtor (real estate company), it is confined to the particular project, it cannot affect any other project(s) of the same real estate company (Corporate Debtor) in other places where separate plan(s) are approved by different authorities, land and its owner may be different and mainly the allottees (financial creditors), financial institutions (financial creditors, operational creditors are different for such separate project. Therefore, all the




asset of the company (Corporate Debtor) are not to be maximized. The asset of the company (Corporate Debtor - real estate) of that particular project is to be maximized for balancing the creditors such as allottees, financial institutions and operational creditors of that particular project. Corporate Insolvency Resolution Process should be project basis, as per approved plan by the Competent Authority. Any other allottees (financial creditors) or financial institutions/banks (other financial creditors) or operational creditors of other project cannot file a claim before the Interim Resolution Professional of other project and such claim cannot be entertained.”

20. Furthermore, in the matter of *Ambika Prasad Sharma (Erstwhile Director of Horizon Buildcon Pvt. Ltd.) vs. Horizon Buildcon Pvt. Ltd. and Ors. [C.A (AT) (Ins) No. 1398 of 2019]*, the Hon'ble Appellate Tribunal was of the view that the CIRP of a Corporate Debtor should be restricted to the project in default. The relevant para of the aforesaid judgement is reproduced as under: -

*“25. In the result, for all the aforementioned reasons, we concur with the finding in the Impugned Order passed by the Learned Adjudicating Authority regarding the maintainability and Admission of the Section 7 Application against 'HBPL'. **However, we observe that the CIRP should be Project based and be confined to the subject Project only.** No order as to costs.”*

21. In the matter of *Ram Kishor Arora Suspended Director of M/s. Supertech Limited vs. Union Bank of India [C.A. (AT) (Ins.) 406 of 2022]*, the Hon'ble Appellate Tribunal adopted a project-wise

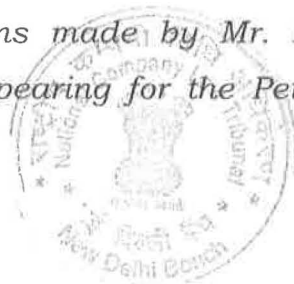


resolution of Supertech Limited. The Hon'ble Appellate Tribunal in its order directed the Interim Resolution Professional ("IRP") to constitute CoC involving creditors of only one of the projects of the Corporate Debtor:

"23. In the facts of the present case and keeping in view the submissions raised by the Learned Counsel for the parties, we are of the view that in 'CIRP' Process, Project-Wise Resolution to be started as a test to find out the success of such Resolution. Keeping an eye regarding construction and completion of the projects, **we at present, are of the view that Interim Order dated 12th April, 2022 staying the constitution of CoC be modified to the extent that CoC be constituted for the Eco Village II Project only** with all Financial Creditors including Financial Creditors/Banks/Home Buyers. The Committee of Creditors of Eco Village II Project shall start process for Resolution of Eco Village II Project. The IRP shall separate the claims received with regard to the Eco Village II Project and prepare an 'Information Memorandum' accordingly and proceed for meeting of the CoC as per the Code....

22. Similar view was followed by the Coordinate Bench (New Delhi Bench III) in the matter of *Mr. Umesh Chander and Ors. vs. M/s GRJ Distributors and Developers Private Limited [C.P. No. IB-477(ND)/2021]* wherein the Adjudicating Authority had initiated the CIRP proceedings of a sole project. The relevant para is reproduced as under :-

6. *In view of the submissions made by Mr. Piyush Sharma, Learned Counsel appearing for the Petitioner*






and Mr. Sandeep Bhuraria, Learned Counsel appearing for the Corporate Debtor and in view of law laid down in the judgments cited by the Learned Counsel for the Corporate Debtor, **we are of the considered view that the CIRP in the present case should be confined to the project i.e., Rosewood Project only.** We therefore hold that since the default has been admitted by the Corporate Debtor and the present petition filed under Section 7 of IBC, 2016 is ought to be admitted and the CIR Process against the Respondent/Corporate Debtor with respect to "Rosewood" Project be initiated."

23. In light of the aforesaid facts and the submissions made by the Learned Counsel appearing for the Petitioner and the Learned Counsel appearing for the Corporate Debtor, we are of the view that the CIR Process in this case should be confined to the Elvedor Project of the Corporate Debtor due to the following rationale: -

- I. There are other projects of the Corporate Debtor which are progressing at a steady pace, and if the CIR Process of the Corporate Debtor is initiated, then the other projects will be adversely affected. Nothing has been brought to our notice regarding the financial health of the Corporate Debtor which would cast doubt regarding completion of other projects.
- II. The construction of the present project, namely Elvedor, is near completion, and it is stated that the project is 90% completed.





III. The fact that the Corporate Debtor has managed to complete other projects on time in the past as well.

IV. No allegations of misconduct, fraudulent practices, or gross mismanagement have been brought to our notice that would cast significant doubt on their role in the CIR Process as envisaged in the project-wise approach.

In view of the above facts and circumstances, we are of the opinion that the project specific insolvency of the Corporate Debtor may lead to successful resolution of the project.

24. We therefore hold that since the default has been admitted by the Corporate Debtor, the present petition filed under Section 7 of IBC, 2016 is to be admitted, and the CIR Process against the Respondent/Corporate Debtor with respect to the “Elvedor Project” should be initiated.

25. Therefore, in view of the fact that all the legal requirements are fulfilled, the present application is **admitted**. The CIRP is initiated against the Corporate Debtor viz., M/s. Imperia Wishfield Pvt. Ltd with respect to the “Elvedor Project” exclusively.

26. Sub-section (3) (b) of Section 7 mandates the Financial Creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Akash Shinghal for appointment as Interim Resolution Professional having registration number IBBI/IPA-001/IP-P00137/2017-18/10279. The proposed IRP is directed to file a compliance affidavit





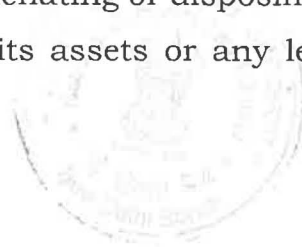
pertaining to the valid AFA within 5 days from the pronouncement of this order, failing which the applicants shall propose the name of an alternative IRP. Accordingly, this Adjudicating Authority, hereby appoints Mr. Akash Shinghal (Email – akash@kjco.com), to act as Interim Resolution professional. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench


27. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

28. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed only on “Elvedor Project” of the Corporate Debtor:

“(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal





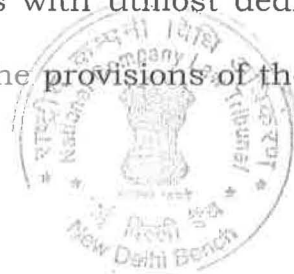
right or beneficial interest therein, with respect to the “Elvedor Project”;


(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor with respect of its property i.e. “Elvedor Project” including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor pertaining to the “Elvedor Project.”

29. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code. Additionally, the aforesaid bar shall only be applicable to the “Elvedor Project” and all other projects of the CD shall be exempt from the same.

30. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code,






Rules and Regulations. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' i.e. the Elvedor Project exclusively as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

31. This Adjudicating Authority issues the following directions in view of the judgment of the Hon'ble NCLAT in Ram Kishor Arora, Suspended Director of M/s. Supertech Ltd. v. Union Bank of India & Anr. (Company Appeal (AT) (Insolvency) No. 406 of 2022), wherein the NCLAT propounded the novel concept of Project-Wise Insolvency. In an appeal against this order before the Hon'ble Supreme Court in *Indiabulls Asset Reconstruction Company Limited V. Ram Kishore Arora & Ors. (Civil Appeal No. 1925 of 2023)*, the Hon'ble Apex Court did not interfere with the directions already issued by the NCLAT. The directions to the IRP with regard to the Elvedor Project are as follows: -

- A. That, the that IRP may constitute the CoC with regard to the "Elvedor Project" only.
- B. Subsequent to the constitution of CoC for "Elvedor Project", the IRP shall be mandated to complete the construction of the project with the assistance of the ex- management, its employees and workmen.





C. With regard to the “Elvedor Project”, the IRP shall proceed with the completion of the project and shall be free to prepare Information Memorandum, issue Form – G, invite Resolution Plan however no Resolution Plan be put for voting without the leave of this Adjudicating Authority.

D. All receivables pertaining to or arising out of the “Elvedor Project”, shall be deposited in a separate account and detailed records encompassing the inflow and outflow and any other transactions associated with the aforesaid account shall be maintained by the IRP.

E. That all other projects of the Corporate Debtor apart from “Elvedor Project” shall be kept as ongoing project.

F. That the IRP is instructed to submit an extensive Status Report within six weeks from the day of pronouncement of this order, pertaining to the “Elvedor Project” and the state of affairs of the said project.

G. The IRP/RP is at liberty to file I.A. for any direction/clarification in the above regard.

32. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by

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updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

33. Let copy of the order be served to the parties.

**SD/-
Rahul Bhatnagar)
Member (Technical)**

**SD/-
(Mahendra Khandelwal)
Member (Judicial)**



Push A
3-6-2024

Roshan K
Kumar
3-6-2024

Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003