

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 2207 of 2024

(Arising out of the Order dated 19.11.2024 passed by the National Company Law Tribunal, New Delhi, Court - IV in CP No. (IB) – 62(ND) / 2024)

IN THE MATTER OF:

SGN Universal Construction Company Private Limited

A company incorporated under Companies Act, 1956
Having its registered office at: R-529, New Rajinder Nagar, New Delhi – 110060

Through its Director, Mr. Ajay Arora

...Appellant

Versus

1. Shailendra Kumar Singh,

S/o Late Harinandan Singh President of Bluebell Social Welfare Society

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...Respondent No. 40

41.M/S Morpheus Prodevelopers Pvt Ltd

A company incorporated under Companies Act, 1956, Having its registered office at: 1, Main Road, Maujpur, Delhi - 110054
accounts@themorpheusgroup.com,
info@themorpheusgroup.com

Through Interim Resolution Professional,
Mr. Shailendra Singh, IBBI/IPA-002/IP-
N00471/2017- 2018/11372

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...Respondent No. 41

Present:

For Appellant

Mr. Krishnendu Datta, Sr. Adv. along with
Mr. Gaurav Mitra, Ms. Aakashi Lodha, Mr.
Sanjeevi Seshadi, Ms. Aishwarya Modi Seth & Ms.
Nishtha Jindal.

For Respondents

Mr. Kunal Tandon, Sr. Adv. along with Mr. Amit
Singh, Mr. Gauram Singhal, Mr. Rajat Chaudhary,
Ms. Anjali Maurya, Ms. Suraksha Mandhya &
Mr. Adarsh Nair, for R-1 to 40.

Mr. Neeraj Malhotra, Sr. Adv. along with
Mr. Abhishek Anand, Mr. Karan Kohli, Ms. Palak
Kalra, Mr. Rajat Gupta, Mr. Abhyuday D &
Mr. Shailendra Singh, for RP.

J U D G E M E N T

(30.03.2026)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present appeal has been filed by the Appellant i.e., SGN Universal Construction Company Private Limited under Section 61 of the Insolvency and

Bankruptcy Code, 2016 (**‘Code’**) against the Impugned Order dated 19.11.2024 passed by the National Company Law Tribunal, New Delhi, Court -IV (**‘Adjudicating Authority’**) in CP No. (IB) – 62(ND) / 2024.

Shailendra Kumar Singh and others, who are homebuyers, are Respondent No.1 to 40 herein.

M/s Morpheus Prodevelopers Pvt Ltd, who is the Corporate Debtor through Interim Resolution Professional, Mr. Shailendra Singh, is the Respondent No.41 herein.

2. The Appellant submitted that the project “Morpheus Bluebell” at Plot No. GH-04, Sector-04, Greater Noida (West), comprised inter alia Towers 3 and 4 being developed by the Corporate Debtor i.e. M/s Morpheus Prodevelopers Pvt. Ltd., and Tower 5 being developed exclusively by the Appellant, pursuant to contractual arrangements commencing around 03.05.2014. The Appellant contended that by February 2017, a sum of Rs. 6.92 crores were outstanding from the Corporate Debtor to the Appellant towards construction work, whereupon, in discharge of this existing liability, the Corporate Debtor agreed to confer upon the Appellant all construction, development and alienation rights in Tower 5 for a total consideration of Rs. 7,62,30,333, culminating in execution of a Development Rights Agreement dated 22.02.2017 granting the Appellant extensive, irrevocable, absolute and exclusive rights over Tower 5, including the right to collect and retain all sale/sub-lease/license/transfer proceeds of units in Tower 5.

3. The Appellant submitted that in furtherance of the Development Rights Agreement, the Corporate Debtor executed a registered Power of Attorney dated 16.03.2017 in favour of the Appellant, and subsequently, by Addendum dated 15.10.2020, transferred to the Appellant additional FSI of 18,000 sq. ft. accruing to Tower 5 as a green project, thereby reinforcing that Tower 5, in its entirety (including the additional FSI), stood vested in the Appellant for all practical purposes. The Appellant stated that between 2019 and 2022 it expended around Rs. 11 crores and completed approximately 80–85% of the construction of 17 floors of Tower 5, while the Corporate Debtor failed to perform its obligations regarding common areas and to procure a separate RERA registration for Tower 5 in the name of the Appellant, and instead, in collusion with third parties, started exerting pressure on the Appellant to fund Towers 3 and 4, giving rise to disputes between the parties.

4. The Appellant submitted that despite its exclusive rights in Tower 5, the Corporate Debtor, in proceedings initiated by homebuyers of Towers 3 and 4 under Section 8 of the U.P. RERA Act, 2016, made representations dated 12.04.2022 and 16.09.2022 before UPRERA, falsely showing unsold inventory in Tower 5 as a funding source available with the Corporate Debtor for completion of the project, thereby misrepresenting and jeopardising the Appellant's rights. The Appellant further submitted that, to counter such misrepresentations, it was constrained to issue a public notice in September 2022

asserting its extensive rights in Tower 5, yet the Corporate Debtor continued to mislead homebuyers regarding Tower 5.

5. The Appellant stated that it was compelled to institute a petition under Section 9 of the Arbitration and Conciliation Act, 1996, being OMP (I) COMM No. 311 of 2022 before the Hon'ble Delhi High Court, wherein, by order dated 04.11.2022, the Corporate Debtor was restrained from creating any third-party rights in units in Tower 5 of "Morpheus Bluebell"; such restraint was reiterated and clarified by a further order dated 16.01.2023, which categorically prohibited the Corporate Debtor from creating or giving effect to any third-party rights in respect of Tower 5. The Appellant contended that these interim orders and details of the proceedings were widely circulated in the WhatsApp group of homebuyers, and were acknowledged by the association of allottees in its representation to RERA authorities dated 19.12.2022, thereby demonstrating that the homebuyers were fully aware of the protective orders in favour of the Appellant concerning Tower 5.

6. The Appellant submitted that by order dated 15.03.2024, the Hon'ble Delhi High Court continued the interim orders dated 04.11.2022 and 16.01.2023 for three months and, with consent of the parties, referred the disputes between the Appellant and the Corporate Debtor to arbitration, appointing Justice R. Bhatt (retd) a Sole Arbitrator and directing that the pending Section 9 petition be treated as a Section 17 application before the Arbitrator. The Appellant stated that the Sole Arbitrator thereafter heard arguments on the Section 17 application on

16.04.2024 and, by a detailed order dated 08.06.2024, inter alia restrained the Corporate Debtor, its directors and agents from holding out to the public that it had any right or interest to market, sell, transfer, alienate or create any interest in any unit in Tower 5, thereby affirming that Tower 5 is the asset of the Appellant and not of the Corporate Debtor.

7. The Appellant contended that, independently of the arbitration, an application under Section 7 of the Code, being CP (IB) No. 62(ND)/2024, was filed in or around February 2024 by homebuyers of Towers 3 and 4 against the Corporate Debtor, and the Adjudicating Authority conducted procedural hearings in February and March 2024, eventually setting the Corporate Debtor ex parte by order dated 01.04.2024 in view of its non-appearance despite service. The Appellant further submitted that it came to know of these insolvency proceedings and, mindful of the Corporate Debtor's past collusive conduct and misrepresentations regarding Tower 5, apprehended that the Corporate Debtor's non-appearance was a deliberate attempt to defeat the Appellant's rights by allowing orders to be passed without disclosure of the Appellant's extensive rights and the subsisting High Court and arbitral orders.

8. The Appellant stated that, acting diligently, it filed I.A. No. 2197(ND)/2024 on 02.05.2024 before the Adjudicating Authority in CP (IB) 62(ND)/2024, limited to placing on record the interim orders passed by the Hon'ble Delhi High Court and the Sole Arbitrator in relation to Tower 5, and only prayed that the orders of the Adjudicating Authority do not conflict with those

existing orders; no adjudication on the correctness of such orders or on the merits of the Appellant's rights was sought in that application. The Appellant contended that on 06.05.2024 the said I.A. was merely adjourned to 27.05.2024 and the homebuyers were directed to file written submissions in the Section 7 application, and that on 27.05.2024 the Adjudicating Authority reserved orders both in the Section 7 application and on the maintainability of the Appellant's I.A. No. 2197 without issuing notice to any party on the merits of the Appellant's rights and without requiring pleadings on those merits; the Appellant thereafter filed a written note of submissions dated 27.05.2024 confined to its limited prayer.

9. The Appellant submitted that in the meantime the Sole Arbitrator's order dated 08.06.2024 under Section 17 of the Arbitration Act further fortified the Appellant's extensive, irrevocable and absolute rights in Tower 5, and a copy of this order was duly handed over to the Adjudicating Authority during the hearing on 07.10.2024; nevertheless, the Impugned Order has not even referred to or considered this crucial order. The Appellant contended that, despite the limited scope of its I.A. and despite no notice, pleadings or arguments on the merits of its rights, the Adjudicating Authority, by the Impugned Order dated 19.11.2024, has (i) included units of Tower 5 while calculating the total number of units to test satisfaction of the minimum threshold under the first and second provisos to Section 7(1) of the Code; and (ii) made wide-ranging and adverse observations in paras 6.7 to 6.13 regarding the Development Rights Agreement of 2017 and Addendum of 2020 and suggesting that such transactions are in the nature of those

governed by Sections 43, 49 and 66 of the Code and overridden by the Code even before commencement of CIRP and without any application by a Resolution Professional.

10. The Appellant stated that no notice whatsoever was issued on its I.A. No. 2197(ND)/2024, no reply was filed by the homebuyers or any other party, and no party addressed arguments on the merits of the Appellant's rights in Tower 5; yet, the Adjudicating Authority has proceeded to make serious adverse findings against the Appellant and its Agreements, treating Tower 5 as an asset of the Corporate Debtor and suggesting they defeat homebuyers' rights, thereby gravely prejudicing the Appellant in blatant breach of audi alteram partem. The Appellant contends that, further compounding this, by a separate order of the same date (19.11.2024) in I.A. No. 2197(ND)/2024, the Adjudicating Authority has purported to dispose of the Appellant's I.A. by holding that it would be "considered along with" the Section 7 application, even though only maintainability of the I.A. had ever been argued, and without giving the Appellant any opportunity to address the merits or to meet the observations ultimately recorded in the Impugned Order.

11. The Appellant submitted that its application was never intended to, and did not, oppose the initiation of CIRP against the Corporate Debtor; its singular and limited objective was to ensure that there is no conflict between the order of the Adjudicating Authority and the binding interim orders of the Hon'ble Delhi High Court and the Sole Arbitrator preserving the Appellant's rights in Tower 5.

12. The Appellant stated that it has cumulatively expended over Rs. 20 crores in acquiring extensive, irrevocable and absolute development and alienation rights in Tower 5 and in constructing 17 floors thereof, and that Tower 5 has at all times remained in its custody and possession and is its asset, not that of the Corporate Debtor. The Appellant contends that, in any event, even assuming (without admitting) that any scrutiny under Sections 43, 49 or 66 of the Code could arise, it can only be undertaken, post-commencement of CIRP, at the instance of the Resolution Professional through appropriate applications, and cannot be initiated against a third party like the Appellant in the course of a Section 7 admission order, much less on ex parte assumptions without pleadings or evidence.

13. The Appellant submitted that the Adjudicating Authority has failed to appreciate that the homebuyers themselves were aware of and had acknowledged the High Court's interim order dated 04.11.2022, yet it appears that those orders and the subsequent arbitral order dated 08.06.2024 were not candidly disclosed to the Adjudicating Authority, thereby enabling the Corporate Debtor and others, in collusion and by misleading the homebuyers of Towers 3 and 4, to continue attempts to defeat the Appellant's vested rights in Tower 5. The Appellant contended that the Adjudicating Authority has, as a result, proceeded on unfounded assumptions and presumptions, incorrectly treating the total number of units as 356 by including Tower 5, and then using that figure to test the minimum numerical threshold under the first and second provisos to Section 7(1),

even though, on the Appellant's own case, exclusion of Tower 5 units does not affect satisfaction of the threshold and therefore there was no necessity to treat Tower 5 as an asset of the Corporate Debtor.

14. The Appellant stated that in passing the Impugned Order and the connected order in I.A. No. 2197(ND)/2024, the Adjudicating Authority has exceeded the jurisdiction conferred by the Code by purporting to adjudge the validity and correctness of orders of the Hon'ble Delhi High Court and the Sole Arbitrator and by casting aspersions on the Agreements of 2017 and 2020 without any lis on that issue and without even impleading the Appellant as a party in the Section 7 application.

15. Concluding arguments, the Appellant requested this Appellate Tribunal to allow the present appeal.

16. Per contra, the Respondent No.1 to 40 denied all averments made by the Appellant as misleading and baseless.

17. The Respondents submitted that after the enactment of the RERA regime in 2016, the entire project was registered under a single RERA Registration No. **UPRERAPRJ11705**, thereby confirming that Towers 3, 4 and 5 form part of a single integrated project. The Respondents stated that the Appellant was initially engaged only as a contractor, however, due to pending dues of approximately ₹6.92 crores and ongoing disputes in 2017, a Development Rights Agreement dated 22.02.2017 was executed between the Corporate Debtor and the Appellant. The Respondents contended that the said Development Rights Agreement was

executed in violation of the conditions contained in the principal agreement dated 20.09.2014 executed between M/s AIMS Golf Town Developers Private Limited and the Corporate Debtor, which mandated proper tripartite authorization before any transfer or assignment of development rights. The Respondents further stated that although an addendum dated 15.10.2020 was subsequently executed, the Appellant failed to complete the construction work, and consequently the Corporate Debtor terminated the Development Rights Agreement on 20.06.2022. The Respondents submitted that the termination took place well before the initiation of the CIRP and therefore no subsisting or enforceable right survives in favour of the Appellant with respect to Tower No. 5.

18. The Respondents submitted that due to the failure of the Corporate Debtor to hand over possession of the flats to the homebuyers, Respondents No. 1 to 40 initiated proceedings under Section 7 of the Code seeking initiation of CIRP against the Corporate Debtor for the entire project consisting of Towers 3, 4 and 5. The Respondents stated that during the pendency of these proceedings, the Appellant filed I.A. No. 2197 (ND)/2024 merely for the limited purpose of placing certain interim orders passed by the Hon'ble Delhi High Court in arbitration proceedings on record.

19. The Respondents contended that the Adjudicating Authority, considered the said interlocutory application strictly within the limited scope of the prayer made therein and while deciding the Section 7 application examined only the statutory parameters of existence of debt, occurrence of default and satisfaction

of the statutory threshold. The Respondents further submitted that the Adjudicating Authority also reaffirmed the overriding effect of Section 238 of the Code over other laws, including arbitration proceedings.

20. The Respondents stated that in view of the moratorium imposed under Section 14 of the Code, no parallel proceedings including arbitration can continue against the assets of the Corporate Debtor during the CIRP. The Respondents contended that the development rights over Tower No. 5 constitute “property” and therefore form part of the assets of the Corporate Debtor within the meaning of Sections 3(27), 18(f) and 25(2)(a) of the Code. The Respondents submitted that consequently the Appellant cannot assert any independent or parallel rights over Tower No. 5 outside the CIRP framework and its only remedy is to file its claim before the Resolution Professional.

21. The Respondents further submitted that the interim order relied upon by the Appellant passed by the Delhi High Court in arbitration proceedings is not a stay in rem and therefore does not affect the ongoing CIRP proceedings which are proceedings in rem. The Respondents stated that the reliance placed by the Appellant on the Development Rights Agreement dated 22.02.2017 is misplaced since the said agreement stood terminated on 20.06.2022, and therefore no proprietary or development rights survive in favour of the Appellant.

22. The Respondents contended that Tower No. 5 forms an inseparable and integral part of the project comprising Towers 3, 4 and 5, which are registered under a single RERA registration. The Respondents submitted that Tower No. 5

contains vital infrastructure including the clubhouse, swimming pool, DG sets, electrical systems and STP/WTP pumps that cater to the entire project. The Respondents stated that the common basements, parks, entry and exit points and other shared utilities further confirm the complete functional integration of the project and therefore treating Tower No. 5 as a standalone asset is neither feasible nor legally permissible.

23. The Respondents submitted that the Corporate Debtor continues to remain the registered promoter of the project under the RERA registration and the name of the Appellant does not appear as promoter. The Respondents contended that under Section 2(zk) read with Sections 3 and 11 of the RERA Act, the registered promoter bears the statutory responsibility for development, compliance and delivery of the project. The Respondents therefore stated that all rights, obligations and liabilities with respect to Tower No. 5 continue to vest in the Corporate Debtor.

24. The Respondents further contended that the Development Rights Agreement dated 22.02.2017 is void ab initio as it was executed without the mandatory authorization required under the earlier agreement dated 20.09.2014. The Respondents submitted that no tripartite or quadripartite agreement was executed as required under clauses 6.5, 6.6, 11.6 and 11.7 of the earlier agreement, and therefore the Development Rights Agreement lacks legal validity. The Respondents also stated that the said agreement was subsequently terminated by the Corporate Debtor through notice dated 20.06.2022.

25. It was pleaded by the Respondents that the Appellant cannot assert any independent or parallel rights over Tower No. 5 outside the CIRP framework and only remedy for the Appellant is to file its claim before the Resolution Professional.

26. The Respondents submitted that there is no arbitral award or final judicial order granting any rights in favour of the Appellant over Tower No. 5. The Respondents contended that the Appellant has sought to rely upon interim proceedings to claim exclusive rights over Tower No. 5 and thereby obstruct the CIRP process, which is wholly untenable and malafide. The Respondents further stated that all homebuyers including those belonging to Tower No. 5 have already filed their claims before the Resolution Professional, thereby confirming that Tower No. 5 forms part of the collective assets of the project undergoing CIRP.

27. Per contra, the Respondent No.41 denied all averments made by the Appellant as misleading and baseless.

28. The Respondent No. 41 submitted that the Adjudicating Authority has correctly admitted the Company Petition filed by 40 homebuyers, being the allottees of residential dwelling units in Towers-3 and Tower-4 of the real estate project developed by the Corporate Debtor. These 40 homebuyers collectively represent a total of 356 flats. The Respondent No. 41 contended that the threshold requirement stipulated in the second proviso to Section 7 of the Code, which mandates that an application under Section 7 by allottees of a real estate project must be filed jointly by not less than one hundred such allottees or not less than

ten per cent of the total number of such allottees under the same real estate project, whichever is less, has been fully satisfied. The Respondent No. 41 submitted that this collective representation of 356 flats by 40 homebuyers ensures the Petition is not filed frivolously and meets the stringent statutory threshold designed to prevent abuse of the insolvency process in real estate matters.

29. The Respondent No. 41 contended that the Adjudicating Authority has examined the Development Rights Agreement dated 22.02.2017 and the subsequent Addendum dated 15.10.2020, whereby development rights in Tower-5 were transferred to M/s SGN Universal Construction Company Private Limited. The Respondent No. 41 submitted that the timing of the Addendum, introduced well after the Corporate Debtor's default in delivering possession to homebuyers in June 2017, raises serious concerns regarding its bona fide nature. The Respondent No. 41 contended that the late addition appears to be an afterthought aimed at retroactively transferring land rights rather than a genuine contractual arrangement, particularly when no substantial construction progress had been achieved by 22.02.2017 despite the scheduled possession date of June 2017.

30. The Respondent No. 41 submitted that the Adjudicating Authority has taken note of the Delhi High Court order dated 15.03.2024 in OMP(I)(COMM) 311 of 2022 appointing Hon'ble Justice R. Bhat (Retd.) as sole Arbitrator, yet correctly observed that such arbitration proceedings cannot hinder the Corporate Insolvency Resolution Process. The Respondent No. 41 contended that Section 238 of the Code, which provides that the provisions of the Code shall have effect

notwithstanding anything to the contrary contained in any other law for the time being in force, unequivocally overrides the Arbitration and Conciliation Act, 1996. The Respondent No. 41 submitted that the interim stay granted by the Delhi High Court is specific to the parties and does not operate in rem, thereby having no bearing on the ongoing CIRP proceedings initiated under the Code.

31. The Respondent No. 41 contended that the Impugned Order is free from any infirmity, as the Adjudicating Authority has balanced the statutory mandate under Section 7 with the overriding effect of Section 238, ensuring that the rights of the 356 allottees represented by the 40 homebuyers are protected without any interference from parallel proceedings. The Respondent No. 41 submitted that the decision aligns squarely with established judicial precedents affirming the supremacy of the Code over other dispute resolution mechanisms, rendering the Appellant's challenge wholly without merit.

32. The Respondent No. 41 submitted that the Appellant has deliberately withheld the critical fact that the Corporate Debtor, vide letter dated 20.06.2022, terminated the Development Rights Agreement in accordance with Clause 15.8 thereof and simultaneously revoked the General Power of Attorney granted in favour of the Appellant. Clause 15.8 expressly states that, save and except as permitted under the Agreement, the Agreement shall not be terminated by either party. The Respondent No. 41 contended that this termination was necessitated by the Appellant's failure to complete construction of Tower-5 within the stipulated timeframe and in accordance with requisite standards.

33. The Respondent No. 41 submitted that the suppression of this termination letter dated 20.06.2022 is not a mere omission but a calculated concealment of a material fact that directly impacts the rights, liabilities and obligations of all parties involved in the present dispute. The Respondent No. 41 contended that such conduct strikes at the root of transparency and good faith, which are foundational to judicial proceedings, and amounts to abuse of the process of law.

34. The Respondent No. 41 submitted that, in view of the settled law laid down by the Hon'ble Supreme Court in *S.P. Chengalvaraya Naidu v. Jagannath & Ors. (1994) 1 SCC 1*, a litigant who approaches the Court with unclean hands based on falsehood is not entitled to be heard on merits. The Respondent No. 41 further contended that the principle reiterated in *K.D. Sharma v. Steel Authority of India Ltd. (2008) 12 SCC 481* equally applies, wherein suppression of material facts was held to constitute a fraud on the Court, disentitling the party from any relief and warranting discharge of the proceedings to prevent abuse of process.

35. The Respondent No. 41 submitted that development rights squarely fall within the definition of "property" under Section 3(27) of the Code, which encompasses every description of interest, including present or future or vested or contingent interest arising out of or incidental to property. The Respondent No. 41 contended that this expansive definition has been authoritatively recognised by the Hon'ble Supreme Court in *Victory Iron Works Ltd. v. Jitendra Lohia & Anr. (Civil Appeal No. 1743 of 2021)*, wherein development rights created in favour of the Corporate Debtor were held to constitute "property" and

consequently “asset” within the meaning of Sections 18(f) and 25(2)(a) of the Code.

36. The Respondent No. 41 submitted that the Resolution Professional, is statutorily mandated under Section 18(f) of the Code to take control and custody of all assets of the Corporate Debtor, including ownership rights recorded in the balance sheet, assets located in foreign countries, intangible assets, and crucially, assets subject to determination of ownership by a court or authority under Section 18(f)(vi) of the Code. The Respondent No. 41 contended that Tower-5, being subject to pending arbitration proceedings before the Sole Arbitrator, falls squarely within this category, thereby entitling the Resolution Professional to take possession and preserve the asset during the CIRP.

37. The Respondent No. 41 submitted that, following the valid termination of the Agreement vide letter dated 20.06.2022, the development rights over Tower-5 have reverted exclusively to the Corporate Debtor. The Respondent No. 41 contended that any failure to secure these rights would result in diminution of value and confer undue benefit upon parties not entitled thereto, at the expense of the creditors of the Corporate Debtor, thereby defeating the very objective of the Code to maximise asset value.

38. The Respondent No. 41 submitted that Tower-5 cannot be treated in isolation from the rest of the project, as its central firefighting system and central water storage plant are physically and functionally interconnected with the systems serving Towers-3 and 4. The Respondent No. 41 contended that

exclusion of the firefighting system of Tower-5 would render the entire interconnected infrastructure redundant for all towers. The Respondent No. 41 submitted that the minutes of site visit dated 23.11.2024, unequivocally confirm the presence of these shared key infrastructure facilities in the vicinity of Tower-5, establishing its integral role in the overall project functioning.

39. The Respondent No. 41 contended that the interim direction permitting only symbolic possession of Tower-5 has caused significant operational hindrance to the CIRP, particularly in relation to preservation of records and management of critical business operations located therein. The Respondent No. 41 submitted that continued restriction to symbolic possession is incompatible with the Resolution Professional's statutory duties under Section 18 of the Code and prayed that the said interim restriction be vacated forthwith to enable full custody and control of Tower-5.

40. The Respondent No. 41 submitted that interim relief and final relief are fundamentally distinct in nature, scope and effect. The Respondent No. 41 contended that interim relief granted by the Sole Arbitrator on 04.11.2022 was merely provisional and tentative, intended solely to preserve status quo, prevent sale of unsold units in Tower-5 in contravention of the Development Agreement and Assignment Development Agreement, and safeguard the Appellant from irreparable harm pending final adjudication. The Respondent No. 41 submitted that the said order expressly records prima facie findings and does not determine substantive rights. The Respondent No. 41 contended that this principle finds

clear support in *Barak Upatyaka D.U. Karmachari Sanstha (2009) 5 SCC 694*, wherein the Hon'ble Supreme Court held that reasons assigned in support of a non-final interim order are tentative and interim directions are temporary arrangements to preserve status quo. The Respondent No. 41 further submitted that the same principle was reaffirmed in *Zenit Mataplast P. Ltd. v. State of Maharashtra (2009) 10 SCC 388*, emphasising that interim orders cannot become a fait accompli before final hearing.

41. The Respondent No. 41 contended that additional authorities, including *Kaka Ram v. Mangat Ram (CM(M) No. 20/2024)*, *State of U.P. v. Ram Sukhi Devi (AIR 2005 SC 284)* and *Cotton Corporation of India v. United Industrial Bank (1983 AIR 1272)*, uniformly establish that interim relief is ancillary, prohibitory or preventive in nature and cannot mirror or pre-empt the final relief. The Respondent No. 41 submitted that the Appellant's attempt to elevate the interim order to confer absolute development rights over Tower-5 is legally misconceived and must be rejected outright.

42. The Respondent No. 41 submitted that upon commencement of CIRP, Section 14(1)(a) of the Code imposes a comprehensive moratorium prohibiting institution, continuation or execution of any suits, proceedings or arbitration against the Corporate Debtor. The Respondent No. 41 contended that the expression "proceedings" has been expansively interpreted by the Hon'ble Supreme Court in *P. Mohanraj v. M/s. Shah Brothers Ispat Pvt. Ltd. (AIR 2021*

SC 1308) to include arbitral proceedings, thereby mandating a stay on the ongoing arbitration between the Appellant and the Corporate Debtor.

43. The Respondent No. 41 submitted that the moratorium extends to all actions affecting the assets of the Corporate Debtor, including the development rights over Tower-5, which stand protected following the termination letter dated 20.06.2022. The Respondent No. 41 contended that any continuation of arbitration would undermine the breathing space intended by the moratorium and must be stayed until completion of the CIRP.

44. The Respondent No. 41 submitted that the Code provides a complete and self-contained mechanism for resolution of all claims during CIRP. The Respondent No. 41 contended that the Appellant's appropriate remedy is to file its claim before the Resolution Professional for verification and consideration in the resolution plan, rather than pursuing parallel arbitration that conflicts with the moratorium under Section 14 of the Code. The Respondent No. 41 submitted that development rights over Tower-5 being assets of the Corporate Debtor, any claim thereto must be channelled through the collective insolvency process to ensure equitable treatment of all stakeholders.

45. The Respondent No. 41 submitted that the foundational Development Rights Agreement dated 20.09.2014 between M/s Aims Golf Town Developers Pvt. Ltd. and the Corporate Debtor expressly mandated under Clauses 6.5, 6.6, 11.6 and 11.7 the execution of tripartite or quadripartite agreements with prospective buyers to safeguard title and ownership vesting solely in the lessee.

The Respondent No. 41 contended that the complete absence of any such tripartite agreement renders the subsequent Development Rights Agreement dated 22.02.2017 between the Corporate Debtor and the Appellant null and void ab initio, as it violates the essential contractual safeguards of the foundational agreement.

46. The Respondent No. 41 submitted that the Suspended Board of Directors of the Corporate Debtor, despite due service of notice on 15.02.2024, deliberately chose not to appear or contest the Company Petition before the Adjudicating Authority. The Respondent No. 41 contended that the same Board, however, actively participated in the arbitration proceedings and facilitated recording of statements supporting the Appellant. The Respondent No. 41 submitted that this selective and inconsistent conduct demonstrates clear collusion and conflict of interest, warranting outright dismissal of the appeal at the threshold.

47. The Respondent No. 41 specifically denied the Appellant's unsubstantiated claim of having expended over Rs. 20 Crore for acquisition of alleged irrevocable development rights in Tower-5 and construction of 17 floors thereof, for want of any proof. The Respondent No. 41 contended that the Adjudicating Authority correctly included units in Tower-5 as part of the Corporate Debtor's assets while satisfying the Section 7 threshold. The Respondent No. 41 submitted that the Appellant's reliance on interim orders is misplaced, that Tower-5 forms integral assets of the Corporate Debtor, and that the Impugned Order dated 19.11.2024 is sustainable in law and free from any error warranting interference.

48. The Respondent No.41 submitted that the Appellant has deliberately suppressed material facts relating to pre-CIRP termination of the Agreement, namely: (i) termination letter dated 20.06.2022; and (ii) its reply dated 27.06.2022. The Corporate Debtor validly terminated the Agreement and revoked the GPA in terms of Clauses 1 and 6 of the Addendum read with Clause 15.8 of the Agreement. By such calculated suppression, the Appellant has attempted to mislead this Appellate Tribunal into passing interim orders and adjudicating issues wholly extraneous to the present Appeal. The failure to disclose termination of the Agreement constitutes deliberate suppression of material facts intended to secure undue advantage. It is settled law that a litigant must approach the Court with correct and complete disclosure.

49. Concluding arguments the Respondent No. 41 requested this Appellate Tribunal to dismiss the present Appeal.

Findings

50. We observe that the star point of the Appellant is that it has irrevocable, absolute and exclusive rights for development and alienation of units in Tower 5 of the Project vide Development Right Agreement dated 22.02.2017, Addendum dated 15.10.2020 and registered Power of Attorney dated 16.03.2017. The Appellant submitted that it spent over Rs. 20 crores for acquiring the rights in Tower 5 and constructing the 17 floors of the said Tower. The Appellant conceded that through the present appeal, the Appellant is aggrieved to the limited extent

of observations at Paragraph 6.1, 6.7-6.13 of the Impugned Order dated 19.11.2024.

51. We consciously observe that the Appellant has not impugned the initiation of CIRP against the Corporate Debtor by allottees of the Corporate Debtor the present Appeal is only against adverse observations in respect of alleged rights of Appellant in Tower 5.

52. It is noted that on account of the Corporate Debtor's failure to hand over possession of flats, R1-R40 initiated CIRP under Section 7 for the project which comprised Towers 3, 4, and 5. During the proceedings, the Appellant filed I.A. No. 2197 (ND)/2024 to place certain interim arbitration orders of the Delhi High Court on record. The Adjudicating Authority considered this limited prayer and, while deciding Section 7, examined the existence of debt, default, and statutory threshold. The Adjudicating Authority also considered the overriding effect of Section 238 of the Code over other laws, including Arbitration, and admitted the project into insolvency on 19.11.2024 by passing two orders, one under the I.A. No. 2197 of 2024 filed by the Appellant, clarifying it would be heard along with the Section 7, and the Section 7 order itself, admitted after considering the specific prayer in the I.A. No.2197 of 2024, in accordance with Code.

53. We take into consideration that during section 7 proceeding against the Corporate Debtor, the Appellant filed LA. No. 2197 (ND)/2024 to place certain interim orders of the Hon'ble Delhi High Court on record, without seeking exclusion of Tower No. 5 or adjudication of title. The Adjudicating Authority

considered the I.A. No. 2197 of 2024 w.r.t. this specific prayer and, while deciding Section 7, examined the statutory parameters of debt, default, and threshold. The Adjudicating Authority decided that due to the overriding effect of Section 238 of the Code over all other laws, including Arbitration, held that the interim orders with respect to Arbitration, not being in rem, could not impact the CIRP.

54. It has been argued that the development rights over Tower No. 5 constitute “property” and hence “assets” of the Corporate Debtor under Sections 3(27), 18(f), and 25(2)(a) of the Code.

At this stage we take into consideration the relevant section of the Code which reads as under:

“Section 3: Definitions

(27) “property” includes money, goods, actionable claims, land and every description of property situated in India or outside India and every description of interest including present or future or vested or contingent interest arising out of, or incidental to, property;

Section 18: Duties of interim resolution professional.

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including—

(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

- (ii) assets that may or may not be in possession of the corporate debtor;*
- (iii) tangible assets, whether movable or immovable;*
- (iv) intangible assets including intellectual property;*
- (v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;*
- (vi) assets subject to the determination of ownership by a court or authority;*

Section 25: Duties of resolution professional.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely:—

- (a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;*

(Emphasis supplied)

55. It is therefore important to look into the ratio laid down by the Hon'ble Supreme Court in Victory Iron Works Ltd. vs. Jitendra Lohia & Anr., Civil Appeal No. 1743 of 2021, where Hon'ble Supreme Court of India has laid down legal position. The relevant portion reads as under:

“35. From the sequence of events narrated above and the terms and conditions contained in the Agreements entered into by the parties, it is more clear than a crystal that a bundle of rights and interests were created in favour of the Corporate Debtor, over the immovable property in question. The creation of these bundle of rights and interests was actually

for a valid consideration. But for the payment of such consideration, Energy Properties would not even have become the owner of the property in dispute. Therefore, the development rights created in favour of the Corporate Debtor constitute “property” within the meaning of the expression under Section 3(27) of IBC. At the cost of repetition, it must be recapitulated that the definition of the expression “property” under Section 3(27) includes “every description of interest, including present or future or vested or contingent interest arising out of or incidental to property”. Since the expression “asset” in common parlance denotes “property of any kind”, the bundle of rights that the Corporate Debtor has over the property in question would constitute “asset” within the meaning of Section 18(f) and Section 25(2)(a) of IBC. “
(Emphasis supplied)

The above ratio, laid down by the Supreme Court, is self-explanatory.

56. In the contextual background, it is sufficed to note that the impugned Order was passed initiating CIRP against the Corporate Debtor with Separate order disposed of I.A. 2197/2024. We note that the Appellant filed two Appeals before us. It is Company Appeal (AT) (INS) No. 2207 of 2024 against Impugned Order dated 19.11.2024 which allowed admitting Section 7 Application and in Company Appeal (AT) (INS) No. 2208 of 2024 against the Impugned Order dated 19.11.2024 under which the Adjudicating Authority disposed of I.A. No. 2197 of 2024 filed by the Appellant.

57. Tower No. 5 was an integral part of the original project comprising Towers No. 3, 4, and 5 under a single RERA Reg. No. UPRERAPRJ11705. Tower 5, houses most of the project's vital infrastructure, including the swimming pool, clubhouse, DG set, electrical systems, and STP/WTP pumps, serving all three towers. Basements, entry/exit points, gates, park, and utility tanks are common to all towers, for functional integration. We also take into account that the RERA Reg. No. UPRERAPRJ11705 continues to reflect the name of the Corporate Debtor as the registered promoter of the entire project, (along-with registered address) which including Tower No. 5.

58. It is noted that on 09.12.2010, Greater Noida Development Authority executed a lease deed in favour of AIM Golf Town Developers Pvt. Ltd. in respect of plot no. GH-04 in Greater Noida measuring about 1,76,090 sq.m. and later on 20.09.2014, AIMS entered into a Development Rights Agreement with the Corporate Debtor. Another Development Rights Agreement was executed between the Appellant and the Corporate Debtor granting development rights to the Appellant in respect of Tower 5 of the project on 22.02.2017 and Addendum to the Agreement dated 22.02.2017 was executed between the Appellant and the Corporate Debtor. It is pertinent to note that additional Termination Clause was introduced in the Development Agreement dated 22.02.2017 by way of this addendum. It has been pleaded by the Respondents that on 20.06.2022, the Corporate Debtor terminated the Agreement and revoked the General Power of Attorney due to alleged Appellant's failure to complete the construction of Tower

5 within the stipulated timeframe, however the Appellant issued a reply on 27.06.2022 to the termination letter disputing the termination.

59. We also note that in OMP (I) COMM No. 311/2022, filed by the Appellant under Section 9 of the Arbitration and Conciliation Act, 1996, the Hon'ble Delhi High Court granted interim relief to the Appellant restraining the Corporate Debtor from creating third-party rights in Tower-5 of 'Morpheus Bluebell'. Hon'ble High Court, with consent of both the parties in OMP (I) COMM No. 311 of 2022, appointed Justice R. Bhat (Retd.) as a Sole Arbitrator and directed that the interim orders of 04.11.2022 and 16.01.2023 will continue till three months only. We note that during pendency of Section 7, the Appellant filed I.A. No. 2197/2024 seeking limited prayer to place certain facts on record and the Adjudicating Authority reserved orders after hearing Section 7 Petition and I.A. 2197/2024.

60. We also take note of the fact that the sole Arbitrator passed interim order on 08.06.2024, restraining the Corporate Debtor from creating third-party rights in Tower 5, however the Sole Arbitrator on 06.05.2025 held that arbitral proceedings cannot continue due to Section 14 moratorium against the Corporate Debtor in view of the CIRP. We also note that the sole Arbitrator finally terminated arbitration proceedings under Section 32(2) of the Arbitration & Conciliation Act, 1996. It is brought to our notice that the Appellant has since then, filed application seeking re-call of order dated 24.11.2025 before Sole Arbitrator, which is pending for disposal.

61. We observe that Section 14 of the Code imposes a mandatory moratorium prohibiting continuation of suits, proceedings, or arbitration against the Corporate Debtor during CIRP. The Sole Arbitrator has also terminated Arbitration proceedings in view of section 14 of the Code. We are of view that Section 238 of the Code gives overriding effect over inconsistent laws, including the Arbitration & Conciliation Act, 1996. Upon CIRP admission, determination of claims and stakeholder rights falls within the domain of the Resolution Professional at initial stages of CIRP.

62. As a matter of fact, we note that the Appellant never filed any application before the Adjudicating Authority disputing ownership of Tower-5, nor submitted any claim before the Resolution Professional asserting such rights. I.A. 2197/2024 was filed for limited prayer to place facts on record, the proceedings w.r.t. Arbitration case which was considered by the Adjudicating Authority. The Impugned Order dated 19.11.2024 does not adjudicate ownership of Tower-5, which was never in issue at the admission stage.

63. We observe that under Section 18(f) of the Code, the Resolution Professional is statutorily bound to take control and custody of all assets over which the Corporate Debtor has ownership rights. This Tribunal has also recognized the same in its earlier order dated 02.12.2024. The relevant paras of the order reads as under:

“13. It is true that RP is entitled to take possession of the assets of the CD by virtue of Section 18(1)(f), however, the

issue as to whether Tower No.5 is also asset of the CD, is an issue which is under consideration before the Sole Arbitrator, where the IRP/ RP is entitled to appear and protect the interest of the CD. The learned Counsel for the RP has also referred to Section 18(1)(f)(vi) of the IBC. The respective submissions, which been made by learned Counsel for the parties, need consideration.

15. In the meantime, in view of the interim orders passed by the Delhi High Court and the Sole Arbitrator, as noted above, the RP may not take actual physical possession of Tower No.5 except a symbolic possession, since the rights of the parties are yet to be determined with regard to Tower No.5. We make it clear that any observations made by us in the order are only prima facie observations and may not be treated as expression of any opinion on the contention of both the parties, which are yet to be finally determined.”

(Emphasis supplied)

64. We reiterate that the Appellant has conceded that it does not challenge the admission of the Corporate Debtor into CIRP and is only aggrieved by paragraphs 6.1 and 6.7 to 6.13 of the Impugned Order. The said paragraphs are dealt with hereinbelow:

A) Para 6.1 of the Impugned Order dated 19.11.2024 in CP No. IB 62(ND)/2024

The present Petition has been filed by 40 homebuyers, who are the allottees of residential dwelling units in Towers-3 and Tower-4 of the real estate project developed by the Corporate Debtor. These homebuyers collectively

represent a total of 356 flats. In considering the maintainability of the Petition, it is necessary to refer to the threshold requirement applicable to financial creditors who are allottees under a real estate project, as stipulated in the second proviso to Section 7 of the Code.

(Emphasis supplied)

We note that the Adjudicating Authority has simply recorded the facts of the case and statutory threshold for filing a Section 7 Application. Moreover, once the Appellant is not challenging admission of CIRP against the Corporate Debtor, Para 6.1 is not consequential for the Appellant. We find the Adjudicating Authority has done due diligence and has taken care to find out about the threshold being maintained by the Homebuyers who initiated Section 7 before the Adjudicating Authority. We do not find anything wrong in this Para 6.1 of the Impugned Order.

B) Para 6.3 of the Impugned Order dated 19.11.2024 in CP No. IB 62(ND)/2024

“Upon applying the statutory threshold set forth in Section 7 of the IBC to the present case, it is noted that there is some ambiguity regarding the exact number of units sold by the Corporate Debtor. However, taking a holistic approach and assuming, for the purpose of analysis, that all the units in the aforementioned towers have been sold, it can be deduced that the threshold, as laid down under Section 7, would require at least 36 homebuyers/allottees to file the Petition. The Petition

in question is filed by 40 allottees, which exceeds the statutory minimum requirement. Therefore, it is clear that the Petition is maintainable, as the requisite threshold for initiating the insolvency proceedings under Section 7 of the IBC is satisfied.”

(Emphasis supplied)

We note that the Adjudicating Authority is required to satisfy the threshold as presented in the Code. We take into consideration the relevant portion of Section 7 of the Code, for determining threshold for Homebuyers as allottees, as a class, which reads as under :-

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

(1) A financial creditor either by itself or jointly with [other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government,] [Substituted 'other financial creditors' by Act No. 26 of 2018, dated 17.8.2018.] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

[Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating 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 per cent. of the total number of such creditors in the same class, whichever is less:

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:
Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.] [Inserted by Act No. 1 of 2020, dated 13.3.2020.]
Explanation. - For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.”

(Emphasis supplied)

Above provision of the Code makes it very clear that the Adjudicating Authority was duty bound to examine the threshold. This can be found with by taking both denominator and numerator into consideration i.e., total units and no of applicants who filed Section 7 application. We wonder, if the Adjudicating

Authority do not take into account these facts then how the Adjudicating Authority can decide threshold. We must be cautious that the CIRP was sought by Homebuyers against the Corporate Debtor with respect to project and not against any specific Tower. Thus, we do not find any error in the Impugned Order. We are unable to agree with the Appellant that he has been prejudiced by this Para 6.3.

C) Para 6.7 of the Impugned Order dated 19.11.2024 in CP No. IB 62(ND)/2024

It has come to light, through IA 2197(ND)/2024, that the Corporate Debtor transferred development rights in Tower-5 to M/s SGN Universal Construction Company Private Limited under a Development Rights Agreement dated 22.02.2017. However, the subsequent Addendum dated 15.10.2020 references the transfer of land itself, which raises concerns about the timing and intent behind such a provision. This late addition to the agreement, especially after the Corporate Debtor's default in delivering possession to homebuyers in 2017, appears to be an afterthought, possibly aimed at retroactively transferring land rights.

(Emphasis supplied)

This paragraph deal with I.A. 2197/2024 filed by the Appellant itself. The said paragraph is in nature of observations by the Adjudicating Authority and no finding have been given.

It is the case of the Appellant that the Adjudicating Authority is factually incorrect in observing that by Addendum dated 15.10.2020, transfer of land happened. The Appellant is also aggrieved by the wording in above paragraph, which the Appellant feels are unjustified. In this connection, we note that even if the Adjudicating Authority has incorrectly recorded the land issue (as per the Appellant it was for Additional FSI), it does not effect the Impugned Order, as the Appellant's case is only w.r.t. right in Tower 5. We are of view that other observation of the Adjudicating Authority might have been recorded in given context, background of the case, keeping paramount interest of Homebuyers, who most of the time suffer the most. We also note that the Adjudicating Authority has used non definitive words like "appears"..... "possibly....", which do not determine about rights over Tower 5. In view of this, we are not impressed with the arguments of the Appellant on this issue.

D) Para 6.8 of the Impugned Order dated 19.11.2024 in CP No. IB 62(ND)/2024

"As a matter of general prudence, if the possession of the flats was to be handed over in June 2017, when the Corporate Debtor signed the first Development Rights Agreement on 22.02.2017, substantial progress on construction should have been made by that time, had everything proceeded as planned. However, it appears that no substantial work had been completed as of 22.02.2017, and consequently, possession could not have been transferred in June 2017. In light of this, it seems that the Corporate Debtor, unable to

fulfill its commitment to deliver possession, sought to mitigate its liabilities by transferring the development rights of Tower-5. This transfer could be viewed as an attempt to salvage at least a portion of the project by retroactively adjusting its contractual obligations, thereby raising further questions about the timing and motivations behind such actions.”

(Emphasis supplied)

This paragraph is in continuation of para 6.7 discussed above which deal with I.A. 2197/2024 filed by the Appellant itself. The paragraph 6.8 is also in nature of observations. No specific finding has been given regarding final outcome on rights of either party over Tower 5.

It is fact that the entire project was conceived by the Corporate Debtor itself and the Appellant was not involved when project was launched. It is also a fact that the Appellant was indeed a contractor of the Corporate Debtor and its due were not paid and to that extent it became Operational Creditor of the Corporate Debtor. It is also a vital fact that flats were to be delivered to the Homebuyers by June, 2017. We may assume that perhaps, in this background, the Adjudicating Authority has given observation in para 6.8. However, the Adjudicating Authority has not given its findings, not even preliminary finding, about the Appellant’s alleged rights or claims over Tower 5. Therefore, we are not in position to accept the pleadings of the Appellant on this account.

E) Para 6.9 of the Impugned Order dated 19.11.2024 in CP No. IB
62(ND)/2024

We have also taken into consideration the order of Hon'ble Delhi High Court dated 15.03.2024 in OMP (I) (COMM) 311 of 2022, whereby the Hon'ble Court appointed Hon'ble Justice R. Bhat (Retd.) as the sole Arbitrator to resolve the dispute between the parties namely M/s SGN Universal Construction Company Private Limited and the Corporate Debtor.

(Emphasis supplied)

The paragraph merely records orders of the Hon'ble High Court and Sole Arbitrator. This is precisely the relief sought by the Appellant in I.A. 2197/2024. At this stage, we note that prayer was made by the Appellant before the Adjudicating Authority in its I.A No. 2197 of 2024, which reads as under:-

“17. In light of the aforesaid facts and submissions, it is most respectfully prayed that this Hon'ble Adjudicating Authority may be pleased to:

A. Pass an order taking on record the aforementioned facts so as to ensure that the orders of this Hon 'ble Tribunal do not conflict with the orders of the Hon 'ble Delhi High Court as presently in force;

B. Pass any such further orders as this Hon'ble Adjudicating Authority may deem fit in the interest of justice.”

(Emphasis supplied)

We note that the Adjudicating Authority has recorded the facts w.r.t Arbitration as requested by the Appellant. We are perplexed as how the Appellant

is feeling aggrieved by the same as they were sought by the Appellant itself to be noted by the Adjudicating Authority and the Impugned Order recorded same in Para 6.9 of the Impugned Order. We do not find merit in the contentions of the Appellant on this Para 6.9 and reject the same.

F) Para 6.10 and 6.11 of the Impugned Order dated 19.11.2024 in CP No. IB 62(ND)/2024

“We further take note of Section 238 of the Insolvency and Bankruptcy Code, 2016, which unequivocally provides that the provisions of the IBC shall override any other conflicting law. This provision reads:

“Section 238 - Provisions of this Code to override other laws:

The provisions of this Code shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.”

This provision is a clear and unambiguous declaration that, in the event of any inconsistency or conflict between the provisions of the IBC and any other law, the provisions of the IBC shall take precedence. This overriding effect includes conflicts with other statutes, such as the Companies Act, 2013, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI Act), and the SARFAESI Act (Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002).

6.11 Several authoritative decisions by the Hon’ble Supreme Court and High Courts have consistently affirmed the primacy of the IBC over other statutory provisions,

particularly in matters concerning insolvency resolution and creditor rights. Some of the relevant decisions are summarized as follows:

a) Swiss Ribbons Pvt. Ltd. v. Union of India (2019) 4 SCC 17:

In this landmark judgment, the Hon'ble Supreme Court upheld the constitutional validity of the IBC and affirmed that the provisions of the Code supersede other laws relating to corporate insolvency. The Court stressed the necessity of the IBC to facilitate a time-bound resolution process and stated that the Code provides a "uniform framework" for addressing insolvency.

b) State Bank of India v. V. Ramakrishnan (2021) 7 SCC 170:

The Hon'ble Supreme Court observed that the provisions of the IBC take precedence over the provisions of other statutes that deal with the enforcement of recovery and security interests. It stated that the resolution process under the IBC is the primary process, and other recovery mechanisms cannot override it.

c) Lalit Kumar Jain v. Union of India (2020) 9 SCC 821:

In this case, the Court reinforced the point that any provision in a law that conflicts with the IBC will not hold precedence. The Court specifically held that the IBC is meant to "override" any conflicting law, including the Companies Act, 2013, when it comes to corporate insolvency."

(Emphasis supplied)

We observe that para 6.10 & 6.11 bring out well established legal position as stipulated by the Hon'ble Supreme Court of India as well as the Appellate Tribunal in catena of judgement. We do not find any error whatsoever, in this para 6.10 & 6.11 of the Impugned Order and reject the arguments of the Appellant that it is aggrieved by the same.

G) Para 6.12 of the Impugned Order dated 19.11.2024 in CP No. IB 62(ND)/2024

“Moreover, we note that the interim stay order passed by the Delhi High Court specifically pertains to the Corporate Debtor and does not constitute a stay in rem. As such, the stay order will not affect the ongoing Corporate Insolvency Resolution Process (CIRP) under the IBC, provided the stay does not prevent the continuation of the insolvency proceedings. It is pertinent to observe that arbitration proceedings cannot act as a hindrance to the IBC process. The IBC is a self-contained code with its own mechanisms, and Section 238 of the Code explicitly ensures that the provisions of the IBC override any other law, including the Arbitration and Conciliation Act, 1996. Once insolvency proceedings are initiated under the IBC, they take precedence over all other legal proceedings, including any parallel arbitration proceedings.

H) Para 6.13 of the Impugned Order dated 19.11.2024 in CP No. IB 62(ND)/2024

“This principle has been consistently reaffirmed by the Hon'ble Supreme Court in various judgments, which uphold

the supremacy of the IBC over other dispute resolution mechanisms, such as arbitration. Relevant rulings in this regard include:

a) K. Kishan v. Vijay Nirman Company Pvt. Ltd. (2020) 16 SCC 308:

*The Hon'ble Supreme Court held that **even if a matter is pending arbitration, the corporate insolvency resolution process (CIRP) can be initiated and continued under the IBC. Arbitration cannot hinder or stay the process of insolvency resolution.** The Court affirmed that IBC has a distinct and independent procedure for dealing with insolvency matters, and arbitration cannot bypass or stall the IBC process.*

b) Erstwhile Surya Constructions Pvt. Ltd. v. Union of India (2019) 2 SCC 386:

The Court emphasized that once the insolvency process is triggered, no other proceeding, including arbitration, can hinder or interfere with the resolution or liquidation process. The IBC process is meant to be timebound and has precedence over other recovery or dispute resolution mechanisms like arbitration.”

(Emphasis supplied)

65. We note that Para 6.12 and 6.13 of the impugned order clarifies that the interim stay passed by the Delhi High Court pertains only to the Corporate Debtor and is not a stay in rem. Therefore, it does not affect the ongoing CIRP, which being a proceeding in rem, continues unaffected. Further the reliance by Appellant on the Development Right Agreement dated 22.02.2017 and

Addendum dated 15.02.2020 also need to be looked into in details by the Resolution Professional, post CIRP, in view of fact that the Respondents are of view that the same was allegedly terminated by the Corporate Debtor vide notice dated 20.06.2022, and no proprietary or development rights allegedly survive in favour of the Appellant, and Tower No. 5 forms part of the Corporate Debtor's assets under CIRP. It is the case of the Respondents that any claim arising from the terminated Development Right Agreement renders the Appellant an Operational Creditor, whose sole remedy is to file a claim before the RP. All these issues are wide open for all the parties and are to be dealt by the Resolution Professional and later by the Adjudicating Authority at appropriate stage, as and when and if required.

66. We note that the Appellant had filed two appeals earlier i.e. Company Appeal (AT) (INS) 2208/2024 and Company Appeal (AT) (INS) 2207/2024. The Appellant withdrew Company Appeal (AT) (INS) 2208/2024. The relevant portion of this Appellate Tribunal's earlier order reads as under:

“ **Comp. App. (AT) (Ins) No. 2208 of 2024**

After arguing for some time, Counsel for the Appellant prays for withdrawal of this appeal with liberty to raise the issue of relevance the documents in appeal no. 2207 of 2024.

Counsel for the Respondent has not raised any objection in this regard. Therefore, the present appeal is hereby dismissed as withdrawn with aforesaid liberty.

Comp. App. (AT) (Ins) No. 2207 of 2024 On the request
of Counsel for the parties, adjourned to 07th October, 2025.”

(Emphasis supplied)

Thus, by this order we are disposing of only remaining Company Appeal (AT)
(Ins.) No. 2207 of 2024.

67. In view of above detailed discussion, we do not find any error in the
Impugned Order. The appeal fails and stand rejected. We make it clear that any
observations made by us in the order are only prima facie observations and may
not be treated as expression of any opinion on the contention of both the parties,
which are yet to be finally determined. No order as to cost. I.A.'s if any, are
closed.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

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