NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

I.A. No. 2928 of 2026
In
Company Appeal (AT) (Insolvency) No. 406 of 2022

IN THE MATTER OF:

Ram Kishor Arora **...Appellant**
Suspended Director of Supertech Ltd.

Versus

Union Bank of India & Anr. **...Respondents**

Present:

For Applicant/ Appellant	**:**	**Mr. Ritin Rai, Sr. Advocate with Mr. Gudipati Gayatri Kashyap, Mr. Ranvijay Gohain, Ms. Anam Ahmad, Mr. Deepak Kumar, Advocates.** **Mr. Abhijeet Sinha, Sr. Advocate with Mr. Mudit Sharma, Ms. Nandini Sharma, Mr. Shashank Shekhar Pandey, Mr. Ritesh Dhyani, Advocates.**
For Respondents	**:**	**Sh. Rajiv Jain, Amicus Curiae, Ms. Eshna Kumar, Mr. Zaid Hashmat, Ms. Shruti Sakshi, Advocates, Amicus.** **Ms. Aakanksha Nehra, Mr. Shubham Jaiswal, Mr. Mayank Biyani, Himangi Arora, Advocates for Applicant in I.A. 2962 of 2026.** **Mr. Rachit Mittal, Mr Shubham Santhalia, Kanishk Raj, Srishti Agarwal, Advocate for NOIDA Authority.** **Mr. Mudit Sharma, Ms. Nandini Sharma, Mr. Shashank Shekhar Pandey, Mr. Ritesh Dhyani, Advocates for R-4.**

O R D E R

ASHOK BHUSHAN, J.

This application has been filed by NBCC (1) Ltd. praying for modification and clarification of the order dated 12.12.2024 passed by this Tribunal in the present appeal.

2. Brief background facts of the case giving rise to the application need to be noticed for appreciating the prayers made in the application:

i. Corporate Insolvency Resolution Process (**"CIRP"**) against the corporate debtor Supertech Ltd. commenced vide order dated 25.03.2022 by admitting the Section 7 application filed by the Union Bank of India.

ii. The present appeal has been filed by the Suspended Director, challenging the admission order. The order dated 10.06.2022 was passed in the appeal directing for constitution of the Committee of Creditors (**"CoC"**) with regard to one project of corporate debtor namely Eco Village – II and other projects were directed to be kept as on-going project.

iii. Subsequent to the order dated 10.06.2022, this Tribunal on 31.05.2024 directed the project-wise resolution of the corporate debtor. Various proposals for project-wise resolution was received and matter was under consideration when an application was filed by the NBCC being I.A. No. 6557/2024 expressing an interest to undertake construction of 16 projects of the corporate debtor. NBCC also filed its revised term of reference.

iv. This Tribunal heard the learned counsel for the NBCC, learned counsel for the appellant and Interim Resolution Professional (**"IRP"**) and passed an order on 12.12.2024 allowing the I.A. No. 6557/2024 of the NBCC and issuing various directions as per term of reference for completion of 16 projects of the corporate debtor as has been noted in the order. Various directions were issued for completion of 16 projects.

v. Various operational creditors, suspended directors and other parties filed appeals against the order dated 12.12.2024 being Civil Appeal No. 2626/2025 and other connected appeals challenging the order dated 12.12.2024. The Hon'ble Supreme Court heard all the appeals and the order of this Tribunal dated 12.12.2024 was affirmed subject to certain modification as indicated in the order of the Hon'ble Supreme Court dated 05.02.2026. At the time of hearing, NBCC raised certain objections with regard to terms and conditions imposed by the NCLAT in that order. Hon'ble Supreme Court granted liberty to the NBCC to move an application before the NCLAT and seek clarification. In paragraph 25 of the order of the Hon'ble Supreme Court following has been directed:

> ***"25.** We are also cognizant of the fact that NBCC had serious objections to certain terms and conditions imposed by the NCLAT in the impugned order, and it is highlighted that while negotiating with the home buyers or the IRP, the NBCC did not agree to conditions that would ultimately render its proposal unviable. In this regard, we do not express any opinion; however, we grant NBCC the liberty to move an application before NCLAT and may seek clarification."*

vi. The present application has been filed on account of the above liberty granted by the Hon'ble Supreme Court. In the present application, appellant has prayed for following reliefs:

> *"i. Modify the order dated 12.12.2024 and issue necessary directions/orders granting NBCC waiver*

from provisions of RERA Act, 2016, and other statutory provisions;

ii. Issue necessary directions/orders granting the Apex Committee with Veto Powers over the Project Wise Committee for decision making;

iii. Modify the order dated 12.12.2024 and issue necessary clarifications / modifications to the direction at SI. No. 11 that the Applicant will not infuse funds at the outset and only facilitate the Apex Committee to generate the initial infusion of 100 crores;

iv. Modify the order dated 12.12.2024 and issue necessary directions/orders for grating NBCC a PMC fee of 8% and separate marketing fee of 1% on the sale value of the project;

v. Pass such other and further orders that this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case."

3. We have heard learned counsel for the applicant, learned counsel for the appellant, learned counsel for the homebuyers as well as Amicus Curiae Mr. Rajiv Jain.

4. We proceed to consider the prayers made by the application in seriatim.

Prayer (i):

5. The first prayer made by the appellant is that this Tribunal may issue a direction granting NBCC waiver from provisions of RERA Act, 2016. In the application, NBCC has referred to one of the conditions as claimed in the term of reference under the heading **"RERA Exemptions".** In paragraphs 4 of the application, following has been pleaded:

*"4… A.) **RERA Exemptions** That one of the main conditions submitted by the Applicant before this Hon'ble Tribunal in its ToR, which was a condition precedent to undertake works of 16 Supertech projects, was seeking waiver from compliance of statutory provisions like building regulations and the provisions*

of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA"). That in its ToR, the applicant at Condition 1.4 (d) (iii) sought the following:

> *"(iii) Hon'ble NCLAT may consider issuing appropriate orders to exempt NBCC as well as projects from the application of various provisions of RERA, including Section 4 (2) (l) (D) of RERA in relation to maintenance of a separate account in a Scheduled Bank and deposit of 70% (Seventy percent) of the amounts realised from the allottees with respect to the relevant Project into the separate account, Section 14 (2) relating to the approvals required from the allottee/ allottees, etc, and Section 15 relating to the requirement of prior consent of allottees for transfer or assignment of majority rights and liabilities of a promoter. "*

That from the above, it can be seen that complete exemptions were sought from this Hon'ble Tribunal from various provisions of RERA both to NBCC and the 16 projects of Supertech, which was sought not only because of the requirement of approvals/renewals of various plans, sanctions, NOCs, etc., but also because of various provisions like Section 14 (2) relating to the approvals required from the allottee/ allottees, etc, Section 15 relating to the requirement of prior consent of allottees for transfer or assignment of majority rights and liabilities of a promoter, Section 18 ofRERA, which imposes the primary obligation on builders (promoters) for delay compensation (under Section 71) if possession is not delivered as per schedule, penal provisions (under Sections 59-64), etc..."

6. In our order dated 12.12.2024, we have already issued necessary directions, which has been noticed in paragraph 81, direction which was sought by NBCC with regard to statutory bodies having accepted, which acceptance is noticed in paragraph 83 of the order to the following effect:

> *"83. Directions 3 as suggested are approved, which shall with respect to all 16 Projects. Directions contained in C 3 are approved..."*

7. With regard to exemption from compliance of RERA Act, 2016, in paragraph 85(3), this Tribunal directed as follows:

> *"85. We allow the IA 6557/2024 to undertake the 16 Projects as listed in Annexure A (except Doon Square). All necessary steps be undertaken by the NBCC. We dispose of IA 6557/2024, accordingly with following directions:*
>
> > *(3) The NBCC (I) Ltd. cannot be allowed exemption from complying statutory requirements under different statutes regulating building regulations and RERA Act 2016."*

8. Learned counsel for the appellant in support of his submission has relied on the judgment of the Hon'ble Supreme Court in ***'Bikram Chatterji & Ors.' Vs. 'Union of India & Ors.'*** reported in **[(2019) 19 SCC 161]** and order passed by the Hon'ble Supreme Court in ***'Bhupinder Singh' Vs. 'Unitech Ltd.'*** in **[Civil Appeal No.10856/2016],** where Hon'ble Supreme Court has granted exemption from provisions of RERA Act, 2016.

9. The prayers made by the NBCC as noted above in paragraph C 3 was already granted by issuing necessary directions to the statutory authority which includes the RERA to consider and grant necessary approval within the time bound period, which amply protects the interest of the NBCC.

10. We are of the view that this Tribunal is not competent to grant any exemption from compliance of the statutory provisions i.e., RERA Act, 2016.

Thus, prayer (i) as claimed in the application cannot be granted.

<u>Prayer (ii):</u>

11. Applicant has sought necessary direction granting the Apex Committee with Veto Powers over the project-wise committee for decision making. The Apex Court Committee having been constituted as Apex body for overall supervision of all 16 projects handed over to the NBCC. In paragraph 78 of the order dated 12.12.2024 constitution of the Apex Court Committee and project-wise committee as well as necessary direction to safeguard the interest of the stakeholders have already been made in paragraph 78 under the Heading A, paragraph 1(iv), the Apex Court Committee is empowered to take all decisions in relation to completion of all the projects including the following directions. Paragraph 1(iv) is as follows:

> ***"1) FORMATION OF APEX COURT COMMITTEE:***
>
> ***iv.*** *The Apex Court Committee may take all decisions in relation to completion of all the projects including, but not limited to, the following:*
>
> > *a. Approval and allocation of overall interim funding which may be required for all the projects. Such funding shall be treated as interim finance as defined and specified under the provisions of the Insolvency and Bankruptcy Code, 2016 ("IBC") and shall be paid in priority over others.*
> >
> > *b. Approve the formation of a Special Purpose Vehicle ("SPV"), if required, for raising interim finance.*
> >
> > *c. Approval of proposals and reports submitted by NBCC at various stages of work, approve estimated cost, projected costs, actual costs as applicable and make available required funds to NBCC for completion of the balance work and any other direction necessary for comprehensive completion of all the projects*

d. Approval of costs for appointing any marketing or other agencies or other consultants common for all projects.

e. Approval of common expenses towards appointment of professionals, auditors, corporate employees and staff, legal, administrative and other head office expenses.

f. Allocation of funds from project to common pool for meeting common expenses.

g. Allocation of funds from surplus project to deficit project.

h. Distribution/ allocation of surplus towards any dues of lenders, statutory authorities and other creditors as on Insolvency commencement date ("ICD") which remains unpaid from the respective project's cash flows.

i. Allocation of funds for repayment of any common dues of the corporate debtor as on the insolvency commencement date, e.g. statutory dues, which cannot be allocated towards any specific project.

j. Any other action in relation to the Corporate Debtor which may be required to ensure the smooth operations of the projects."

12. Apex Court Committee being the highest body to supervise all 16 projects given to the NBCC, we are of the view that the Apex Court Committee is the final authority to take decision and the input provided by NBCC, any decision taken by project-wise committee can always very well be placed before the Apex Court Committee for consideration and direction. It is clarified that the decision of the Apex Court Committee shall be final with respect to any decision taken by the project-wise committee. In the mechanism provided, it is inherent that Apex Court Committee is to take a final decision, hence the prayer made in the application that Apex Court

Committee be given Veto Powers over the project-wise committee for decision making does not require any specific direction or consideration.

13. It is clarified that Apex Court Committee is entitled to take final decision with respect to any decision taken by project-wise committee, when the decision is placed before the Apex Court Committee for consideration and direction.

<u>Prayer (iii):</u>

14. It is prayed that direction dated 12.12.2024 is modified/clarified that the applicant shall not infuse funds at the outset and only facilitate the Apex Court Committee to generate the initial infusion of Rs.100 crore. In the ultimate direction which was issued on 12.12.2024. In paragraph 85(11) following was directed:

> *"85. We allow the IA 6557/2024 to undertake the 16 Projects as listed in Annexure A (except Doon Square). All necessary steps be undertaken by the NBCC. We dispose of IA 6557/2024, accordingly with following directions:*
>
> > *(11) NBCC shall obtain necessary finance of Rs.100 crores as suggested and deposit in the above designated account to be spent as per decision of Apex Court Committee for carrying out the Project."*

15. The above direction was with respect to obtaining necessary finance of Rs.100 crore, the intendment of the order was that finance has to be obtained with assistance of NBCC, NBCC was not required to deposit Rs.100 crore of its own funds. We thus clarify that the above direction was not to the effect that NBCC shall infuse funds of Rs.100 crore rather said direction was only to facilitate in obtaining finance by the NBCC.

<u>Prayer (iv):</u>

16. The appellant submitted that the order dated 12.12.2024 with regard to grating NBCC a PMC fee of 8% and separate marketing fee of 1% on the sale value of the project be granted by modifying the order dated 12.12.2024. In the order, NBCC in its terms of reference has claimed fee of 8% project as PMC fee and 1% was claimed as marketing fee @ 1% on the sale value of the project. In our direction, we have directed that NBCC shall not be entitled to claim market fee of 1% on sale value and said shall be included in the 8% of PMC fee.

17. Learned counsel for the appellant has prayed for the modification of the said direction. In paragraph 85(12) with regard to PMC fee and marketing fee, we have issued following directions in paragraph 85(12):

> *"85. We allow the IA 6557/2024 to undertake the 16 Projects as listed in Annexure A (except Doon Square). All necessary steps be undertaken by the NBCC. We dispose of IA 6557/2024, accordingly with following directions:*
>
> > *(12) In reference to TOR as suggested by NBCC regarding its fee of 8% as PMC Fee, we are of the view that marketing fee of 1% as suggested shall be included in 8% fee and no separate marketing fee shall be chargeable."*

18. We having already held that 8% fee including the marketing fee of 1%, we do not see any necessity to modify the said direction. We only clarify that total of PMC fee and marketing fee being pegged at 8% the PMC fee should be charged at the rate of 7% and marketing fee at the rate of 1%.

The direction is clarified to the above extent.

19. The application filed by the NBCC need to be disposed of in the above manner.

Application is disposed of accordingly.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

22nd May, 2026

himanshu