

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1344 of 2026

**[Arising out of Impugned Order dated 01.06.2026 in Restored Company
Petition (IBC) 9/ND/2025 [Old Case CP (IB) No.196/(ND)/2023 passed by the
Hon'ble Bench-IV, National Company Law Tribunal, New Delhi].**

IN THE MATTER OF:

**Monitoring Committee of Earth Towne Project
Earth Infrastructures Limited**

Represented by its Member of Monitoring
Committee: Mr. Harish Taneja

Office at:

A1, 228, Block A1, Nauroji Nagar, Safdarjung
Enclave, New Delhi-110029.

Email: info.htlegal@gmail.com

...Appellant

VERSUS

1. Earth Towne Infrastructure Private Limited

Registered office at:

B-100, Second Floor, Naraina Industrial Area,
Phase-1, South West Delhi-110028. Email:

cirpearthtowne@gmail.com

...Respondent No.1

2. Mr. Rajiv Bajaj

**Resolution Professional of Earth Towne
Infrastructure Private Limited**

Regd. No.:(IBBI-IPA-002/IP-N00276/2017-
2018/10834)

Resident of LG, B-269, Chattarpur Enclave, Phase II,
New Delhi, Delhi-110074.

Email: rbajajip@gmail.com

...Respondent No.2

**3. Satyabrata Mitra and other Financial Creditors
of Earth Towne Infrastructure Private Limited**

Represented through:

Earth Towne Flat Buyers Welfare Association
(Regd.)
Association of Financial Creditors Through
Mr. Satyabrata Mitra General Secretary
Office at: Plot No.GH-4, Sector-1, Greater Noida
(West), Gautam Buddh Nagar, Uttar Pradesh –
201318.

...**Respondent No.3**

Present:

For Appellant : Ms. Ekta Choudhary, Mr. Aakash Bhatt, Mr. Harish Taneja, Advocates.

For Respondents : Mr. Vinod Chaurasia, Advocate for R-1 and 2.
Mr. Rajiv Bajaj- IRP
Mr. Lakshay Agarwal, Advocate for R-3.

J U D G E M E N T

(05.10.2026)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present appeal is filed by the Appellant i.e., Monitoring Committee of Earth Towne Project, Earth Infrastructures Limited under Section 61 of the Insolvency and Bankruptcy Code, 2016, (“**Code**”) arising out of Impugned Order dated 01.06.2026 passed by the Bench-IV, National Company Law Tribunal, New Delhi (“**Adjudicating Authority**”) in Restored Company 30 Petition (IBC) 9/ND/2025 [Old Case CP (IB) No.196/ND/2023]

Earth Towne Infrastructure Private Limited is the Respondent No.1 herein.

Mr. Rajiv Bajaj Resolution Professional of Earth Towne Infrastructure Private Limited is the Respondent No.2 herein.

Satyabrata Mitra and other Financial Creditors of Earth Towne Infrastructure Private Limited is the Respondent No.3 herein.

2. The Appellant submitted that the present Appeal has been preferred against the Impugned Order dated 01.06.2026 passed by the Adjudicating Authority in Restored Company Petition (IBC) No.9/ND/2025 [Old C.P. (IB) No.196/ND/2023], whereby the application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“Code”) filed against Earth Towne Infrastructure Private Limited (“ETIPL”/“Respondent No.1”) was admitted and Corporate Insolvency Resolution Process (“**CIRP**”) was initiated against it. The Appellant stated that ETIPL is the land-owning Special Purpose Company in respect of the land on which the “Earth Towne” project is situated and that the initiation of CIRP against ETIPL, subsequent to the Judgment dated 05.05.2026 passed by the Hon’ble Supreme Court restoring the Resolution Plan of Earth Infrastructures Limited (“EIL”), has created a situation in which the implementation of the restored Resolution Plan has become legally and factually incapable of being carried out. The Appellant contended that the Adjudicating Authority failed to take into consideration this material subsequent development and proceeded to admit the Section 7 petition without appreciating its direct and fundamental consequences upon the implementation of the Resolution Plan already approved under Section 31 of the Code and subsequently restored by the Hon’ble Supreme Court.

3. The Appellant submitted that the factual background of the dispute commences with the allotment of approximately 73,942 square metres of land comprised in Large Group Housing/Builders' Residential Plot No. GH-04, Sector-01, Greater Noida, by the Greater Noida Industrial Development Authority ("**GNIDA**") to a consortium consisting of EIL, Raus Infrass Limited and Shalini Holdings Limited vide Allotment Letter dated 19.03.2010. The Appellant stated that GNIDA had formulated a Builders Scheme for plots measuring more than 60,000 square metres, under which such plots were to be allotted on lease for a period of 90 years. Clause 8 of the said Scheme specifically contemplated the constitution of a Special Purpose Company by the members of a consortium for undertaking development of the allotted plot. Pursuant thereto, the consortium incorporated ETIPL on 21.07.2010 as the Special Purpose Company and, thereafter, a Lease Deed dated 01.09.2010 was executed by GNIDA in favour of ETIPL for a period of 90 years commencing from 01.09.2010. The Appellant further stated that the Lease Deed recorded that ETIPL was constituted at the instance of the consortium for the purpose of developing and erecting the project on the subject land and that EIL held 78% shareholding in ETIPL, while Raus Infrass Limited and Shalini Holdings Limited held 11% each.

4. The Appellant further submitted that after execution of the Lease Deed, ETIPL entered into an unregistered Development Agreement dated 09.09.2010 with EIL, whereby EIL was entrusted with the right and responsibility to develop

the land. The Appellant stated that under the said arrangement, the area-sharing ratio was stipulated at 18% for ETIPL and 82% for EIL, thereby demonstrating the substantive role of EIL in the development and implementation of the project. The residential project developed upon the subject land was named “Earth Towne”. The Appellant contended that building permissions were obtained from GNIDA and a large number of homebuyers and office-space buyers booked units in the project and paid substantial amounts to EIL and, in certain cases, to ETIPL. The project was also registered with the Uttar Pradesh Real Estate Regulatory Authority. Thus, according to the Appellant, the development of the project, the financial interests of the homebuyers and the obligations towards GNIDA were intrinsically connected with EIL and ETIPL and, more particularly, with the subject land upon which the entire project was founded.

5. The Appellant stated that CIRP was initially commenced against EIL at the instance of Deepak Khanna, a financial creditor, pursuant to an application filed under Section 7 of the Code, which was admitted by the Adjudicating Authority on 06.06.2018. Thereafter, an Interim Resolution Professional was appointed, public announcement was made under Section 13 of the Code, and the Committee of Creditors (“CoC”) was constituted. The Appellant submitted that the CoC consisted of HDFC Bank and approximately 4,229 allottees, including homebuyers and office-space buyers. Subsequently, a Resolution Professional was appointed and, pursuant to the revised Form G dated 22.05.2019, three resolution applicants, namely BPT Infra Projects Private Limited, Roma and

Alpha, submitted their respective proposals. The plan submitted by BPT Infra Projects Limited was rejected, whereas the Resolution Plan submitted by Roma in respect of the “Earth Towne” project was approved by the CoC in its 14th meeting held on 26.08.2019. Thereafter, GNIDA informed the Resolution Professional vide letter dated 18.09.2019 that substantial dues amounting to Rs.148,37,46,148/- were payable to it by ETIPL.

6. The Appellant submitted that the Resolution Plan submitted by Roma was thereafter approved by the Adjudicating Authority vide Order dated 05.04.2021 passed in C.A. No.751 of 2019 in CP (IB)-401(ND)/2017. Pursuant to the said Approval Order, a Monitoring Committee was constituted for supervision, monitoring and facilitation of implementation of the approved Resolution Plan. The Appellant contended that the Resolution Plan, once approved under Section 31 of the Code, became binding upon the Corporate Debtor, its employees, members, creditors, guarantors, other stakeholders, statutory authorities and the Resolution Applicant. The Appellant further submitted that the said Approval Order was subsequently challenged before this Appellate Tribunal by GNIDA and other stakeholders and was set aside vide Judgment dated 30.01.2023. The matter thereafter travelled to the Hon’ble Supreme Court in various connected Civil Appeals.

7. The Appellant contended that the subsequent Judgment dated 05.05.2026 passed by the Hon’ble Supreme Court in Civil Appeal No.2466 of 2023 is of fundamental significance to the present proceedings. The Appellant stated that

the Hon'ble Supreme Court, after considering the factual circumstances surrounding the development of the project and the relationship between EIL and its subsidiary companies, held that the case was eminently fit for lifting the corporate veil. The Hon'ble Supreme Court found that EIL was the main driving force behind the development of the projects as well as payment of GNIDA's dues and that the subsidiary companies were only a front. On that basis, the Hon'ble Supreme Court restored the Resolution Plans of Alpha and Roma and permitted the Successful Resolution Applicants to proceed with the Resolution Plans and complete the projects within the timelines indicated therein. The Appellant submitted that the aforesaid findings were binding and constituted a material development which necessarily ought to have been taken into consideration by the Adjudicating Authority while considering the subsequent Section 7 proceedings against ETIPL.

8. The Appellant further submitted that, after the aforesaid Judgment of the Hon'ble Supreme Court, Mr. Satyabrata Mitra, the Authorized Representative, along with 145 other homebuyers/financial creditors/allottees of ETIPL, instituted Restored Company Petition (IBC) No.9/ND/2025 [Old C.P. (IB) No.196/ND/2023] under Section 7 of the Code against ETIPL. The Appellant stated that the petition alleged a default of Rs.28,64,48,786/- arising from the financial debt paid by the applicants towards purchase of their respective units and the non-delivery of flats/non-payment of the amounts paid by the applicants. The Adjudicating Authority reserved the matter for orders on 15.04.2026 and

thereafter, vide Order dated 01.06.2026, admitted the Section 7 petition and initiated CIRP against ETIPL, appointing Mr. Rajiv Bajaj as the Interim Resolution Professional. According to the Appellant, the admission of CIRP against ETIPL occurred immediately after the Judgment of the Hon'ble Supreme Court restoring the Resolution Plan of EIL and, therefore, the legal consequences of the subsequent CIRP upon the restored Resolution Plan required specific consideration.

9. The Appellant contended that the Adjudicating Authority, while passing the Impugned Order, failed to appreciate that the subject land constitutes the very foundation and substratum of the Resolution Plan approved in the CIRP of EIL. It was submitted that the "Earth Towne" project is situated upon the land owned by ETIPL and that the Resolution Plan of EIL contemplated and depended upon the development and completion of the said project. Therefore, once CIRP was commenced against ETIPL, the land-owning entity, the project land came under the control and custody of the Resolution Professional and became subject to the insolvency process of ETIPL. The Appellant stated that neither the Appellant nor the Successful Resolution Applicant could thereafter exercise the requisite authority, possession or control over the project land for implementing the Resolution Plan of EIL. Consequently, the very asset upon which the implementation of the Resolution Plan depended became subject to a separate insolvency proceeding, thereby creating an irreconcilable conflict between the two CIRPs.

10. The Appellant submitted that the Resolution Plan of EIL was fundamentally premised upon the development and completion of the “Earth Towne” project and that the availability and utilisation of the land owned by ETIPL was indispensable for such implementation. The Appellant contended that the subject land was not an ancillary or incidental asset but constituted the essential substratum upon which the entire Resolution Plan was structured. There was no alternative land, asset or development site through which the obligations contemplated under the approved Resolution Plan could be performed. Therefore, according to the Appellant, the commencement of CIRP against ETIPL created a supervening circumstance which rendered performance of the Resolution Plan impossible for reasons entirely beyond the control of the Appellant or the Successful Resolution Applicant. The Appellant emphasised that such impossibility was not attributable to any default, negligence, omission or unwillingness on their part but arose solely because the land-owning entity itself had subsequently been subjected to CIRP.

11. The Appellant further contended that the doctrine of lifting of the corporate veil, already applied by the Hon’ble Supreme Court, assumes particular significance in the present case. The Appellant submitted that once the Hon’ble Supreme Court had held EIL to be the real driving force behind the development of the project and the subsidiary companies, including ETIPL, to be merely a front, the CIRP of ETIPL could not have been considered in complete isolation from the restored Resolution Plan of EIL. According to the Appellant, the legal

effect of the Judgment dated 05.05.2026 required the Adjudicating Authority to consider the relationship between EIL and ETIPL and the consequences of placing the land necessary for implementation of EIL's Resolution Plan into a separate insolvency estate. The Appellant stated that failure to consider this binding finding resulted in an order which frustrates the very implementation of the Resolution Plan restored by the Hon'ble Supreme Court.

12. The Appellant stated that the continuation of two parallel insolvency proceedings concerning the same real estate project gives rise to conflicting rights, obligations and statutory responsibilities. On the one hand, the Resolution Plan of EIL, restored by the Hon'ble Supreme Court, requires the Successful Resolution Applicant and the Monitoring Committee to proceed with development and completion of the "Earth Towne" project. On the other hand, the CIRP of ETIPL places the land-owning entity and its assets under the control and custody of the Resolution Professional in accordance with the Code. The Appellant contended that the same land cannot simultaneously be treated as an asset required for implementation of one approved Resolution Plan and as an asset falling exclusively within the control of another insolvency process. Such a situation, according to the Appellant, creates conflicting statutory obligations which cannot be harmonised without appropriate directions from this Hon'ble Appellate Tribunal.

13. The Appellant further submitted that the interests of thousands of homebuyers are directly affected by the present situation. It was contended that

the homebuyers constitute a special class of financial creditors under the Code and that the object of the insolvency process, particularly in a real-estate project, includes preservation of the project and its completion rather than allowing competing insolvency proceedings to frustrate such completion. The Appellant relied upon the decision of the Hon'ble Supreme Court in *Pioneer Urban Land and Infrastructure Ltd. v. Union of India*, reported as (2019) 8 SCC 416, in support of the statutory recognition accorded to homebuyers as financial creditors. The Appellant submitted that permitting the present state of affairs to continue would seriously prejudice the interests of the homebuyers, defeat the objective of value maximisation and undermine the possibility of completion of the project.

14. The Appellant contended that an approved Resolution Plan under Section 31 of the Code is binding upon all concerned stakeholders and that the Resolution Plan in question had not merely been approved by the Adjudicating Authority but had subsequently been restored by the Hon'ble Supreme Court. Therefore, the implementation of such Resolution Plan could not be rendered nugatory by a subsequent event without the competent forum examining the effect of such event upon the restored plan. The Appellant stated that while Section 31 makes an approved Resolution Plan binding, the insolvency framework also empowers the adjudicatory forums to issue appropriate directions where subsequent supervening circumstances fundamentally alter the factual and legal basis upon which implementation of the plan depends. The Appellant therefore submitted

that the appropriate course was to preserve the efficacy of the restored Resolution Plan and harmonise the competing proceedings rather than permitting circumstances which make its implementation impossible.

15. The Appellant further stated that, being the Monitoring Committee constituted pursuant to the approved Resolution Plan, it was directly entrusted with supervision, monitoring and facilitation of implementation of the Resolution Plan of EIL. Therefore, once the commencement of CIRP against ETIPL created a direct impediment to such implementation, the Monitoring Committee was required to seek appropriate directions from the competent forum. The Appellant submitted that the Monitoring Committee accordingly held a meeting on 06.06.2026 and considered the effect of the Order dated 01.06.2026 initiating CIRP against ETIPL. During the meeting, the representatives of the Successful Resolution Applicant pointed out that the CIRP of the subsidiary/land-owning company would affect the viability and implementation of the restored Resolution Plan, particularly in view of the treatment of merger/demerger contemplated under the Resolution Plan. The Monitoring Committee consequently authorised Mr. Harish Taneja to draft and file an appropriate application before the Adjudicating Authority to place on record the subsequent Judgment dated 05.05.2026 of the Hon'ble Supreme Court and seek appropriate directions.

16. The Appellant submitted that pursuant to the aforesaid decision, it filed IA No.2807/ND/2026 before the Adjudicating Authority in Restored Company Petition (IBC) No.9/ND/2025, seeking dismissal/closure of the CIRP initiated

against ETIPL. However, on 02.07.2026, the Adjudicating Authority orally observed that the earlier C.P. (IB) No.196/ND/2023 had merely been restored and admitted pursuant to directions passed by this Appellate Tribunal and that the Monitoring Committee constituted in the CIRP of EIL could not file an application or interfere in the restored petition concerning ETIPL. In view thereof, the Appellant withdrew IA No.2807/ND/2026 with liberty to take appropriate legal steps. Thereafter, the Monitoring Committee again convened a meeting on 11.07.2026 and, after considering the effect of the Order dated 02.07.2026, resolved to approach this Appellate Tribunal and authorised Mr. Harish Taneja to prepare and file the present Appeal.

17. The Appellant contended that the Adjudicating Authority committed a serious error in law by failing to consider the subsequent and material Judgment dated 05.05.2026 of the Hon'ble Supreme Court before passing the Impugned Order. It was submitted that the said Judgment had restored the Resolution Plan of EIL and had specifically recorded findings regarding the real role of EIL and its subsidiary companies. The Appellant stated that the legal position governing the project had therefore materially changed before the Impugned Order was passed. The failure to consider such a subsequent and binding development, according to the Appellant, resulted in non-application of mind to a fact which had a direct bearing on the feasibility, legality and implementation of the restored Resolution Plan.

18. The Appellant further contended that the Impugned Order fails to appreciate the consequences flowing from Sections 18, 25, 30 and 31 of the Code. It was submitted that once the CIRP of ETIPL commenced, the project land came within the insolvency estate under the control and custody of the Resolution Professional, whereas the Resolution Plan of EIL requires the same land to be available for project implementation. Therefore, continuation of the CIRP against ETIPL directly obstructs implementation of the Resolution Plan restored by the Hon'ble Supreme Court. The Appellant stated that the legislative intent underlying Sections 30 and 31 would be defeated if an approved and restored Resolution Plan could be rendered incapable of implementation merely because of a subsequent insolvency proceeding concerning an entity whose asset constitutes the very foundation of the project contemplated under that plan.

19. The Appellant submitted that the principle *lex non cogit ad impossibilia* is attracted to the facts of the present case, since the law does not compel a party to perform an act which has become impossible due to circumstances beyond its control. The Appellant contended that the subsequent commencement of CIRP against the land-owning entity has made it impossible for the Successful Resolution Applicant and the Monitoring Committee to obtain the control and use of the project land necessary for implementation of the Resolution Plan. Accordingly, instead of allowing the restored Resolution Plan to be frustrated by an event beyond the control of the stakeholders responsible for its implementation, the Adjudicating Authority ought to have exercised its

jurisdiction to preserve the efficacy of the Resolution Plan and protect the interests of the stakeholders, particularly the homebuyers.

20. The Appellant lastly contended that it had the necessary locus to approach the Adjudicating Authority as well as this Appellate Tribunal, since the Monitoring Committee was constituted pursuant to the approved Resolution Plan and was entrusted with its supervision and implementation. The Appellant stated that the Impugned Order directly affects its statutory and contractual responsibilities under the Resolution Plan and prevents it from carrying out the very function for which it was constituted. It was therefore submitted that the Appellant was not a stranger to the proceedings against ETIPL but was directly and substantially affected by the commencement and continuation of the CIRP, particularly because the project land required for implementation of EIL's Resolution Plan had been brought within a separate insolvency estate.

21. The Appellant, therefore, submitted that the Impugned Order suffers from material irregularity, patent illegality and failure to consider relevant and binding material. It was contended that the Adjudicating Authority failed to appreciate the binding effect of the Judgment dated 05.05.2026 of the Hon'ble Supreme Court, the findings regarding lifting of the corporate veil, the indispensable nature of the project land, the effect of the subsequent CIRP against ETIPL and the resulting conflict between the two insolvency proceedings. The Appellant stated that the Impugned Order has the effect of frustrating the implementation of a Resolution Plan restored by the Hon'ble Supreme Court and causes serious

prejudice to the interests of the homebuyers and other stakeholders. Accordingly, the Appellant submitted that the Impugned Order is liable to be interfered with and set aside by this Appellate Tribunal in exercise of its jurisdiction under Section 61 of the Code, and that appropriate directions ought to be issued so as to harmonise the insolvency proceedings, give effect to the binding Judgment of the Hon'ble Supreme Court and preserve the implementation of the approved Resolution Plan.

22. Concluding arguments, the Appellant requested this Appellate Tribunal to set aside the Impugned Order and allow the present Appeal.

Findings

23. At the outset, we note that by the Impugned Order, the Adjudicating Authority admitted the application filed under Section 7 of the Code by Mr. Satyabrata Mitra and 145 other homebuyers of the project “Earth Towne” and initiated the CIRP against Earth Towne Infrastructure Private Limited (“ETIPL” / “the Corporate Debtor”). The Appeal, therefore, raises a question of some consequence at the intersection of group insolvency and the finality of resolution: whether, after the Hon'ble Supreme Court has, by its judgment dated 05.05.2026, restored the resolution plan for the Earth Towne project in the CIRP of the holding company, Earth Infrastructures Limited (“EIL”), and has lifted the corporate veil between EIL and ETIPL on the finding that ETIPL was “only a front”, a separate

CIRP could validly be commenced against ETIPL on 01.06.2026 at the instance of homebuyers of the very same project, in respect of the very same allotments.

24. We have heard the learned counsel for the parties and perused the record, including the synopsis filed on behalf of the Appellant dated 05.09.2026 and the documents annexed thereto.

25. The facts necessary for the disposal of this Appeal, which are largely matters of record and not in serious dispute, are set out hereunder.

a) On 19.03.2010, the GNIDA allotted Plot No. GH-04, Sector-01, Greater Noida, measuring 73,942 sq. mtrs., to a consortium comprising EIL, Raus Infrass Limited and Shalini Holdings Limited under Builder Scheme Code BRS-01/2010-(I). The scheme mandated the incorporation of a Special Purpose Company (“**SPC**”) for execution of the lease and implementation of the project. ETIPL was accordingly incorporated on 21.07.2010 as the SPC. On 01.09.2010, GNIDA executed a Lease Deed for a period of 90 years in favour of ETIPL.

b) On 09.09.2010, ETIPL executed a Development Agreement in favour of EIL, conferring upon EIL exclusive development rights over the project land. It was EIL which thereafter developed, marketed and collected monies for the residential project known as “Earth Towne”. The shareholding of EIL in ETIPL, initially 78%, was subsequently increased to 98%.

- c) On 06.06.2018, the Adjudicating Authority admitted a petition under Section 7 of the Code against EIL in C.P. (IB) No. 401/ND/2017. In the CIRP of EIL, resolution plans were invited project-wise. The resolution plan submitted by Roma Unicon Designex Consortium (“Roma”) for the Earth Towne project was approved by the Committee of Creditors in its 14th meeting held on 26.08.2019 and thereafter by the Adjudicating Authority vide Order dated 05.04.2021 in C.A. No. 751/2019. The Appellant Monitoring Committee was constituted under that approval order for supervision and implementation of the approved resolution plan.
- d) On an appeal by GNIDA, this Appellate Tribunal, by judgment dated 30.01.2023 in Company Appeal (AT) (Ins.) No. 630 of 2022 and connected appeals, set aside the approval of the resolution plans, holding inter alia that the leasehold lands held by the subsidiaries of EIL could not be dealt with in the CIRP of EIL without the consent of GNIDA. Civil Appeals were preferred before the Hon’ble Supreme Court, including Civil Appeal No. 2466 of 2023 by the Earth Towne Flat Buyers Welfare Association.
- e) During the pendency of the Civil Appeals, Mr. Satyabrata Mitra and other homebuyers of Earth Towne (“the Financial Creditors” / “the Homebuyers”) filed C.P. (IB) No. 196/ND/2023 under Section 7 of the Code against ETIPL. The Appellant has asserted, and it is not shown to be otherwise, that the petition was filed because the Homebuyers were uncertain of the fate of the Civil Appeals. The petition was dismissed by

the Adjudicating Authority on 21.10.2024 on the ground that the threshold under the second proviso to Section 7(1) of the Code was not met.

- f) That order was set aside by this Appellate Tribunal by judgment dated 04.09.2025 in Company Appeal (AT) (Ins.) No. 2171 of 2024 (**Mr. Satyabrata Mitra & Ors. v. Earth Towne Infrastructure Pvt. Ltd.**). This Appellate Tribunal held that the threshold was to be tested at the stage of filing and with reference to the units of ETIPL, and that it was met. It is of significance that this Appellate Tribunal expressly confined itself to the question of threshold and expressed no view on the merits of the petition. The petition was restored as Restored Company Petition (IBC) No. 9/ND/2025, and orders were reserved therein by the Adjudicating Authority on 15.04.2026.
- g) On 05.05.2026, that is, after orders were reserved in the restored petition but before they were pronounced, the Hon'ble Supreme Court allowed the batch of Civil Appeals by its judgment in **Alpha Corp Development Private Limited v. Greater Noida Industrial Development Authority & Ors.**, 2026 INSC 449 (which includes Civil Appeal No. 2466 of 2023) ("the Supreme Court Judgment"). The Hon'ble Supreme Court set aside the judgment of this Appellate Tribunal dated 30.01.2023, lifted the corporate veil between EIL and its land-holding subsidiaries including ETIPL, restored the resolution plans of Roma and of Alpha Corp Development

Private Limited, and directed that the time frames for completion of the projects under the restored plans shall commence from 01.06.2026.

- h) On 01.06.2026, the very date from which the implementation time frames under the restored plan were to commence, the Adjudicating Authority pronounced the Impugned Order admitting the Section 7 petition against ETIPL. The Impugned Order does not advert to the Supreme Court Judgment. It is not in dispute that the Supreme Court Judgment was not placed before the Adjudicating Authority by the Financial Creditors at any stage before the admission. The Appellant first approached the Adjudicating Authority by way of I.A. No. 2807/ND/2026, and the application was withdrawn on 02.07.2026 with liberty to avail appropriate remedies. The present Appeal was thereafter filed.
- i) Meanwhile, the IRP himself filed I.A. No. 2986/2026 before the Adjudicating Authority on or about 04.07.2026, under Rule 11 of the NCLT Rules, 2016 read with Section 60(5) of the Code, placing the Supreme Court Judgment on record and seeking appropriate directions including recall, modification or variation of the Impugned Order. This application is stated to be pending, wherein the IRP has placed on record that (i) despite the petition having been instituted by 146 homebuyers, only one claim, that of Mrs. Kavita Ray and Mr. Arvind Kumar Ray, has been received pursuant to the Public Announcement dated 06.06.2026; (ii) the Financial Creditors have not deposited the sum of Rs. 2,00,000/- directed

by the Adjudicating Authority towards CIRP expenses; and (iii) the Master Data of ETIPL on the MCA portal reflects its status as “Struck Off”, with the last financial statements filed being for the year ended 31.03.2014.

26. We note that the Adjudicating Authority, in the Impugned Order, noticed that EIL is the holding company of ETIPL, that ETIPL was incorporated as a Special Purpose Company for the purpose of the Earth Towne project, and that the petitioning homebuyers are the same set of creditors who are creditors of EIL, so that the debt of ETIPL and of EIL is related to one project, “Earth Towne”. Having so noticed, the Adjudicating Authority nevertheless proceeded to admit the application due to established debt and default. The Impugned Order proceeds on the premise that the CIRP of EIL and the Section 7 application against ETIPL could run side by side, as two independent processes. That premise may have held good while the resolution plan for Earth Towne stood set aside and the Civil Appeals were pending. The Impugned Order, however, contains no consideration of the position after 05.05.2026, when the Hon’ble Supreme Court restored the plan and lifted the corporate veil. It is this omission which lies at the heart of the present Appeal.

27. The Appellant made the submissions before us during hearing that though there is no bar on the filing of two petitions in respect of the same claim, a petition under Section 7 is not maintainable once the underlying debt stands legally resolved. The Financial Creditors and their claim in both proceedings are indistinguishable. The debt of ETIPL and of EIL relates to one project, “Earth

Towne”, and was dealt with in the insolvency of EIL, as the Adjudicating Authority itself noticed in the Impugned Order in paras 8, 11 and 13.

28. The Appellate stated that the majority of the homebuyers of Earth Towne, represented through the Earth Towne Flat Buyers Welfare Association, supported the resolution plan of Roma before the Hon’ble Supreme Court. Upon restoration of that plan on 05.05.2026, the underlying claim stood conclusively resolved before the Impugned Order was passed, leaving no subsisting default capable of sustaining a Section 7 petition.

29. It is noted that the Hon’ble Supreme Court has lifted the corporate veil, held that the subsidiary / land-owning company was only a front, restored the resolution plan and directed the successful resolution applicant to complete the project within the time frame indicated in the plan. The Impugned Order, by subjecting the very land to a separate CIRP and moratorium, renders the Supreme Court Judgment incapable of implementation.

30. We consider that a “default” under Section 3(12) of the Code requires a debt which is due and payable and not paid. In terms of the resolution plan accepted by the homebuyers, no debt of the kind asserted is due and payable by ETIPL. Reliance was placed by the Appellate on **JC Flowers Asset Reconstruction Pvt. Ltd. v. Laxmi Oil and Vanaspati Pvt. Ltd.**, Comp. App. (AT) (Ins.) No. 1052 of 2022, 2024 SCC OnLine NCLAT 532.

31. Reliance was also placed by the Appellants on **Mrs. Mamatha v. AMB Infrabuild Pvt. Ltd. & Ors.**, Comp. App. (AT) (Ins.) No. 155 of 2018, decided

on 30.11.2018, 2018 SCC OnLine NCLAT 785, for the proposition that where a landowner and a developer come together for a project, a Section 7 application lies against them jointly, and not individually against one or the other; and on Sugandhi (Dead) by LRs v. P. Rajkumar, (2020) 10 SCC 706, for the proposition that procedure is the handmaid of justice.

32. We also observe that the IRP has not opposed the Appeal. His stand, as reflected in I.A. No. 2986/2026, is that the Hon'ble Supreme Court Judgment has a direct and substantial bearing on the present CIRP. He has submitted that the leasehold land of ETIPL is the substratum of the Earth Towne project covered by the restored plan; that the moratorium under Section 14 of the Code, now in force against ETIPL and its assets, and the obligation of the successful resolution applicant to complete the project from 01.06.2026 operate over the same subject matter and are capable of coming into direct conflict; and that the Supreme Court Judgment, had it been considered by the Adjudicating Authority, may have materially influenced the decision on admission. The IRP has, however, fairly stated that he places the judgment on its own terms and does not express any independent opinion on its interpretation.

33. Upon consideration of various submissions, as noted above, the following issues arise for determination:

Issue I: Whether the Appeal at the instance of the Monitoring Committee is maintainable, and whether this Appellate Tribunal may take into account

the Supreme Court Judgment, which was not placed before the Adjudicating Authority.

Issue II: What is the legal effect of the Hon’ble Supreme Court Judgment dated 05.05.2026 upon ETIPL, its leasehold land and the Earth Towne project.

Issue III: Whether, on the date of admission, there subsisted a “default” of ETIPL within the meaning of Section 3(12) of the Code which could found a separate CIRP, having regard to the restored resolution plan, and whether the judgment of this Appellate Tribunal dated 04.09.2025 forecloses that enquiry.

Issue IV: Whether the continuation of the CIRP against ETIPL is compatible with the Hon’ble Supreme Court Judgment and the scheme of the Code.

34. Issue I: Whether the Appeal at the instance of the Monitoring Committee is maintainable, and whether this Appellate Tribunal may take into account the Supreme Court Judgment, which was not placed before the Adjudicating Authority.

35. On first issue, it needs to be appreciated that Section 61(1) of the Code confers a right of appeal upon “any person aggrieved” by an order of the Adjudicating Authority. The expression is of wide amplitude and is not confined to the parties before the Adjudicating Authority; it extends to a person whose legal rights or interests are prejudicially affected by the order. The Appellant is the body constituted, under the order of the Adjudicating Authority dated

05.04.2021, to supervise and implement the resolution plan for the Earth Towne project, a plan which now stands restored by the Hon'ble Supreme Court with the direction that its implementation time frames commence from 01.06.2026. The Impugned Order has placed the land on which that plan is to be implemented under the control of an IRP and under the moratorium of Section 14 of the Code. An order which directly impedes the implementation of a resolution plan that the Monitoring Committee is duty-bound to implement plainly affects it prejudicially. We, therefore, hold that the Appellant is a "person aggrieved" and the Appeal is maintainable at its instance.

36. In our considered opinion, the fact that the Appellant was not a party before the Adjudicating Authority does not detract from this conclusion. The Appellant had no occasion to be heard, and it did attempt to approach the Adjudicating Authority by I.A. No. 2807/ND/2026, which it withdrew with liberty upon the realisation on the part of the appellant, itself, that the Adjudicating Authority but perhaps could not revisit its order. Nor does the pendency of I.A. No. 2986/2026 file by the IRP bar this Appeal. The Appellant is not the applicant in that I.A., and the question whether the Adjudicating Authority possesses the power to recall an order of admission on the ground canvassed therein is itself open to serious doubt. The statutory appellate remedy under Section 61 is the appropriate forum for the challenge.

37. As regards the Hon'ble Supreme Court Judgment not having been placed before the Adjudicating Authority, it is settled that an appellate forum may take

notice of subsequent events and developments which have a bearing on the relief, so as to shorten litigation and to do complete justice. The present case is a fortiori, for the Supreme Court Judgment is not a subsequent event at all; it was pronounced on 05.05.2026, nearly four weeks prior to the Impugned Order, and it concerns the very project of which the Financial Creditors are allottees. Being a law declared by the Hon'ble Supreme Court and a direction issued by it in respect of the very subject matter, it binds all courts and tribunals under Articles 141 and 144 of the Constitution of India. This Appellate Tribunal cannot shut its eyes to it.

Issue I is answered in favour of the Appellant.

38. Issue II: What is the legal effect of the Hon'ble Supreme Court Judgment dated 05.05.2026 upon ETIPL, its leasehold land and the Earth Towne project.

39. We take into consideration the fact that the Hon'ble Supreme Court Judgment was placed before the Adjudicating Authority by the IRP with I.A. No. 2986/2026, which forms Document-1 of the Appellant's synopsis. The paragraphs which bear upon ETIPL, as extracted therein, are reproduced below.

“... ETIPL was incorporated only to enable GNIDA's leasing of land for development of Earth Towne and was controlled by EIL, with a 98% shareholding. ETIPL, therefore, stands on a different footing from the other two companies, insofar as GNIDA is concerned. In any event, we may note that all three companies either share common directors with EIL

and/or have their relations as directors. The only assets of the three companies were the lands leased out to them by GNIDA for these projects. The companies' shareholdings indicate that EIL was the dominant and majority shareholder."

"... Insofar as Earth Towne is concerned, as already stated, GNIDA itself required the consortium of the three companies to incorporate a SPC and it was pursuant to this requirement, that ETIPL was brought into existence. Further, the lease deed executed by GNIDA in favour of ETIPL made it clear that EIL was to be the lead member of ETIPL, retaining its majority shareholding as well as its lead role. It is an admitted fact that EIL, which had a 78% shareholding in ETIPL, increased it to 98%. ETIPL executed an agreement conferring the right to develop the project on the leased land in favour of EIL. ... Given the facts obtaining presently, we are of the firm view that this was an eminently fit case for lifting the corporate veil, as EIL was the main driving force in the development of the projects and in payment of GNIDA's dues. The subsidiary companies were only a front. In the light of this finding, we deem it unnecessary to deal with the issue raised in the context of Sections 18 and 25 of the Code, apropos the scope of the term 'assets'."

40. We further note that the Hon'ble Supreme Court noted the fact that the Earth Towne Flat Buyers Welfare Association represents about 1,600 of the approximately 1,878 homebuyers of Earth Towne, that this majority supports Roma's resolution plan, and that Roma does not propose to pass GNIDA's dues

on to the homebuyers. We also note that judgement records that securing completion of the stalled projects was “the very aim” of the CIRP against EIL, and permits the successful resolution applicants to proceed with their plans to complete, inter alia, Earth Towne and directed that the resolution plans “shall stand restored” and that the time frames for completion “shall commence from the 1st day of June, 2026”.

41. We also note that the Hon’ble Supreme Court did not decide the case on the narrow question of whether the leasehold interest was an “asset” of EIL within Sections 18 and 25 of the Code. It found it unnecessary to do so precisely because it rested its conclusion on a broader foundation, namely, that the corporate veil between EIL and ETIPL deserved to be lifted, EIL being the main driving force and ETIPL being “only a front”. The consequence of lifting the veil is that, for the purposes of the resolution of the Earth Towne project, EIL and ETIPL are treated as one economic entity, and the land standing in the name of ETIPL is dealt with under the resolution plan approved in the CIRP of EIL.

42. We accordingly hold that, by virtue of the Hon’ble Supreme Court Judgment, ETIPL’s leasehold land, which is its only asset, and the Earth Towne project upon it stand comprehended within, and are to be dealt with under, the restored resolution plan of Roma in the CIRP of EIL. The Earth Towne project has thus already been placed on the path of resolution under the Code, by the highest court of the land, with a binding timeline commencing 01.06.2026.

43. We need to take into consideration the settled principle that the corporate veil is lifted where the separate personality of a company is used to defeat the substance of a transaction or to mask the economic reality of a group. Here, the Hon'ble Supreme Court disregarded the separate personality of ETIPL so that the formal ownership of the land by ETIPL would not stand in the way of the completion of Earth Towne under the plan approved in the CIRP of EIL. A separate CIRP against ETIPL, founded entirely on its status as a distinct legal person, would resurrect the very separateness that the Hon'ble Supreme Court has disregarded, and would do so for the purpose of subjecting the same land to a different resolution. That would run directly counter to the ratio and the directions of the Hon'ble Supreme Court Judgment. What the Hon'ble Supreme Court has held to be a front for the purposes of resolving Earth Towne cannot be treated as a real and independent debtor for the purpose of an insolvency process in respect of the same project.

44. Thus, we find that issue number II also goes in favour of the appellant.

45. **Issue III: Whether, on the date of admission, there subsisted a “default” of ETIPL within the meaning of Section 3(12) of the Code which could found a separate CIRP, having regard to the restored resolution plan, and whether the judgment of this Appellate Tribunal dated 04.09.2025 forecloses that enquiry.**

46. The jurisdiction of the Adjudicating Authority under Section 7(5)(a) of the Code turns upon its satisfaction that a “default” has occurred. As held by the

Hon'ble Supreme Court in *Innoventive Industries Ltd. v. ICICI Bank*, (2018) 1 SCC 407, the enquiry under Section 7 is into the existence of a financial debt and a default in respect of it. Section 3(12) defines "default" as non-payment of a debt when the whole or any part or installment of the amount of debt has become due and payable. This Appellate Tribunal, in *JC Flowers* (supra), has held that the words "due and payable" mean that the debt in respect of which default is alleged must be a subsisting debt, and that the creditor must establish not merely the existence of a debt but a default in respect of it. What, then, was the "debt" of the Financial Creditors? It is common ground that they are allottees of units in Earth Towne, a single residential project developed by EIL on the land of ETIPL, and that their monies were paid to EIL as developer. Their claim, in substance, is for the delivery of their units or the refund of the monies paid for them. The Adjudicating Authority itself found, in the Impugned Order, that the Financial Creditors are the same set of creditors who are creditors of EIL, and that the debt of ETIPL and EIL relates to one project, "Earth Towne" [Impugned Order, paras 8, 11 and 13]. The record further indicates that the claims of a substantial number of the petitioning homebuyers had been admitted in the CIRP of EIL [NCLT order dated 09.07.2024 in C.P. (IB) No. 196/ND/2023 recording that claims of around 70 of the 145 homebuyers stood admitted in the resolution plan of EIL.

47. It is well settled that an approved resolution plan is binding on the corporate debtor and all its stakeholders, including creditors, and that on its approval a successful resolution applicant takes over the undertaking on a "clean slate"; all

claims not forming part of the plan stand extinguished: ***Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.***, (2021) 9 SCC 657; ***Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta***, (2020) 8 SCC 531. The resolution plan of Roma, restored by the Hon'ble Supreme Court, provides for the completion of Earth Towne and the handing over of units to its allottees. The claims of the allottees of Earth Towne, arising out of their allotments in that project, are thus the very claims that the restored plan deals with and resolves. Once the Hon'ble Supreme Court lifted the veil and treated ETIPL as a front for EIL, the claim of an Earth Towne allottee against ETIPL cannot be regarded as a debt distinct from his claim against EIL in respect of the same unit. It is one claim, arising from one allotment, in one project, against what has been judicially declared to be one economic entity. That claim has been resolved in the manner provided under the restored plan, under which the obligation to complete the project and to deliver the units rests upon the successful resolution applicant, within the time frames commencing from 01.06.2026. On 01.06.2026, therefore, there subsisted no separate debt of ETIPL, due and payable to the Financial Creditors, the non-payment of which could constitute a "default" independent of the resolution plan. An allottee's remedy for performance lies under and in terms of the plan, and in enforcement of it through the Monitoring Committee and the Adjudicating Authority, and not in a fresh CIRP against the land-holding front.

48. We note that Section 31(1) of the Code provides that a resolution plan approved by the Adjudicating Authority “shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.” The allottees of Earth Towne are, by any reckoning, “stakeholders involved in the resolution plan” of Roma, which is a plan for the completion of their very project. The binding effect of Section 31(1) thus operates upon them, and the restoration of the plan by the Hon’ble Supreme Court revives that binding effect in full.

49. We acknowledge the fact that the Appellant has fairly conceded that there is no bar in law to two petitions being filed in respect of the same claim, one against the developer and the other against the landowner. We agree with the proposition, but the question here is different. It is not whether the Financial Creditors could file the petition in 2023, when the resolution plan for Earth Towne stood set aside and its future was uncertain; it is whether the petition could be admitted on 01.06.2026, after the plan had been restored by the Hon’ble Supreme Court and the land of ETIPL had been brought within it. The maintainability of the application at the time of filing does not answer the question whether, at the time of admission, a default subsisted which justified the initiation of a CIRP. The Adjudicating Authority was bound to take into account the state of affairs

obtained on the date on which it exercised its jurisdiction under Section 7(5) of the code. We however observe that the pronouncement of judgement by the Hon'ble Supreme Court was perhaps not brought to the notice of the adjudicating authority by the Appellant at that stage. Hence, the adjudicating authority did not have privilege of the said judgement of Hon'ble Supreme Court. We are also of the view that, perhaps, there was no intention of Adjudicating authority to ignore the judgement of the Hon'ble Supreme Court and acted in good faith, based on the records available at the time of reserving the order.

50. However, we need to emphasise that where a landowner and a developer have come together for a single real estate project, the insolvency resolution of that project should proceed as a consolidated one, since the completion of the project depends upon both entities. In view of these facts, we are of the opinion that the application would lie against the landowner and developer jointly and not individually against one or the other. The principle underlying these decisions is consolidation for the purpose of completion of the project. In the present case, that consolidation has already been achieved by the Hon'ble Supreme Court Judgment, which has brought the land of ETIPL within the resolution of EIL. A separate CIRP against ETIPL alone, commenced after that consolidation, would not consolidate but fragment the resolution of Earth Towne, which is the very mischief, which need to be avoided.

51. We are of clear view that the judgment of this Appellate Tribunal dated 04.09.2025 in Company Appeal (AT) (Ins.) No. 2171 of 2024, decided only the

question whether the threshold under the second proviso to Section 7(1) was satisfied, and expressly refrained from expressing any view on the merits. It restored the petition to be decided on merits in accordance with law. It was rendered at a time when the resolution plan for Earth Towne stood set aside by this Appellate Tribunal and the Civil Appeals were pending, and when the separate identity of ETIPL had not been subjected to the scrutiny that the Hon'ble Supreme Court later undertook. The legal landscape was fundamentally altered by the Supreme Court Judgment of 05.05.2026. The satisfaction of the threshold is a condition for the filing of an application; it is not a finding that a default exists which justifies admission. The earlier judgment of this appellate Tribunal, therefore, does not foreclose the enquiry undertaken by us.

Issue III is answered in favour of the Appellant as on the date of the Impugned Order there was no default of ETIPL, distinct from the claims resolved under the restored resolution plan, capable of founding a separate CIRP under Section 7 of the Code.

52. Issue IV: Whether the continuation of the CIRP against ETIPL is compatible with the Hon'ble Supreme Court Judgment and the scheme of the Code.

53. It needs to be appreciated clearly that even apart from the question of default, the continuation of the CIRP against ETIPL would bring it into direct collision with the Supreme Court Judgment. Upon admission, the moratorium under Section 14 of the Code was attached to ETIPL and its assets. Section

14(1)(b) of the code prohibits the transferring, encumbering, alienating or disposing of any of its assets or any legal right or beneficial interest therein; the management of ETIPL vests in the IRP; and a fresh process for resolution of ETIPL, with its own committee of creditors and its own resolution plan, would follow. At the same time, the Hon'ble Supreme Court has directed that Roma shall proceed with the completion of Earth Towne on that very land from 01.06.2026, and shall pay GNIDA's recalculated dues in installments over twenty-four months. Two processes under the same Code cannot run simultaneously over the same land, one to implement a plan and the other to seek a different resolution of it. The IRP has rightly pointed out this conflict.

54. We are conscious of the fact that Article 144 of the Constitution of India mandates that all authorities, civil and judicial, shall act in aid of the Supreme Court. A proceeding which, if allowed to continue, would impede the implementation of a resolution plan restored by the Hon'ble Supreme Court with specified timelines cannot be permitted to continue. The objective of the Code is resolution, and the objective of the Supreme Court Judgment was expressly the completion of the stalled projects for the benefit of the homebuyers. A parallel CIRP against the land-holding entity serves neither objective. It threatens to delay the project for the very homebuyers of Earth Towne, the overwhelming majority of whom supported the restored plan. If the successful resolution applicant fails to complete the project or to deliver the units in accordance with the restored plan, the allottees are entitled to seek enforcement of the plan before the Adjudicating

Authority in the CIRP of EIL under Section 60(5) of the Code, through the Monitoring Committee constituted for that purpose, and the consequences of any contravention of an approved plan are provided for in the Code itself, including Section 33(3). The remedy of the allottees is thus the enforcement of the plan that resolves their claims, and not the commencement of a parallel process that would undermine it. Indeed, the interest of every allottee of Earth Towne, including the Financial Creditors, lies in the speedy completion of the project, which is what the restored plan is designed to achieve. The material placed by the IRP reinforces this conclusion. Out of 146 petitioning homebuyers, only one claim has been received in the CIRP of ETIPL. The Financial Creditors have not deposited the CIRP costs directed by the Adjudicating Authority. ETIPL is a company with no business other than holding the leasehold land, has filed no financial statements since 2014, and has been described by the Hon'ble Supreme Court as a front. A CIRP of such an entity, running parallel to a court-restored plan, is devoid of any meaningful resolution content.

Issue IV is answered in favour of the Appellant. The CIRP against ETIPL is incompatible with the Supreme Court Judgment and cannot be permitted to continue.

55. In view of above detailed discussions, we find merit in the appeal. The appeal succeeds and the Impugned order is set aside. The parties are directed to appear before the adjudicating authority on 15 October 2026, who shall take

further course of action in accordance with law. There will be no order as to cost.

IA, if any, stand closed.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

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(Shweta)