

NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

1. IA/3723/2025 C.P. (IB)/2946(MB)2019

IN THE MATTER OF

Bank of India
VS
Wadhwa Buildcon LLP
U/s 7 of the Insolvency and Bankruptcy Code, 2016
Order Delivered on 12.10.2026

CORAM:

SH. VINAY GOEL
MEMBER (J)

SH. CHARANJEET SINGH GULATI
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Applicant in IA No. 3723 of 2025: - Adv Pritesh Burad (VC)
For the Respondent: - Adv. Sayali Patil (VC)

ORDER

IA/3723/2025: - The above **IA/3723/2025** is listed for pronouncement of orders. The same is pronounced in open court today vide a separate order.

Sd/-
VINAY GOEL
Member (Judicial)
//Anmol//

Sd/-
CHARANJEET SINGH GULATI
Member (Technical)

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, V**

IA (IBC) No. 3723 of 2025

IN

CP (IB) No. 2946 of 2019

IN THE MATTER OF

Harender Nihalani

1201, Vignaher Heights, Sector 14, Nerul
West, Palm Beach Road, Navi Mumbai -
400706

... Applicant No. 1

Santosh Nihalani

1201, Vignaher Heights, Sector 14, Nerul
West, Palm Beach Road, Navi Mumbai -
400706

... Applicant No. 2

Versus

Manish Dawda

*Resolution Professional of M/s. Wadhwa
Buildcon LLP*

Having office address at: 205 A, 2nd Floor,
Hiren Light Industrial Estate, Behind
Johnson & Johnson Mogul Lane, Bhagoji
Kheer Marg, Mahim West, Mumbai -
400016

... Respondent

IN THE ORIGINAL MATTER OF

Bank of India

... Financial Creditor

Versus

M/s. Wadhwa Buildcon LLP

... Corporate Debtor

Order Delivered on: 12.10.2026

Coram:

Sh. Vinay Goel

Member (Judicial)

Sh. Charanjeet Singh Gulati

Member (Technical)

Appearance through VC/Physical/Hybrid Mode:

For the Applicant: Adv. Pritesh Barud, Adv. Akhilesh Kumar Amurya
(PH)

For the Respondent: Adv. Maulik Chokshi (VC)

ORDER

IA (IBC) No. 3723 of 2025

1. The present Interlocutory Application has been filed on 27.05.2025 (refilled 04.08.2025) by Harender Nihalani and Santosh Nihalani (**'Applicants'**), under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 (**'IBC/the Code'**) read with Rule 11 of the National Company Law Tribunal Rules, 2016 with the following prayers:

a) Direct the Respondent Resolution Professional to admit the claim of the Applicants of Rs. 5,27,00,000/- (Rupees Five Crore Twenty-Seven Lakhs);

- b) In alternative to prayer clause (a) this Hon'ble Tribunal be pleased to admit the claim of the Applicants of Rs. 5,27,00,000/- (Rupees Five Crore Twenty-Seven Lakhs);*
- c) In consonance with the prayer clause (a,)/(b.) direct the Respondent Resolution Professional to furnish all records relevant to the CIRP Process of the Corporate Debtor;*
- d) Direct the Respondent Resolution Professional to include the name of the Applicants in the list of the Claimants of the Corporate Debtor;*
- e) Pass such other and further orders as this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case.*

Brief facts as per the Application:

2. The Applicants and Mr. Suresh L. Wadhwa, Ashok T. Navlani, and Mrs. Maya Ashok Wadhwa started a Partnership Firm, M/s. Sai Baba Construction (**“the said Firm”**) for purpose of completing the construction of Wadhwa Heights situated at Kalyan District Thane.
3. It is submitted that a Memorandum of Understanding dated 02.06.2015 (**“MoU I”**) was executed between the Applicants and Mr. Suresh Wadhwa, recording an amount of Rs. 3.80 Crores payable within six months from the sale proceeds of the Corporate Debtor's project, **“WADHWA REGALIA”**. Upon non-payment, MoUs dated 04.03.2016 (**“MoU II”**) and 02.09.2016 (**“MoU III”**) were executed in respect of the outstanding amount.
4. The Applicants submit that the Cheques issued towards the outstanding amount were dishonoured for reason of “funds insufficient”. Consequently, the Applicants issued a statutory notice dated 26.04.2017 under Section 138 of the Negotiable Instruments Act, 1881, to Mr. Suresh L. Wadhwa, the majority partner of the Corporate Debtor and M/s. Sai Baba

Construction. Upon failure to make payment, the Applicants filed Complaints under Section 138 of the Negotiable Instruments Act, being SCC Nos. 819 and 820 of 2017, before the Hon'ble JMFC, Kalyan. Thereafter, vide Order dated 10.07.2017, the Hon'ble JMFC, Kalyan issued process against M/s. Sai Baba Construction and Mr. Suresh L. Wadhwa.

5. It is submitted that Mr. Suresh L. Wadhwa, majority partner of the Corporate Debtor and M/s. Sai Baba Construction, agreed to settle the 138 Proceedings by transferring the right, title and interest in Shop No. 11, Ground Floor, Building Type A, Wadhwa Regalia ("**said Shop**") to the Applicants for a consideration of Rs. 5.27 Crores, against which the Applicant paid Rs. 1.47 Crores. It was agreed that the Agreement for Sale would be executed upon withdrawal of the 138 Proceedings. Accordingly, Agreement of Sale dated 09.01.2018 ("**said Agreement**") was executed between Corporate Debtor being Promoter No. 1 and Shri. Surjit B. Ailsinhani and Shri. Jagdish I. Nihalani, being Co-Promoter No. 2 and the Applicants herein being the Allottee/s and on 09.01.2018, the Applicants executed an Affidavit-Cum-Declaration recording withdrawal of SCC Nos. 819 and 820 of 2017 pursuant to the agreed transfer.
6. The Applicants submit that despite the sale of the said Shop, possession was not handed over within the stipulated period. Consequently, Complaint No. CC006000000375321 was filed before the Ld. MahaRERA. During the conciliation proceedings held on 28.08.2024, it came to the Applicants' knowledge that the Corporate Debtor had been admitted into CIRP vide Order dated 28.07.2020 passed by this Tribunal in CP No. 2946/2019.
7. The Applicants issued notice dated 02.12.2024 seeking possession of the said Shop. Vide email dated 02.03.2025, the Respondent directed

submission of the claim in Form-CA. The Applicants submitted Form-CA dated 12.03.2025 claiming Rs. 5.27 Crores as Homebuyers and seeking possession of the said Shop. Despite furnishing the bank statement sought by the Respondent, the claim was rejected vide email dated 29.03.2025, on the ground that Rs. 3.80 Crores did not constitute a debt of the Corporate Debtor and Rs. 1.47 Crores arising from settlement of the Section 138 proceedings did not qualify as its debt. In this regard, the Applicants submit that the Rs. 3.80 Crores represented the debt owed to them, which was settled through transfer of the said Shop, for which Rs. 1.47 Crores was paid into the Corporate Debtor's account under the Agreement dated 09.01.2018, executed with the Corporate Debtor as Promoter No. 1. Accordingly, the Applicants contend that their total claim of Rs. 5.27 Crores ought to have been admitted.

8. The Applicants submit that, by virtue of the Agreement dated 09.01.2018, they are allottees in the "Wadhwa Regalia" project of the Corporate Debtor within the meaning of Section 5(8)(f) of the Code read with Regulation 8A of the CIRP Regulations, 2016, and are, therefore, creditors of the Corporate Debtor. Accordingly, their claim is liable to be admitted.

Affidavit in Reply, in Brief:

9. Vide order dated 28.07.2020, the CIRP was initiated against the Corporate Debtor and Mr. Rakesh Kumar Tulsyan was appointed as the Interim Resolution Professional ('**IRP**') of the Corporate Debtor. Pursuant to the constitution of Committee of Creditors ('**CoC**'), in the 2st meeting on 15.09.2020, the CoC appointed Mr. Vishal Jain as Resolution Professional ('**erstwhile RP**'). Thereafter, vide order on 02.07.2024 in 2265 of 2024, the Tribunal appointed the Applicant as Resolution Professional ('**RP**').

10. With regard to the MoUs, the Respondent submits that Mr. Suresh L. Wadhwa executed them in his individual capacity and had agreed to pay Rs. 3.80 Crores to the Applicants from the profits/proceeds of the “WADHWA REGALIA” project, which had already been transferred to the Corporate Debtor. The Respondent further submits that the Applicants have not produced any proof substantiating the alleged valuation of the said Shop at Rs. 5.27 Crores, against which Rs. 1.47 Crores was allegedly paid.
11. The Respondent submits that the Affidavit-Cum-Declaration and Agreement for Sale dated 09.01.2018 record that, pursuant to the Development Agreement dated 13.04.2015, Mr. Jagdish I. Nihalani and Mr. Surjit B. Ailsinghani had transferred development rights to the partners of the Corporate Debtor. The Agreement records the Shop’s value at Rs. 5.27 Crores, comprising Rs. 3.80 Crores settled between the Applicants and Late Mr. Suresh Wadhwa and Rs. 1.47 Crores allegedly paid to the Promoters, namely, the Corporate Debtor, Mr. Surjit B. Ailsinghani and Mr. Jagdish I. Nihalani. However, no documentary evidence of payment of the said Rs. 1.47 Crores has been produced by the Applicants or found by the Respondent.
12. It is submitted that the Corporate Debtor should not be held liable due to the personal liability of late Mr. Suresh Wadhwa who had entered into the Contract with the Applicant.
13. The Respondent submits that the Applicants’ claim as Homebuyers under Section 5(8)(f) of the Code is based on the said Agreement dated 09.01.2018. However, while the Applicants rely upon the MoUs and Affidavit-Cum-Declaration recording settlement of Rs. 3.80 Crores through transfer of the Shop, the said Agreement does not record such settlement and only reflects Rs. 1.47 Crores as consideration, for which no

documentary proof has been furnished. Accordingly, the Respondent contends that the Applicants do not qualify as Homebuyers.

Affidavit in Rejoinder on behalf of the Applicants, in Brief:

14. The Applicant, in its Affidavit in Rejoinder dated 01.12.2025, submits that the Affidavit-Cum-Declaration dated 09.01.2018, read with the Agreement for Sale of the same date, establishes that the said Shop was agreed to be transferred pursuant to settlement of the Section 138 Proceedings, with possession to be handed over upon execution of the Agreement. The Respondent has also acknowledged that the “WADHWA REGALIA” project was brought into the Corporate Debtor, and therefore the liabilities arising therefrom were undertaken by the Corporate Debtor.
15. It is submitted that Mr. Suresh L. Wadhwa was the majority partner holding 70.75% in M/s. Sai Baba Construction and also held a major shareholding and was the Managing Partner of the Corporate Debtor, the Applicants, relying on the doctrine of indoor management, understood the corresponding liability to have been undertaken by the Corporate Debtor and accordingly withdrew the 138 Proceedings. The Applicants, therefore, contend that their claim of Rs. 5.27 Crores, comprising Rs. 3.80 Crores towards the outstanding amount and Rs. 1.47 Crores under the Agreement for Sale, is liable to be admitted.
16. The Applicants submits that a since the Respondent has not disputed the Agreement executed between the Applicants and the ex-partner of the Corporate Debtor, the Applicants qualify as Homebuyers under Section 5(8)(f) of the Code as the same is substantiated by the MoUs, the Order in the Section 138 Proceedings, the Affidavit-Cum-Declaration, and the said Agreement.

Analysis and Findings

17. We have heard the Ld. Counsels for the parties and perused the documents placed on record.
18. Through the present Interlocutory Application, the Applicants seeks admission of the claim of Rs. 5.27 Crores, as a Financial Creditor in class under Section 5(8)(f) and Regulation 8A of the CIRP Regulations, 2016 and inclusion of his name in the list of the Claimants of the Corporate Debtor.
19. *Per contra*, the Respondent/RP contends that Mr. Suresh Wadhwa executed the MoUs in his individual capacity, therefore, the Corporate Debtor cannot be fastened with his personal liabilities. It is contended that the Applicants have produced no documentary evidence of payment of the said Rs. 1.47 Crores and have failed to establish their claim as Homebuyers under Section 5(8)(f) of the Code.
20. It is noted that the Applicants, by prayer clauses (a) and (b), seek admission of their claim of Rs. 5,27,00,000/-. However, when matter came up for consideration on 22.09.2026, the following order was passed:

“IA/3723/2025- *Heard, Ld. Counsel for the Applicant and the Counsel for the Respondent. The main argument entered by the Ld. Counsel for the Applicant was in respect of the Agreement for Sale dated 09.01.2018, which refers to a shop admeasuring 147.04 square meters and the consideration therein being mentioned at Rs. 1.47 cores. Ld. Counsel for the Applicant submits that they have no objection in restricting their claim to the extent of Rs. 1,47,00,000/-. Ld. Counsel for the Respondent/RP submits that the Applicant herein is an investor and as such receipt of amount of Rs. 1,47,00,000/- into the account of the Corporate Debtor, on facts is not being disputed. On being asked, the RP present in person through the*

VC also confirms the same. Accordingly, the matter is reserved for orders.”

21. From the above submissions of the Applicant and the Respondent, it is undisputed that a sum of Rs. 1.47 Crores was received into the account of the Corporate Debtor from the Applicant. The Agreement for Sale dated 09.01.2018 records the same amount as the consideration for the shop admeasuring 147.04 sq. m. The Applicants have restricted their claim to Rs. 1.47 Crores. Therefore, the prayers are accordingly confined to admission of claim Rs. 1.47 Crores.
22. Upon perusal of the Agreement for Sale dated 09.01.2018, which was executed by the Corporate Debtor as Promoter No. 1 in respect of Shop No. 11, it is seen that the Agreement records Rs. 1.47 Crores as the consideration for the said Shop, and the receipt of that amount by the Corporate Debtor is not disputed by the Respondent/RP. In view of the aforesaid facts, and the admitted position that a sum of Rs. 1.47 Crores was received into the account of the Corporate Debtor from the Applicants, the liability to the extent of that amount is attributable to the Corporate Debtor.
23. Now, the only issue for determination is the category under which the claim is to be admitted, namely whether the Applicants are to be treated as financial creditors in a class under Section 5(8)(f) of the Code or as other creditor.
24. In this regard, it is necessary to refer to the provisions of Section 5(8)(f) of the Code, which is reproduced hereinbelow:

“Section 5 – Definitions

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

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

Explanation - For the purposes of this sub-clause-

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

(ii) the expressions, “allottee” and “real estate project” shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016;”

25. Upon a plain reading of Section 5(8)(f) of the Code, it is clear that when funds are obtained from an allottee in a real estate project, having the commercial effect of a borrowing, and disbursed against the consideration for the time value of money, it constitutes a financial debt. By Explanation (ii), “allottee” and “real estate project” have the meanings assigned to them in Sections 2(d) and 2(zn) of the Real Estate (Regulation and Development) Act, 2016 (“RERA”). Section 2(d) covers a person to whom a plot, apartment or building has been allotted, sold or otherwise transferred by the promoter, and Section 2(zn) covers development of a building or buildings, including a commercial building. The provision nowhere uses the expression “homebuyer” or restricts itself to residential units.

26. In the present case an Agreement for Sale dated 09.01.2018 in respect of Shop No. 11, Ground Floor, Type A building, Wadhwa Regalia, executed between the Applicants, the Corporate Debtor and its promoters, Mr. Surjit Ailsinghani and Mr. Jagdish Nihalani has been executed which is not disputed. In terms of the said agreement for sale Commercial Shop bearing No. 11 on the Ground Floor of Building Type A in Wadhwa Regalia, which

is the commercial building of the project has been allotted to the Applicant. It is admitted fact that the Applicants has paid Rs. 1.47 Crores consideration for the said Shop. The Applicants, being the allottees of a commercial shop in the commercial building of the real estate project Wadhwa Regalia, therefore fall squarely within Sections 2(d) and 2(zn) of RERA. The amount of Rs. 1.47 Crores paid by the Applicants to the Corporate Debtor is accordingly an amount raised from an allottee under a real estate project, and is deemed to have the commercial effect of a borrowing. The said amount thus constitutes a “financial debt” within the meaning of Section 5(8)(f) of the Code.

27. Having established that the Applicants are allottees in a real estate project and that the amount paid is deemed to have the commercial effect of a borrowing under Section 5(8)(f), it is necessary to address whether the Applicants are genuine allottees or speculative investors. In this regard, the Hon'ble Supreme Court's judgment in ***Mansi Brar Fernandes v. Shubha Sharma and Anr.***, (2025) ibclaw.in 353 SC dated 12.09.2025, examined the issue of speculative investors and laid down as under:

“18.1. The determination of whether an allottee is a speculative investor depends on the facts of each case. The inquiry must be contextual and guided by the intent of the parties. Indicative factors include: (i) the nature and terms of the contract; (ii) the number of units purchased; (iii) presence of assured returns or buyback clauses; (iv) the stage of completion of the project at the time of investment; and (v) existence of alternative arrangements in lieu of possession. Possession of a dwelling unit remains the sine qua non of a genuine homebuyer's intent.”

18.2. The problem of speculative misuse of real estate agreements has long been recognised. Such speculative arrangements artificially inflate demand, fuel asset bubbles, and prejudice genuine buyers. Unlike financial markets –

where speculation may sometimes serve a liquidity function – speculation in residential housing undermines stability, fairness, and the very object of housing development. Schemes of assured returns, compulsory buybacks, or excessive exit options are in truth financial derivatives masquerading as housing contracts. These arrangements enable developers, on the one hand, to mislead gullible individuals, and seasoned investors, on the other; to ‘jump ship’ when the market turns or to hold developers to ransom by invoking the IBC as a coercive recovery mechanism, thereby creating a situation of ‘heads I win, tails you lose’. This Court, in *Madhubhai Amathalal Gandhi v. the Union of India* while deprecating speculative activities in the stock market, strongly cautioned against such distortions, observing:

“These mischievous potentialities inherent in the transactions, if left uncontrolled, would tend to subvert the main object of the institution of stock exchange and convert it into a den of gambling which would ultimately upset the industrial economy of the country”.

18.3. This Court in *Pioneer Urban Land and Infrastructure Ltd v. Union of India* [(2019) ibclaw.in 13 SC] (*supra*), while upholding the constitutional validity of the 2018 amendment recognising allottees as financial creditors, drew a crucial distinction between genuine homebuyers and speculative investors. It clarified that speculative investors cannot be permitted to misuse the Code as a debt recovery mechanism. The judgment struck a balance: ensuring representation of genuine homebuyers in the CoC, while shielding developers and projects from being derailed by investors who never intended to take possession.”

[Bold for Emphasis]

28. Thus, applying the factors laid down by the Hon’ble Supreme Court in ***Mansi Brar Fernandes v. Shubha Sharma & Anr.*** (*Supra*) for determining

whether an allottee is a genuine homebuyer or a speculative investor in the present case is as follows:

(i) ***Nature and terms of Contract*** - The Agreement for Sale dated 09.01.2018 is a standard agreement. Clause 8 restricts the use of the shop to commercial purposes by the Allottees,

(ii) ***Number of Units*** - The Applicants purchased only one (1) shop, being Shop No. 11, in the commercial building of the project.

(iii) ***Assured returns or buyback and alternative arrangements in lieu of possession*** - Upon perusal of the Agreement for Sale, it is clear that the Agreement contains no assured-return, buyback, or other arrangement in lieu of possession.

(iv) ***Stage of the project*** - The Agreement was executed on 09.01.2018 and under Clause 6, the Promoters undertook to deliver possession by 31.12.2021, i.e., more than three years from the date of the Agreement. The Applicants thus invested at an early stage, on the footing that they would wait for construction to be completed and take possession of the shop, which fact is consistent with a genuine buyer and not speculative investor.

29. Therefore, none of the factors laid down in ***Mansi Brar Fernandes*** (Supra) indicates that the Applicants are speculative investors. The Applicants are allottees whose intent was to take possession of the shop, and, therefore, the Applicants do not fall within the category of speculative investors. Accordingly, the Applicants comes within the ambit of Section 5(8)(f) of the Code as financial creditors in the class of allottees.

30. In view of the facts and circumstances of the present case, the Respondent is directed to admit the claim of the Applicants to the extent of Rs. 1.47 Crores as a Financial Creditor in the class of allottees, after due verification

and in accordance with law. Accordingly, the I.A. (IBC) No. 3723 of 2025 is **allowed** and **disposed of** in above terms.

Sd/-

Vinay Goel
Member (Judicial)

Saumya, LRA

Sd/-

Charanjeet Singh Gulati
Member (Technical)