

**BEFORE THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL  
NEW, DELHI**

**I.A. NO.                      OF 2021**

**IN**

**I.A. No.2166 /2020**

**IN**

**COMPANY APPEAL (AT) (INS) NO. 1056 OF 2019**

**IN THE MATTER OF:**

**RAJESH GOYAL**

...APPLICANT

**VERSUS**

**BABITA GUPTA & ORS.**

...RESPONDENTS

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**FILED THROUGH**

  
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Place: New Delhi

Date: 09.04.2021

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FORM NCLAT- 2  
[Under Rule 31]  
INTERLOCUTORY APPLICATION

**IN THE HON'BLE NATIONAL COMPANY LAW APPELLATE  
TRIBUNAL AT NEW DELHI  
APPELLATE JURISDICTION  
I.A. NO.                OF 2021  
IN  
I.A. No.2166 /2020  
IN  
COMPANY APPEAL (AT) (INS) NO. 1056 OF 2019**

**CAUSE TITLE**

**BETWEEN:**

Rajesh Goyal

...Applicant

**VERSUS**

Babita Gupta &Ors.

...Respondents

**AN APPLICATION UNDER RULE 11 OF NATIONAL COMPANY LAW  
APPELLATE TRIBUNAL, RULES 2016 SEEKING CLARIFICATION OF  
JUDGMENT DATED 04.03.2021**

The Applicant above named states as follows:

**1. RELIEF**

For the facts, reasons, circumstances and grounds stated herein,  
the Applicant/Appellant herein, pray that this Hon'ble Appellate  
Tribunal may be pleased to:

- (a) pass an order to clarify that the directions in para 18 with regard  
to extension of time line be read as "Revised timelines with  
exclusion upto 04.03.2021 i.e. the date of judgment passed by this  
Hon'ble Appellate Tribunal and accordingly, the proposed extended  
time line may be revised in terms of Annexure -Ahereto; and
- (b) pass an order clarifying that the portion in para 18 of the judgment  
dated 04.03.2021 i.e. .... *"the amount invested by him as*

*Financial Creditor in terms of the judgment shall stand forfeited and" ..... may be removed/deleted; and/or*

- (c) pass an order clarifying that the Hon'ble Adjudicating Authority should decide on the application for replacement of IRP in a time bound manner; and/or
- (d) Pass any or such other order as this Hon'ble Tribunal may deem fit and appropriate in the facts and circumstances of the present case in the interest of justice.

2. **BRIEF FACTS:**

- i. That the applicant herein is the Appellant in the captioned appeal and was the applicant in the captioned application being I.A. No. 2166 / 2020 whereby, exclusion and extension of time was sought for completion of the project in terms of judgment dated 05.02.2020 passed by this Hon'ble Appellate Tribunal in Comp. Appl (AT (Ins) No. 1056 of 2019. A copy of the judgment dated 05.02.2020 passed by this Hon'ble Appellate Tribunal is annexed herewith and marked as **ANNEXURE - A**.
- ii. That vide order dated 22.09.2020 this Hon'ble Appellate Tribunal had directed the counsel for IRP to move an appropriate application supported by an affidavit in this regard seeking substitution of the IRP. The relevant portion of the order dated 22.09.2020 is as under:

".....

.....

At this stage Shri Rishabh Jain, Advocate representing IRP brought to our notice that Mr. Gaurav Katiyar, IRP has tendered his resignation and he is required to be substituted by a new Resolution Professional. From the last para of the Judgment dated 5th February, 2020, we find that it is only in the event of breach of undertaking in regard to infusion of funds by the Promoter as Financial Creditor, the Adjudicating Authority has been asked to complete the Insolvency Resolution Process. This clearly indicates that the Corporate Insolvency Resolution Process is still underway. **It would therefore be appropriate for the learned counsel for IRP to move an appropriate application supported by an affidavit in this regard seeking substitution of the IRP.**

.....

.....”

A copy of the order dated 22.09.2020 is annexed herewith and marked as **ANNEXURE – B**.

- iii. That the hearing in the said application I.A. No. 2166 / 2020 was concluded before this Hon'ble Appellate Tribunal on 07.01.2021 and the order on the said application was reserved. Further, in terms of oral permission / directions by this Hon'ble Appellate Tribunal, a proposed / revised timeline was filed on behalf of the applicant vide Diary No.24606 dt. 12.01.2021.
- iv. That this Hon'ble Appellate Tribunal vide its judgment dated 04.03.2021 was pleased to allow the said application being I.A. No. 2166 / 2020 wherein, in para 16 of the judgment the aforesaid proposed / revised timeline filed on behalf of the applicant vide Diary No.24606 dt. 12.01.2021 was duly recorded and in para 18 of the said judgment, the same was accepted and the time period

upto 15.01.2021 was excluded. The relevant portion of the judgment is reproduced as under:

*"16. The Applicant has given proposed/ revised extended timeline (filed vide Diary No.24606 dt. 12.1.2021), which is extracted herein below: -*

Sl. No.	Event	Original Timelines as per order dated 05.02.2020	Revised timelines <u>(exclusion upto 15.01.2021)</u>	Proposed extended timelines (90 days)
1	Flat should be completed in all aspects (Page 62 paragraph 20(ii))	30.06.2020	15.06.2021	15.09.2021
2	All internal fit-outs for electricity, water connection (Page 62 paragraph 20 (ii))	30.07.2020	15.07.2021	15.10.2021
3	Common area such as Swimming Pool, Club house etc. as per agreement (Page 62 paragraph 20 (iii))	30.08.2020	15.08.2021	15.11.2021
4	Refund of 30% of the Principal amount to the Allottees (Page 62, paragraph 20 (iv))	22.05.2020	15.04.2021	15.07.2021
5	Refund of 70% of the Principal amount to the allottees (Page 62, paragraph 20 (iv))	30.08.2020	15.08.2021	15.11.2021
6	Interest to be paid to the allottees seeking refund (Page 62, paragraph 20 (iv))	30.08.2020	15.08.2021	15.11.2021
7	Payment to Financial Institutions/ Bank and operational Creditors	30.08.2020	15.08.2021	15.11.2021

	(Page 62, paragraph 20 (iv))			
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As per the said order, the allottees were directed to deposit balance amount and pay 90% by 15.03.2020, the same may be extended to 15.03.2021."

.....

.....

"18. We accordingly, while allowing the Application seeking extension in the context of timelines provided in the judgment to the extent indicated, **direct extension of timelines as indicated in the proposed extended timelines filed on behalf of the Applicant vide Diary No.24606 dated 12th of January, 2021 (also reproduced at paragraph 16 above of this judgment)**, with further provision that the time allowed to allottees who were directed to deposit balance amount and pay 90% by 15th March, 2020 shall stand extended to 15th of June, 2021. **All directions, except for the extended timelines, remaining intact, it is reiterated** that if the Applicant-Promoter fails to comply with the undertaking and fails to invest as Financial Creditor or does not cooperate with the Resolution Professional, **the amount invested by him as Financial Creditor in terms of the judgment shall stand forfeited** and the Adjudicating Authority, National Company Law Tribunal will complete the Insolvency Resolution Process. The Resolution Professional will report compliance in respect of each step contemplated to be taken in terms of the fresh schedule within 15 days on first working day of every month. It shall be open to the homebuyers to approach this Appellate Tribunal with any grievance in this regard."

A copy of the Judgment dated 04.03.2021 passed by this Hon'ble Appellate Tribunal is annexed herewith and marked as **ANNEXURE - C.**

**3. GROUNDS ON WHICH ORDERS PRAYED FOR:**

It is most respectfully submitted that the present application is being filed seeking clarification of the judgment dated 04.03.2021 on the following grounds:

**CLARIFICATION - I**

- i. Because the revised timeline proposed by the applicant in the said chart vide Diary No.24606 dt. 12.01.2021 was upto 15.01.2021 as the same was based on the assumption that the order on the application was reserved on 07.01.2021 and that the order/judgment would be passed around 15.01.2021.
- ii. Because the judgment has been passed only on 04.03.2020 i.e. after 48 days from the proposed exclusion date in Revised timelines i.e. exclusion upto 15.01.2021, for which period the Applicant / Appellant could not have started the work in the absence of the permission granted by this Hon'ble Court.
- iii. Because if the exclusion for the period when the order was reserved and till the date on which it was passed by this Hon'ble Appellate Tribunal is not granted, then the same would cause irreparable loss to the applicant and also to all the home buyers, as the time granted by this Hon'ble Appellate Tribunal to complete the project is very limited under the *Reverse - CIRP*.
- iv. Because it is in the interest of justice that the clarification in this regard may please be provided and an order be passed to read the

"Revised timelines with exclusion upto 04.03.2021 i.e. the date of judgment passed by this Hon'ble Appellate Tribunal allowing the exclusion of time and accordingly, the proposed extended time line may also be revised in terms of the chart for proposed exclusion and extension of time annexed hereto and marked as **ANNEXURE - D**.

#### CLARIFICATION - II

- v. That in para 18 of the judgment dated 04.03.2021, this Hon'ble Appellate Tribunal has observed that:

"All directions, except for the extended timelines, remaining intact, it is reiterated that if the Applicant-Promoter fails to comply with the undertaking and fails to invest as Financial Creditor or does not cooperate with the Resolution Professional, the amount invested by him as Financial Creditor in terms of the judgment shall stand forfeited and the Adjudicating Authority, National Company Law Tribunal will complete the Insolvency Resolution Process. The Resolution Professional will report compliance in respect of each step contemplated to be taken in terms of the fresh schedule within 15 days on first working day of every month."

- vi. Because this Hon'ble Appellate Tribunal vide its judgment dated 05.02.2020 had not imposed any such condition of forfeiture and as such the direction with regard to ".....the amount invested by him as Financial Creditor in terms of the judgment shall stand forfeited and....." would amount to altering the judgment dated 05.02.2020 and as indicated in the previous part of the same para i.e. "All directions, except for the extended timelines, remaining intact, it is reiterated....." the intention of this Hon'ble Appellate



Tribunal while passing the judgment dated 04.03.2021 was not to alter the conditions in the judgment dated 05.02.2020.

- vii. Because the present judgment dated 04.03.2021 indicates that the said condition has now been altered and therefore, the same may also be clarified accordingly, and the portion in para 18 of the judgment dated 04.03.2021 i.e. .... *"the amount invested by him as Financial Creditor in terms of the judgment shall stand forfeited and"* ..... may please be removed/deleted.

### **CLARIFICATION - III**

- viii. Because in para 5 of the judgment dated 04.03.2021, this Hon'ble Appellate Authority has observed that:

*"..... Keeping in view the last para of directions incorporated in judgment dated 5th February, 2020, learned Counsel for IRP was given liberty to approach the Adjudicating Authority for seeking substitution of the IRP as the CIRP was still underway. ...."*

- ix. Because vide order dated 22.09.2020 this Hon'ble Appellate Tribunal had directed the Counsel for IRP to move appropriate application supported by an affidavit seeking his substitution and it did not state that the application was to be moved before the Hon'ble Adjudicating Authority and as such the IRP had filed an application before this Hon'ble Appellate Tribunal seeking his substitution.
- x. Because this Hon'ble Tribunal has recorded in the Judgment dated 04.03.2021 that the IRP was directed vide earlier order to move an application before Adjudicating Authority. As such it may please be

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clarified that Hon'ble Adjudicating Authority should decide on the application for replacement of IRP in a time bound manner.

4. **BALANCE OF CONVENIENCE:**

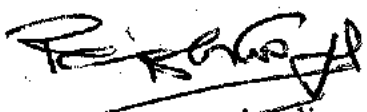
The balance of convenience lies in favour of the applicant as the Applicant could not have started the work in the absence of permission from this Hon'ble Appellate Tribunal, which can be deemed to have been granted only when the judgment is passed in the application seek exclusion and extension of time in view of the time lost due to lock down and various other hardships faced on account of COVID-19 pandemic. If the present application seeking clarification is not heard and decided in favour of the applicant then the same would cause irreparable loss, injury and inconvenience to the Applicant. Further, no harm whatsoever would be caused to the Respondent or any other person, if necessary clarification as sought for is granted by this Hon'ble Appellate Tribunal in the interest of justice.

**DECLARATION**

The applicant above named hereby solemnly declare that nothing material has been concealed or suppressed and further declare that the enclosures and typed set of material papers relied upon and filed herewith are true copies of the originals or fair reproduction of the originals or true translation thereof.

Verified at New Delhi dated this day of April, 2021.

  
Counsel for Applicant

  
Applicant

**VERIFICATION**

I, Rajesh Goyal S/o Shri J.B. Goyal age 53 years R/o 1st floor, House number 32, Road No. 43, West Punjabi Bagh, New Delhi-110026 do hereby verify that the contents of the paras 1 to 2 are true to my personal knowledge/derived from official record) and para 3 to 4 are believed to be true on legal advice and that I have not suppressed any material facts.

Date : 09-04-2021

Place : New Delhi



Signature of the appellant or authorized officer

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**BEFORE THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL  
NEW, DELHI**

**I.A. NO.                      OF 2021**

**IN**

**I.A. No.2166 /2020**

**IN**

**COMPANY APPEAL (AT) (INS) NO. 1056 OF 2019**

**IN THE MATTER OF:**

**RAJESH GOYAL**

**...APPLICANT**

**VERSUS**

**BABITA GUPTA & ORS.**

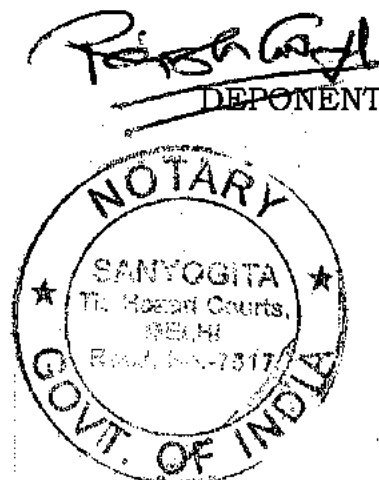
**...RESPONDENTS**

**AFFIDAVIT IN SUPPORT OF  
THE INTERLOCUTORY APPLICATION**

I, Rajesh Goyal S/o Shri J.B. Goyal age 53 years R/o 1st floor,  
House number 32, Road No. 43, West Punjabi Bagh, New Delhi-110026,  
do hereby solemnly affirm and declare as under:

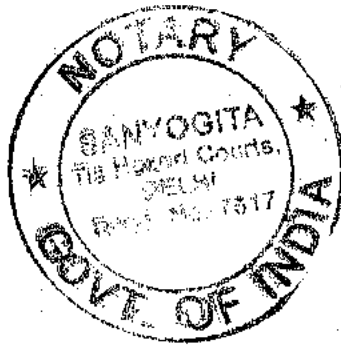
1. That I am the Applicant herein and am well conversant with the facts of the case and as such I am competent to affirm this affidavit.
2. That the contents of the accompanying application are true and correct to my knowledge and belief and nothing material has been concealed therefrom.
3. That the contents of the accompanying application may kindly be read as part of the present affidavit and the same are not being repeated herein for the sake of brevity.

**VERIFICATION:**



Verified at New Delhi on this day of April, 2021 that the contents of the above affidavit are true and correct to the best of my knowledge and belief and no part of it is false and nothing material has been concealed therefrom.

*Rehman*  
DEPONENT



ATTESTED  
SV  
NOTARY PUBLIC DELHI

08 APR 2021

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

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**Company Appeal (AT) (Insolvency) No. 1056 of 2019****&****I.A. Nos. 4033 & 4303 of 2019****IN THE MATTER OF:****Rajesh Goyal****...Appellant****Vs.****Babita Gupta & Ors.****...Respondents****For Appellant :**

**Mr. Sunil Kumar, Senior advocate with  
Mr. Chandra Shekhar Yadav, Ms. Gitanshi Arora, Mr.  
Vivek Kohli, Mr. Sandeep Bhuraria, Mr. Aman  
Anand, Mr. Parth Kaushik, Ms. Mahima Malhotra,  
Mr. Monish Surendran and Ms. Malvika Jain,  
Advocates**

**For Respondents:**

**Mr. Sumesh Dhawan Ms. Apoorva, Mr. Abhinav  
Agnihotri and Mr. Vedant Singh, Advocates for  
Indiabulls**

**Mr. Amandeep Singh, Advocate for 'Home Buyers  
Association'**

**Mr. Rishabh Jain, Advocate for 'Interim Resolution  
Professional'**

**Mr. Praful Jindal, Advocate for Applicants**

**Mr. Rajesh Gupta and Mr. Anubhav Mehrotra,  
Advocates**

**Mr. Parvesh Bahuguna, Advocate**

**Mr. Sudeep Shrotirya and Mr. Govind Keshav,  
Advocates**

**O R D E R****05.02.2020—**

Ms. Babita Gupta, Mr. Manoj Kumar Gupta and Ms. Sweta Gupta (Allottees – Financial Creditors) moved an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('I&B Code', for short) for initiation of 'corporate insolvency resolution process' against 'Rajesh

Projects (India) Private Limited (Corporate Debtor), an infrastructure Company.

2. The Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi by impugned order date 19<sup>th</sup> September, 2019 admitted the application.

3. Mr. Rajesh Goyal (Promoter) has preferred this appeal on one of the ground that the Respondents (Allottees) themselves being defaulter and in view of the decision of the Hon'ble Supreme Court in '**Pioneer Urban Land and Infrastructure Limited & Anr. v. Union of India & Ors.** - [(2019) SCC OnLine SC 1005]', the application was fit to be dismissed. It was also submitted that there was no 'default' by the 'Corporate Debtor' in terms of the agreement, therefore, the application under Section 7 of the 'I&B Code' was pre-mature.

4. The Appellant highlighted the present project status in the appeal to suggest that the 9 (nine) towers of the project is on the verge of completion and stated as under:

*"At present, as far as the physical structure is concerned, the construction of the said Project has reached up to 75% (Seventy-Five Percent). The Corporate Debtor has developed 1,920 flats in 9 towers in Phase-1 comprising of Towers A, B, C, D, E, F, G, H & M. The bulk of sales and allottees relate to these towers.*

*The super structure of these nine towers is already complete and the finishing work is under progress. The internal and external plaster work, staircase railing balcony railing,*

internal doorframes, internal electrical conducting work, of 7 towers is complete. In some of the towers lift installations work is also near complete representing 8 lifts.

In Common Areas, external services like rainwater harvesting, sewage line, drainage line are in advanced stage. Civil Structure work of club and community area is also nearly complete and finishing work will be started soon.

At best, it is the submission of the Appellant that it will need 6 – 9 months to complete the Project and apply for the Completion/Occupation Certificate.

As far as the financials are concerned, the Corporate Debtor as on date has sold/booked around 1,650 units and received approximately Rs.595.75 crores (excluding Taxes) against such bookings. Against this sum of money received, the Corporate Debtor has spent more than 600 crores on construction, licenses, marketing as per the following details. While these collections and expenses have been incurred over the last 6 odd years, the consolidated figures, based on the unaudited accounts for the Financial Year 2018-19 are as under :

<b>Particulars</b>	<b>Amount (INR) (In Crores)</b>	<b>Percentage (%)</b>
Collection of Phase-I/II/III	595.75	
<b>TOTAL</b>	<b>595.75</b>	16.12%



Land Cost	96.09	48.35%
Construction Cost	288.10	7.56%
Finance Cost	45.04	6.06%
Marketing Cost	36.15	11.51%
Salaries Exp.	68.60	7.74%
Administrative & Other Expenses	46.12	3.19%
Brokerage & Selling Expenses	19.05	0.58%
Advertisement Expenses	3.44	2.58%
Taxes	15.35	
<b>Total</b>	<b>617.93</b>	
Balance	(22.18)	

5. It has also been pleaded that the 'Corporate Debtor' spent more amount than the amount collected from the 'Financial Creditor' for the said project and in fact the expenses were made in terms of the requirements as prescribed under RERA, which reads as under :

*"A bare perusal of the above clearly shows that Corporate Debtor has spent on the Project more than the amount collected from the customers and no monies has been paid to any promoter, director or transferred to any other Associate Company, sister concern and the said funds have been used solely for the purpose of the completion and construction of the said Project.*

*Further, as would also be apparent, the expenses that have been incurred by the Corporate Debtor are well within the industry norms and quite reasonable. In*

*fact the expenses are fully in lieu with the requirements prescribed (70:30) under the RERA."*

6. Similar issue was fell for consideration before this Appellate Tribunal in **'Flat Buyers Association Winter Hills-77, Gurgaon vs. Umang Realtech Pvt. Ltd. through IRP & Ors.'** in **'Company Appeal (AT) (Insolvency) No. 926 of 2019'**. In the said case, this Appellate Tribunal in the judgment dated 4<sup>th</sup> February, 2020 noticed the problems as arises in the 'corporate insolvency resolution process' of infrastructure companies constructing Apartments/Flats for the allottees. It was noticed that the allottees were not agreed to invest more amount or to finance to keep the 'Corporate Debtor' (Umang Realtech Pvt. Ltd. (through IRP) as a going concern. For the said reason, on the request of one 'Uppal Housing Pvt. Ltd. -Intervenor/Promoter' it was allowed to invest the amount as an outsider - Financial Creditor and not as the Promoter to keep the 'Corporate Debtor' (Company) as a going concern. As the 'Promoter' it was also allowed to co-operate with the 'Interim Resolution Professional, it having expertise of 'real estate project', so the Appellate Tribunal asked to give the time-frame of completion of the flats/apartments and the common area facilities. During the pendency of the appeal, the project remained functional on receipt of investment and cooperation of Promoter. The result was that out of 706 flats/apartments of the 'Winter Hills - 77, Gurgaon project, for which 624 flats/apartments were booked, before time and within the period of 'corporate insolvency resolution process' 453 allottees, who paid their respective consideration amount in full were allowed possession on receipt of fees etc. registration of 'Sale Deed' in

favour of 92 allottees were completed. So some more time was allowed and matter was disposed of.

7. In the case of *'Flat Buyers Association Winter Hills – 77, Gurgaon'* (Supra) this Appellate Tribunal observed :

**"PROBLEMS IN FOLLOWING CERTAIN PROCESS IN THE CASES OF INFRASTRUCTURE COMPANIES (FOR ALLOTTEES):"**

3. The Parliament made amendment of Section 30(2) & (4) of the 'I&B Code' to give weightage to the 'Secured Creditors' which came into force on 16<sup>th</sup> August, 2019.

4. In "**Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors.**<sup>1</sup>", the Hon'ble Supreme Court made a distinction between the 'Secured' and 'Unsecured Creditors' and observed that protecting creditors in general is, no doubt, an important objective. Protecting creditors from each other is also important. If an "equality for all" approach recognising the rights of different classes of creditors as part of an insolvency resolution process is adopted, secured financial creditors will, in many cases, be incentivised to vote for liquidation rather than resolution, as they would have better rights if the Corporate Debtor is liquidated. This would defeat the objective of the Code which is resolution of distressed assets and only if the same is not possible, should

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<sup>1</sup>2019 SCC OnLine SC 1478

liquidation follow. The amended Regulation 38 does not lead to the conclusion that 'Financial Creditors' and 'Operational Creditors', or secured and unsecured creditors, must be paid the same amounts, percentage wise, under the resolution plan before it can pass muster. Fair and equitable dealing of Operational Creditors rights under the Regulation 38 involves the resolution plan stating as to how it has dealt with the interests of Operational Creditors, which is not the same thing as saying that they must be paid the same amount of their debt proportionately. So long as the provisions of the Code and the Regulations have been met, it is the commercial wisdom of the requisite majority of the Committee of Creditors which is to negotiate and accept a resolution plan, which may involve differential payment to different classes of creditors, together with negotiating with a prospective resolution applicant for better or different terms which may also involve differences in distribution of amounts between different classes of creditors.

5. In **"Pioneer Urban Land and Infrastructure Limited & Anr. v. Union of India & Ors."**<sup>2</sup>, the Hon'ble Supreme Court upheld the Explanation below Section 5(8) (f) to hold that allottees (Homebuyers) of Infrastructure

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<sup>2</sup>(2019) SCC OnLine SC 1005

Company are 'Financial Creditors'. It further observed that RERA is in addition to and not in derogation of the provisions of any other law for the time being in force, also makes it clear that the remedies under RERA to allottees were intended to be additional and not exclusive remedies. Therefore, provisions of the Code would apply in addition to RERA.

6. The following are the problems which have now cropped up.

There is a difference in Form B and Form C for submission of proof claims by the Operational Creditors and the Financial Creditors. Prior to the Notification dated 27<sup>th</sup> November, 2019, Form B which is for submission of proof of claims by Operational Creditors before the Interim Resolution Professional, did not have any column for details of any security held by them, unlike Form C which had such a separate column. The inclusion of this column vide the aforesaid notification acknowledges the fact that Operational Creditors can also be secured and that earlier, due to absence of any such specific column, the Operational Creditors were deprived from submitting their claims and to state whether any security is held by them either by annexing it by way of supplementary documents. Hence, there was a need for this inclusion.

7. On the other hand, since inception of the Insolvency and Bankruptcy Code, 2016, at the time of liquidation, Forms B & C provided column for details of any security held by 'Operational Creditors' and the 'Financial Creditors'.

8. The 'allottees' (Homebuyers) come within the meaning of 'Financial Creditors'. They do not have any expertise to assess 'viability' or 'feasibility' of a 'Corporate Debtor'. They don't have commercial wisdom like Financial Institutions/ Banks/ NBFCs. However, these allottees have been provided with voting rights for approval of the plan. Many of such cases came to our notice where the allottees are the sole Financial Creditors. However, it is not made clear as to how they can assess the viability and feasibility of the 'Resolution Plan' or commercial aspect/ functioning of the 'Corporate Debtor' in terms of the decision of the Hon'ble Supreme Court in **"Innoventive Industries Limited v. ICICI Bank and Anr."**<sup>3</sup> followed by **"Swiss Ribbons Pvt. Ltd. & Anr. V. Union of India & Ors."**<sup>4</sup> and **"Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors."**<sup>5</sup>

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<sup>3</sup>(2018) 1 SCC 407

<sup>4</sup>2019 SCC OnLine SC 73

<sup>5</sup>2019 SCC OnLine SC 1478

9. In terms of the 'I&B Code' and the decisions of the Hon'ble Supreme Court, the 'Resolution Plan' must maximise the assets of the Corporate Debtor and balance the stakeholders (secured and unsecured creditors- Financial Creditors/ Operational Creditors).

10. The Infrastructure which is constructed for the allottees by Corporate Debtor (Infrastructure Company) is an asset of the Corporate Debtor. The assets of the Corporate Debtor as per the Code cannot be distributed, which are secured for 'Secured Creditors'. On the contrary, allottees (Homebuyers) who are 'Unsecured Creditors', the assets of the Corporate Debtor which is the Infrastructure, is to be transferred in their favour ('Unsecured Creditors') and not to the 'Secured Creditors' such as Financial Institutions/ Banks/ NBFCs.

Normally, the Banks/ Financial Institutions/ NBFCs also would not like to take the flats/ apartments in lieu of the money disbursed by them. On the other hand, the 'unsecured creditors' have a right over the assets of the Corporate Debtor i.e. flats/ apartment, assets of the Company.

11. In most cases, the Committee of Creditors take 'haircut'. The Resolution Applicants satisfy them most of the time with lesser amount than the amount as

determined. In the case of allottees (Financial Creditors), there cannot be a haircut of assets/ flats/ apartment.

The law is to be explained now again in a reverse way.

### **REVERSE CORPORATE INSOLVENCY RESOLUTION**

#### **PROCESS:**

12. In **"Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors. (2019 SCC OnLine SC 1478)"**, Hon'ble Supreme Court observed as follows:

"90. In *Swiss Ribbons* (supra) this Court was at pains to point out, referring, inter alia, to various American decisions in paras 17 to 24, that the legislature must be given free play in the joints when it comes to economic legislation. Apart from the presumption of constitutionality which arises in such cases, the legislative judgment in economic choices must be given a certain degree of deference by the courts. In para 120 of the said judgment, this Court held:

"120. The Insolvency Code is a legislation which deals with economic matters and, in the larger sense, deals with the economy of the country as a whole. **Earlier experiments, as we have seen, in terms of legislations having failed, "trial" having led to repeated "errors", ultimately led**



to the enactment of the Code. The experiment contained in the Code, judged by the generality of its provisions and not by so-called crudities and inequities that have been pointed out by the petitioners, passes constitutional muster. To stay experimentation in things economic is a grave responsibility, and denial of the right to experiment is fraught with serious consequences to the nation. We have also seen that the working of the Code is being monitored by the Central Government by Expert Committees that have been set up in this behalf. Amendments have been made in the short period in which the Code has operated, both to the Code itself as well as to subordinate legislation made under it. This process is an ongoing process which involves all stakeholders, including the petitioners.”

In view of the observation of the Hon'ble Supreme Court, we experimented as to whether during the Corporate Insolvency Resolution Process the resolution can reach finality without approval of the third party resolution plan.”

8. This Appellate Tribunal also noticed the following facts :

13. One of the Promoter – 'Uppal Housing Pvt. Ltd.'/ Intervenor agreed to remain outside the Corporate Insolvency Resolution Process but intended to play role of a Lender (Financial Creditor) to ensure that the Corporate Insolvency Resolution Process reaches success and the allottees take possession of their flats/apartments during the Corporate Insolvency Resolution Process without any third party intervention. The Flat Buyers Association of Winter Hill – 77 Gurgaon also accepted the aforesaid proposal. It is informed that 'JM Financial Credit Solutions Ltd' one of the financial institution has also agreed to cooperate in terms of agreement with the condition that they will get 30% of the amount paid by the allottees at the time of the registration of the flat/apartment.

14. The other development is that 'Rachna Singh' and 'Ajay Singh' (Allottees), who moved application under Section 7 of the I&B Code, joined hands with the Appellant - 'Flat Buyers Association Winter Hill - 77, Gurgaon' and became its members. During the last few months the Corporate Insolvency Resolution Process has progressed and a number of allottees including 'Rachna Singh' and 'Ajay Singh' have

*already taken possession of their respective flats and sale deed(s) have been registered in their favour.*

*15. 'Uppal Housing Pvt. Ltd.' invested certain amount as an outsider Financial Creditor and as Promoter cooperating with the Interim Resolution Professional, having expertise of real estate project, so we asked it to give time frame for completion of the flats/apartments of the project and time frame for providing common area facilities like Swimming Pool, Club House etc. as per the agreement. They were directed to provide a chart showing the amount as due from different allottees and default, if any, committed by allottee(s). The progress report has also been taken on record."*

9. In this Appeal, the 'Interim Resolution Professional' was directed to collate the claims and on the basis of voting share of the allottees to find out whether the allottees agrees with the proposal for investment by Promoter – as an outsider 'Financial Creditor' and to allow this to co-operate with 'Insolvency Resolution Professional' to complete the project and allottee, if any, who wants the refund.

10. The 'Interim Resolution Professional' after conducted the voting of the allottees (Financial Creditors) and the voting share and the decision has been recorded as under:

"12. That the detail of total number of allottees entitled for proposal and exercised their option is as under:

Particulars	Possession	Refund
Total no. of allottees	1450	148
No. of allottees responded	915	125

13. That after the end of offer period, the detail of decision of the allottees on the aforesaid proposal is as under:

**With respect to possession offer:-**

Particulars	Assent	Dissent	Total
Through Right2Vote	873	39	912
Through e-mail	5	--	5
Less: Consent given by Ex-director & IRP	2	--	2
<b>Total</b>	<b>876</b>	<b>39</b>	<b>915</b>
<b>Percentage (%)</b>	<b>95.74%</b>	<b>04.26%</b>	<b>100.00%</b>

With respect to refund offer:-

Particulars	Assent	Dissent	Total
Through Right2Vote	49		912
Through e-mail	5	--	5
Less: Consent given by Ex-director & IRP	2	--	2
<b>Total</b>	<b>876</b>	<b>39</b>	<b>915</b>

<b>Percentage (%)</b>	<b>95.74%</b>	<b>04.26%</b>	<b>100.00%</b>
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11. The time for completion of the project after receiving the occupancy certificate has been shown by Mr. Rajesh Goyal – Promoter as under, as agreed with the allottees :

<b>S.No</b>	<b>Name of the Tower</b>	<b>Period for applying occupancy certificate after completion of work</b>
01	Tower A	Within 180 days from the start of work.
02	Tower B	Within 180 days from the start of work
03	Tower C	Within 180 days from the start of work
04	Tower F	Within 180 days from the start of work
05	Tower D	Within 180 days from the start of work
06	Tower E	Within 180 days from the start of work
07	Tower M	Within 180 days from the start of work
08	Tower G	Within 180 days from the start of work
09	Tower H	Within 180 days from the start of work

(ii) The second party also undertakes to start work within 30 days (+-) 10 days from the date of order passed by Hon'ble NCLAT in all respect allowing the construction at the project site.

12. Mr. Rajesh Goyal (Promoter) who appear in person accepted that the Promoter will make investment as 'Financial Creditor' to keep the 'Corporate Debtor' (company) as a going concern. 'Summary of sources of funds and time period' to infuse such investment shown as under:

**"Summary of Sources of Funds and time period {Total 70 Crores (approx.)**

S.No	Particulars	Amount in crores			
		30 Days	60 Days	90 Days	Total
1	Sanctioned Loan from IIFL Home Finance Limited	5.00	5.00	5.00	15.00
2	Confirmed Investor	3.00	3.00	3.00	9.00
3	From the properties of Sister concerns	0.50	2.00	2.15	4.65
4	From the personal properties of the promoter and his family members	5.38	15.94	20	41.32
5	<b>Total (A)</b>	13.88	25.94	30.15	<b>69.27</b>

13. A time-frame for refund to the allottees has been shown based on the agreement reached with the allottees who are seeking refund, as shown hereunder:

**"TIME FRAME FOR REFUND OF PRINCIPAL AMOUNT TO ALLOTTEES WHO SEEK REFUND (AFTER SURRENDERING THEIR FLATS)"**

The second party under the direct supervision of the first party will be refund the money to third party/ allottee/ buyer within an outer time period of 180 days per following schedule:-

S.NO	Percentage (%) of total debt	Time period for refund of money
1	30% of principal amount	Within 90 days from the permission granted by the Hon'ble NCLAT subject to any unforeseen circumstances.
2	70% of principal amount	From 91 to 180 days from the start of work.

14. Insofar as interest payable on the principal amount to be refunded to the allottees is concerned, the matter was discussed. Mr. Rajesh Goyal - 'Promoter', Mr. Gaurav Katiyar - 'Interim Resolution Professional' and the counsel representing such allottees, the following agreement was reached:

- (a) The allottees, on production of certificate from the Bank, will be entitled to simple interest @ 6% per annum on their principal amount. If any of such allottee induce the certificate from the 'Financial Institution/Bank' that it has taken loan and has paid or required to pay higher rate of interest such allottee will be entitled to simple interest at the rate the Bank has granted loan only with respect to the amount released by the Bank/Financial Institution on production of certificate.
- (b) The interest will be paid only on completion of the flats and its allotment to the allottees, by sale of unsold apartment/apartments. It may be paid within 180 days, the time period has provided or by 30<sup>th</sup> August, 2020, the last date for completion of the project.

15. Mr. Rajesh Goyal, who is present in the Court, undertakes that he will immediately infuse a sum of Rs. 5.38 Cr. plus 0.50 Cr. i.e. Rs. 5.88 Cr. within a week.

16. Mr. Rajesh Goyal (Promoter) also agrees to pay to all the 'Financial Institutions' such as 'Allahabad Bank', 'Punjab National Bank' and 'Indiabulls' etc. The dues of all the 'Financial Institutions' and time of payment has been shown as under:

*"The dues of financial institutions (Principal only), as existing on the day of declaration of the account as NPA or 19<sup>th</sup> September, 2019 the date on which the insolvency petition against the corporate debtor was admitted as the case may be, shall be paid in the following time frame:*

No.	Sl.	Name of the Financial Institutions	Amount (Rs.) due as on date	Time period for payment
1.		Allahabad Bank	17.35 Crores (as on 01/04/2019)	Within 180 days of the start of the work, subject to any unforeseen circumstances
2.		Punjab National Bank	1.33 Crores (as on 19/09/2019)	Within 180 days of the start of the work, subject to any unforeseen circumstances
3.		Indiabulls Commercial Credit Ltd.	35.80 Crores (the balance as on 01/07/2019 after payment of Rs. 3.70 Crores on 29.06.2019 for regularizing the account)	Within 180 days of the start of the work, subject to any unforeseen circumstances
4.		India Infoline Housing Finance Limited	27.00 crores (as on 19/09/2019)	Within 180 days of the start of the work, subject to any unforeseen circumstances
		<b>Total</b>	<b>81.48 Crores</b>	

17. Learned counsel for the "Indiabulls" submitted that an amount of Rs. 35.80 Crores has wrongly shown and due amount is Rs. 42 Crores.

18. Mr. Rajesh Goyal (Promoter) submitted that any amount as may be determined by the 'Interim Resolution Professional' will be paid to the



'Financial Institutions' including Banks, 'Indiabulls' and the 'Operational Creditors', if any.

19. In view of the facts as referred to above and before passing any direction, it is desirable to quote certain observations and finding as given by this Appellate Tribunal in **"Flat Buyers Association Winter Hills - 77, Gurgaon"** :

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

be project basis, as per approved plan by the Competent Authority. Any other allottees (financial creditors) or financial institutions/ banks (other financial creditors) or operational creditors of other project cannot file a claim before the Interim Resolution Professional of other project and such claim cannot be entertained.

So, we hold that Corporate Insolvency Resolution Process against a real estate company (Corporate Debtor) is limited to a project as per approved plan by the Competent Authority and not other projects which are separate at other places for which separate plans approved. For example – in this case the Winter Hill – 77 Gurgaon Project of the 'Corporate Debtor' has been place of Corporate Insolvency Resolution Process. If the same real estate company (Corporate Debtor herein) has any other project in another town such as Delhi or Kerala or Mumbai, they cannot be clubbed together nor the asset of the Corporate Debtor (Company) for such other projects can be maximised.

22. Further, a 'Secured Creditor' such as 'financial institutions/ banks', cannot be provided with the asset (flat/apartment) by preference over the allottees (Unsecured Financial Creditors) for whom the project has been approved. Their claims are to be satisfied by providing the flat/apartment. While satisfying the

allottees, one or other allottee may agree to opt for another flat/apartment or one tower or other tower if not allotted to any other. In such case their agreements can be modified by the Interim Resolution Professional/ Resolution Professional with the counter signature of the Promoter and the allottees, so that the allottees (financial creditors), who are on rent or paying interest to banks may like to get earlier possession and are relieved from paying rent or interest to banks.

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24. However, after offering allotment it is open to an allottee to request the Interim Resolution Professional/Promoter, whoever is in-charge, to find out a third party to purchase said flat/apartment and get the money back. After completion of the flats/project or during the completion of the project. It is also open to an allottee to reach agreement with the Promoter (not Corporate Debtor) for refund of amount.

25. In the light of aforesaid discussion, as we find it is very difficult to follow the process as in normal course is followed in a Corporate Insolvency Resolution Process, we are of the view, that a 'Reverse Corporate Insolvency Resolution Process' can be followed in the cases of real estate infrastructure companies in the interest of the allottees and survival of the real estate companies and to

*ensure completion of projects which provides employment to large number of unorganized workmen."*

20. The procedure as followed in "*Flat Buyers Association Winter Hills - 77, Gurgaon*" (Supra) shows curtailment of period of resolution without asking for 'resolution plan' from the third party before finalisation of the 'resolution plan'. The resolution can be taken even during the 'corporate insolvency resolution process', if any 'Promoter' as investor agrees to invest the money for keeping the company as a going concern and complete the project within the time frame. In view of the fact that part of the infrastructure (Apartments/Flats) has already been completed, the allottees (Financial Creditors) were the main beneficiaries of the infrastructure have already reached settlement with the 'Promoter' and the fact that the 'Promoter' as an 'outsider financial creditor' has agreed to invest the amount, not from the account of the 'Corporate Debtor' but from other sources to keep the infrastructure as a going concern, we in exercise of inherent powers conferred under Rule 11 of the NCLAT Rules, 2016, pass the following order:

- i. 'Rajesh Goyal' (Promoter) is directed to cooperate with the Interim Resolution Professional and disburse amount (apart from the amount already disbursed) from outside as Lender (financial creditor) not as Promoter to ensure that the project is completed within the time frame as given by him. The disbursement of amount which has been made by 'Rajesh Goyal.' and the amount as will be generated from dues of the Allottees (Financial Creditors) during the Corporate Insolvency Resolution should be deposited in the account of the Company (Corporate Debtor) to keep the Company a going concern. The amount

can be utilized only by issuance of cheque signed by the authorised person of the Company (Corporate Debtor) with counter signature by the Interim Resolution Professional. The Bank in which the Corporate Debtor (Company) has account the amount should be deposited only for the purpose of completion of the Project. Banks will allow the cheques for encashment only with the counter signature of the Interim Resolution Professional.

ii. The flats/apartments should be completed in all aspect by 30<sup>th</sup> June, 2020. All internal fit outs for electricity, water connection should be completed by 30<sup>th</sup> July, 2020. The allottees are directed to deposit their balance amount and pay 90% without penal interest, if not deposited, by 15<sup>th</sup> March, 2020. The Allottees in whose favour possession has been offered and clearance has been given by the competent authority are bound to pay the cost for registration and directed to deposit registration cost to get the flats/apartments registered after paying all the balance amount in terms of the agreement.

iii. Common area such as Swimming Pool, Club House etc. as per the agreement, be also completed by 30<sup>th</sup> August, 2020. The allottees are allowed to form 'Residents Welfare Association' and get it registered to empower them to claim the common areas.

iv. 'Rajesh Goyal' will return the amount to the allottees, who already sought for, within the time frame i.e. 30% of the principal amount within 90 days and rest 70% of the principal amount within 180 days. The interest be paid to them in the manner as detailed above by 30<sup>th</sup>

August, 2020. The 'Financial Institutions/Banks' and 'Operational Creditors', if any should be paid simultaneously within the period of 180 days.

v. All these processes should be completed by 30<sup>th</sup> August, 2020. If it completed, the Corporate Insolvency Resolution Process be closed after intimating it to the Adjudicating Authority (National Company Law Tribunal). The resolution cost including fee of the Interim Resolution Professional will be borne by the Promoter. Only after getting the certificate of completion from the Interim Resolution Professional/Resolution Professional and approval of the Adjudicating Authority (National Company Law Tribunal) unsold flats/ apartments etc. be handed over to the Promoter.

vi. It is made clear that even during the Corporate Insolvency Resolution Process, the Interim Resolution Professional can also sell the unsold flats/apartments, by way of a Tripartite Agreement between the Purchaser, Interim Resolution Professional/Resolution Professional and Promoter (Rajesh Goyal). The proceeds as may be generated from such sale should be utilized for completion of the project, payment to Financial Institutions/Banks, Operational Creditors and interest as is payable to the allottees whose principal amount is to be refunded. Once the project is completed, the 'Interim Resolution Professional' will move application before the Adjudicating Authority (National Company Law Tribunal) with the report of completion and ask for disposal of application under Section 7 of the 'I&B Code' filed by Ms. Babita Gupta,

Mr. Manoj Kumar Gupta and Ms. Sweta Gupta (Allottees – Financial Creditors).

vii. However, if the 'Promoter' fails to comply with the undertaking and fails to invest as financial creditor or do not cooperate with the Interim Resolution Professional/Resolution Professional, the Adjudicating Authority (National Company Law Tribunal) will complete the Insolvency Resolution Process.

The appeal stands disposed of with aforesaid observations and directions.

[Justice S.J. Mukhopadhaya]  
Chairperson

(Justice Venugopal M.)  
Member(Judicial)

ns/RR

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

39

**I.A. No. 2166 of 2020 in****Company Appeal (AT) (Insolvency) No. 1056 of 2019****IN THE MATTER OF:****Rajesh Goyal****...Appellant****Versus****Babita Gupta & Ors.****...Respondents****Present:****For Appellant:****Mr. Abhijeet Sinha, Mr. Saurabh Jain, Mr. Sandeep Bhuraria and Mr. Aman Anand, Advocates.****For Respondents:****Mr. Sudeep Kumar Shrotriya, Advocate for R-1 to 3.****Mr. Rishabh Jain, Advocate with Mr. Gaurav Katiyar, IRP.****Mr. Kumar Anurag Singh, Advocate for Financial Creditor.****Mr. Sumesh Dhawan, Ms. Vatsala Kak and Ms. Geetika Sharma, Advocates for India Bulls.****Mr. Praful Jindal, Advocate.****Mr. Rajesh Gupta and Mr. Anubhav Mehrotra, Advocates for Homebuyers****Mr. Amandeep Singh, Advocate for Intervenor.****Mr. Rupesh Kumar, Advocate.****ORDER****(Through Virtual Mode)**

**22.09.2020:** Apart from 'IndiaBulls Commercial Credit Pvt. Ltd.' three more Objectors have come forward and filed their objections. Shri Rishabh Jain, Advocate has filed objection on behalf of the IRP. Shri Amandeep Singh, Advocate has filed objection on behalf of the Intervenor - 'RG Luxury Home Buyers Association'. Shri Anubhav Mehrotra has filed objection on behalf of Allottees (Home Buyers seeking refund).



Heard all the parties briefly. In the light of judgment dated 5<sup>th</sup> February, 2020, before proceeding further, we deem it appropriate to let all the parties - Appellant/Applicant and Objectors to file a brief note, not more than two pages, including the chart in regard to steps envisaged to be taken in terms the judgment dated 5<sup>th</sup> February, 2020 as also steps Appellant/ Applicant and the Objectors propose to make the settlement incorporated in the aforesaid judgment workable, within one week.

At this stage Shri Rishabh Jain, Advocate representing IRP brought to our notice that Mr. Gaurav Katiyar, IRP has tendered his resignation and he is required to be substituted by a new Resolution Professional. From the last para of the Judgment dated 5<sup>th</sup> February, 2020, we find that it is only in the event of breach of undertaking in regard to infusion of funds by the Promoter as Financial Creditor, the Adjudicating Authority has been asked to complete the Insolvency Resolution Process. This clearly indicates that the Corporate Insolvency Resolution Process is still underway. It would therefore be appropriate for the learned counsel for IRP to move an appropriate application supported by an affidavit in this regard seeking substitution of the IRP.

Shri Kumar Anurag Singh, Advocate representing one of the Financial Creditors wants to file an affidavit indicating his desire to invest some amount for

*I.A. No. 2166 of 2020 in Company Appeal (AT) (Insolvency) No. 1056 of 2019*

completion of the project in terms of the judgment rendered by this Appellate Tribunal. He may do so within one week.

List the matter 'for orders' on **30<sup>th</sup> September, 2020.**

**[Justice Bansi Lal Bhat]  
Acting Chairperson**

**[Justice Venugopal M.]  
Member (Judicial)**

**[Kanthi Narahari]  
Member (Technical)**

*am/gc*

*I.A. No. 2166 of 2020 in Company Appeal (AT) (Insolvency) No. 1056 of 2019*

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI****I.A. No. 2166 of 2020****In****Company Appeal (AT) (Insolvency) No. 1056 of 2019****In the matter of:****Rajesh Goyal****....Appellant/Applicant****Vs.****Babita Gupta & Ors.****....Respondents****Present:****For Appellant/  
Applicant:****Mr. Abhijeet Sinha, Mr. Saurabh Jain,  
Mr. Sandeep Bhuraria, Mr. Aman Anand,  
Advocates.****For Respondents:****Mr. Praful Jindal, Mr. Rajesh Gupta, Mr. Anubhav  
Mehrotra, Mr. Rupesh Kumar, Advocates for  
impleader.****Mr. Sumesh Dhawan, Ms. Vatsala Kak, Ms.  
Geetika Sharma, Advocates for India Bulls****Mr. Gaurav Katiyar, IRP, Mr. Rishabh Jain,  
Advocate for IRP.****Mr. Sudeep Kumar Shrotriya, Advocate for R1-3****Mr. Kumar Anurag Singh, Mr. Zain A. Khan,  
Advocates for FC****Mr. Amandeep Singh, Advocate for intervenor for  
RG Luxury Home Buyers****Mr. Rudreshwar Singh, Mr. Gautam Singh,  
Advocates for Jan Kaliyan Samiti****Mr. Manoj Kumar, (Legal Head, IIFL, FC)****Mr. Nishant Piyush, Advocate for FC****Mr. Ram Sharma, Advocate for IIFL.**

## J U D G M E N T

43

### BANSI LAL BHAT, J.

"To, stay experimentation in things economic is a grave responsibility and denial of the right to experiment is fraught with serious consequences to the Nation". Remarked the Hon'ble Apex Court in **"Swiss Ribbons Private Limited and Anr. vs. Union of India and Ors. (2019) SCC OnLine SC 73"** while dealing with the constitutionality of the Insolvency and Bankruptcy Code, 2016, which was reiterated in **"Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta and Ors. - (2019) SCC OnLine SC 1478"**. Taking a cue therefrom this Appellate Tribunal in **"Flat Buyers Association Winter Hills 77, Gurgaon vs. Umang Realtech Private Limited through IRP & Ors. - Company Appeal (AT) (Insolvency) No. 926 of 2019"** decided on 4<sup>th</sup> February, 2019 embarked upon an experiment to introduce the concept of "Reverse Corporate Insolvency Resolution Process", which envisaged resolution in real estate sector (Infrastructure Companies) involving allottees/ home buyers as stake holders by looking beyond the dotted line of approval of third party Resolution Plan and devising ways and means of Insolvency Resolution involving all stake holders. The IRP was directed to collate the claims and based on the voting share of allottees find out whether the allottees would agree to a proposal for investment by promoter as an outsider "Financial Creditor" and to allow it to cooperate with IRP to complete the project. This Appellate Tribunal noticed that one of the Promoter – Uppal Housing Private Limited/ Intervenor agreed to play role of a lender (Financial Creditor) while remaining outside the CIRP

I.A. No. 2166 of 2020 in  
Company Appeal (AT) (Insolvency) No. 1056 of 2019

process. Such proposal was accepted by the Flat Buyers. JM Financial Credits Solutions Limited also agreed to cooperate subject to a condition imposed in regard to receipt of a percentage of amount paid by the allottees. Applicants Rachna Singh and Ajay Singh who had filed Application under Section 7 of the I&B Code, joined hands with the Flat Buyers Association Winter Hills 77, Gurgaon by becoming its Members. The matter progressed and a number of allottees including the original Applicants got possession of their respective flats. As the contemplated process progressed satisfactorily with cooperation of the stake holders, it was allowed to proceed further.

2. In Company Appeal (AT) (Insolvency) No. 1056 of 2019 decided on 5<sup>th</sup> of February, 2020, this Appellate Tribunal, while noticing that the concept of Reverse Insolvency Resolution Process conceived and introduced in **Flat Buyers Association Winter Hills 77, Gurgaon** (supra) had shown curtailment of period of resolution without asking for Resolution Plan from the third party and that the Resolution can be taken even during the CIRP if any promoter, as Investor agrees to invest the money for keeping the Company as a going concern and complete the project within the time frame, observed that since part of the infrastructure (Apartment/ Flats) has already been completed, the main beneficiaries being the allottees have already reached settlement with the Promoter and the fact that the Promoter as an outsider-Financial Creditor has agreed to invest the amount from his own sources and not from the account of Corporate Debtor, proceeded to pass a slew of directions invoking Rule 11 of the NCLAT Rules, which are reproduced hereunder: -

"i. 'Rajesh Goyal' (Promoter) is directed to cooperate with the Interim Resolution Professional and disburse amount (apart from the amount already disbursed) from outside as Lender (financial creditor) not as Promoter to ensure that the project is completed within the time frame as given by him. The disbursement of amount which has been made by 'Rajesh Goyal.' and the amount as will be generated from dues of the Allottees (Financial Creditors) during the Corporate Insolvency Resolution should be deposited in the account of the Company (Corporate Debtor) to keep the Company a going concern. The amount can be utilized only by issuance of cheque signed by the authorized person of the Company (Corporate Debtor) with counter signature by the Interim Resolution Professional. The Bank in which the Corporate Debtor (Company) has account the amount should be deposited only for the purpose of completion of the Project. Banks will allow the cheques for encashment only with the counter signature of the Interim Resolution Professional.

ii. The flats/apartments should be completed in all aspect by 30<sup>th</sup> June, 2020. All internal fit outs for electricity, water connection should be completed by 30<sup>th</sup> July, 2020. The allottees are directed to deposit their balance amount and pay 90% without penal interest, if not deposited, by 15<sup>th</sup> March, 2020. The Allottees in whose favour possession has been offered and clearance has been given by the competent authority are bound to pay the cost for registration and directed to deposit registration cost to get the flats/apartments

registered after paying all the balance amount in terms of the agreement.

iii. Common area such as Swimming Pool, Club House etc. as per the agreement, be also completed by 30<sup>th</sup> August, 2020. The allottees are allowed to form 'Residents Welfare Association' and get it registered to empower them to claim the common areas.

iv. 'Rajesh Goyal' will return the amount to the allottees, who already sought for, within the time frame i.e. 30% of the principal amount within 90 days and rest 70% of the principal amount within 180 days. The interest be paid to them in the manner as detailed above by 30<sup>th</sup> August, 2020. The 'Financial Institutions/'Banks' and 'Operational Creditors', if any should be paid simultaneously within the period of 180 days.

v. All these processes should be completed by 30<sup>th</sup> August, 2020. If it completed, the Corporate Insolvency Resolution Process be closed after intimating it to the Adjudicating Authority (National Company Law Tribunal). The resolution cost including fee of the Interim Resolution Professional will be borne by the Promoter. Only after getting the certificate of completion from the Interim Resolution Professional/Resolution Professional and approval of the Adjudicating Authority (National Company Law Tribunal) unsold flats/ apartments etc. be handed over to the Promoter.

vi. It is made clear that even during the Corporate Insolvency Resolution Process, the Interim Resolution Professional can also sell the unsold flats/apartments, by way of a Tripartite Agreement between the

*Purchaser, Interim Resolution Professional/Resolution Professional and Promoter (Rajesh Goyal). The proceeds as may be generated from such sale should be utilized for completion of the project, payment to Financial Institutions/Banks, Operational Creditors and interest as is payable to the allottees whose principal amount is to be refunded. Once the project is completed, the 'Interim Resolution Professional' will move application before the Adjudicating Authority (National Company Law Tribunal) with the report of completion and ask for disposal of application under Section 7 of the 'I&B Code' filed by Ms. Babita Gupta, Mr. Manoj Kumar Gupta and Ms. Sweta Gupta (Allottees – Financial Creditors).*

*vii. However, if the 'Promoter' fails to comply with the undertaking and fails to invest as financial creditor or do not cooperate with the Interim Resolution Professional/Resolution Professional, the Adjudicating Authority (National Company Law Tribunal) will complete the Insolvency Resolution Process.*

*The appeal stands disposed of with aforesaid observations and directions."*

3. It is manifestly clear that in the event of Promoter failing to comply with the undertaking and making investment as Financial Creditor or not extending cooperation to the IRP/RP, the resolution process would be completed by the Adjudicating Authority.

4. I.A. No.2166 of 2020 has been filed by Shri Rajesh Goyal seeking extension of timelines laid down in the judgment dated 5<sup>th</sup> of February, 2020 rendered by this Appellate Tribunal in Company Appeal (AT) (Insolvency)



No.1056 of 2019 (hereinafter referred as 'the Appeal') purportedly in light of the change in circumstances caused by outbreak of COVID-19 pandemic and lockdowns imposed in various parts of the Country after the aforesaid judgment. It is submitted that due to imposition of nationwide lockdown after outbreak of COVID-19 pandemic, the restrictions imposed resulted in unprecedented financial crisis, loss of lives, disruption of construction activity and operations of the corporate sector more particularly the financial as well as the real estate sectors. It is further submitted that the Central Government and various instrumentalities of State, have recognized the hardship and extended timelines for completion of projects. It is submitted that the aforesaid judgment was delivered just before outbreak of COVID-19 pandemic and the timelines laid down in terms of the judgment were required to be extended as non-compliance of the directions on the part of Applicant were not intentional.

5. All stake holders including Indiabulls who was a party to original proceedings in Appeal as a Financial Creditor and the Home buyers were allowed to intervene. All others who were parties to the original proceedings were also put on notice to elicit their views. Indiabulls Commercial Credit Private Limited and three more objectors came forward and filed their objections. Apart from IRP, RG Luxury Home Buyers Association filed objections on behalf of allottees (Home Buyers) seeking refund. All concerned were directed to file brief notes including the chart in regard to steps envisaged to be taken in furtherance of the judgment as also indicate the steps proposed to make the settlement incorporated in the aforesaid

judgment workable. Meanwhile, it was brought to our notice that Shri Gaurav Katiyar, IRP has tendered resignation. Keeping in view the last para of directions incorporated in judgment dated 5<sup>th</sup> February, 2020, learned Counsel for IRP was given liberty to approach the Adjudicating Authority for seeking substitution of the IRP as the CIRP was still underway. Further development, as noticed in order dated 22<sup>nd</sup> September, 2020 is in regard to one of the Financial Creditors desiring to invest some amount for completion of the project in furtherance of judgment dated 5<sup>th</sup> February, 2020. IIFL Home Finance Limited – Financial Creditor filed affidavit in this regard.

6. Applicant-Rajesh Goyal (Promoter) seeks extension of 11 months after the expiry of timelines stipulated in judgment dated 5<sup>th</sup> February, 2020 in light of altered circumstances, which are attributed mainly to outbreak of COVID-19 and its repercussions.

7. IRP, in its brief note suggested that the Applicant may be given five-six months to complete and handover Towers-A, B, C & F to the respective allottees, while for the remaining Towers, the Applicant's may be deferred till he proves his bonafide in delivering Towers-A, B, C & F within the extended timelines. It was suggested that the Applicant be directed to expedite selling of Flats and bring money from properties of sister concerns. It was further suggested that the allottees and their bankers be directed to pay 90% of the total consideration calculated as per BBA as regards receivables from allottees of Greater Noida Project and the additional area. As regards receivables from projects situated in Delhi, it suggested that Shri Rajesh Goyal be directed to provide and utilize money in addition to Rs.5.06 crores

already invested by him for construction purpose. It was suggested that IIFL Home Finance Limited may be directed to release the fund immediately. It was further suggested that M/s AGS Developers Private Limited, M/s GBS Marketing Private Limited and M/s Neel Builders Private Limited may be directed to release the funds immediately as per their LOI's. It was lastly suggested that Indiabulls may be directed to amicably settle the dispute and surrender 70% of the sale proceeds of the said property in favour of general balances of the creditors to be utilized for completion of the real estate project.

8. Indiabulls Commercial Credit Private Limited has filed affidavit stating therein that IIFL Home Finance Limited was obligated to disburse an amount of Rs.15 crores in favour of the Corporate Debtor in three tranches of Rs.5 crores each, disbursement of first tranche within 30 days from the date of judgment and further disbursement within sixty days and ninety days thereof respectively. It is stated that IIFL failed to disburse such aforesaid amount thereby not complying with judgment. However, it is admitted that sanction of Rs.15 crore in favour of Corporate Debtor was approved by IIFL vide its letter dated 4<sup>th</sup> August, 2020.

9. IIFL Home Finance Limited (Financial Creditor/ Intervenor) has filed affidavit stating that the Appellant sought further financial assistance of Rs.15 crores from it and IIFL had agreed to extend further loan to it in terms of letter dated 4<sup>th</sup> August, 2020. The sanction was confirmed vide letter dated 21<sup>st</sup> August, 2020 subject to this Appellate Tribunal granting extension of

time to complete the Project. Thus, IIFL Home Finance Limited has raised no objection to extension of timelines specified in the judgment.

10. Intervenor-RG Luxury Home Buyers Association has filed reply to the affidavit of IIFL Home Finance Limited stating that out of Rs.15 crores loan sanctioned by IIFL, Rs.10 crores will be adjusted by it towards repayment of principal amount of the previous loan. In the end the extension of loan of Rs.15 crores would prove to be a damp squib as Rs.14 crores will have to be repaid with interest thereupon practically leaving nothing for completion of the Project.

11. RG Jan Kalyan Samiti – An Association of Home Buyers, as Intervenor has filed affidavit stating that the unprecedented situation due to outbreak of COVID-19 has impacted the completion of Project, shattering their dreams of owning a dream home to be complete at the earliest. However, they have not opposed the prayer of extension of timelines to Rajesh Goyal.

12. The Home Buyers seeking refund have filed affidavit stating that to make the settlement workable the Applicant promoter must invest Rs.70 crore in the Bank account within a period of 30 days and the extension should be considered thereafter. It is stated that under the garb of extension of time the Applicant wants the allottees to cough up Rs.92.65 crores to be paid by the allottees seeking possession of the flats. It is further stated that the IRP should lay down the procedure to be followed by the objectors to start process of surrendering of their allotted flats.

13. Indiabulls Commercial Credit Private Limited, in its brief note (filed vide Diary No.22398 dt. 29.9.2020) indicated that the Applicant failed to comply

with the directions as contained in judgment dated 5<sup>th</sup> of February, 2020.

This has been projected in a tabular form, which is reproduced hereinbelow: -

"Sno.	Particulars	Timeline as per order dated 5.2.2020	Complied/ Not Complied
1.	Rs.13.88 Crs, to be invested in the Corporate Debtor	within 30 days i.e. by 5.3.2020	Not Complied
2.	Rs.25.94 Crs, to be invested in the Corporate Debtor	within 60 days by 5.4.2020	Not Complied
3.	Rs.30.15 Crs, to be invested in the Corporate Debtor	within 90 days by 5.5.2020	Not Complied
4.	Construction of flats/ apartments to be completed	By 30.6.2020	Not Complied
5.	All internal fit outs for electricity water connection to be completed	By 30.7.2020	Not Complied
6.	Common area such as swimming pool, club house etc.. as per agreement be completed	By 30.8.2020	Not Complied
7.	Return of 30% of principal amount to the allottee who seek refund (after surrendering flats)	Within 90 days	Not Complied
8.	Return of remaining 70% of principal amount to the allottee who seek refund (after surrendering flats)	From 91 to 180 days from the start of work	Not complied
9.	Interest to be paid on the principal amount to the allottee who seek refund (after surrendering flats)	By 30.8.2020	Not complied
10.	Repayment of the dues of ICCL	within 180 days from the start of the construction work at the site of project i.e. by 5.9.2020	Not complied"

14. We have heard learned Counsel for the parties and perused the record.

15. According to Applicant, when the judgment was delivered on 5<sup>th</sup> of February, 2020, the timelines given therein were achievable. However, with the present pandemic situation it is impossible to work with a larger manpower with restrictions and mandatory guidelines in place to be followed for safety of workers. The Applicant seeks exclusion of the period from the date of judgment till further directions as a zero period and to extend the timelines, for completion of the Project in a proportionate manner with reasonable extension on account of restrictions imposed. While IIFL Home Finance Limited has sanctioned further loan of Rs.15 crores to the present Project, all other allottees seem to be interested in completion of the Project, which would serve the larger interests of the stake holders. The Applicant seeks 90 days extension beyond the period of exclusion. However, in regard to allottees who were directed to deposit the balance amount and pay 90% by 15<sup>th</sup> March, 2020 the Applicant wants the time to be extended upto 15<sup>th</sup> November, 2020. As regards, direction to Applicant to infuse a sum of Rs.5.88 crores within a week, it is submitted that the Applicant has already infused Rs.5.24 crores and he undertakes to infuse balance within two weeks.

16. The Applicant has given proposed/ revised extended timeline (filed vide Diary No.24606 dt. 12.1.2021), which is extracted herein below: -

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"Sl. No.	Event	Original Timelines as per order dated 05.02.2020	Revised timelines (exclusion upto 15.01.2021)	Proposed extended timelines (90 days)
1	Flat should be completed in all aspects (Page 62 paragraph 20(ii))	30.06.2020	15.06.2021	15.09.2021
2	All internal fit-outs for electricity, water connection (Page 62 paragraph 20 (ii))	30.07.2020	15.07.2021	15.10.2021
3	Common area such as Swimming Pool, Club house etc. as per agreement (Page 62 paragraph 20 (iii))	30.08.2020	15.08.2021	15.11.2021
4	Refund of 30% of the Principal amount to the Allottees (Page 62, paragraph 20 (iv))	22.05.2020	15.04.2021	15.07.2021
5	Refund of 70% of the Principal amount to the allottees (Page 62, paragraph 20 (iv))	30.08.2020	15.08.2021	15.11.2021
6	Interest to be paid to the allottees seeking refund (Page 62, paragraph 20 (iv))	30.08.2020	15.08.2021	15.11.2021
7	Payment to Financial Institutions/ Bank and operational Creditors (Page 62, paragraph 20 (iv))	30.08.2020	15.08.2021	15.11.2021

*As per the said order, the allottees were directed to deposit balance amount and pay 90% by 15.03.2020, the same may be extended to 15.03.2021."*

17. After providing opportunity of hearing to the stake holders, who appeared or were represented and having accorded our anxious consideration

to the submissions at the Bar, we are of the view that the outbreak of COVID-19 declared as pandemic globally and resulting in imposition of nationwide lockdown with effect from 25<sup>th</sup> March, 2020 and having the disastrous effects of disrupting all economic activities with probably the worst adverse impact on Infrastructure Projects/ Real Estate Projects compounded by migration of labour, restrictions in place for the safety of human lives besides economic hardship unleashed by the unforeseen circumstances, impact whereof still subsists, it would be in the interest of all stake holders to mitigate the hardship created by the unprecedented situation in the wake of outbreak of COVID-19 resulting in imposition of lockdown and halting/ slowing down economic activities/ construction activities. It is indisputable that cash flow and liquidity has suffered a setback and the credit market is making desperate effort to bounce back and stand back on its feet. This warrants a magnanimous approach as the Reverse Corporate Insolvency Resolution Process, showing encouraging results and safeguarding the interests of all stake holders must be given one more chance of proving result oriented. With this noble object, which has in essence been subscribed to by the stake holders interested in completion of the Project, we are inclined to extend the timelines envisaged in the judgment dated 5<sup>th</sup> of February, 2020 without altering, substituting or modifying its structural terms. This, we believe, will create a win-win situation for all stake holders, though extension of time would result in further delay of delivery of flats to the Home Buyers awaiting to step in into their dream homes. We make it clear that though we are convinced about delay having been occasioned on the part of Promoter in



adhering to the directions, as regards, infusion of Rs.13.88 crores in Corporate Debtor within 30 days from the date of judgment viz. by 5<sup>th</sup> of March, 2020, we stop short of holding that the Reverse Corporate Insolvency Resolution Process contemplated in terms of the judgment dated 5<sup>th</sup> of February, 2020 has aborted due to non-compliance on this score, the single instance of default on the eve of outbreak of COVID-19 pandemic and imposition of lockdown being viewed only as an aberration. This is not with a view to condone the default but only to promote the ends of justice as giving further lease of life to the visionary step taken in pursuance of an experiment in the form of Reverse Corporate Insolvency Resolution Process must not give way to a single instance of default which happened just on the eve of imposition of lockdown due to outbreak of COVID-19 pandemic.

18. We accordingly, while allowing the Application seeking extension in the context of timelines provided in the judgment to the extent indicated, direct extension of timelines as indicated in the proposed extended timelines filed on behalf of the Applicant vide Diary No.24606 dated 12<sup>th</sup> of January, 2021 (also reproduced at paragraph 16 above of this judgment), with further provision that the time allowed to allottees who were directed to deposit balance amount and pay 90% by 15<sup>th</sup> March, 2020 shall stand extended to 15<sup>th</sup> of June, 2021. All directions, except for the extended timelines, remaining intact, it is reiterated that if the Applicant-Promoter fails to comply with the undertaking and fails to invest as Financial Creditor or does not cooperate with the Resolution Professional, the amount invested by him as

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Financial Creditor in terms of the judgment shall stand forfeited and the Adjudicating Authority, National Company Law Tribunal will complete the Insolvency Resolution Process. The Resolution Professional will report compliance in respect of each step contemplated to be taken in terms of the fresh schedule within 15 days on first working day of every month. It shall be open to the homebuyers to approach this Appellate Tribunal with any grievance in this regard.

The I.A. No.2166 of 2020 is disposed off.

**[Justice Bansi Lal Bhat]**  
**Acting Chairperson**

**[Justice Jarat Kumar Jain]**  
**Member (Judicial)**

**[Dr. Alok Srivastava]**  
**Member (Technical)**

**New Delhi**

**4<sup>th</sup> March, 2021**

**Ash**

*I.A. No. 2166 of 2020 in  
Company Appeal (AT) (Insolvency) No. 1056 of 2019*

**CHART -PROPOSED REVISED / EXTENDED TIMELINE  
WITH EXCLUSION UPTO 04.03.2021 i.e.THE DATE OF JUDGMENT  
PASSED BY THIS HON'BLE APPELLATE TRIBUNAL**

<b>Sl. No.</b>	<b>Event</b>	<b>Original Timelines as per order dated 05.02.2020</b>	<b>Revised timelines (exclusion upto 04.03.2021)</b>	<b>Proposed extended timelines (90 days)#</b>
<b>1</b>	Flat should be completed in all aspects (Page 62 paragraph 20(ii))	30.06.2020	30.07.2021	30.10.2021
<b>2</b>	All internal fit-outs for electricity, water connection (Page 62 paragraph 20 (ii))	30.07.2020	30.08.2021	30.11.2021
<b>3</b>	Common area such as Swimming Pool, Club house etc. as per agreement (Page 62 paragraph 20 (iii))	30.08.2020	30.09.2021	30.12.2021
<b>4</b>	Refund of 30% of the Principal amount to the Allottees (Page 62, paragraph 20 (iv))	22.05.2020	22.06.2021	22.08.2021
<b>5</b>	Refund of 70% of the Principal amount to the allottees (Page 62, paragraph 20 (iv))	30.08.2020	30.09.2021	30.12.2021
<b>6</b>	Interest to be paid to the allottees seeking refund (Page 62, paragraph 20 (iv))	30.08.2020	30.09.2021	30.12.2021
<b>7</b>	Payment to Financial Institutions/Bank and operational Creditors (Page 62, paragraph 20 (iv))	30.08.2020	30.09.2021	30.12.2021

As per the said order, the allottees were directed to deposit balance amount and pay 90% by 15.03.2020, the same may be extended to 15.07.2021.

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# *Subject to any unforeseen circumstances*

BEFORE THE HON'BLE NATIONAL COMPANY LAW APPELLATE  
TRIBUNAL, NEW DELHI

(APPELLATE JURISDICTION)  
COMPANY APPEAL (AT) (INS) NO. 1056 OF 2019

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**IN THE MATTER OF:**

RAJESH GOYAL

...APPLICANT

**VERSUS**

BABITA GUPTA & ORS.

...RESPONDENTS

**VAKALATNAMA**

KNOWN ALL to whom these presents shall come that I/We the undersigned appoint

**SAURABH JAIN (Enrolment No. – D/642/2007)**

Advocate (hereinafter called the advocates) to be the advocates for the Petitioner(s) Appellant(s)/Respondent(s)/Defendant(s) in the above mentioned cause, to do all the following acts, deeds and things or any of them, that is to say:-

1. To act, appear and plead in the above mentioned cause in this Court or any other Court in which the same may be tried or heard in the first instance or in appeal or letters patent appeal to review or revision or execution or in any other stage of its progress until its final decision.

2. To present pleadings, appeals, letters patent appeal, petition of appeal to Supreme Court, Cross objections, or petitions or execution, review, revision withdrawal compromise or other petitions or affidavits or other documents or sworn affidavit as shall be deemed necessary or advisable for the prosecution of the said cause in all its stages.

3. To withdraw or compromise the said cause or submit to arbitration any differences or dispute that shall arise touching or in any manner relating to the said cause.

4. To receive moneys and grant receipts therefore and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said cause.

5. To employ any other Legal Practitioner authorizing him to exercise the power and authority hereby conferred on the advocates whenever they may think fit to do so.


AND I/We hereby agree to ratify whatever the advocates or their substitute shall do in the premises.

AND I/We hereby agree not to hold the Advocates or their substitute responsible for the result of the said cause in consequence of their absence from the Court when the said cause in called up for hearing.

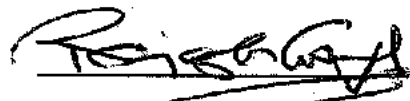
AND I/We hereby agree that in the event of the whole or any part of the fee agreed by me/us to be paid to the Advocates remaining unpaid, they shall be entitled to withdraw from the prosecution of the said cause until the same is paid.

IN WITNESS WHEREOF I/We hereunto set my / our hand to these presents the contents of which have explained to and understood by me, this the 08 day of APRIL, 2021.

Accepted subject to the terms  
Regarding fees



Advocate(s)



(Applicant / Appellant)

[Signature or thumb Impression]

**SAURABH JAIN**

Advocate  
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