

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

I.A. OF 2020

IN

COMPANY PETITION (IB)-710(PB) OF 2019

IN THE MATTER OF:

BABITA GUPTA & ORS.

.... FINANCIAL CREDITOR

VERSUS

RAJESH PROJECTS (INDIA) PRIVATE LIMITED

....CORPORATE DEBTOR

AND

IN THE MATTER OF

MR. GAURAV KATIYAR, IRP

.....APPLICANT

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APPLICANT THROUGH

DATE: 05.08.2020
PLACE: NEW DELHI



RISHABH JAIN

D-472/2018

ADVOCATE FOR THE RESOLUTION PROFESSIONAL

H. NO-2511, S.T. NO.-12, BIHARI COLONY

SHAHDARA DELHI - 110032

MOBILE NO-9873431798, E-mail: rjcs092gmail.com

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
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RAJESH PROJECTS (INDIA) PRIVATE LIMITED

....CORPORATE DEBTOR

MEMO OF PARTIES

- 1. MR. GAURAV KATIYAR,**
INTERIM RESOLUTION PROFESSIONAL OF
RAJESH PROJECTS (INDIA) PRIVATE LIMITED
having his office at
D-32, East of Kailash, Near M Cinema,
New Delhi - 110065

..... Applicant

VERSUS

- 1. RAJESH GOYAL**
EX-DIRECTOR AND SHAREHOLDER IN
CORPORATE DEBTOR
H. NO-32, ROAD NO-43, WEST PUNJABI BAGH
FIRST FLOOR, NEW DELHI-110026

.....Respondent

APPLICANT THROUGH

Rishabh
(RISHABH JAIN)

DATE: 05.08.2020

PLACE: NEW DELHI ADVOCATE FOR THE APPLICANT

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VERSUS

RAJESH PROJECTS (INDIA) PRIVATE LIMITED

....CORPORATE DEBTOR

NOTICE OF MOTION

Date: 5th August, 2020

From: Mr. Gaurav Katiyar, Interim Resolution
Professional of M/s Rajesh Projects (India)
Private Limited
through Counsel:
Mr. Rishabh Jain, Advocate

To: The Registrar,
National Company Law Tribunal,
New Delhi Bench

Concerning:

Ex-Management and Promoter of
Rajesh Projects (India) Private Limited

.....Corporate Debtor

3.

The Party named above request that the Tribunal grant the following relief:

- a. to allow the IRP to start the CIR Process in accordance with Chapter II of Part II of the Code;
- b. to allow the IRP to constitute the Committee of Creditors in terms of section 21 of the Code;
- c. to pass such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

For the following reasons:

- i) Because Mr. Rajesh Goyal, Respondent No-1 has failed to fulfill his obligation and undertaking given before the Hon'ble NCLAT in Company Appeal (AT)(Insolvency) No. 1056 of 2019;
- ii) Because Mr. Rajesh Goyal, Respondent No-1 has failed to keep the Corporate Debtor as going concern;
- iii) Because para 27(vii) of the order dated 05.02.2020 passed by the Hon'ble Appellate Tribunal in Company Appeal (AT)(Insolvency) No. 1056 of 2019 titled as "Rajesh Goyal v. Babita Gupta & Ors. empowered this Hon'ble Tribunal to complete the CIRP in case the Respondent/Promoter fails to comply with the undertaking given before the Hon'ble Appellate Tribunal; and
- iv) As per the calculation in para 19 and 20 of the application Resolution Professional has only 40 days out of 180 days and 77 days out

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of 330 days for completion of CIRP in
accordance with Chapter II of Part II of the I
& B Code' 2016.

Rishabh
RISHABH JAIN
(Advocate)

RISHABH JAIN ADVOCATE M.COM, LL.B, ACS	House No-2511, Street No-12, Bihari Colony, Delhi-110032 Mobile No.-9873431798 e-mail- rjcs092@gmail.com
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The Registrar of NCLT

Date: 05.08.2020

New Delhi Bench,

Subject: Mentioning letter and letter of urgency

Respected Sir,

The present application is filed by the Interim Resolution Professional for seeking the permission to constitute the Committee of Creditors in terms of section 21 and start the CIR Process in accordance with Chapter II of Part II of the Code on the following grounds:

- a) Because Mr. Rajesh Goyal, Respondent No-1 has failed to fulfill his obligation and undertaking given before the Hon'ble NCLAT in Company Appeal (AT)(Insolvency) No. 1056 of 2019;
- b) Because Mr. Rajesh Goyal, Respondent No-1 has failed to keep the Corporate Debtor as going concern;
- c) Because para 27(vii) of the order dated 05.02.2020 passed by the Hon'ble Appellate Tribunal in Company Appeal (AT)(Insolvency) No. 1056 of 2019 titled as "Rajesh Goyal v. Babita Gupta & Ors. empowered this Hon'ble Tribunal to complete the CIRP in case the Respondent/Promoter fails to comply with the undertaking given before the Hon'ble Appellate Tribunal; and
- d) As per the calculation in para 19 and 20 of the application Resolution Professional has only 40 days out of 180 days and 77 days out of 330 days for completion of CIRP in accordance with Chapter II of Part II of the I & B Code' 2016.

DATE: 05.08.2020
PLACE: NEW DELHI

Filed by

Rishabh

RISHABH JAIN

D-472/2018
ADVOCATE FOR THE APPLICANT
H. NO-2511, S.T. NO.-12, BIHARI COLONY
SHAHDARA DELHI - 110032
MOBILE NO-9873431798, E MAIL ID: rjcs092@gmail.com

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I.A. OF 2020

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RAJESH PROJECTS (INDIA) PRIVATE LIMITED

....CORPORATE DEBTOR

AND

IN THE MATTER OF

MR. GAURAV KATIYAR, IRP

.....APPLICANT

INTERLOCUTORY APPLICATION U/S 60(5) OF THE I &

B CODE' 2016 FILED BY IRP FOR SEEKING

NECESSARY DIRECTIONS


1. That instant application is being filed at the instance of the IRP for placing necessary facts, developments and seeking directions.

2. That after the admission of the captioned IB petition, the promoter, namely Mr. Rajesh Goyal, filed appeal bearing

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Company Appeal (AT)(Insolvency) No. 1056 of 2019 titled as "Rajesh Goyal v. Babita Gupta & Ors. against the order dated 19.09.2019 passed by this Hon'ble Tribunal.

3. That the Hon'ble Appellate Tribunal vide order dated 05.02.2020 disposed off the aforesaid appeal with inter-alia direction(s):
- a) Mr. Rajesh Goyal will keep investing the money in Corporate Debtor to maintain the corporate debtor as going as concern;
 - b) Mr. Rajesh Goyal will complete the construction of flat/ apartment in all respect by 30th June' 2020. All internal fit out for electricity and water connection should be completed by 30th July' 2020;
 - c) Mr. Rajesh Goyal will complete the construction of common area of the project such as swimming pool and club house etc. as per the builder buyer agreement by 30th August' 2020 in all respect;
 - d) Mr. Rajesh Goyal will also return the money of the Operational Creditors, Financial Institutions and the allottees seeking refund.

A copy of the order dated 05.02.2020 passed by Hon'ble NCLAT in Company Appeal (AT)(Insolvency) No. 1056 of 2019 is annexed herewith as Annexure-1. 

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4. Furthermore, Mr. Rajesh Goyal also undertook before the Hon'ble Appellate Tribunal to invest a sum of Rs. 69.97 Crores as mentioned in his affidavit dated 3rd February' 2020. The time frame and sources of the Rs. 69.97 Crores undertaken to be invested by Mr. Rajesh Goyal is as under:

(Rupees in crores)

S.No.	Particulars	30 days	60 days	90 days	Total
1	Sanctioned loan from IIFL Homes 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 concern	0.50	2.00	2.15	4.65
4	From the personal properties of promoters and his family members	5.38	15.94	20.00	41.32
5	Total	13.88	25.94	30.15	69.97

5. It is also pertinent to mention here that apart from the above source of fund, Rs. 111.22 crores from sale of *P.*

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unsold inventory in the project, and Rs. 81.48 crores receivable from allottees, was also part and parcel of the plan submitted by Respondent no. 1. A copy of the affidavit dated 03.02.2020 filed by Respondent no. 1 before the Hon'ble Appellate Tribunal is annexed herewith and marked as "Annexure-2".

6. Furthermore, Mr. Rajesh Goyal also undertook before the Hon'ble Appellate Tribunal to start the construction work on the site of project namely, "RG Luxury Homes" within in 30 days (+-) 10 days from the date of final order passed by Hon'ble NCLAT and will complete the finishing work along with common area and will apply for occupancy certificate(s) tower wise within 180 days from the start of work.

7. The Hon'ble Appellate Tribunal vide order dated 05.02.2020 allowed the Respondent no. 1 i.e. Mr. Rajesh Goyal to complete the construction of flat/ apartment in all respect by 30th June' 2020, all internal fit out for electricity and water connection by 30th July' 2020, the construction of common area of the project such as swimming pool and club house etc. as per the builder buyer agreement by 30th August' 2020 in all respect. R.

Whereas the Respondent no. 1 i.e. Mr. Rajesh Goyal has failed to comply the same.

8. It is most humbly submitted that during Feb' 2020 to June'2020, the Corporate Debtor received a sum of Rs. 5,06,27,928/- from sale of units of the Corporate Debtor located at 18th Floor of RG Trade Tower, Netaji Subhash Place, Pitam Pura, Delhi, 110034.
9. That the Corporate Debtor received a sum of Rs. 26,01,438/- from customers of RG Luxury Homes during March' 2020 to July'2020.
10. From the above it is quite evident that the Respondent No-1 i.e. Mr. Rajesh Goyal has failed to bring sum of aggregating Rs. 69.97 Crores in the bank account of the Corporate Debtor.
11. During the Feb' 2020 to July' 2020, aforesaid fund of Rs. 5.30 crore were utilized as per the table mentioned herein below:

Particulars	Amount (Rs.)
Construction Expense	2,73,31,543
Loan Repayment made to IIFL	1,87,50,000
Office expense (Including salary)	52,74,746
CIRP Cost	14,16,000
Payment to Customer (wrongly debited by bank)	3,00,000
Total	5,30,72,289

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12. A comparative chart showing the status of construction on 05.02.2020 vis-à-vis 30.06.2020 prepared and provided by the M/s. Solution Inc. (Project Management Consultant) is annexed herewith as **Annexure-3**. A bare perusal of aforesaid comparative chart clearly shows that during the period of 05.02.2020 to 30.06.2020, no substantial construction as directed by the Hon'ble Appellate Tribunal was done.

13. Furthermore, table in para no 11 showing the utilization of funds clearly depicts that the construction of the flats, common area and project could not be completed due to shortage of funds.

14. That as per M/s. Solution Inc. (PMC) following are the major jobs which are required to be done in the Towers to obtain the occupancy certificate tower wise as deposed by Respondent no. 1 i.e. Mr. Rajesh Goyal before the Hon'ble Tribunal: -

S. No.	Particulars	Comment
i.	Lifts	• 2 Lifts are available in store for Tower-A and 6 lifts for Tower-B, C, D, & E are under installation before commencement of CIRP.

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		<ul style="list-style-type: none">• For rest of the lifts (28) work order is yet to be placed which pending due to the shortage of funds.
ii.	CSS-Transformers	Quotation were asked from independent vendors, but the prices are under final negotiation. Work order is yet to be placed which pending due to the shortage of funds.
iii.	Electrical panels	Quotation were asked from independent vendors, but the prices are under final negotiation. Work order is yet to be placed which pending due to the shortage of funds.
iv.	DG sets	Quotation were asked from independent vendors, but the prices are under final negotiation. Work order is yet to be placed which pending due to the shortage of funds.
v.	Fire pumps	Quotation were asked from independent vendors, but the prices

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		are under final negotiation. Work order is yet to be placed which pending due to the shortage of funds.
vi.	Water Treatment Plant (WTP)/ Water pumps	No process initiated due to shortage of funds; Delivery time is 2-3 weeks.
vii.	Sewerage Treatment Plant (STP)	Quotation were asked from independent vendors, but the prices are under final negotiation. Work order is yet to be placed which pending due to the shortage of funds.
viii.	IPS work	Vendor/ Contractor working before the commencement of CIRP date were asked to resume their work, part work is done by vendors during 05.02.2020 to 29.07.2020 and part work pending due to shortage of funds.
ix.	Fire work	Vendor/ Contractor identified for installation, work order placed and work for Tower- B & C is substantially completed, part work

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		is done by vendors during 05.02.2020 to 29.07.2020 and part work pending due to shortage of funds.
x.	Firework in shaft	Material (other than accessories) is available in sufficient quantity. Vendor/ Contractor identified for installation, work order placed and work for Tower- B & C is substantially completed, part work is done by vendors during 05.02.2020 to 29.07.2020 and part work pending due to shortage of funds.
xi.	Plumbing work (CPVC)	Vendor/ Contractor identified for installation, work order placed and work for Tower- A, B, C & D is substantially completed, no work is done by during 05.02.2020 to 29.07.2020 and work pending due to shortage of funds.
xii.	Plumbing work (UPVC)	Material is available in sufficient quantity. Vendor/ Contractor identified for

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		installation, work order placed and part work is done in Tower- B & C, no work is done by during 05.02.2020 to 29.07.2020 and work pending due to shortage of funds.
xiii.	Wall tiles	For material purchase: <ul style="list-style-type: none">• Tiles in sufficient quantity were purchased during 05.02.2020 to 29.07.2020. For installation/ affixation: <ul style="list-style-type: none">• Vendor/ Contractor identified for installation, work order placed, part work is done by vendors during 05.02.2020 to 29.07.2020 and part work pending due to shortage of funds.
xiv.	Internal Putty	No work done during 05.02.2020 to 29.07.2020.
xv.	External primer / painting	External primer work is in progress in Tower-A, B, C & F, this work is done during 05.02.2020 to 29.07.2020.

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		No painting work done during 05.02.2020 to 29.07.2020.
xvi.	Water proofing	No work done during 05.02.2020 to 29.07.2020.
xvii.	Kota stone staircase	No work done during 05.02.2020 to 29.07.2020.

15. That from the remarks as mentioned in the table in para no-14 it is clear that the major jobs required to be done in the project are pending only because of shortage/non-availability of the funds.

16. The Applicant/Resolution Professional through email 21st March' 2020 suo-moto took the cognizance of pandemic i.e. Novel COVID-19 and authorized the Respondent to take all precautions including reduction in number of laborer or complete shut down of the project site. A copy of the e-mail dated 21st March' 2020 written by the Applicant/ Resolution Professional to Respondent is annexed herewith as **Annexure-4**.

17. But thereafter opening of lockdown (i.e. unlock-1, 2 and 3) the Applicant/ Resolution Professional also wrote to e-mail dated 26.05.2020, 22.06.2020 & 27.07.2020 to

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comply the timelines as mentioned in the order dated 05.02.2020 passed by the Hon'ble Appellate Tribunal. Copies of e-mail dated 26.05.2020, 22.06.2020 & 27.07.2020 sent by the Applicant/ Resolution Professional to Respondent No-1 are annexed herewith as **Annexure-5**. The Respondent No-1 vide e-mail dated 02.08.2020 replied to the above mail wherein the major cause of delay mentioned by the Respondent No-1 was shortage of labour and various other effects caused due to outbreak of pandemic Novel COVID-19. A copy of the reply (without its annexures) dated 02.08.2020 sent by Respondent No-1 to Applicant is annexed as **Annexure-6**.

18. That due to outbreak of pandemic Novel COVID-19 the Central Government and State Government announced the lockdown of 68 days whereas the 65 days have been lapsed after announcing of unlock by the Central Government and State Government. Hence the application is being filed after giving sufficient opportunity/time to Respondent No-1 to come out of the hardships caused by pandemic Novel COVID-19.

19. That it is a matter of record that in the present case the CIRP of the Corporate Debtor was ordered by this Hon'ble Tribunal vide order dated 19.09.2020. A table showing

^

the time consumed in major activities/events during the CIRP/Reverse CIRP of the Corporate Debtor is as under:

S. No.	Particulars	Time Period (in days)
i.	Time Period for public announcement and collation of claim	26 days [19.09.2020 - 15.10.2019]
ii.	Time taken by the Hon'ble Appellate Tribunal in disposing of appeal u/s 61(1) of the I & B Code' 2016 filed by the Respondent No-1 assailing section 7 order dated 19.09.2020	112 days [i.e. 05.02.2020 - 16.10.2019]
iii.	Lockdown period to be excluded by Suo-Moto Hon'ble NCLAT in Company Appeal (AT) (Ins.) 01 of 2020	68 days [25.03.2020 - 31.05.2020]

20. Further a table showing the calculation of 180 days and 330 days as given by the Section 12 of the I & B Code' 2016 is as under:

S. No.	Particulars	Time Period (in days)

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(19)

i.	Total Time period from 19.09.2019 to 05.08.2020	321 day
ii.	Less: Time taken by the Hon'ble Appellate Tribunal in deciding the appeal u/s 61(1) of the I & B Code' 2016 filed by the Respondent No-1 assailing section 7 order [i.e. 16.10.2019 to 05.02.20120]	113 day
iii.	Less: Time liable to be excluded due to lockdown caused due to pandemic COVID-2019 as ordered by the Hon'ble Appellate Tribunal in Suo-moto Company Appeal (AT) (Ins.) 01 of 2020.	68 day
iv.	Time taken by the IRP/Application in conducting the CIRP/Reverse CIRP of the Corporate Debtor.	140 days [321-113-68] days
v.	Time period left from initial 180 days given by	40 days [180-140] days

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	the section 12(1) of I& B Code' 2016	
vi.	Time period left from overall 330 days	77 days [330-(321-68)] days

21. From the above table it is clear that the Applicant/Resolution Professional has only 40 days out of 180 days and 77 days out of 330 days for completion of CIRP in accordance with Chapter II of Part II of the I & B Code' 2016.

22. The aforesaid application is being bona-fide manner and in the interest of justice.

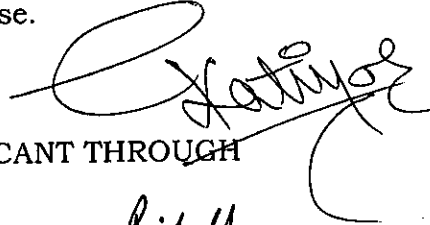
PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Tribunal may be pleased:

- a. to allow the IRP to start the CIR Process in accordance with Chapter II of Part II of the Code;
- b. to allow the IRP to constitute the Committee of Creditors in terms of section 21 of the Code; and

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c. to pass such other order or orders as this Hon'ble
Court may deem fit and proper in the facts and
circumstances of the present case.


APPLICANT THROUGH

DATE: 05.08.2020
PLACE: NEW DELHI

Rishabh
RISHABH JAIN

D-472/2018

ADVOCATE FOR THE INTERIM RESOLUTION
PROFESSIONAL

H. NO-2511, S.T. NO.-12, BIHARI COLONY
SHAHDARA DELHI - 110032

MOBILE NO-9873431798

E-mail: rjcs092gmail.com

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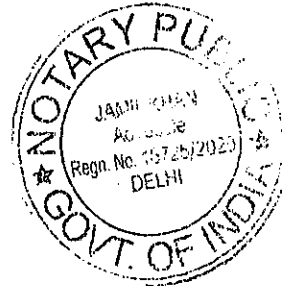
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INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

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**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

I.A. OF 2020

IN

COMPANY PETITION (IB)-710(PB) OF 2019

IN THE MATTER OF:

BABITA GUPTA & ORS.

....FINANCIAL CREDITOR

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RAJESH PROJECTS (INDIA) PRIVATE LIMITED

....CORPORATE DEBTOR

AND

IN THE MATTER OF

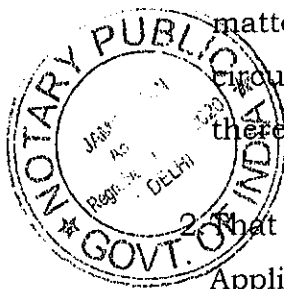
MR. GAURAV KATIYAR, IRP

.....APPLICANT

AFFIDAVIT IN SUPPORT OF APPLICATION

I, Gaurav Katiyar S/o Late Shri Yogesh Kumar Katiyar, aged about 40 years, having office at D-32, East of Kailash, New Delhi - 110065, do hereby solemnly affirm and declare as under

1. That I am the Applicant in the above captioned matter and well conversant with the facts and circumstances of the present application and therefore, competent to depose about the same.



2. That the contents of the accompanying Application have been drafted under my

GAURAV KATIYAR
Insolvency Professional
IBBI/IPA-001/IP-P00209/2017-18/10409
Katiyar

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instructions and the contents of the same have been read over, explained to me and admitted by me to be true and correct.

3. That the contents of the application are based on the personal information and records of the CIRP of the Corporate debtor.

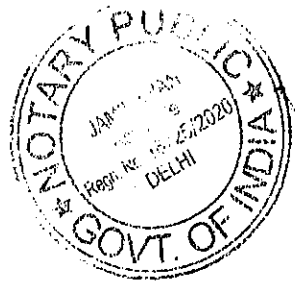
~~GAURAV KATIYAR~~
~~DEBENTURE~~
Insolvency Professional
IBBI/MPA-001/HP/CP/0209/2017-18/10489

VERIFICATION:

Verified at New Delhi on this 31 day of JUL 2020, 2020 that the contents of aforesaid paras are true and correct to my knowledge and belief and no part of it is false and nothing has been concealed therefrom.

Signature identified by
me
Kishan
31/07/2020

~~GAURAV KATIYAR~~
~~DEBENTURE~~
Insolvency Professional
IBBI/MPA-001/HP/CP/0209/2017-18/10489



ATTESTED
NOTARY PUBLIC, DELHI
GOVT. OF INDIA
31 JUL 2020

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

(25)

**Company Appeal (AT) (Insolvency) No. 1056 of 2019
&**

I.A. Nos. 4033 & 4303 of 2019

Annexure-1

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

TRUE COPY .

h.

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 19th 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 :

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

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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	
Total	617.93	
	(22.18)	
Balance		

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

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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 4th 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

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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 16th August, 2019.

4. In "**Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors.**¹", 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

¹2019 SCC OnLine SC 1478

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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.**"², the Hon'ble Supreme Court upheld the Explanation below Section 5(8) (f) to hold that allottees (Homebuyers) of Infrastructure

²{2019} SCC OnLine SC 1005

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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 27th 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.**"³ followed by "**Swiss Ribbons Pvt. Ltd. & Anr. V. Union of India & Ors.**"⁴ and "**Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors.**"⁵.

³(2018) 1 SCC 407

⁴2019 SCC OnLine SC 73

⁵2019 SCC OnLine SC 1478

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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

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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**

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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.”

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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:

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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
Total	876	39	915
Percentage (%)	95.74%	04.26%	100.00%

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
Total	876	39	915

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Percentage (%)	95.74%	04.26%	100.00%
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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 :

S.No	Name of the Tower	Period for applying occupancy certificate after completion of work
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.)

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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	Total (A)	13.88	25.94	30.15	69.27

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.

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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 30th 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:

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"The dues of financial institutions (Principal only), as existing on the day of declaration of the account as NPA or 19th 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
		Total	81.48 Crores	

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

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'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

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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

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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

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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 30th June, 2020. All internal fit outs for electricity, water connection should be completed by 30th July, 2020. The allottees are directed to deposit their balance amount and pay 90% without penal interest, if not deposited, by 15th 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 30th 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 30th

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 30th 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,

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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)

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Annexure-2 (SI)

BEFORE THE NATIONAL COMPANY LAW APPELLATE
TRIBUNAL, NEW DELHI

COMPANY APPEAL (AT). (INSOLVENCY) NO. 1056 OF 2019

IN THE MATTER OF:-

RAJESH GOYAL

.....APPELLANT

VERSUS

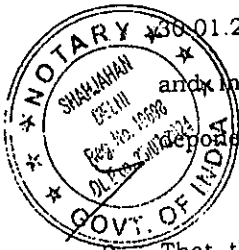
BABITA GUPTA & ORS.

...RESPONDENTS

AFFIDAVIT OF THE APPELLANT

I Rajesh Goyal, S/o Jai Bhagwan Goyal, aged about 52 years,
R/o House No. 32, Road No. 43, West Punjabi Bagh, First
Floor, New Delhi-110026, do hereby solemnly affirm and state
as under:-

1. That I am the appellant in the present appeal. I am the
initial promoter and director of the Corporate Debtor
namely "Rajesh Projects (India) Pvt. Ltd.". The present
affidavit is being filed in pursuance to the Order dated
01.01.2020 passed by this Hon'ble Appellate Tribunal
and in furtherance to earlier affidavits filed by the
dependent.



2. That, through the present affidavit, the appellant hereby
details the upfront amount to be invested immediately for
completion of the project along with its sources.

Handwritten signature/initials.

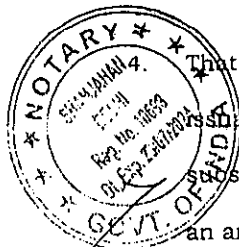
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3. The Appellant himself & through his family members and through the properties belonging to the Appellant, his family members and his other company(ies) and through his relatives, friends and investors arranged by him would source the initial fund of 70 crores (approx.) to complete the Project. Further, for the sake of specificity the details of the 70 Crores are 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 HFL 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	Total (A)	13.88	25.94	30.15	69.97



That for completing the project and for applying for assistance of the **Occupancy Certificate** and subsequently give the offer of possession to the allottees, an amount of **Rs. 62.21 Crores** is required. Immediately

after issuance of Occupancy Certificate, the offer of possession is issued and the remaining works in terms of the Builder Buyer Agreement i.e. finishing works etc shall

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be completed. Upon offer of possession, the allottee(s) are liable to pay their remaining payments towards the consideration amount, maintenance charges, stamp duty charges, electricity charges etc under the Builder Buyer Agreement and get the sub-lease deed registered. The total amount that would fall due on this account would amount to Rs 62.65 Crores receivable from the allottees. It would also be pertinent to mention that Rs. 30 Crores is due from such allottees who have defaulted in making payments due to the Corporate Debtor. It is submitted that such payments as per the terms of settlement circulated by the IRP is due within 30 days from the date of commencement of work of the Project pursuant to orders of the Hon'ble Appellate Tribunal.

5. The total amount recoverable from the Project i.e. the receivables from the unsold inventory is to the tune of Rs. 111.22 Crores. That as on date the amounts due to the Financial Creditors is Rs 81.48 crores. Thus, the amounts due to the Financial Creditors shall also stand duly serviced from the above receivables.



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6. That I swear and solemnly affirm that this declaration is true, that it conceals nothing and that no part of it is false.

Solemnly affirmed at New Delhi on 4th day of Feb, 2020.

Rajesh Goyal
DEPONENT

Anam Anand
I Mobilized the document who has collected in my presence.

VERIFICATION:-

I, Rajesh Goyal the above-named deponent verify that the contents of Paragraph Nos. 1 to 6 of the aforesaid affidavit are true and correct to the best of my knowledge and nothing material has been concealed thereof.

Verified at New Delhi on 3rd this day of Feb, 2020.

03 FEB 2020

03 FEB 2020

03 FEB 2020

Rajesh Goyal
DEPONENT



VERIFIED THAT THE DEPONENT
SIGNED AND AFFIRMED THE ABOVE
DECLARATION AND THAT HE HAS
READ THE SAME AND IS AWARE OF
THE CONTENTS AND IS NOT AWARE
OF ANY CONCEALMENT OF ANY
MATERIAL FACTS OR INFORMATION
WHICH SHOULD BE DISCLOSED
IN THE AFFIDAVIT.
Notary Public

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RG LUXURY HOMES

SEC-16B, GREATER NOIDA WEST, GB NAGAR, UP

Date- 04-07-2020

PROJECT STATUS AS DATED ON 30/06/2020

S.NO.	TOWERS	TOTAL NO OF FLOORS	IPS		FIRE WORK		FIRE WORK IN SHAFT		INTERNAL PUTTY		PLUMBING WORK		WALL TILES IN TOILETS		WATER PROOFING		KOTA STORE IN S/CASE				EXTERNAL PRIMER/PAINING		LIFTS		REMARK	
			STATUS ON 04/02/20	STATUS ON 30/06/20	STATUS ON 04/02/20	STATUS ON 30/06/20	STATUS ON 04/02/20	STATUS ON 30/06/20	STATUS ON 04/02/20	STATUS ON 30/06/20	STATUS ON 04/02/20	STATUS ON 30/06/20	STATUS ON 04/02/20	STATUS ON 30/06/20	STATUS ON 04/02/20	STATUS ON 30/06/20	M. S/CASE	F. S/CASE	STATUS ON 04/02/20	STATUS ON 30/06/20	STATUS ON 04/02/20	STATUS ON 30/06/20	STATUS ON 04/02/20	STATUS ON 30/06/20		STATUS ON 04/02/20
1	A	29	0	0	7	7	0	0	0	0	29	29	0	0	0	0	0	7	7	24	24	0%	25%	2	2	LIFT MATERIAL IS IN THE STORE
2	B	25	7	14	25	25	0	25	13	13	25	13	13	15	13	13	25	25	25	25	0%	65%	1	1		
3	C	25	3	3	25	25	0	18	24	24	25	7	25	25	7	7	25	25	25	25	0%	70%	2	2		
4	F	25	0	0	4	9	0	0	0	0	8	16	0	0	0	0	0	0	0	0	0%	50%	0	0		
	TOTAL	104	10	17	61	66	0	43	37	37	87	95	20	40	20	20	57	57	74	74			5	5		

(Source : Provided by PMCM/s. Solution Inc.)

NOTE:- 1. Tile work started on 25th of June 2020.

2. External Sewerage and Drainage work is completed till Tower-M.

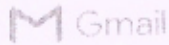
3. Fire work started in Tower-A, pipe cutting & application of primer of pipe in process.

4. Basement cleaning from Tower-A to Tower-M is completed.

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Annexure-3

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IRP of Rajesh Projects <rgi.cirp@gmail.com>

Clarification in light of seriousness of pandemic Novel Coronavirus (COVID-19)

1 message

IRP of Rajesh Projects <rgi.cirp@gmail.com>

To: Rajesh Goyal <rajesh.rpipl@gmail.com>, Rajesh Goyal <omd@rggroup.in>, deepak.rpipl@gmail.com, Deepak Gupta <dgupta@rggroup.in>

Sat, Mar 21, 2020 at 12:21 PM

To,
The Ex-management/ Ex-directors/ Promoters
M/s. Rajesh Projects India Private Limited (In CIRP)

We draw your kind attention towards seriousness of pandemic Novel Coronavirus (COVID-19).

In this connection, We write to inform you that from IRP's Office you are fully authorized to take all the necessary preventive action(s) including the compliance of guidelines issued by the Central Government, Government of NCT of Delhi and Government of Uttar Pradesh, to deal with the seriousness of pandemic Novel Coronavirus (COVID-19), **to save the humanity and in the interest of mankind.**

In addition to the above general authorization you are further authorized to:

- reduce the number labour on the project site of "R.G. Luxury Homes" of the Corporate Debtor to the extent of completely (if required) and temporary shutdown (if required) ;
- direct or requests the employees of the Corporate Debtor to provide their services from their own home (if required) ;
- however during the temporary shutdown, the gates of the site shall remain open (temporarily) to receive the inwards/material ordered by the Corporate debtor. In this regard, necessary arrangements shall be made at the site.

The underlying guiding factor to take the above measures shall be,

- the compliance of guidelines issued by the Central Government, Government of NCT of Delhi and Government of Uttar Pradesh ;
- to protect the economic interest of stakeholders; and
- protection of labour and employees of the Corporate Debtor from the pandemic Novel Coronavirus (COVID-19).

Hence, you are required to maintain the correct balance between the economic interest of stakeholders and protection/interest of labour and employees of the Corporate Debtor from the pandemic Novel Coronavirus (COVID-19).

In case anything is not covered in this please write us immediately.

Warm Regards

Office of Interim Resolution Professional of
M/s. Rajesh Projects (India) Private Limited
IBBI Registration No.: IBBI/IPA-001/IP-P00209/2017-18/10409
Address: D-32, East of Kailash, New Delhi - 110065
(L) 011 4905 0107

URL: www.gauravkatiyar.in

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Non-compliance in terms of order passed by Hon'ble NCLAT on**05.02.2020**

5 messages

Annexure-5

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IRP of Rajesh Projects <rgi.cirp@gmail.com>

Tue, May 26, 2020 at 7:15 PM

To: Rajesh Goyal <cmd@rggroup.in>, Rajesh Goyal <rajesh.rpipl@gmail.com>

Mr. Goyal,

We draw your attention over following non-compliance in terms of order passed by Hon'ble NCLAT on 05.02.2020:

1. Promoters were supposed of deposit Rs. 41.32 Crore from personal properties of the promoter and his family members on or before 05.05.2020;
2. IIFL was supposed to disburse Rs. 15 Crore on or before 05.05.2020;
3. You had assured confirmed investors of Rs. 9 crore, who were supposed to make payment on or before 05.05.2020;
4. Promoters were supposed to deposit Rs. 4.65 crore from the properties of sister concerns on or before 05.05.2020;
5. Corporate Debtor was supposed to make payment of 30% of principal amount for refund cases on or before 05.05.2020;
6. Progress of construction during 45 days (from 05.02.2020 to 21.03.2020) is also not satisfactory.

It seems you have lost somewhere during implementation of order passed by Hon'ble NCLAT on 05.02.2020.

We further request you to kindly ensure compliance of aforesaid order passed by Hon'ble NCLAT at the earliest without any further delay.

--

Warm Regards

Office of Interim Resolution Professional of
M/s. Rajesh Projects (India) Private Limited
IBBI Registration No.: IBBI/IPA-001/IP-P00209/2017-18/10409
Address: D-32, East of Kailash, New Delhi - 110065
(L) 011 4905 0107

URL: www.gauravkatiyar.in

IRP of Rajesh Projects <rgi.cirp@gmail.com>

Mon, Jun 22, 2020 at 11:17 AM

To: Rajesh Goyal <cmd@rggroup.in>, Rajesh Goyal <rajesh.rpipl@gmail.com>

Mr. Goyal,

Awaiting your response.

We further request you to kindly ensure compliance of aforesaid order passed by Hon'ble NCLAT at the earliest without any further delay.

--

Warm Regards

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Office of Interim Resolution Professional of
M/s. Rajesh Projects (India) Private Limited
IBBI Registration No.: IBBI/IPA-001/IP-P00209/2017-18/10409
Address: D-32, East of Kailash, New Delhi - 110065
(L) 011 4905 0107

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URL: www.gauravkatiyar.in
[Quoted text hidden]

IRP of Rajesh Projects <rgi.cirp@gmail.com>
To: Rajesh Goyal <cmd@rggroup.in>, Rajesh Goyal <rajesh.rpipl@gmail.com>

Mon, Jul 27, 2020 at 10:29 AM

Mr. Goyal,

Awaiting your response.

We further request you to kindly ensure compliance of aforesaid order
passed by Hon'ble NCLAT at the earliest without any further delay.

[Quoted text hidden]
[Quoted text hidden]

Rajesh Goyal <rajesh.rpipl@gmail.com>
To: IRP of Rajesh Projects <rgi.cirp@gmail.com>
Cc: Rajesh Goyal <cmd@rggroup.in>

Thu, Jul 30, 2020 at 1:53 PM

Dear Mr. Gaurav Katariya,


At the outset, we would like to acknowledge the receipt of your email dated 27.07.2020, whereby you had requested for the ex-management to ensure compliance of order dated 05.02.2020 passed by the Hon'ble NCLAT in the matter of "Rajesh Goyal Vs. Babita Gupta & Ors. Company Appeal (AT) Insolvency No. 1058 of 2019.

It is our endeavour to extended our co-operation and assistance in the timely completion of the Project "RG Luxury Homes" as per the directions of the Hon'ble NCLAT. In furtherance of the queries raised by you in your email dated 27.05.2020, we are in the process obtaining the requisite documents to answer all your concerns. It is stated that my Brother-in law has unfortunately been tested positive for the Covid 19 virus on 19th July 2020 (report attached) and we have been under home isolation and also I haven't been keeping well for the past 7 days. It is due to these reasons there has been an unavoidable delay.

It is humbly requested that on account of this unprecedented situation, an extension of one week be provided to us so that the process of procuring documents may be completed and the proper project report/status same may be submitted to you with all the relevant information sought by you.

Consideration of the above request shall be highly appreciated.

Regards,
Rajesh Goyal
Promoter
Rajesh Projects India Private Limited
[Quoted text hidden]

 Dr. Abhay Gupta (1).pdf
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Rajesh Goyal <rajesh.rpipl@gmail.com>
To: IRP of Rajesh Projects <rgi.cirp@gmail.com>
Cc: Rajesh Goyal <cmd@rggroup.in>

Sun, Aug 2, 2020 at 10:16 AM

Dear sir,
PFA our reply to the queries raised by you

Regards
Rajesh Goyal
Promoter
Rajesh Projects India Private Limited
[Quoted text hidden]

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 Letter to IRP.pdf
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Ar. no. 6

Dated: 01.08.2020

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To

Shri Gaurav Katiyar
Office of Interim Resolution Professional (IRP) of
M/s Rajesh Projects (India) Private Limited

Reg. No. IBBI/IPA-001/IP-P00209/2017-18/10409

Office at: D-32, East Of Kailash, New Delhi-110065

Ref: *Rajesh Goyal Vs. Babita Gupta & Ors.*
Company Appeal (AT) (Insolvency) No. 1056 of 2019.

Sub: Reply to emails dated 26.05.2020 & 27.07.2020 with regard to the
Compliance of the order dated 05.02.2020 passed by the Hon'ble
NCLAT.

Dear Sir,

- 1) This is with reference to the captioned matter – i.e., **Rajesh Goyal Vs. Babita Gupta & Ors. Company Appeal (AT) (Insolvency) No. 1056 of 2019**, wherein, the Hon'ble National Company Law Appellate Tribunal ("NCLAT") disposed of the Appeal vide its order dated 05.02.2020 ("Order"), giving certain directions to the Ex-Director, Financial Institutions, your good self the Interim Resolution Professional (IRP) and the Allottees of the Real Estate Project of Rajesh Projects (India) Private Limited (hereinafter referred to as the Corporate Debtor) i.e. RG Luxury Homes ("Project"). It is submitted that the said detailed order dated 05.02.2020 passed by the Hon'ble NCLAT was published on the NCLAT website on 15.02.2020 and the certified copy was made available to the undersigned on 22.02.2020. Thereby making the effective date of implementation and compliance of the directions issued by the Hon'ble NCLAT being 22.02.2020.

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- 2) Vide your emails dated 26.05.2020 & 27.07.2020, you have requested the ex-management to ensure the compliance said order. It is submitted that the ex-management in its capacity is putting in its maximum efforts to ensure the completion of the construction despite being prevailing situation and hurdles being faced during those unprecedented times.

- 3) It is submitted taking reference from the affidavits filed by the Promoter, the Hon'ble NCLAT vide its order dated 05.02.2020 passed directions to the Ex-Management to make an investment as a "Financial Creditor" to keep the Corporate Debtor as a going concern and infuse the amounts through various sources i.e. IIFL Home Finance Limited, Confirmed Investors & through sale of Personal Properties of the promoter its sister concern(s) and the Corporate Debtor. Further the NCLAT directed the Promoter i.e. Rajesh Goyal to co-operate with you (Interim Resolution Professional) to ensure that the Project is completed in a time bound manner. Moreover, the Ex-Management was directed to return the principal amount to the allottees who have sought refund as well as Financial Institutions/Banks and "Operational Creditor" within a period of 180 days.

- 4) As you may be aware following the rapid outbreak of the respiratory illness caused by the novel Coronavirus ("COVID-19") that was first reported in Wuhan, China at the end of 2019, the World Health Organization (WHO) declared COVID-19 a "Public health emergency of international concern i.e. to be pandemic on March 11th, 2020.

- 5) Consequently, the Hon'ble Prime Minister, announced Janta Curfew on 22nd March 2020 in its effort to curb the spread of the virus. Further, in a drastic step, to curb the spread of coronavirus, the Hon'ble Prime Minister, on March 24th directed a total lockdown in the country which continued until 8th June, 2020. However, partial Lockdown continues till date.

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PROJECT MOBILIZATION/LABOUR PROCUREMENT/ PERMISSION NOT GRANTED FOR CONSTRUCTION ACTIVITIES HIT DUE TO COVID PANDEMIC.

- 6) Vide your E-mail dated 26/5/2020, you have mentioned that the progress of the project construction from 5/2/2020 to 21/3/2020 was not satisfactory. In this regard it is, my endeavor, to bring to your kind notice that as per NCLAT order dated 5th February 2020 point number 11(ii) page 16 it is clearly mentioned that the promoter shall start the work within 30 days [(+)(-)] 10 days) from the date of the order passed in all aspects allowing the construction at the project site. As explained in para 1 above, this order was published on the internet on 15/2/2020 and a certified copy was made available to the undersigned on 22nd February 2020. The Ex-Management initiated the process of mobilizing all resources at the Project from 15/2/2020 with more than 200 workers recruited to commence the construction works i.e. firefighting, paint, plaster, drainage, sewage work etc., at the project site.
- 7) Thereafter, on 22.03.2020 a complete lockdown was announced by the Government which resulted in hampering the construction activities bringing them to a standstill. After the lockdown was announced a huge number of migrants mostly laborer's across India migrated back to their villages (reverse migration) in order to sustain a living as the economic activity in the country had stopped abruptly. It is submitted that due to these circumstances the majority of the labour migrated back to their villages mainly located in West Bengal and Bihar from the project site. In addition to the COVID pandemic a large proportion of the labourers were forced back to their villages to safeguard their homes and families due to

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Cyclonic Storm Amphan which hit West Bengal in May, 2020. Presently, West Bengal and Bihar are still under lockdown currently and the train services to and from these states have not commenced till date. The notification of the Railway ministry cancelling all regular trains is marked and annexed herewith as ANNEXURE A.

- 8) On 07.05.2020 the ex-management wrote a letter to the OSD, Group Housing, Greater Noida Industrial Development District (GNIDA/Authority) to obtain requisite permission to commence construction at the project site which had been stalled since 22.03.2020 due to the Covid-19 Pandemic and subsequent lockdown. It was also informed to the concerned authorities that 90 workers are residing in a labour hutment close to the project site under the care and supervision of the ex-management. The authority sought for a list of laborer's which was duly provided but the same was a futile attempt as no permission was granted to commence the construction due to the prevailing circumstances and the directions of the state government. The Copy of communication exchanged with Greater Noida Authority is marked and annexed herewith as ANNEXURE B (COLLY).

- 9) The Ministry of Housing and Urban Affairs, in consultation with all stake holders has issued an advisory through Office Memorandum dated 13.05.2020. As per the advisory, on page 2 point 6 subclause (i) and (ii) all the regulatory authorities were advised to give an extension of 6 months in the completion timeline of the real estate projects due to the outbreak of Covid-19 which is a calamity cause by nature and is adversely affecting the regular development of real estate projects by invoking force majeure clause. They further advised for an additional of 3 months to all the authorities in their own discretion for situations specific to their states. Copy of the Advisory dated 13th May 2020 is marked and annexed herewith as ANNEXURE C.

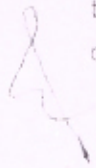
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10. As per advisory issued by the Ministry of Housing and urban affairs dated 28th May 2020 on page 3, point 7 subclause (i), (ii) and (iii) it is stated that the covid-19 pandemic be treated as a force majeure situation and an extension on validity of all approvals, registrations, completion certificates, payments schedule on charges including developmental charges be extended by 9 months. It further extends the timelines for subsequent compliances by the building proponents as per the pre-condition of the permission given automatically for a period of 9 months. Copy of the Advisory dated 28th May 2020 is marked and annexed herewith as **ANNEXURE D.**

11. The Uttar Pradesh Real Estate Regulatory (UPRERA) Authority vide its order dated 06.06.2020 considering the situation created by the pandemic and subsequent lockdown taking into factors like reverse migration of labourers's to their native places and break in supply chain of construction material adversely impacting the construction activities of real estate projects across the country. It would be worthwhile to mention that the UPRERA was pleased to extend the timelines for completion of the projects by 6 months as clearly mentioned in page 2 point 1(i) of the order dated 06.06.2020. Copy of the UPRERA order dated 6th June 2020 is marked and annexed herewith as **ANNEXURE E.**

- 12) Vide your email dated 21.03.2020 you had requested the ex-management to take all necessary and preventive action(s) including compliance of the guidelines issued by the Central Government and Government of Uttar Pradesh. You had specifically stated to take all necessary preventive action(s) so as to ensure the safety and security of the labour/work force at the projet site. In view of the government circular/ directions/ orders including mandatory quarantines, travel restrictions, employee absences, migration of labour from the project site and due to the fear related from the coronavirus the construction activity at the project site came to a complete halt due to the circumstances mentioned above. Even after



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the lockdown was partially lifted on 08.06.2020 there have been various restrictions in and around the Project site. It is submitted that Gautam Buddha Nagar where the project site is located has more than 300 containment zones including the area where the project site is located. The notice issued by GNIDA containing the list of containment zones in Gautam Buddha Nagar dated 16.07.2020 is marked herewith and annexed as ANNEXURE F. In light of the above the ex-management had no option to reduce the pace of construction after lifting of lockdown to ensure that there is no outbreak of the virus amongst the workers. Further the marketing and sales offices of the Project have also remained closed to ensure there is no interaction between the allottees and the workforce as a precautionary measure. An E-mail in this regard was written to you on 19 July 2020 by the ex-management. A copy of the same has been marked and annexed herewith as ANNEXURE G.

NEGOTIATIONS WITH ALLAHABAD BANK/ INDIA INFOLINE/ CONFIRMED INVESTOR DELAYED DUE TO THE PANDEMIC. PENDING PROCEEDINGS IN DRT AND DRAT AGAINST INDIABULLS:

13) vide your E-mail dated 26/5/2020, as point number 2 you have asked IIFL was supposed to deposit rupees 15 crores or before 05/05/2020. In this regard we have to submit as below:

- i. IIFL Home finance Limited had issued a term sheet on 23.12.2019 confirming that they are ready to sanction 15 crores. It is submitted that the head offices of IIFL Home Finance Loan are located in Mumbai, Maharashtra which is a hotspot of the pandemic and has been under lockdown since 20.03.2020. Due to this, there has been a delay in the sanction and disbursement of the loan. We expect to get the final Sanction letter by 5th August 2020. It is further submitted that the said loan will be released by 3rd week of August 2020 which

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shall be deposited in the account of the Corporate Debtor under your supervision.

14) vide your E-mail dated 26/5/2020, as point number 3 you have asked the confirmed investor was supposed to make payment of 9 crores on or before 05/05/2020. You will please appreciate that due to the Pandemic the financial position across the economy has taken an ugly turn and hence due the said reason the Confirmed investor is in the process of rearranging their finances in wake of the economic crisis and has assured the Ex-Management to give a revised schedule for providing funds as assured by end of August, 2020.

15) vide your E-mail dated 26/5/2020, as point number 1 and 4 you have stated that promoters were supposed to deposit rupees 41.32 crores from the personal properties of the promoter and their family members on or before 05/05/2020 and rupees 4.65 crores from the properties of the sister concerns on or before 05/05/2020.

- i. In this regard we have to say that please refer to our affidavit dated 27th January 2020, on page 14, point III complete details of the said properties have been given. The Properties as clearly mentioned had been mortgaged to various financial institutions as additional collateral to raise funds for the corporate debtor. Copy of the Affidavit dated 27th January 2020 is marked and Annexed herein as **ANNEXURE H**.
- ii. The Ex-Management before the initiation of the lockdown due to the Covid – 19 pandemic, vide its E-mails dated 20.02.2020 and in compliance of the order dated 05.02.2020 had apprised your good self about the different properties of the Corporate Debtor its Directors and/or its sister concerns in RG City Centre, Lawrence Road, RG Metro Arcade, RG Mall, Rohini which

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have been sold prior to the initiation of the CIRP and the balance consideration amounting to Rs. 311.19 lakhs is receivable from the said properties. You were duly informed that the said properties have been mortgaged with Allahabad Bank against the loan availed by the Corporate Debtor. You were requested to initiate release of the said properties and execute the Sale Deeds in favour of the buyers of the said properties and collect the balance payments which amounts then would be utilized for the construction of the project and simultaneously pay 30% of the said Sale proceeds realized to Allahabad Bank. In the said E-mail dated 20.02.2020 we had also provided with the details of other unsold properties owned by the sister concerns of the Corporate Debtor. It has been specifically submitted in the said mail that in order to raise funds for completing the construction of the Project is essential and hence, you were requested to contact the banks and get the title deeds of the properties released so as to enable the Ex-Management to execute the sale of the said properties and receive the sale consideration in the name of the Corporate Debtor to utilize for paying the amount to financial institutions and construction purposes.

- ii. The Promoter on 26th February visited Kolkata and had a meeting with the Executive Director, Allahabad Bank to initiate the process of obtaining NOC's from the bank to facilitate the sale proceedings of the properties of the sister concerns/personal properties of the promoter/ Corporate Debtor. On 28.02.2020 the Ex-management wrote a letter to the Assistant General Manager, Allahabad Bank requesting permission for the sale of assets as listed in the affidavits filed before the NCLAT. Moreover, it has been specifically submitted to the bank that the said monies would be used towards the construction of the project and further undertook to repay a percentage of the principal amount subject to the bank releasing its charge and allow the sale of properties as per directions/ orders of the Hon'ble NCLAT. The copy of communication between the ex-management and Allahabad bank is marked herewith and annexed as **ANNEXURE I**.

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- iv. On 04.03.2020 that the Government of India vide Gazzette Notification dated 04.03.2020 amalgamated Allahabad Bank into Indian Bank effective from 01.04.2020. Thereafter lockdown was announced and approval of our request letter has been delayed due to the change in management of the bank and the branches not being fully operational due to the COVID pandemic

- v. Further, rupees 40 crores was to be realised from the promoter's HUF owned property mortgaged to India bulls Commercial Credit Limited as per the NCLAT Order. India bulls Commercial Credit Limited in violation of the orders of the Hon'ble NCLAT restraining them from the sale deed of any property mortgaged with them proceeded to issue an Auction notice, dated 11.03.2020, after approx., one month from the date of the NCLAT order. The auction could not take place due to the nationwide lockdown. It is submitted that despite the aforesaid Order, dated 05.02.2020, India Bulls, with ill motive and *malafide* intention proceeded to issue another sale notice on 12.06.2020, for property mortgaged with the bank. It is submitted that the sale notices were issued even before the expiry of 180 days from the date of the NCLAT order. The ex-management as a result were constrained to file an I.A no. 725 of 2020, in S.A 207 of 2019, seeking the quashing of the sale notice dated 12.06.2020. The Learned DRT vide its Order, dated 08.07.2020, was pleased to allow the I.A filed by the ex-management. Thereafter India bulls has filed an appeal against the order dated 08.07.2020 and the same is pending adjudication before the Hon'ble DRAT, Delhi. It is pertinent to mention that India bulls has not only filed its claim before the IRP but also participated in proceedings before the Hon'ble NCLAT. India bulls also filed a Civil Appeal before the Hon'ble Supreme Court of India against the interim orders passed by the Hon'ble NCLAT, which was subsequently withdrawn by them on account of NCLAT Final order dated 05.02.2020. India bulls in complete disregard of the NCLAT Order has proceeded to sell the property of ex-management which is crucial

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and necessary source of funds to be infused in the completion of the Project.
The Copy of the order dated 08.07.2020 Passed by the Ld. DRT in I.A No. 725 of 2020 in S.A 207 of 2019 is marked herewith and annexed as ANNEXURE J.

- 16) Please note India Infoline Housing Finance Limited in compliance of the order of the Hon'ble NCLAT provided us with NOC of the properties mortgaged to them and as on date the ex-management was able to bring in approximately Rs. 5,25,00,000/- (Rupees Five Crores Twenty Five Lakhs only) other than the Project receivable of the Corporate Debtor.
- 17) Further, as per point 20(ii) on page 24 of the order of the NCLAT the allottees were directed to deposit their balance amount by 15th March 2020. In this regard the ex-management and the IRP have written E-mails to Allottees dated 18th March 2020 and many other. Due to this Pandemic, the customers have also been unable to clear their outstanding dues and have only deposited approximately Rs 25,00,000 /- (Rupees Twenty-Five Lakhs Only) in terms of the NCLAT order .

PERIOD OF LOCKDOWN TO BE EXCLUDED AS A PERIOD OF TIMELINE FOR ANY ACTIVITY THAT COULD NOT BE COMPLETED TO DUE TO LOCKDOWN

The Government of India announced a nationwide lockdown on account of COVID-19 pandemic with effect from 25th March, 2020. The lockdown consequently till date has severely disrupted regular business activities across all sectors of the economy in the country. On 29th March, the IBBI vide the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2020 dated 29th March, 2020 inserted a new regulation, Regulation 40C, to the IBBI (CIRP Regulations) providing for exclusion of the period of lockdown imposed by the Central Government in the wake if COVID-19 outbreak from the computation of timelines for completion of activities under a CIRP. It is evident that such relief has been

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granted to ensure that the rights of all stakeholders in a CIRP Process are sufficiently protected during such unprecedented times. Thus, the period of 180 days automatically stand extended vide the aforesaid Notification of the IBBI for the following purposes as mentioned in your emails dated 26.05.2020 & 27.07.2020, (a) Deposit of Rs. 41.32 Crores from the personal properties of the promoter and his family member; (b) Disbursement of Loan from IIFL for Rs. 15 Crore; (c) Payment of Rs. 9 crores by the confirmed investor in the account of the Corporate Debtor (d) Deposit of Rs. 4.65 crores from the properties of sister concerns & (e) Payment of 30% principal amount of refund cases among allottees. It is submitted that due to lockdown the Real estate has faced a severe blow. There has been no sale proceeds of unsold flats and apartments which could have been utilized for the completion of the project, payment to Financial institutions and allottees who have asked for the principal amount to be refunded.

- 18) With your E-mail dated 26/5/2020, as point number 5 you have asked the status of making payment of 30% of Principal amount for refund cases on or before 5/5/2020. Please refer to point 13 of the Hon'ble NCLAT order, It was directed to us to pay 30% of the Principal amount paid by such allottees within 90 days of the order subject to any unforeseen circumstances. As mentioned by us in Point 1 of this letter, as 22nd February 2020 is our date of receipt of the order, we had to pay the refund amount by 22nd May 2020. Owing to the current ongoing pandemic and the lockdown in place, It is a force majeure and an unforeseen circumstance and therefore the timeline for the same should be extended accordingly.
- 19) In view of the circumstances and facts as stated above it is humbly requested that a reasonable opportunity and time be provided to the ex-management to deposit the funds and also your co-operation to mobilise its resources. Our objective is resolving the distress faced by the Corporate Debtor and ultimately deliver the project to allottees/ homebuyers who invested their hard-earned monies. I request a meeting with your office to discuss the matter and the way forward.

R.

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Thanking You
Yours Sincerely,

Rajesh Goyal
(Ex-Director)
Rajesh Projects India Private Limited

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INDIA NON JUDICIAL

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Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL63482192218180S
Certificate Issued Date	: 31-Jul-2020 04:06 PM
Account Reference	: IMPACC (IV)/ dl792203/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL79220335387685647636S
Purchased by	: GAURAV KATIYAR
Description of Document	: Article 4 Affidavit
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: GAURAV KATIYAR
Second Party	: Not Applicable
Stamp Duty Paid By	: GAURAV KATIYAR
Stamp Duty Amount(Rs.)	: 10 (Ten only)



.....Please write or type below this line.....

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at: www.shcesstamp.com. Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
2. The onus of checking the legitimacy is on the users of this certificate.
3. In case of any discrepancy please inform the Competent Authority.

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

72

I.A. OF 2020

IN

COMPANY PETITION (IB)-710(PB) OF 2019

IN THE MATTER OF:

BABITA GUPTA & ORS.

....FINANCIAL CREDITOR

VERSUS

RAJESH PROJECTS (INDIA) PRIVATE LIMITED

....CORPORATE DEBTOR

AND

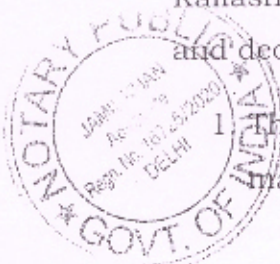
IN THE MATTER OF

MR. GAURAV KATIYAR, IRP

.....APPLICANT

UNDERTAKING BY WAY OF AFFIDAVIT TO COMPLY
THE NORMAL PROCEDURE IMMEDIATELY AFTER
REMOVAL OF LOCKDOWN IN THE NATION AND
STATE OF UTTAR PRADESH

I, Gaurav Katiyar S/o Late Shri Yogesh Kumar Katiyar, aged about 40 years, having office at D-32, East of Kailash, New Delhi - 110065, do hereby solemnly affirm and declare as under:



1. That I am the applicant in the above captioned matter and well conversant with the facts and

GAURAV KATIYAR
Insolvency Professional
IBBI/IPA/01/IFP/00209/2017/16210409

circumstances of the present application and therefore, competent to depose about the same.

- 2. That due to outbreak of COVID-19 and closedown of entire nation, the applicant is not in position
 - a. to file the original application (in 2 Sets);and
 - b. to comply with other mandatory requirements as mentioned in NCLT Rules, 2016.

3. That I say and affirm that I unequivocally and unconditionally undertakes to comply and will comply the aforesaid requirements, before the Hon'ble Principal Bench, immediately after resuming the administrative functioning of this Hon'ble Tribunal.

GAURAV KATIYAR
 Insolvency Professional
 IBBI/IPA-001/P/00209/2017-18/10409
 DEPONENT

VERIFICATION:

Verified at Delhi on this 31 day of July, 2020 that the contents of aforesaid paras are true and correct to my knowledge and belief and no part of it is false and nothing has been concealed therefrom.

Signature identified by me
 Kishabh
 31/07/2020

GAURAV KATIYAR
 DEPONENT
 Insolvency Professional
 IBBI/IPA-001/P-00209/2017-18/10409



ATTESTED
 NOTARY PUBLIC, DELHI
 GOVT. OF INDIA
 31 JUL 2020



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INDIA NON JUDICIAL

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Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL63482975536932S
Certificate Issued Date	: 31-Jul-2020 04:06 PM
Account Reference	: IMPACC (IV)/ dl792203/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL79220335386907393796S
Purchased by	: RISHABH JAIN
Description of Document	: Article 4 Affidavit
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: RISHABH JAIN
Second Party	: Not Applicable
Stamp Duty Paid By	: RISHABH JAIN
Stamp Duty Amount(Rs.)	: 10 (Ten only)



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**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

I.A. OF 2020

IN

COMPANY PETITION (IB)-710(PB) OF 2019

IN THE MATTER OF:

BABITA GUPTA & ORS.

.... FINANCIAL CREDITOR

VERSUS

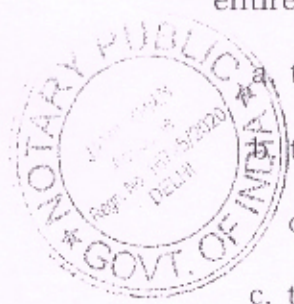
RAJESH PROJECTS (INDIA) PRIVATE LIMITED

....CORPORATE DEBTOR

AFFIDAVIT VERIFYING OF THE APPLICATION

I, Rishabh Jain S/o Late Shri Praveen Jain, aged about 28 years, r/o H. No-2511, Street No-12, Bihari Colony, New Delhi - 110065, do hereby solemnly affirm and declare as under:

1. That I am the Advocate by profession and my enrolment number is D-472/2019;
2. That the contents of the accompanying present application have been drafted by me;
3. That due to outbreak of COVID-19 and closedown of entire nation, my client is not in position
 - a. to file the original application (in 2 Sets);
 - b. to physically serve the copy of the application to opposite party; and
 - c. to comply with other mandatory requirements as mentioned in NCLT Rules, 2016.



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4. That in compliance of the para 1(ii) notice dated 22.03.2020, issued by the Ld. Registrar of this Hon'ble Tribunal, I verify contents of the accompanying present application.

Rishabh
DEPONENT

VERIFICATION:

Verified at New Delhi on this 31st day of, July, 2020 that the contents of aforesaid paras are true and correct to my knowledge and belief and no part of it is false and nothing has been concealed therefrom.

Rishabh
DEPONENT



ATTESTED
ce
NOTARY PUBLIC, DELHI
GOVT. OF INDIA
31 JUL 2020

IN THE NATIONAL COMPANY LAW TRIBUNAL AT NEW DELHI

COMPANY PETITION NO IB-710(PB) OF 2019

77

In Re:-
Babita Gupta & Ors.

Appellant/Petitioner/ Applicant.

Versus

Rajesh Projects (India) Private Limited

Defendant/Respondent

Know all to whom these present shall come that I/we Mr. Gaurav Katiyar, Interim Resolution Professional of Rajesh Projects (India) Private Limited, do hereby appoint.

RISHABH JAIN

D/472/2018

ADVOCATE

Office: H. No-2511, S.T. No-12, Bihari Colony, Delhi-110032

Mobile: 9873431798

(herein after called the advocate/s) to be my/our Advocate in the above noted case authorize him:-
To act, appear and plead in the above-noted case in this court/Tribunal or in any other Court in which the same may be tried or heard and also in the appellate court including High Court subject to payment of fees separately for each court by me/us.

To sign file, verify and present pleadings, appeals cross-objections or petitions for executions review revision, withdrawal, compromise or other petitions or affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case in all its stages subjects to payment of fees for each stage.

To file and take back documents, to admit and/or deny the documents of opposite party.

To withdraw or compromise the said case or submit to arbitration any differences or disputes that may arise touching or in any manner relating to the said case.

To take execution proceedings.

To deposit, draw and receive monthly cheques, cash and grant receipts thereof 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 case.

To appoint and instruct any other Legal practitioner authorizing him to exercise the power and authority hereby conferred upon the Advocate whenever he may think fit to do so and to sign the power of attorney on our behalf.

And I/we the undersigned do hereby agree to ratify and confirm all facts done by the advocate or his substitute in the matter as my/our own acts., as if done by me/us to all intents and proposes.

And I/We undertake that I/we or my/our duly authorized agent would appear in Court on all hearings and will inform the Advocate for appearance when the case is called.

And I/We undersigned do hereby agree that in the event of the whole or part of the fee agreed by me/us to be paid to the advocate remaining unpaid he shall be entitled to withdraw from the prosecution of the said case until the same is paid up. The fee settled is only for the above case and above Court. I /We here agree that once fee is paid, I/We will not be entitled for the refund of the same in any case whatsoever and if the case prolongs for more than 3 Years the original fees shall be paid again by me/us.

IN WITNESS WHEREOF / I/We do hereunto set my/our hand to these presents the contents of which have been understood by me/us on this 16th March, 2020.

Accepted subject to the terms of the fees.

Rishabh
Advocate



GAURAV KATIYAR
Insolvency Professional
IBBI/IA-001/IP-P00209/2017/ET/110409
(Client) *Gaurav Katiyar*

I identify the signature of client
Rishabh
16/03/2020