

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

I.A. OF 2021

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, IRPAPPLICANT

VERSUS

RAJESH GOYAL

.....RESPONDENT

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DATE: 19 .03.2021
PLACE: NEW DELHI

APPLICANT THROUGH


RISHABH JAIN

D-472/2018

ADVOCATE FOR THE RESOLUTION PROFESSIONAL
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1

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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: 19 .03.2021

PLACE: NEW DELHI ADVOCATE FOR THE APPLICANT

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
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COMPANY PETITION (IB)-710(PB) OF 2019

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VERSUS

RAJESH PROJECTS (INDIA) PRIVATE LIMITED

....CORPORATE DEBTOR

NOTICE OF MOTION

Date: 19th March, 2021

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

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

- i) to allow the IRP to take his remuneration of Rs. 14,71,067/- from the funds available in bank accounts of the CD;
- ii) in alternate to prayer (a)(supra) pass appropriate direction to CD to pay the applicant's dues in full;
- iii) Pass appropriate direction to appoint an Insolvency Professional as IRP in the captioned Company Petition to substitute the present IRP; and
- iv) 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.


RISHABH JAIN
(Advocate)

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

I.A. OF 2021

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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, IRPAPPLICANT

VERSUS

RAJESH GOYALRESPONDENT

AN APPLICATION U/S 60(5) OF THE I & B CODE' 2016

FILED BY IRP FOR SEEKING SUBSTITUTION OF IRP

1. That instant application is being filed at the instance of the IRP for seeking substitution/replacement of IRP in the present matter.
2. That it is a matter of record that the order for initiation of CIRP of M/s. Rajesh Project (India) Private Limited was ordered by this Hon'ble Tribunal on 19.09.2019.
3. That it is also a matter of record that after the admission of the aforesaid IB petition, the promoter, namely Mr.

R.

Rajesh Goyal, filed appeal bearing Company Appeal (AT)(Insolvency) No. 1056 of 2019 titled as "Rajesh Goyal v. Babita Gupta & Ors.

4. That on 05.02.2020 the Hon'ble Appellate Tribunal disposed off the Company Appeal (AT)(Insolvency) No. 1056 of 2019 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 the project namely, "RG Luxury Homes" by 30th August' 2020 in all respect;
- c) 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 the Hon'ble Appellate Tribunal in Company Appeal (AT)(Insolvency) No. 1056 of 2019 is annexed herewith as

Annexure-1.

5. That after expiry of time period given by the Hon'ble Appellate Tribunal in Company Appeal (AT)(Insolvency) No. 1056 of 2019, the Respondent filed I.A. No-2166 of 2020 before the Hon'ble Appellate Tribunal for seeking

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extension of further time. The Hon'ble Appellate Tribunal vide order dated 04.03.2021 allowed the extension to the Respondent. A copy of the order dated 04.03.2021 passed by the Hon'ble Appellate Tribunal in I.A. No-2166 of 2020 in Company Appeal (AT)(Insolvency) No. 1056 of 2019 is annexed herewith as **Annexure-2**.

6. That during the pendency of I.A. No-2166 of 2020, the Applicant herein tendered his resignation as IRP and filed appropriate application before the Hon'ble Appellate Tribunal in terms of liberty granted by the Hon'ble Appellate Tribunal vide order dated 22.09.2020. A copy of the order dated 22.09.2020 passed by the Hon'ble Appellate Tribunal in Company Appeal (AT) (Insolvency) No. 1056 of 2019 is annexed herewith as **Annexure-3**. However, the said application filed was not considered as the Hon'ble Appellate Tribunal and vide order dated 04.03.2021 the Hon'ble Appellate Tribunal held that the applicant is required to file the appropriate application before this Hon'ble Tribunal.
7. That the applicant herein tried his best to implement the said order but due to various reasons the directions of the said order could not be complied with in full. 

8. Further during the past six months i.e. Feb' 2020 to Sep' 2020, the applicant faced various interpretational issues in the said order and because of such interpretational issues, the applicant is not in position to continue as IRP. Moreover, during the past six months internal control system in the CD was very weak. Hence, the Applicant vide his letter dated 18.09.2020 expressed his unwillingness to continue in the captioned matter for the detailed reasons mentioned in the aforesaid letter. A copy of the resignation letter dated 18.09.2020 is annexed herewith and marked as **Annexure-4.**
9. It is also pertinent to mention here that on 04.02.2020 with the intervention of this Hon'ble Appellate Tribunal the books of accounts, assets of the CD were handed over to the IRP. It is further submitted that because the IRP has to maintain the going-concern of the CD, therefore instead of locking the books of accounts, assets of the CD, the "supardari" of accounts, assets of the CD were given to the employees of the CD. A copy of the sheet showing the handing over and taking over of books of accounts and assets of the CD is annexed herewith as **Annexure-5.** Therefore, from the perusal of handing over and taking over sheet it is quite evident that the

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employees of the CD are having the actual and physical possession of books of accounts, assets of CD.

10. That though the applicant was rendering his services to CD even during the lock down, but the applicant has not been paid anything for last six month. The applicant vide e-mail dated 23.09.2020 requested the Respondent No-1 to pay his due, but till date no money has been paid to the applicant for his past services of six months. A copy of the e-mail dated 23.09.2020 along with his bill of professional services for last six month is annexed herewith and marked as **Annexure-6**.

11. It is also pertinent to mention here that in past the applicant have been paid for his services from the account of CD itself.

12. As the applicant has already expressed his unwillingness to continue in the captioned Company Appeal, therefore it will be in the interest of justice to substitute a new "IRP" in the captioned Company Appeal in place of the applicant.

13. Moreover, since the applicant has not been paid anything for last six month, in this connection a necessary direction be issued.

14. 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 take his remuneration of Rs. 14,71,067/- from the funds available in bank accounts of the CD;
- b. in alternate to prayer (a)(supra) pass appropriate direction to CD to pay the applicant's dues in full;
- c. Pass appropriate direction to appoint an Insolvency Professional as IRP in the captioned Company Petition to substitute the present IRP; and
- d. 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.

DATE: 19.03.2021
PLACE: NEW DELHI

APPLICANT THROUGH


RISHABH JAIN

D-472/2018

ADVOCATE FOR THE INTERIM RESOLUTION
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INDIA NON JUDICIAL

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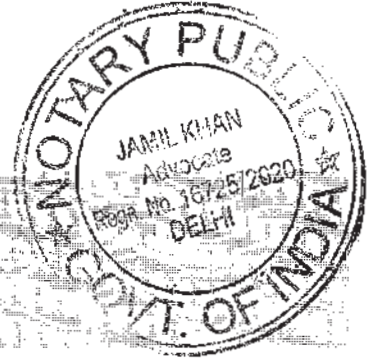
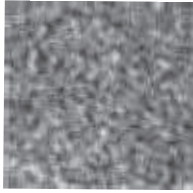


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Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL61997086113825T
Certificate Issued Date : 19-Mar-2021 12:29 PM
Account Reference : IMPACC (IV)/ dl792203/ DELHI/ DL-DLH
Unique Doc. Reference : SUBIN-DL79220325530308163424T
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)



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AND

IN THE MATTER OF

MR. GAURAV KATIYAR, IRP

.....APPLICANT

VERSUS

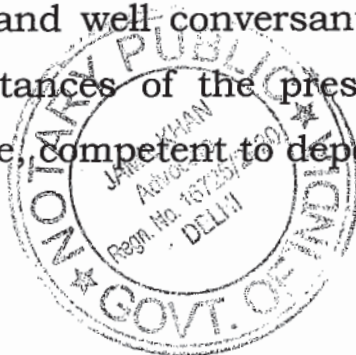
RAJESH GOYAL

.....RESPONDENT

AFFIDAVIT IN SUPPORT OF APPLICATION

I, Gaurav Katiyar S/o Late Shri Yogesh Kumar Katiyar, aged about 41 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.



A handwritten signature in black ink, appearing to read "Katiyar", written over a horizontal line.

2. That the contents of the accompanying Application have been drafted under my instructions and the contents of the same have been read over, explained to me and admitted by me to be true and correct.

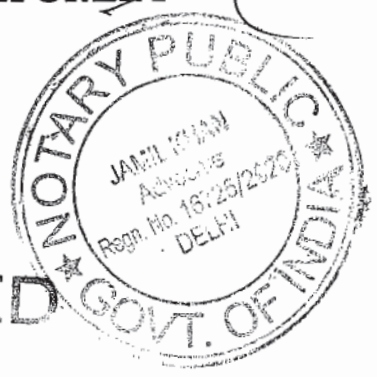
3. That the contents of the application are based on the personal information and records of the CIRP of the Corporate debtor.

DEPONENT
[Handwritten signature]

VERIFICATION:

Verified at New Delhi on this day of March, 2021 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.

DEPONENT
[Handwritten signature]



ATTESTED
[Handwritten signature]
NOTARY PUBLIC, DELHI
GOVT. OF INDIA

19 MAR 2021

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

13

**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


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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	
Balance	(22.18)	

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

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

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

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

6. Similar issue was fell for consideration before this Appellate Tribunal in **‘Flat Buyers Association Winter Hills-77, Gurgaon vs. Umang Realtech Pvt. Ltd. through IRP & Ors.’** in **‘Company Appeal (AT) (Insolvency) No. 926 of 2019’**. In the said case, this Appellate Tribunal in the judgment dated 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

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

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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

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

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

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

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

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

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

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

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

REVERSE CORPORATE INSOLVENCY RESOLUTION

PROCESS:

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

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

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

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

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

8. This Appellate Tribunal also noticed the following facts :

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

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

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

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

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

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

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

27

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

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.)

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.

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:

“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

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

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

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

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

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

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

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

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

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

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

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

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

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

ii. The flats/apartments should be completed in all aspect by 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,

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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NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

I.A. No. 2166 of 2020

Annexure-2

In

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

In the matter of:

Rajesh Goyal

....Appellant/Applicant

Vs.

Babita Gupta & Ors.

....Respondents

Present:

**For Appellant/
Applicant:**

**Mr. Abhijeet Sinha, Mr. Saurabh Jain,
Mr. Sandeep Bhuraria, Mr. Aman Anand,
Advocates.**

For Respondents:

**Mr. Praful Jindal, Mr. Rajesh Gupta, Mr. Anubhav
Mehrotra, Mr. Rupesh Kumar, Advocates for
impleader.**

**Mr. Sumesh Dhawan, Ms. Vatsala Kak, Ms.
Geetika Sharma, Advocates for India Bulls**

**Mr. Gaurav Katiyar, IRP, Mr. Rishabh Jain,
Advocate for IRP.**

Mr. Sudeep Kumar Shrotriya, Advocate for R1-3

**Mr. Kumar Anurag Singh, Mr. Zain A. Khan,
Advocates for FC**

**Mr. Amandeep Singh, Advocate for intervenor for
RG Luxury Home Buyers**

**Mr. Rudreshwar Singh, Mr. Gautam Singh,
Advocates for Jan Kaliyan Samiti**

Mr. Manoj Kumar, (Legal Head, IIFL, FC)

Mr. Nishant Piyush, Advocate for FC

Mr. Ram Sharma, Advocate for IIFL.

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J U D G M E N T**BANSI LAL BHAT, J.**

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

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

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

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

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

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

ii. The flats/apartments should be completed in all aspect by 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


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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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

with the directions as contained in judgment dated 5th of February, 2020.

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

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


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

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

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

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

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

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

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

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


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

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

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

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

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

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

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

New Delhi

4th March, 2021

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NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

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

Annexure-3

IN THE MATTER OF:

Rajesh Goyal

...Appellant

Versus

Babita Gupta & Ors.

...Respondents

Present:

For Appellant:

Mr. Abhijeet Sinha, Mr. Saurabh Jain, Mr. Sandeep Bhuraria and Mr. Aman Anand, Advocates.

For Respondents:

**Mr. Sudeep Kumar Shrotriya, Advocate for R-1 to 3.
Mr. Rishabh Jain, Advocate with Mr. Gaurav Katiyar, IRP.**

Mr. Kumar Anurag Singh, Advocate for Financial Creditor.

Mr. Sumesh Dhawan, Ms. Vatsala Kak and Ms. Geetika Sharma, Advocates for India Bulls.

Mr. Praful Jindal, Advocate.

Mr. Rajesh Gupta and Mr. Anubhav Mehrotra, Advocates for Homebuyers

Mr. Amandeep Singh, Advocate for Intervenor.

Mr. Rupesh Kumar, Advocate.

ORDER

(Through Virtual Mode)

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

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

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

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

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

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

List the matter 'for orders' on **30th September, 2020.**

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

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

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

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

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Gaurav Katiyar

Insolvency Professional

D-32, East of Kailash, New Delhi - 110065

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Annexure-4 ○

Dear Allottees

Date : 18.09.2020

Rajesh Projects (India) Private Limited

R.G. Luxury Homes

Sub: From the desk of IRP

As all of you must be fully aware that during the pendency of Company Appeal filed by Mr. Rajesh Goyal in Hon'ble NCLAT, all of you entered into settlement terms with me and Mr. Rajesh Goyal on the faith that construction will done under the supervision of the Hon'ble Appellate Tribunal and the Hon'ble Appellate Tribunal vide order dated 05.02.2020 disposed off the said appeal with a novel concept of "Reverse CIRP". Thereafter during 2nd week of March'2020 the kick start as desired to the Corporate Debtor was given by Mr. Rajesh Goyal and finally due to pandemic COVID-19, the site was again closed on my request.

Thereafter lifting of partial lockdown in the State of U.P and NCT of Delhi we collectively (i.e. Mr. Goyal and IRP) tried to again made a kick start to the site of the CD but due to various other factors (including the COVID-19) the same could not be done.

Thereafter on receiving various calls and emails from various homebuyers the site was opened for inspection and the progress of construction was shown to the you in phased manner.

Thereafter there was no material development on the site due to various reasons, including main reason shortage of fund and time as granted by the Hon'ble Appellate Tribunal vide order dated 05.02.2020 was expired. In the meantime, IRP filed appropriate application before Hon'ble NCLT for appropriate directions and Mr. Rajesh Goyal filed appropriate application before Hon'ble NCLAT for

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GAURAV KATIYAR

Insolvency Professional

IRP/IDA/04/HP-P/0209/2017-18/10409

seeking extension of time granted to him vide order dated 05.02.2020.

Now, through this letter I would say and submit that as IRP I am no more in position to continue the novel concept of "Reverse CIRP" due to various conundrums as mentioned herein below:

- i. Though I am allowed to continue as IRP and Mr. Rajesh Goyal was allowed to continue the construction, but there is no specific separation of "authority" and "responsibility" between IRP and Mr. Rajesh Goyal leading to following practical problem in day to day affairs of the CD:
 - a. Section 179 of the Companies Act' 2013 empowers the board to act on behalf of the company whereas the same and similar duties have been casted on the IRP u/s 17 and 18 of the I & B Code' 2016;
 - b. It is not clear that if Mr. Rajesh Goyal is managing the day to day affairs of the CD, then all the books of accounts, registered office, movable and immovable assets shall remain in the control and custody of Mr. Rajesh Goyal. Whereas a symbolic possession under the superdari of employees are lying with the IRP. Hence, in future in case Mr. Rajesh Goyal fails to honour the commitments in the order dated 05.02.2020, IRP will be asked about the whereabouts of the books of accounts, registered office, movable and immovable assets because theoretically books of accounts, registered office, movable and immovable assets are in my possession.
 - c. Though as per IBC employees, officers and staff of the CD are required to report to IRP whereas they are only reporting and acting on instruction of Mr. Rajesh Goyal.
 - d. Though as per IBC I am fully entitled to have access the electronic and physical records including books of account & CRM data of the CD but the same are not made available to me. I have to depend on the mercy of Mr. Rajesh Goyal.

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

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- e. Though as per IBC I am responsible for complying the requirements under any law for the time being in force for and on behalf of the CD, but to comply the same I am dependent on the employees, officers and staff and Mr. Rajesh Goyal.
- ii. As per Companies Act' 2013, there are clear cut Roles and duties of Statutory Auditor, Internal Auditor, Company Secretary, Accounts Head and PMC, whereas in "Reverse CIRP" IRP is being made the solely responsible for duties and functions of all of these persons as they are not coming (except PMC) are coming forward which is creating "Reverse CIRP" a highly riskier assignment for IRP in comparison to normal CIRP assignment.
- iii. As all of us know Mr. Rajesh Goyal is only and solely running the affairs of the CD including the construction at site. Therefore, it is imperative for Mr. Rajesh Goyal to have aforesaid authority to work freely, but it is not made clear that in case Mr. Rajesh Goyal fails to honour the commitments in the order dated 05.02.2020, the only and solely Mr. Rajesh Goyal shall be responsible as Mr. Rajesh Goyal is taking all the decision(s). Therefore, the ownership of all the decisions of during the "Reverse CIRP" shall be of Mr. Rajesh Goyal. But no immunity is granted to IRP. In the absence of any specific law or any injunction or declaration of immunity to IRP from court, "Reverse CIRP" a highly riskier assignment for IRP in comparison to normal CIRP assignment.

In Business organization management, there is a say that Authority should be equivalent to Responsibilities. In case authority is more than the responsibility, then there are chances of misuse of authority and in case in case authority is less than the responsibility, then person will become ineffective.

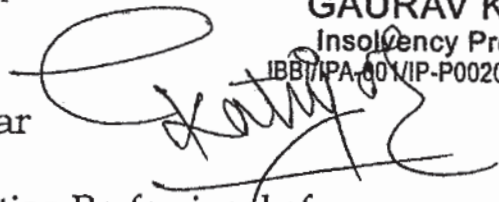
As all of you are having lot of expectation from IRP and in future the performance of IRP will judged in light of duties of

IRP as mentioned in "Code" and without having any authority, IRP becomes ineffective in this case.

Therefore, due to aforesaid conundrum, I am no more in position to continue as IRP for the novel concept of "Reverse CIRP". Hence, I will hold my position and maintain the status quo till new IRP is not appointed in this matter.

In the last but not least I express my sincere thanks and gratitude for reposing the faith in me and giving me this opportunity. I also apologies to all of you for not handing over your dream flats in my tenure.

Thanking You



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

Gaurav Katiyar

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

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



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POSSESSION MEMO OF BOOKS OF ACCOUNTS, ACCOUNTING RECORDS, SECRETARIAL RECORDS OF M/s RAJESH PROJECTS INDIA PRIVATE LIMITED

In compliance of the direction passed by Hon'ble NCLAT on 04.02.2020, the ex-management of M/s Rajesh Projects India Private Limited invited the IRP to take the possession of the books of accounts and other accounting records of the company.

To take the possession of the books of accounts and other accounting records of the company a team consisting:

1. Mr. Gaurav Katiyar – IRP,
2. CA. Kailash Jain, Associate Insolvency Professional
3. Mr. Sumit Singh, IRP Office Assistant

was constituted.

Around 4:30PM the team reached at the registered office of the corporate debtor situated at 214, 2nd Floor, RG City Centre, Plot No-LSC, B Block, Lawrance Road, Delhi-110035, after reaching at the aforesaid address the team met Mr. Deepak Gupta ex-director, Mr. Amod Kumar Jha Company Secretary, Mr. Naveen Sharma Head of Administration and Mr. Paras Malhotra Accounts Manager.

Thereafter the team started taking over of possession details of which is as under:

S. No.	Particulars	Number
1	Computers	9
2	Computer Server of the Corporate Debtor	1
3	Customer files	1736 (Approx)
4	Accounting vouchers (in binded form)	722 (Approx)
5	Accounting vouchers (in box & flat files)	390 (Approx)
6	Copies of previous years bank statements	various

After preparation of the aforesaid inventory of the accounting records and books of accounts the actual physical possession was handed over by Mr. Deepak Gupta ex-director to the team. The inventory of aforesaid record was prepared till 08.00 P.M. The team will continue and prepare the rest inventory on 06.02.2020.

Thereafter, IRP took the printout of the trail balance of the Corporate Debtor from 25.09.2019 to till date. On perusing the same the team found that the major assets of the company are in form of fixed assets, non-current assets, loans and advances, inventories and trade receivables.

The team also perused the fixed assets ledger wherein the assets under the category of motor vehicles, office equipment and plant & machinery were found. The IRP noted that there are total five motor cars in the company. Thereafter IRP asked about the actual location of these cars. Mr. Gupta explained that these cars are being used the

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company for the purpose of business. Thereafter the IRP asked about the registration certificates (RC) under the Motor Vehicles Act of these five cars, Tata RMC truck and Tractor 265DI. Mr. Gupta explained that the RC's are in the vehicles itself and asked three days time to furnish the same. In light of aforesaid circumstance the possession of RC of aforesaid cars will be taken accordingly.

The team also found that there are office equipment's, furniture & fixtures which were not available at the registered office of the Corporate Debtor. On being asked Mr. Gupta explained that most of the assets were used to be located at the previous registered office of the corporate debtor as well as site and same has exhausted their useful life.

On perusal of the fixed assets ledger the team also found that there are plant & machinery available in the books of the corporate debtor. On being asked about the actual location of the aforesaid assets Mr. Gupta explained that these assets were purchased time to time and were used in various projects of the company. Thereafter he submits that most of the plant & machinery of the corporate debtor were used for the main business activity of the company and same may have exhausted their useful life.

Thereafter the IRP told Mr. Gupta to prepare a detailed sheet of office equipment, furniture & fixtures and plant & machinery showing the current status of the aforesaid assets along with justification and copy of invoices to judge the same. Mr. Gupta requested that he will submit the details within two weeks time.

Thereafter on perusal of trail balance the team found that there are investment in following companies namely:-

1. RG Residency Private Limited
2. Dimensions Buildwell Private Limited
3. Empire Assets and Proprieties Private Limited and
4. Real Growth Commercial Enterprises Limited (Formerly known as Rajesh Projects & Finance Limited) (a listed company)

On being asked about the share certificates of the same, Mr. Amod Kumar Jha Company Secretary of the Corporate Debtor submitted that the share in the aforesaid companies except Empire Assets and Proprieties Private Limited are in DEMAT form. Mr. Gupta asked for two days to provide the statement of DEMAT account of the Corporate Debtor and at least one week time for physical share certificates of the Empire Assets and Proprieties Private Limited.

Thereafter, Mr. Amod Kumar Jha Company Secretary of the Corporate Debtor presented and handed over the following secretarial records of the Corporate Debtor:

Sr. No.	Particulars	Time period	
		(from)	(till)
1.	Board Minute Book-1	2 nd April, 2004	26 th March, 2008
2.	Board Minute Book-2	3 rd November, 2008	
3.	Board Minute Book-3	29 th April, 2010	21 st March, 2013



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4.	Board Minute Book-4	1 st April, 2013	22 nd March, 2014
5.	Board Minute Book-5	2 nd April, 2014	26 th Feb., 2015
6.	Board Minute Book-6	27 th March, 2017	4 th April, 2016
7.	AGM Minute Book-1	2000	2003
8.	AGM Minute Book-2	2010	2018
9.	Register of Members-1	As per Companies Act 1956	
10.	Register of Members-2	As per Companies Act 1956	
11.	Register of Share Transfer	As per Companies Act 1956	
12.	Register of Director	As per Companies Act 1956	
13.	Register of Director Shareholding	As per Companies Act 1956	
14.	Register of Member	As per Companies Act 2013	
15.	Statutory Manual Register (12 in 1) (Volume-II)	As per Companies Act 2013	

In the presence of

Mr. Deepak Gupta
Ex-director,

Mr. Amod Kumar Jha
Company Secretary

Mr. Naveen Sharma
Head of Administration

Mr. Paras Malhotra
Accounts Manager

[Signature]

[Signature]

[Signature]

[Signature]

Mr. Gaurav Katiyar – IRP

CA. Kailash Jain,
Associate Insolvency
Professional

Mr. Sumit Singh,
IRP Office Assistant

[Signature]
Katiyar

(Possession Given)

(Possession Taken)

Mr. Deepak Gupta
Ex-director,

[Signature]

Mr. Gaurav Katiyar – IRP,

[Signature]
Katiyar

[Signature]
Deve Singh

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SUPAR-DARI POSSESSION MEMO OF BOOKS OF ACCOUNTS, ACCOUNTING RECORDS, SECRETARIAL RECORDS OF M/S RAJESH PROJECTS INDIA PRIVATE LIMITED

On 04.02.2020, the team of IRP took the possession of the following books of accounts, accounting and secretarial records of the Corporate Debtor from the ex-management of the Corporate Debtor:

S. No.	Particulars	Number
1	Computers	9
2	Computer Server of the Corporate Debtor	1
3	Customer files	1736 (Approx)
4	Accounting vouchers (in binded form)	722 (Approx)
5	Accounting vouchers (in box & flat files)	390 (Approx)
6	Copies of previous years bank statements	Various

S. No.	Particulars	Time period (from)	(till)
1.	Board Minute Book-1	2 nd April, 2004	26 th March, 2008
2.	Board Minute Book-2	3 rd November, 2008	
3.	Board Minute Book-3	29 th April, 2010	21 st March, 2013
4.	Board Minute Book-4	1 st April, 2013	22 nd March, 2014
5.	Board Minute Book-5	2 nd April, 2014	26 th Feb., 2015
6.	Board Minute Book-6	27 th March, 2017	4 th April, 2016
7.	AGM Minute Book-1	2000	2003
8.	AGM Minute Book-2	2010	2018
9.	Register of Members-1	As per Companies Act 1956	
10.	Register of Members-2	As per Companies Act 1956	
11.	Register of Share Transfer	As per Companies Act 1956	
12.	Register of Director	As per Companies Act 1956	
13.	Register of Director Shareholding	As per Companies Act 1956	
14.	Register of Member	As per Companies Act 2013	
15.	Statutory Manual Register (12 in 1) (Volume-II)	As per Companies Act 2013	

To maintain the Corporate Debtor as going concern and to facilitate the employees of the corporate debtor to have access to the aforesaid records, books and data, the IRP is not sealing the aforesaid records, books and data. The supardaari of the aforesaid records, books and data is given to Mr. Amod Kumar Jha, CS and Mr. Naveen Sharma, Head of Administration who have accepted the same.

During the supardaari period, Mr. Amod Kumar Jha, CS and Mr. Naveen Sharma, Head of Administration are required to manage, preserve and maintain the actual physical possession of aforesaid records, books and data and in case of any

Handwritten signatures and initials at the bottom of the page, including a signature that appears to read "Amod Kumar Jha".

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discrepancy Mr. Amod Kumar Jha, CS and Mr. Naveen Sharma, Head of Administration are required to inform the IRP immediately.

In the presence of

Mr. Deepak Gupta
Ex-director,

Mr. Amod Kumar Jha
Company Secretary

Mr. Naveen Sharma
Head of Administration

Mr. Paras Malhotra
Accounts Manager

Supd
Amod

Naveen
Paras Malhotra

Katiyar

Mr. Gaurav Katiyar – IRP

CA. Kailash Jain,
Associate insolvency
Professional

Mr. Sumit Singh,
IRP Office Assistant

Prit Singh

(Supar daari Taken)

Mr. Amod Kumar Jha
Company Secretary

Mr. Naveen Sharma
Head of Administration

Amod

Naveen

(Supar daari Given)

Mr. Gaurav Katiyar – IRP

Katiyar

h.

Deena Singh

Gaurav Katiyar

Insolvency Professional

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D-32, East of Kailash,
New Delhi - 110065

(M) 9818949966

e-mail : cagauravkatiyar@gmail.com

Annexure-6

Bill No. : 005

Date : September 23rd 2020

To,

Mr. Rajesh Goyal

Ex-Director/ Promotor

M/s. Rajesh Projects (India) Private Limited

Registered Office : Shop No. 214, LSC Block-B, RG City Centre,
Lawrence Road Delhi North West DL 110035 IN

Project Office : RG Luxury Homes, Plot no. GH-07, Sector-16B
Greater Noida, Gautam Budh Nagar, Uttar Pradesh - 201301
GSTIN : 09AABCR6667C1Z9

Respected Sir/ Madam,

Please find below the billing for our professional services rendered to you.

Particulars	Amount (INR)
Professional fee to act as IRP of in matter of M/s. Rajesh Projects (India) Private Limited:	
- for the month of April'2020 to September'2020 (6 months)	12,00,000
- for the period 24.09.2019 to 30.09.2019 (7 days)	46,667
Add : IGST @ 18%	2,24,400
Out of pocket :	
Professional fee of Mr. Aditya Verma (Advocate on record) in SLP (Civil) No 16436-16439 of 2019 pending before Hon'ble SC for his appearance on 11.08.2020 & 14.09.2020	24,000
Total Bill amount	14,95,067

Amount in words : Fourteen Lakhs Ninty Five Thousands Sixty Seven only

Udyog Aadhar Number : DL08D0022159

PAN : AJRPK0300M

GSTIN : 07AJRPK0300M1Z7

Bank account detail :

Bank : ICICI Bank Limited

Branch : 49 Basant Lok , Vasant Vihar, New Delhi 110057

Current A/C 054205000056; IFSC code : ICIC0000542

GAURAV KATIYAR

Insolvency Professional

IBBI/PA-001/IP-P00209/2017-18/10409

Gaurav Katiyar

Insolvency Professional

h.
True Copy

Invoice and no dues certificate in matter of Babita Gupta & Ors. Vs. Rajesh Projects(India) Private Limited [URGENT]

3 messages

IRP of Rajesh Projects India Private Limited <rgi.rcirp@gmail.com> Wed, Sep 23, 2020 at 2:53 PM
To: Rajesh Goyal <rajesh.rpipl@gmail.com>, cmd@rggroup.in
Cc: cagauravkatiyar@gmail.com, rgi.cirp@gmail.com

To,
Mr. Rajesh Goyal
Ex-director
Rajesh Projects (India) Private Limited

Dear Sir,

As you are aware, we have expressed our unwillingness to act as IRP in matter of *Babita Gupta & Ors. Vs. Rajesh Projects (India) Private Limited* and Hon'ble NCLAT have directed us to file an appropriate application for the same.

Our invoice of Rs. 14,95,067/- for professional fee and out of pocket expenses is attached herewith. We hereby request you to **kindly make the payment of the same within three days** so that we can give our "No dues certificate" which is essential in the appointment of another insolvency professional who will be appointing as IRP in the given matter.

We had received Rs. 2,00,000/- from Mrs. Babita Gupta which has utilized for various expenses amounting to Rs. 80,000/- (approx.). We will handover the balance to the incoming IRP at the time of handing over documents to him.

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

5 attachments




Cancelled cheque Current Account Gaurav Katiyar.jpg
189K

TRUE COPY

 **34. AV-SEP20-4.pdf**
264K

 **27. AV-AUG20-5.pdf**
264K

 **Invoice_RPIPL.pdf**
291K

 **NCLAT order dated 23.09.2020.pdf**
87K

69

IRP of Rajesh Projects India Private Limited <rgi.rcirp@gmail.com>
To: Rajesh Goyal <rajesh.rpipl@gmail.com>, cmd@rgggroup.in
Cc: cagauravkatiyar@gmail.com, rgi.cirp@gmail.com

Sat, Sep 26, 2020 at 1:36 PM

Dear Sir,

Refer trailing email, Kindly make payment of our professional fee & out of pocket expenses at the earliest.

--

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

[Quoted text hidden]

IRP of Rajesh Projects India Private Limited <rgi.rcirp@gmail.com>
To: Rajesh Goyal <rajesh.rpipl@gmail.com>, cmd@rgggroup.in
Cc: cagauravkatiyar@gmail.com, rgi.cirp@gmail.com

Wed, Sep 30, 2020 at 11:25 AM

Dear Sir,

Refer trailing email, Kindly make payment of our professional fee & out of pocket expenses at the earliest as it is outstanding from the last six months.

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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

[Quoted text hidden]


TRUE COPY