

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH COURT-III**

I.A. 2802/2024

In

C.P.(IB) 592/MB/C-III/2022

*Application under Section 60(5) of the
Insolvency and Bankruptcy Code, 2016*

In the matter of:

Capacite Infraprojects Limited

Having its registered office at:

605-607, Shirkant Chambers, Phase – 1, 6th
Floor, Adjacent to R. K. Studios, Sion
Trombay Road, Mumbai - 400071

... Applicant

Vs.

1. Jayesh Natvarlal Sanghrajka

*Resolution Professional of M/s. Radius &
Deserve Builders LLP*

405-407, Hind Rajasthan Building, Dadar,
Mumbai – 400014

**2. Vistra ITCL (India) Limited HDFC
Capital Affordable Real Estate Fund - I**

Having its office at:

IL & FS Financial Centre, Plot No. C22, G
Block, Bandra Kurla Complex, Bandra
(East), Mumbai – 400051

**3. JC Flowers Asset Reconstruction
Private Limited acting in capacity as
Trustee of JCF Yes Bank Trust
202223/14**

Having its office at:

12th Floor, Crompton Greaves House, Dr.
Annie Besant Road, Worli, Mumbai –
400030

4. Yes Bank Limited

Having its office at:

Yes Bank House, Off Western Express
Highway, Santacruz (East), Mumbai –
400055

... Respondents

In the matter of

Amit Infra-Logic (India) Private Limited

... Operational Creditor

Vs.

Radius & Deserve Builders LLP

Having office at: One BKC, A wing, 1401, Plot
No. C-66, Gblock, Bandra Kurla Complex,
Bandra East, Mumbai – 400051

LLPIN No: AAA5895

... Corporate Debtor

Order delivered on: 07.11.2025

Coram:

Ms. Lakshmi Gurung, Member (*Judicial*)

Sh. Hariharan Neelakanta Iyer, Member (*Technical*)

Appearances:

For the Applicant : Adv. Pulkit Sharma a/w Siddha Pamecha a/w
H. Sukhia i/b Mulla Associates

For Respondent 1 : Adv. Amir Arsiwala a/w Adv. Vaishnavi Dhure

For Respondent 2 : Adv. Rohit Gupta & Aneesa Cheema a/w Harsh
Nanda

For Respondent 3 : Adv. Sushmita Gandhi a/w. Anamika Singh and
Kushal Boolchandani i/b. Trilegal

For Respondent 4 : None Appeared

1. The Interlocutory Application No. 2802/2024 (**IA/2802/2024**) has been filed by M/s Capacite Infraprojects Limited (**Applicant**) seeking setting aside the classification of the Applicant's claim and direction to the RP for re-classification of its claim as "financial creditor in a class – homebuyer" from "other creditors". The prayers are:
 - a. *Pass necessary order and direction to set aside the classification of the claim of the Applicant as "Other Creditors" and declare that the claims made by the Applicant in Form CA qualify to be categorized as "Financial Creditor in Class Homebuyer".*
 - b. *Direct the Respondents to consider the claim of the Applicant as a "Financial Creditor in Class Homebuyer" and accordingly take necessary steps to amend/alter/modify the records of the Corporate Debtor in terms thereof;*
 - c. *Pending the hearing and final disposal of the present Application necessary order and directions be passed restraining the Respondents by a temporary injunction from holding any meeting with the agenda to discuss the "List of Creditors of Radius Deserve & Builders LLP As on Insolvency Commencement Date i.e. 27 September 2023 Claims drawn up to 14 April 2024" prepared by the Respondents and/ or take any step in pursuance thereof or take any decision or agenda or step which may adversely affect the rights of the Applicant herein;*
 - d. *In the alternative, pending the hearing and final disposal of the present Application pass necessary order and directions directing the Respondents that any decision or step taken by the Respondents, which may adversely affect the rights of the Applicant shall be subject to the outcome of the present Application and that such step or decision shall be kept in abeyance till the present Application is decided.*

e. Any other order that this Tribunal may deem fit in the facts and circumstances of this case.

2. The RP is Respondent 1 and other respondents are the CoC members. While R-1, R-2 and R-3 have filed separate replies, R-4 has not filed any reply.

Brief background

3. The brief facts leading to filing of the present IA are:
 - 3.1. The Applicant was engaged as a contractor by M/s Radius & Deserve Builders LLP (**Corporate Debtor**) for construction of 16 SRA buildings. In the absence of payment from the Corporate Debtor, Settlement Terms dated 02.02.2018 were executed wherein the Corporate Debtor agreed to pay Rs. 6 crores to the Applicant. Upon failure to make the said payment, the Applicant issued a demand notice dated 14.11.2019 under section 8 of the Code. Pursuant thereto, the Corporate Debtor paid Rs. 4,98,00,000.
 - 3.2. The Corporate Debtor offered to transfer 10 flats in project “Anantya” Chembur in favour of the Applicant as settlement of the part amount of the outstanding dues to the Applicant. However, this offer was not accepted by the Applicant at this stage and the Applicant sent another demand notice dated 10.11.2020 and filed Petition No. 967/2021 under section 9 of the Insolvency and Bankruptcy Code (referred to as **‘IBC’/ ‘Code’**). During the pendency of the said section 9 petition, the Applicant this time agreed to accept 10 flats in settlement of outstanding dues, and accordingly, the said Petition was withdrawn on 19.04.2023.
 - 3.3. Subsequently, upon Petition filed by Amit Infra-Logic (India) Private Limited, the Corporate Debtor was admitted into insolvency proceedings on 27.09.2023 in CP No. 592/2022. Hence, the Applicant submitted claim in Form CA as Financial Creditor in Class (Homebuyers) vide email dated 13.10.2023. While the verification of

the Applicant's claim was pending, the IRP was replaced and R-1 was appointed as RP vide order dated 24.11.2023 in IA/5331/2023.

- 3.4. The RP, has admitted the claim of the Applicant but categorised the Applicant as 'other creditors. Aggrieved by the same, the Applicant has filed the present Application.

Submissions of the Parties

4. Submission of the Applicant

- 4.1. The applicant relies on the definition of 'allottee', as per section 2(d) of the RERA to contend that by allotment of flats to the Applicant by the Corporate Debtor as compensation for its operational debt, the Applicant has acquired the status of an allottee.
- 4.2. It is then submitted that as per the explanation to clause (f) of section 5(8) of the Code the amounts raised from an allottee under a real estate project are deemed to be amounts with the commercial effect of a borrowing.
- 4.3. It is further submitted that in the present case, there existed no barter deal in terms of work carried out by the Applicant and it was only at a later stage that the Corporate Debtor offered a settlement by allotment of flats which was initially not agreeable to the Applicant but later the Corporate Debtor had confirmed allotment of flats towards settlement of dues which implies that the Corporate Debtor accepted the Applicant as an allottee under RERA and therefore, the Applicant's claim is financial debt under section 5(8) of the Code.

5. Submission of the RP (Respondent 1)

- 5.1. Justifying the categorisation of the Applicant as 'other creditor', the RP submitted that no amount of money was deposited by the Applicant with the Corporate Debtor and thus, there was no amount raised from the Applicant, which is the basic condition for the applicant to qualify itself as a financial creditor. Further, the Applicant cannot be considered as an operational creditor since a barter arrangement was

subsequently entered into between the Corporate Debtor and Applicant. Therefore, the Applicant being neither a financial nor an operational creditor, has been admitted in the category of “other creditors”.

- 5.2. It is submitted that perusal of the present application itself shows that the transaction between the Corporate Debtor and Applicant was a barter arrangement in so far as the Corporate Debtor agreed to provide units in its real estate project as compensation for the goods and services supplied by the Applicant instead of monetary compensation.
- 5.3. The Applicant has not produced any proof on record demonstrating that the purported allotment in its favour was registered with RERA. There is no registered sale deed for the said flats in favour of the Applicant. In fact, when the erstwhile IRP sought documents vide email dated 18.10.2023, the Applicant in its reply email dated 26.10.2023, failed to provide any agreement for sale.

6. Submission of the Respondent 2

- 6.1. The submission of the R-2 was similar to that of R-1. It was submitted that in order to be classified as an allottee under the Code, monies should have been raised from and actually paid by such an allottee under a real estate project. In the present case, the Applicant was appointed as a contractor by the Corporate Debtor and was entitled to receive monetary consideration. Accordingly, the Applicant was a service provider. No contractor or operational creditor or any other creditor can claim to be a homebuyer when no consideration was paid towards purchase of flats. Thus, the Applicant cannot qualify as an allottee under section 5(8) of the Code read with the definition of allottee in RERA.
- 6.2. The claim of the Applicant was on the basis of the original transaction. The nature of the underlying transaction will remain the same as it was at the time when the claim had originally arisen. The provisions incorporated into the Code for safeguarding the interests of the homebuyers to be recognized as a separate class of creditors cannot

be misused to admit the claim of the Applicant who is at best merely a contractor/ service provider.

- 6.3. The Applicant itself had filed the Company Petition no. 967/2021 as an operational creditor and now, the Applicant is taking a contradictory stand by submitting a claim as an allottee to be categorised as a ‘financial creditor’.

7. Submission of Respondent 3

- 7.1 Respondent 3 also made similar submissions. It was further submitted that the classification of the Applicant’s claim as “other creditors” has been done by the RP in accordance with law, after perusing various documents and information. The present application has been filed to derail the CIRP and delay the time bound resolution process of the Corporate Debtor considering the fact the application seeking sanction of the resolution plan as approved by the CoC is pending before the Bench. Thus, entertaining this application will turn the clock back in time thereby causing prejudice to the CIRP of the Corporate Debtor and all its stakeholders.
- 7.2 It was further submitted that the reliefs prayed in the application cannot be sought against the Respondent 3 as the CoC members do not have the power to verify and collate the claims received from the creditors.

Discussion & Findings

8. We have heard Ld. Counsel for the parties at length and considered submissions. Perused the record carefully.
9. It is admitted position that the Applicant was service provider to the corporate debtor and therefore the outstanding to the Applicant was in the nature of operational debt. However, it is the case of the Applicant that due to the subsequent settlement between the parties and pursuant to the allotment of flats to it, the Applicant has now assumed the status of financial creditor under section 5(8)(f) the Code.

10. As the facts are undisputed, the neat legal question that arises for determination is:

Whether, in the facts and circumstances of the present case, the Applicant being originally an ‘operational creditor’, should be considered as ‘financial creditor in a class – homebuyer’ for the flats offered to it in lieu of outstanding liability?

11. Though the Applicant had submitted its claim in Form CA claiming to be a financial creditor in a class – Homebuyer, the RP admitted the claim of the Applicant in the category of “other creditors” and provided following reasons:

*Considering the above, we hereby inform you that in the recent Hon’ble National Company Law Appellate Tribunal judgment in the case of **Real Estate Regulatory Authority v. D.B. Corp Ltd Company Appeal (AT) (Ins) No. 1172-1172 of 2022**, the Hon’ble NCLAT has examined in great detail whether a “barter” arrangement can amount to an “operational debt”. After considering the law on this aspect, it was held that a “barter” arrangement cannot amount to an “operational debt” since the “claim” in such a case is not for payment but for units.*

Considering the aspect of the law in the instant case and considering that under section 5(8) of the Code only such amount as is “raised” from an allottee may be treated to be a “financial debt”.

In the present case, the Corporate Debtor did not “raise” any amount from the claimant but the claimant had only provided goods and services.

Therefore, on a strict application of the provisions as they stand, the claimant cannot be either an “operational creditor” or a “financial creditor in a class”. However, you are treated as “Other Creditors” for an admitted amount of INR 20,31,45,000 (Indian Rupees Twenty Crores Thirty One Lakhs Forty Five Thousand Only)."

12. Mr. Pulkit Sharma, Ld. Counsel for the Applicant, submitted that the present case involves operational debt of Rs. 42.21 crores which was settled through allotment of 10 residential flats having value of Rs.

20,31,45,000. While on one hand the RP has admitted the claim of the Applicant for the settlement amount of Rs. 20,31,45,000 but on the other hand, failed to acknowledge the allotment of flats.

13. He argued that by virtue of the allotment of the flats, the Applicant satisfies the requirements of an “allottee” under Section 2(d) of RERA. Although funds were not transferred in the traditional sense from the Applicant’s bank account to the Corporate Debtor’s bank account, but once the flats were allotted, the amount due as ‘operational debt’ got converted to an equivalent inflow of value into the real estate project towards consideration for the flats. Therefore, the Applicant is covered under Section 5(8)(f) of the IBC.
14. He placed reliance on the judgment of **Beacon Trusteeship Ltd. vs. Modella Textile Industries Ltd.** and submitted that in the said case, the Ld. NCLT, Mumbai Bench – IV had held that where flats were allotted by the Corporate Debtor as part of a consideration for transfer of shares under a Memorandum of Understanding, the recipients of such flats were to be treated as “Allottees” and consequently as “financial creditors” under section 5(8) of the Code.
15. Per contra, Mr. Amir Arsiwala, Ld. Counsel for the RP has argued that to qualify as a financial creditor under section 5(8)(f) of the IBC, the mandatory ingredient of “raising of funds” from an allottee under a real estate project is missing in the present case. He submitted that the allotment of flats was not in pursuance of a real estate transaction involving a payment as consideration for flats. He would rely on the judgment of Hon’ble Supreme Court in **Pioneer Urban Land and Infrastructure Ltd. v. Union of India (2019) 8 SCC 416**.
16. Ld. Counsel for the RP emphasized that the flats were not allotted to the Applicant pursuant to any Registered Agreement for Sale nor was any booking amount or consideration paid by the Applicant toward purchase of flats but were instead allotted as partial settlement of outstanding contractor dues, which originated from the Work Order

and civil construction contract, and not in the capacity of an allottee/homebuyer. He referred to the judgment of ***Real Estate Regulatory Authority vs. D. B. Corp Ltd. [Company Appeal (AT) (Ins) No. 1171-1172 of 2022]*** and contended that transactions involving reciprocal arrangements or non-monetary exchanges do not result in a financial debt under the Code.

17. Ld. Counsel for RP submitted that in-kind allotment, without any monetary flow from the Applicant to the Corporate Debtor, is a settlement of dues, not an investment in a real estate project and cannot constitute a 'financial debt' under the Code. Reliance is placed on ***Arenja Enterprises Pvt. Ltd. vs. Edward Keventer (Successors) Pvt. Ltd. [Company Appeal (AT) (Ins) No. 528/2020]***.
18. He submitted that the Applicant is now claiming to be an allottee whereas the Applicant had filed CP/967/2021 under section 9 of the Code in the capacity of an operational creditor.
19. Rebutting the above, Ld. Counsel for the Applicant submitted that the Applicant had originally filed CP/967/2021 under section 9 of the Code as an operational creditor since no final settlement on allotment of flats was materialized and therefore, no reference to the flat allotments was made in CP/967/2021. It was only in March 2023 when the Corporate Debtor confirmed the allotment of 10 flats in favour of the Applicant that the Applicant decided to withdraw the Petition CP/967/2021 which was also recorded in the order dated 19.04.2023.
20. We have gone through the contents of the pleadings in CP/967/2021 – section 9 petition filed by the Applicant against the corporate debtor. It would be interesting to notice that the corporate debtor, in reply affidavit dated 07.04.2022 stated:

“6. I say that the claim of the Operational Creditor was settled by allotment of 10 units valued at Rs.20,31,45,000/-. The details of units, together with date of application and date of

allotment are tabulated at Exhibit 'A'. The copy of 10 application forms signed by the representative of the Operational Creditor/ Application is annexed at Exhibits "B'-1" to "B-10". On the basis of the application form, 10 units were allotted to the Operational Creditor and the dispute was settled.

9. I say that the Petition has been filed on 10.2.2021. However, the petition does not disclose and in fact suppresses the settlement of claim of the Operational Creditor by allotment of 10 flats on 20.8.2020. The disclosure of the allotment of 10 flats in the project "Anantya", Chembur to the Operational Creditor prior to filing of the petition on 10.2.2021 and prior to issuance of Demand Notice dated 10.11.2020 would render the Demand Notice as defective and would render the Petition filed as not maintainable."

21. In response to the reply affidavit of the corporate debtor, the Applicant had filed rejoinder dated 18.06.2022 which was placed on record by the RP vide Affidavit dated 26.06.2025. In the rejoinder, the Applicant contended that the settlement of transfer of flats was not accepted. The submissions of the Applicant are reproduced below:

"k. The said Allotment Letters were issued as an offer for settlement towards part of the Petitioner's dues. The Petitioner has in fact paid no amounts whatsoever towards the said allotments. They were issued by the Respondent itself. In any event, for any title or value to have passed to the Petitioner, it is obvious that these allotment letters were to have been followed by a registered sale deed transferring the said units in favour of the Applicant free of encumbrance. However, since the Respondent was unable to act in furtherance thereof, there was no settlement.

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m. It is submitted that the Allotment Letters are not even duly executed."

22. Thus, as on 18.06.2022, the Applicant had refused to accept the allotment letters and had alleged that these allotment letters were issued by the corporate debtor itself and were not followed by any registered sale deed and therefore did not transfer any title to the Applicant.

23. During the pendency of the section 9 proceedings, the corporate debtor filed Affidavit dated 11.03.2023 and made following submissions:

*“3. I say that during the hearing on 3.3.2023 the Counsel for **the Operational Creditor had disputed the submission of the Advocate for the Corporate Debtor that 10 flats were allotted in favour of the Operation Creditor** and had submitted that if the statement in the Affidavit in reply dated 7.4.2022 for allotment of 10 flats is reiterated then the Operation Creditor is ready to withdraw the present company petition.*

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5. I say that the Corporate Debtor has filed the Affidavit in reply dated 7.4.2022 and reiterate the statement regarding allotment of 10 flats in favour of the Operation Creditor. I say that in the aforesaid circumstances, I reiterate that the company petition is devoid of cause of action and is not maintainable and in any event in view of the Affidavit dated 7.4.2022 filed by the Corporate Debtor, the Operation Creditor be directed to withdraw the company petition or in the alternative the Company petition be dismissed.”

(emphasis provided)

24. This Tribunal vide order dated 19.04.2023 permitted withdrawal of the petition after recording as follows:

“1. Both sides present.

2. On perusal of the affidavit dated 11.03.2023 in compliance of the order dated 03.03.2023, this Bench notes that the Corporate Debtor has admitted to have allotted 10 flats in favour of the Operational Creditor.

3. The Counsel for the Operational Creditor has confirmed the details of these 10 flats are already available with them and in view of the confirmation of the Corporate Debtor of having allotted these flats by this affidavit, they seek to withdraw present Company Petition. Prayer is allowed.”

25. We noticed that the applicant has annexed copies of the application letters all dated 14.08.2020 from the Applicant to the Corporate Debtor and allotment letters issued by the corporate debtor all dated

20.08.2020, with the claim form submitted with the RP, to claim its status as financial creditor under section 5(8)(f) of the Code.

26. However, as revealed from the proceedings before this Tribunal in C.P. No. 967/2021 the application forms dated 14.08.2020 never existed. Even the alleged “allotment letters” dated 20.08.2020 did not exist as the Applicant had denied the same during the hearing on 03.03.2023. Only after the corporate debtor filed affidavit dated 11.03.2023, confirming allotment of 10 flats, that the Applicant withdrew the CP that it had filed against the corporate debtor under section 9 of the Code for default in payment of operational debt.
27. Subsequently, when the Corporate Debtor was admitted to CIRP, the Applicant submitted its claim in Form CA supported by the allotment letters dated 20.08.2020. We find it strange that on one hand, the Applicant, denied execution of application letters dated 14.08.2020 and the alleged “allotment letters” dated 20.08.2020, but on the other hand, has annexed these letters to claim its status as financial creditor in a class as a homebuyer/ allottee in a real estate project.
28. Now coming to this aspect of registered agreement. Ld. Counsel for the RP referred to section 13 of the Real Estate (Regulation and Development) Act, 2016, and submitted that when there is no registered agreement between the parties, there can be no allotment in favour of the Applicant.
29. Per contra, Ld. Counsel for the Applicant further submitted that even in absence of a registered agreement, the claim of a homebuyer ought to be admitted by the RP. Reliance is placed on ***Goverdhan Capital and Finance Pvt. Ltd. vs. Jayesh Natwarlal Sanghrajka [2023 SCC OnLine NCLT 9795]*** and ***K. Amutha vs. RP of Ambojini Property Developers Pvt. Ltd. [2024 SCC OnLine NCLT 1987]***.
30. We have already noticed that there are no application forms dated 14.08.2020 and no allotment letters dated 20.08.2020 validly accepted

by the Applicant before 11.03.2023. There is no registered agreement between the Applicant and the corporate debtor for purchase of flats. We are unable to agree with the submission of the Applicant that on the strength of the allotment letters issued by the corporate debtor in favour of the applicant, the applicant is an allottee in terms of section 2(d) of the RERA and therefore a financial creditor by virtue of explanation to section 5(8)(f) of the Code. In view of the subsequent discussions, we deem it not necessary to decide on the aspect of registration of an agreement in the present facts.

31. At this juncture, we may refer to the Explanation inserted to Section 5(8)(f) of the Code, w.e.f. 06.06.2018 and how the jurisprudence evolved after the judgment of Hon'ble Supreme Court in the case of ***Pioneer Urban Land and Infrastructure Ltd v. Union of India (2019) 8 SCC 416***, [referred to as '**Pioneer judgment**'].

5. Definitions

(8) financial debt means a debt along with interest, if any, which is disbursed against the consideration for the time value and includes –

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

Explanation---For the purposes of this sub-clause,--

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

(ii) the expressions, allottee and real estate project shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016).

32. The above explanation was challenged in Pioneer judgment. The Hon'ble Supreme Court while upholding the status of a home-

buyer/allottee as a financial creditor under the Code has distinguished an allottee from operational creditors and has also explained how the allottee is a financial creditor by satisfying the ingredients of 'time value of money' and 'commercial effect of borrowing' which are worth noticing for the purpose of the present case:

“40. ... Here again, what is unique to real estate developers vis-à-vis operational debts, is the fact that, in operational debts generally, when a person supplies goods and services, such person is the creditor and the person who has to pay for such goods and services is the debtor. In the case of real estate developers, the developer who is the supplier of the flat/apartment is the debtor inasmuch as the **home buyer/allottee funds his own apartment by paying amounts in advance to the developer for construction of the building in which his apartment is to be found.** Another vital difference between operational debts and allottees of real estate projects is that an operational creditor has no interest in or stake in the corporate debtor, unlike the case of an allottee of a real estate project, who is vitally concerned with the financial health of the corporate debtor, for otherwise, the real estate project may not be brought to fruition. Also, in such event, no compensation, nor refund together with interest, which is the other option, will be recoverable from the corporate debtor. One other important distinction is that **in an operational debt, there is no consideration for the time value of money – the consideration of the debt is the goods or services that are either sold or availed of from the operational creditor.** Payments made in advance for goods and services are not made to fund manufacture of such goods or provision of such services. Examples given of advance payments being made for turnkey projects and capital goods, where customisation and uniqueness of such goods are important by reason of which advance payments are made, are wholly inapposite as examples vis-à-vis advance payments made by allottees. **In real estate projects, money is raised from the allottee, being raised against consideration for the time value of money.** Even the total consideration agreed at a time when the flat/apartment is non-existent or incomplete, is

significantly less than the price the buyer would have to pay for a ready/complete flat/apartment, and therefore, he gains the time value of money. Likewise, the developer who benefits from the amounts disbursed also gains from the time value of money. The fact that the allottee makes such payments in instalments which are co-terminus with phases of completion of the real estate project does not any the less make such payments as payments involving “exchange”, i.e. advances paid only in order to obtain a flat/apartment. What is predominant, insofar as the real estate developer is concerned, is the fact that such instalment payments are used as a means of finance qua the real estate project

41. ... We have already pointed out how real estate developers are, in substance, persons who avail finance from allottees who then fund the real estate development project. The object of dividing debts into two categories under the Code, namely, financial and operational debts, is broadly to sub-divide debts into those in which money is lent and those where debts are incurred on account of goods being sold or services being rendered. We have no doubt that real estate developers fall squarely within the object of the Code as originally enacted insofar as they are financial debtors and not operational debtors, as has been pointed out hereinabove. So far as unequals being treated as equals is concerned, **home buyers/allottees can be assimilated with other individual financial creditors like debenture holders and fixed deposit holders, who have advanced certain amounts to the corporate debtor.** For example, fixed deposit holders, though financial creditors, would be like real estate allottees in that they are unsecured creditors. Financial contracts in the case of these individuals need not involve large sums of money. Debenture holders and fixed deposit holders, unlike real estate holders, are involved in seeing that they recover the amounts that are lent and are thus not directly involved or interested in assessing the viability of the corporate debtors. Though not having the expertise or information to be in a position to evaluate feasibility and viability of resolution plans, such individuals, by virtue of being financial creditors, have a right to be on the Committee of Creditors to safeguard their interest.”

“60. ... In the present context, it is clear that the expression **“disburse” would refer to the payment of instalments by the allottee to the real estate developer for the particular purpose of funding the real estate project in which the allottee is to be allotted a flat/apartment.** The expression “disbursed” refers to money which has been paid against consideration for the “time value of money”. In short, the “disbursal” must be money and must be against consideration for the “time value of money”, meaning thereby, the fact that such money is now no longer with the lender, but is with the borrower, who then utilises the money. Thus far, it is clear that an allottee “disburses” money in the form of advance payments made towards construction of the real estate project. Xxx

That this is **against consideration for the time value of money is also clear as the money that is “disbursed” is no longer with the allottee, but, as has just been stated, is with the real estate developer who is legally obliged to give money’s equivalent back to the allottee, having used it in the construction of the project,** and being at a discounted value so far as the allottee is concerned (in the sense of the allottee having to pay less by way of instalments than he would if he were to pay for the ultimate price of the flat/apartment).

65. And now to the precise language of Section 5(8)(f). First and foremost, the sub-clause does appear to be a residuary provision which is “catch all” in nature. This is clear from the words “any amount” and “any other transaction” which means that amounts that are “raised” under “transactions” not covered by any of the other clauses, would amount to a financial debt if they had the commercial effect of a borrowing. The expression “transaction” is defined by Section 3(33) of the Code as follows:

(33) “transaction” includes an agreement or arrangement in writing for the transfer of assets, or funds, goods or services, from or to the corporate debtor;

As correctly argued by the learned Additional Solicitor General, the expression “any other transaction” would

include an arrangement in writing for the transfer of funds to the corporate debtor and would thus clearly include the kind of financing arrangement by allottees to real estate developers when they pay instalments at various stages of construction, so that they themselves then fund the project either partially or completely.

66. Sub-clause (f) Section 5(8) thus read would subsume within it amounts raised under transactions which are not necessarily loan transactions, so long as they have the commercial effect of a borrowing.

67. ... Also of importance is the expression “commercial effect”. “Commercial” would generally involve transactions having profit as their main aim. Piecing the threads together, therefore, **so long as an amount is “raised” under a real estate agreement, which is done with profit as the main aim, such amount would be subsumed within Section 5(8)(f) as the sale agreement between developer and home buyer would have the “commercial effect” of a borrowing, in that, money is paid in advance for temporary use so that a flat/apartment is given back to the lender.** Both parties have “commercial” interests in the same – the real estate developer seeking to make a profit on the sale of the apartment, and the flat/apartment purchaser profiting by the sale of the apartment. Thus construed, there can be no difficulty in stating that the amounts raised from allottees under real estate projects would, in fact, be subsumed within Section 5(8)(f) even without adverting to the explanation introduced by the Amendment Act.”

(emphasis supplied)

33. The above observations and findings of the Hon’ble Supreme Court make it crystal clear that an allottee is a financial creditor because he advances monies to the Corporate Debtor by providing funds for construction of the flats, in consideration for the time value of money and is different from operational creditor who merely provides goods and services. Further, in para 67, the Hon’ble Supreme Court clarified how an amount raised under a real estate agreement has commercial effect of borrowing.

34. Explanation to 5(8)(f) clearly states that '*any amount raised from an allottee' under a real estate project...* In other words, there must be amount raised from the allottee under a real estate project, then only such amount shall be deemed to be an amount having the commercial effect of a borrowing.
35. In view of the above discussions, we are of the view that even if an entity may be covered as 'allottee' under the definition of 'allottee' under RERA, that, in our view, would not *ipso facto*, make the allottee a financial creditor unless amount is raised from such an allottee under the real estate project. Then only the ingredients of time value for money and commercial effect of a borrowing can be satisfied which are the prime conditions for any entity to be classified as financial creditor. In the present case, there was no disbursal of monies by the Applicant to the Corporate Debtor and the allotment of flats was offered by the corporate debtor for the purpose of settlement of operational debt and the Applicant agreed to accept the flats purely for recovering its dues.
36. Now, we come to the judgment of ***Beacon Trusteeship Ltd. vs. Modella Textile Industries Ltd.*** that the Applicant has relied upon. In that case, the Applicants were individuals belonging to one Grover Family who were allotted flats by the Corporate Debtor in lieu of the investment/reinvestment of the proceeds on sale consideration of shares back into the corporate debtor. The Ld. NCLT after considering the facts of the case, held the Grover Family Members as homebuyers in following terms:

"As per MOU-2 dated 02.04.2012, entered into between Grover Family on one side and M/s. Videocon Realty and Infrastructure Limited and Nirmal Lifestyle Limited on the other side, duly countersigned and acknowledged by the Corporate Debtor M/s Modella Textile Industries Limited, the Grover Family is allottee and entitled to 58,890 sq.ft. builtup residential area i.e. approximately 57 residential flats depending upon the size of all flats put together. The consideration value of the MOU-2 was Rs. 31,80,00,000/- out of which Rs. 90,000/- was paid upfront and

for Balance Rs.31,80,00,000/- the consideration was to be passed in the form of approx. 57 residential flats totalling to 58,890 sq.ft. built-up area. **The net effect of the MOU-2 is that Grover Family invested/reinvested the proceeds of sale consideration of shares sold by it to Videocon and Nirmal back into the CD for acquiring flats pursuant to which allotment letters were issued by the CD on its letterhead on 02.04.2012.**”

(emphasis supplied)

The facts of the case are distinguishable.

37. We are guided by the binding precedent laid down by the Hon’ble NCLAT in ***M/s Propertree Real Estate Solutions Private Limited vs. Mr. A. Viswanadha Sarma, RP of Unibera Developers Private Limited [Company Appeal (AT) (Ins) No. 1659 of 2024]***, decided on 08.08.2025. In this case, the Hon’ble NCLAT had upheld the order dated 05.06.2024 passed by Ld. NCLT, New Delhi Bench in the matter of ***Mahi Buildhome Pvt. Ltd. vs. Unibera Developers Pvt. Ltd. [IA-4356/2023 in CP(IB)-505/ND/2022]*** wherein Ld. NCLT held that the claim of allotment of flats on account of adjustment of brokerage money cannot be classified as ‘financial creditor’ but directed the Resolution Professional to examine the claim as mentioned in the Settlement Deed as Operational Creditor. Dismissing the appeal vide order dated 08.08.2025, the Hon’ble NCLAT concluded:

“Conclusions

39. *Thus, even if only the facts admitted to the parties are taken into cognizance it will emerge that the two flats have been allotted to the appellant under MoU dated 25.11.2021 and 03.02.2022 only on account of adjustment of the brokerage money of the appellant which was allegedly due on the CD and therefore there was no money parted or disbursed by the appellant to the CD and in our considered opinion, the debt of the appellant which was due on the CD was only for the commission/brokerage services allegedly rendered by the appellant and no money was disbursed by the appellants to the CD for time value of the money and the appellants are also estopped to change the nature of debt pertaining to*

which they have earlier filed a petition under Section 9 of the IBC, admitting themselves as operational creditor.

40. Thus, keeping in view all the facts and circumstances of this case and in the background of the law discussed herein before, no illegality appears to have been committed either by the IRP or by the Adjudicating Authority in rejecting the claim of the appellant to treat himself as financial creditor.”

38. In the present case also, the Applicant was allotted 10 flats on account of settlement with the corporate debtor towards unsatisfied operational debt and there is no money disbursed by the operational creditor to the CD. An operational creditor, cannot be converted into a financial creditor by way of a Settlement with the corporate debtor.
39. We have no hesitation in holding that the Applicant - a service provider to the corporate debtor having underlying claim in the nature of unsatisfied operational debt and no amount was given to the corporate debtor as an allottee under a real estate project, is not a financial creditor under section 5(8)(f) of the Code. Accordingly, the question is answered in negative and consequently, prayer ‘b’ is **rejected**.
40. As far as the nature of the debt is concerned, we direct the RP to examine and verify the claim of the Applicant as ‘operational creditor’. With this direction, prayer ‘a’ is **disposed of**.
41. Prayers ‘c’ and ‘d’ are interim in nature. Since the matter is finally being disposed of prayers ‘c’ and ‘d’ are rendered infructuous.
42. In above terms, the IA stands **disposed of**.

Sd/-

Hariharan Neelakanta Iyer
Member (Technical)

Uma

Sd/-

Lakshmi Gurung
Member (Judicial)