



**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-I), CHANDIGARH**

**IA (I.B.C)/2105(CH)2023
in
CP(IB) No. 248/Chd/Chd/2019
(Admitted)**

IN THE MATTER OF CP(IB) No. 248/Chd/Chd/2019:

Kone Elevator India Pvt. Ltd.

.... Operational Creditor

Vs.

Chandigarh Overseas Pvt. Ltd.

..... Corporate Debtor

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

IN THE MATTER OF IA NO. 2105/2023:

Tajinder Pal Setia s/o Late Sh. B.K. Setia

Suspended Director Corporate Debtor
i.e. M/s Chandigarh Overseas Pvt. Ltd.,
R/o 131, A-Block, Meera Bag, Delhi 87.

.....Applicant

Vs.

1. Sh.Arvind Kumar, Resolution Professional

of M/s Chandigarh Overseas Pvt. Limited
Registered Office at SCO No. 249 Basement,
Sector 44-C, Chandigarh-160047

2. M/s Accord Infra Developer Pvt. Ltd.

Registered Office at Shop No. P11,
Near ESI, Dispensary Milan Cinema Road,
Karampura, Delhi West 110015, through its Director.
As per MCA Record Company is Striked Off and
DINs of Directors are deactivated.

3. M/s Mohali Hightech Builders and Promoters Pvt. Limited

House No. 989, Sector 69, Mohali, through its Director.
As per MCA Record Company is Striked Off and
DINs of Directors are deactivated.



4. Department of Income Tax

Office at Live Stock Complex, Sector 63, Mohali,
Through its Joint Commissioner

5. Department of Income Tax

Office at Principal Chief Commissioner of Income Tax, Delhi.
C.R.Building, I.P.Estate, New Delhi-110002, Delhi,
Through its Principal Commissioner.

6. Registrar of Companies

Corporate Bhawan, Sector 27, Chandigarh
Through its Registrar

7. Registrar of Companies

4th Floor, IFCI Tower, 61, Nehru Place, New Delhi 110019,
Through its Registrar.

.....Respondents

Order delivered on: 02.07.2025

Coram: HON'BLE SH. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

HON'BLE SH. SHISHIR AGARWAL, MEMBER (TECHNICAL)

Present:

For the Applicant : Mr. Naman Singhal, Advocate

For the Respondent No 1 RP : Mr. Atul V. Sood, Advocate

For the Respondent No 2 & 3 : Mr. Surjit Bhadu & Ms. Saniya Thakur advs.

Per: SH. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

SH. SHISHIR AGARWAL, MEMBER (TECHNICAL)

ORDER

The present Application has been filed by Mr. Tejinder Pal Setia, Suspended Director of Chandigarh Overseas Private Limited ("**Corporate Debtor**" or "**CD**") under Section 60(5) read with Section 21 of Insolvency and Bankruptcy Code ("**IBC**") seeking



to exclude Respondent No. 2 and 3 from the Committee of Creditors (“**CoC**”) on the ground that they are neither Financial Creditors nor Class of Creditors-Homebuyers/Allottees, as they are business partners/service providers and cannot be treated as homebuyers and are speculative investors and with a prayer to reconstitute the CoC and declare all the actions and decisions including the resolutions passed in 1st CoC meeting dated 03.08.2023 as illegal. A further prayer has been made that affairs of the Respondent Nos. 2 and 3 be inquired/investigated by Proforma Respondents 4-7, i.e. jurisdictional Department of Income Tax and Registrar of Companies.

2) The Respondent No. 1 had earlier filed Reply vide Diary No. 2967/1 dated 26.9.2023 and was later permitted to file an Updated Reply vide order dated 4.1.2024, in compliance with which, Updated Reply was filed vide Diary No. 2967/11 dated 15.1.2024. Replies have also been filed by Respondent Nos. 2 & 3 vide Diary No. 2967/2 dated 3.10.23 and Diary No.2967/3 dated 4.10.23 respectively. The Applicant has filed Rejoinder to Replies vide Diary No. 2967/4 dated 04.10.2023, Diary Nos. 2967/5 and Diary No. 2967/6 dated 10.10.2023. Respondent Nos. 2 and 3 have filed further Replies vide Diary Nos. 2967/7 and 2967/8 dated 16.10.2023. The Respondent Nos. 4-7 have not entered appearance. The parties have also filed their respective Short Notes.

3) The Applicant had also filed IA No. 2209/2023 to place on record additional documents in the present IA, which was allowed subject to just exceptions vide order dated 09.05.2024.

4) **BRIEF FACTS:** The uncontroverted chronological facts in brief are as under:

Dates	Events
27.02.2023	Order of admission by this Hon'ble Tribunal
01.03.2023	Public Announcement in Financial Express (English), Amar Ujala (Hindi), Punjabi Tribunal (Punjabi)
02.03.2023	The order of admission dated 27.02.2023 was stayed by the Hon'ble NCLAT



04.07.2023	The Hon'ble NCLAT dismissed the aforesaid appeal and vacated the stay
07.07.2023	Public notice published in three newspapers namely Financial Express (English), Amar Ujala (Hindi), Punjabi Tribune (Punjabi)
14.07.2023	Last date of Submission of claim
20.07.2023	NCLT directed IRP not to constitute the CoC till 26.07.2023
26.07.2023	This Hon'ble Tribunal was pleased to exclude the period of 120 days i.e. from 02.03.2023 to 04.07.2023 in IA 1564/23
03.08.2023	First meeting of CoC was held
04.08.2023	Hon'ble Supreme Court passed an order of status quo
11.08.2023	Hon'ble NCLAT granted stay till the pronouncement
23.08.2023	Hon'ble NCLAT was pleased to dismiss the Appeal and vacate the stay
06.09.2023	Appeal by the Erstwhile promoter was dismissed by the Hon'ble Apex Court
17.09.2023	Publication of Form-G
02.10.2023	Last date for receipt of expression of interest
12.10.2023	Date of issue of provisional list of prospective resolution Applicants
17.10.2023	Last date for submission of objections to provisional list
17.10.2023	Last date for issue of request for Resolution Plans under Regulations 36B (after exclusion)
18.10.2023	Expiry of 90 days from the date of Commencement of CIRP (After Exclusion)
17.11.2023	Last Date for submission of Resolution Plan
22.11.2023	4 th meeting of the CoC
17.12.2023	5 th meeting of the CoC
20.12.2023	Revised last date for submission of Resolution Plan

SUBMISSIONS OF THE APPLICANT

5) The Respondent No. 2 and 3 are not homebuyers/allottees/Financial Creditors nor are they entitled to be part of COC. They are business partners, developers, speculative investors and interested only in the profit the project and are not homebuyers. Their business terms are completely different as compared to other allottees. Further, Inflated and exaggerated claims have been admitted by the RP for oblique motive contrary to records of the CD and on the basis of unsubstantiated, inadmissible and illegal documents.

6) The affairs of Respondent No. 2 and 3 including their directors and shareholders, be inquired and investigated by Respondent Nos. 4 to 7.



7) It has been further averred as under:

- i. The RP has admitted the claim on the basis of a receipt dated 31.12.2023 for Rs. 20,52,32,957/- wherein the said amount has been shown as paid through cheque and cash collectively with no bifurcation with respect to the cash and cheque. Moreover, an amount of Rs. 9,96,50,000/- paid by the respondent no. 2 has already been exhausted against the sale deeds executed and therefore, the said amount should not have been part of the claim. The said receipt is executed by ex- director of CD (who also happens to be common director in another company with director of R-2). The description of property is also termed as “ACCORD HIGH STREET” in the said sale deeds.
- ii. The audited Balance Sheet of Respondent no. 2 as on 31.03.2014, which happens to be for the period after the said alleged receipt was made, neither support the said claim nor the investments made by the respondent no. 2 with the applicant as the total of the Balance Sheet i.e., 7.10 Crores of Rupees, itself does not cover the amount as mentioned in the said receipt of Rs. 20.52 Crores of Rupees. Therefore, the said receipt is false, fabricated and back-dated.
- iii. The claim of Respondent No. 2 has been admitted at Rs. 31,30,40,054/- whereas Rs. 5,39,21,712/- is recoverable from it.
- iv. The Applicant has also submitted that the books of accounts were provided to the RP on 31.07.2023.
- v. The Respondent no(s) 2 and 3 were speculative investors and are not genuine home buyers and hence, their claims cannot be admitted.
- vi. The RP has wrongly admitted the Claim of Respondent No. 2 based on Agreement dated 24.06.2011 with the CD as under the said Agreement the said Respondent was to market and sell the properties constructed by the CD, issue



allotment letters, receive payments and to execute buyer-seller agreements and other documents and hence, is a speculative investor and is not covered within the definition of a financial creditor as a home buyer.

- vii. The another Agreement to Sell dated 26.02.2012 was executed between Respondent No. 2 and the CD which stated that the properties will be built by the CD and handed over to the respondent who will have right to further sell the property, hence the said Respondent is a speculative investor and is not covered within the definition of a financial creditor as a home buyer.
 - viii. The Respondent No. 2 had been marketing the properties allotted to it by the CD and on a complaint by a buyer from the said respondent, District Consumer Disputes Redressal Forum, Chandigarh had directed refund against the said respondent, which shows that the said Respondent is a speculative investor and is not covered within the definition of a financial creditor as a home buyer.
 - ix. There was collusion between the ex-directors of CD and director of Respondent No. 2 as both were common directors in Sarv Awas Housing Bhiwadi Private Limited which is currently in CIRP and hence, Respondent No. 2 is a related party.
 - x. The applicant further submitted that the name of the respondents 2 & 3 company was struck off under Section 248 of the Companies Act, 2013 for non-filing of financial statements and hence cannot file claim.
 - xi. The Respondent No. 2 has made cash payments to the CD and as per Section 269SS of the Income Tax Act, such transactions are barred.
 - xii. The claim of the Respondents is time barred.
- 8) With regard to Respondent No. 3, it has been averred that an Agreement dated 29.06.2009 was entered into between the said respondent and the CD wherein the



Respondent No. 2 has been referred to as promoter and the CD has been referred to as developer and the said Respondent had agreed to buy 40 residential units and 40 industrial units and the respondent could sell the properties and sign builder buyer agreement. It has further been averred that as per Ledger of CD Rs. 3.41 crore is payable to Respondent No. 3 whereas a claim of Rs. 28.21 Crores has been admitted by the RP without any basis.

9) The balance sheet of the CD doesn't reflect the names or amounts of claims which have been admitted by the RP.

10) It has further been averred that the Applicant has the locus to maintain the present application and this Adjudicating Authority has power to order for inquiry into the affairs of the Respondents.

11) In support of his averments, the Applicant has placed reliance on the following judgments:

- i. *Pioneer Urban Land & Infrastructure v. Union of India: 2019 [8] SCC 416.*
- ii. *M/s Jagbasera infrastructure Pvt. Ltd. v. Rawal Variety Construction Ltd. : NCLAT: CA(AT)(Ins.) 150 of 2019: D/d- 04.04.2022.*
- iii. *Vipul Ltd. v. M/s Solitaire Buildmart Ltd.: NCLAT: CA (AT) (Ins.) 550 of 2020 : D/d- 18.08.2020.*
- iv. *Mohit Prasad v. M/s S & N Lifestyle Infrastructure Pvt. Ltd.: NCLT (New Delhi): CP(IB) 1026 of 2020: D/d- 28.03.2023.*
- v. *Mukesh N. Desai v. Piyush Patel & Ors.: NCLAT: CA(AT)(Ins.) 780 of 2020: D/d- 24.02.2022.*
- vi. *Nidhi Rekhan v. M/s Samyak Projects Pvt. Ltd.: NCLAT: CA(AT) (Ins.) 1035 of 2020: D/d- 31.01.2022.*
- vii. *Budhpur Buildcon Pvt. Ltd. v. Abhay Narayan Manudhare: NCLAT: CA (AT) (Ins.) 589 of 2021: D/d-09.09.2022.*



SUBMISSIONS BY RESPONDENT NO. 1 RP

12) At the outset, the RP has averred that the Applicant is a chronic litigant and is trying to disrupt the CIRP and has raised preliminary objection on the maintainability of the Application on the ground of res judicata and unclean hands of the Applicant as under:

- i. Another suspended director, Jagbir Singh had filed IA No. 1571/2023 inter alia seeking to place on record a Forensic Audit Report inter alia disputing the claims of Respondent Nos. 2 and 3 and the same was dismissed by this Adjudicating Authority vide orders dated 27.07.2023.
- ii. The Applicant, Tejinder Pal Setia had filed Civil Appeal Nos. 5533-34 of 2023 before the Hon'ble Supreme Court (against judgment of Hon'ble NCLAT dated 23.8.2023) wherein the Grounds of appeal, similar grievances have been raised as in the present Application (Annexure R-1/2).
- iii. The Respondent No. 2 and 3 herein, who's claims are being challenged by the Applicant were also arrayed as Respondent Nos. 54 and 55 respectively in the said Civil Appeal and;
- iv. These facts have not been disclosed in the present Application and accordingly, the Applicant is guilty of suppression of material facts and forum shopping.

13) It has further been averred as under:

- i. After initiation of the CIRP, the claim of the R2 and R3 were accepted based on the claim documents in the absence of any other information/data as per regulation 14(1). The CoC was constituted on 27.07.2023 by which time the suspended directors had not provided any records/books of accounts relating to the CD. On receipt of further claims, the Coc was reconstituted on 04.09.2023.



Thereafter, the suspended management provided the books of account, bank account statements and other records on 17.09.2023, based on this fresh information, the existing claims were revised under regulation 14 (2).

- ii. As and when direct claims from buyers of units from R-2 and R-3 were filed, the same were collated and corresponding admitted claims of R-2 & R-3 were reduced. The claims were updated under regulation 14(2) and the CoC was constituted six times after its first constitution. The claims of R2 and R3 were as below on the dates of reconstitution of the CoC on various dates as per the following table (The authority intimated and available on website of IBBI):

Sr. No.	Date of CoC Constitution /Reconstitution	Total Claim Amount Admitted (in Rs.) Accord Developers Pvt Ltd + Interest as per Reg. 16(A) + Penalty	Total Claim Amount Admitted (in Rs.) Mohali Hi-Tech (R3) (Principal + Interest as per Reg. 16(A) + Penalty
1	27-07-2023	31,30,40,054.00*	28,21,95,718.00
2	04-09-2023	32,76,46,589.00	28,21,95,718.13
3	18-10-2023	29,16,33,617.67	25,03,50,836.97
4	15-11-2023	29,16,33,617.67	21,98,89,715.22
5	25-12-2023	10,21,62,831.82	21,98,89,715.22
6	11-01-2024	10,21,62,831.82	8,75,22,094.68
7	12-03-2024	8,82,33,357.77	7,78,60,384.00

**typographical error in updated reply at page 10 para 10 which totals Rs. 36,41,63,732 as the interest amount of 13,04,58,367 mentioned includes penalty and penalty of Rs. 5,11,23,678/- has been separately mentioned.*

- iii. Thus, the after 17.9.2023, ledger, bank account statements, books of accounts etc. of the CD has been duly considered for verification of the claims, including revision of existing claims.



- iv. The allegations of the Applicant have been controverted and basis of admission of claims have been averred as under:

Sr. No.	<u>Applicant's submissions</u>	<u>Response of Respondent RP</u>
1	That the claim of Respondent No. 2 & 3 are not homebuyers or allottees hence, cannot be included in CoC. The amount claimed by Respondent no. 2 & 3 does not exist in the financial record and Balance Sheet of the Corporate Debtor. <u>(para 3 & 5, page 7 of IA)</u>	The Balance Sheet is not the sole criteria for admission of claims. <i>As per Reg. 8A of CIRP Regulation, 2016</i> the existence of debt due to creditor in class may be proved on the basis of agreement for sale, letter of allotment, receipt of payment made or such other document evidencing existing of a debt. <u>(pg. 5 & 6 para 5 and 6(a) & (b) of Updated Reply dated 13.01.2024)</u>
2	That Respondent No. 2 & 3 are <u>Speculative Investors</u> , hence not allottees, and their claim cannot be treated as Financial Debt. <u>(pg. 11-16 para 11 to 17).</u>	It has been held by Hon'ble NCLAT that while a speculative investor cannot file an Application u/s 7 of the Code, there is no bar on admission of his claim. As held in <i>Everlike Real Estate & Developers Pvt. Ltd. Vs. Mr. Mohit Goyal, CA(RP) and Anr. (2024) ibclaw.in 429 NCLAT</i>
3	The Respondent No. 2 & 3 have been struck off by RoC, hence claim cannot be accepted. <u>(para 19-20, page 19-20 of IA)</u>	There is no bar under any law that a claim of company that has been struck off cannot be accepted. However, even in the case of dissolution, the company under section 250 of the Companies Act 2013 can realise the amount due to it. <u>(para 19, page 17 of Updated Reply dated 13.01.2024)</u>
4	Respondents No. 2 and No. 3 are related parties <u>(para 24, page 21 of IA)</u>	That the Gursharan Batra ceased to be a shareholder and director of the Corporate Debtor as of 15.12.2014 and the relationship of Amit Puri/ Accord infra Private Limited with the company was also considered while verifying the claim, which is not covered under the definition of "Related party" under the code & Respondent No. 3 does not fall under the definition of Related Party" under the Code. <u>(para 24, page 20 of Updated Reply dated 13.01.2024)</u>

Reasons for Acceptance of the Respondent No. 2' & Respondent No. 3

Sr. No	Particulars	Respondent No. 2	Respondent No.3
	Documents on the basis of which the claim has been filed	Agreement between the Respondent No. 2 and the CD dated 24.11.11 and 26.3.2012; Receipt dated 31.12.2013 for Rs.20,52,32,957/- Claim computation Sheet. <u>(para 10 (v), page 10 of Updated Reply dated 13.01.2024)</u>	Agreement to sell dated 29.06.2009 Receipt Details of the payments Claim computation Sheet <u>(para 12, page 15-16 of Updated Reply dated 13.01.2024)</u>

- v. It has also been stated that the claims of the allottees have been collated as per the terms of the allotment letters/agreements and interest has been added to the claim as per Regulation 16A (7) (which is not reflected in the balance sheet) and penalty as per the Agreement.
- vi. It has been averred that there is no anomaly in admission of the claims of the Respondent Nos. 2 and 3.
- vii. As on date of approval of resolution plan on 19.03.2024, total number of claims of home-buyers is 365 valued at RS. 2,07,89,58, 476.31/- and value of claims of R-2 and R-3 is Rs. 8,82,33,357.77/- (voting share 4.21%) and 7,78,60,384/- (3.72%). The Plan was approved with 99.21% voting.

SUBMISSIONS BY RESPONDENT NOS. 2 AND 3

14) These Respondents have taken a similar stand that the Applicant has no locus standi and after the petition was admitted by this Adjudication Authority u/s 9 of the IBC on 27.2.2023, the Applicant has indulged into various litigations for closure of CIRP before Hon'ble NCLAT/Hon'ble Supreme Court having been unsuccessful, he is now trying the frustrate the CIRP proceedings.



15) They have further submitted that the Application is vexatious and is an attempt to threaten the respondents into withdrawing their claims as the Applicant have impleaded RoC/Income Tax Department as Proforma Respondents while seeking a prayer for inquiry/investigation by them into the affairs of these Respondents.

16) The Respondent No. 2 avers that it had initially entered into an Agreement dated 24.06.2011 with the CD, which was superseded by an Agreement to Sale dated 26.03.2012. As a consideration, a sum of Rs. 20,52,32,957/- has been paid by it to the CD towards which receipt dated 31.12.2023 was issued by the CD. The units sold to the respondent were not delivered by the CD and hence, claim was filed with the IRP.

17) The respondents have further stated that the audited balance sheet for the year 2020-21 (Annexure A-5), does not name any allottee as its creditors. However, the balance sheet shows a sum of Rs. 71,47,31,028/- under the head "Advance from customers. Similarly, the balance sheet for the year ended 31.03.2013 shows a sum of Rs. 70,84,90,632/- under the head "Advance from customer received against projects".

The Auditors Report for the year 2020-21 states as under:

"2. As required by Section 143(3) of the Act, we report that:

(a) We have sought all the information and explanations which to the best of our knowledge and belief were necessary for the purposes of our audit but we are unable to obtain the following:

- 1) Balance confirmation from the unsecured loans, creditors, debtors, advances and other personal balances has not been provided.***
- 2) GST reconciliation has not been provided. Also the details inventory sold and remaining has not been provided.*
- 3) Approvals from the respective authorities for the project has not been provided and status of project attachment by the local authorities has not been provided.*
- 4) Impact of pending income tax, tds, civil and other cases has not been given in the balance sheet.*
- 5) Status of associate firms and companies has not been received.*
- 6) Fixed Asset register has not been provided.*
- 7) Mandatory company secretarial requirements has not been fulfilled.*
- 8) Contingent liabilities has not been declared in the financial statements which are likely to occur in near future.*
- 9) Company is not regular in depositing statutory dues with the respective departments."*



18) It is stated that if the averment of the Applicant is to be accepted that only those allottees who's name appear in the balance sheet, then all the other claims filed with the IRP/RP are null and void, which is not the case.

19) The Respondent No. 3 has further stated that it had issued a Legal Notice (Annexure R-3/0) dated 2.12.2015 to the CD by attaching Ledger Account of the CD showing payment of RS. 6.07 cr. and the CD did not respond to its legal notice and the Applicant has never challenged the Agreements entered into between the said respondent and the CD.

20) The allegation of the Applicant that the Agreements were entered into with the CD when the CD was under the old management is of no substance as it is the inner working of the CD. The Agreement is with the CD which is a separate entity than the management. As Respondent No. 2 had substantial interest in the project of the CD, its direct was a witness to the change of management Agreement dated 15.10.24 (Annexure R-2/9).

21) The Applicant had filed IA No. 1571 of 2023 under Section 12A of the IBC read with Regulation 30A of CIRP Regulations. The Respondents along with other had filed IA No. 1584/23 to be impleaded as Respondent Nos. 51 and 52. By way of order dated 25.7.2023, this Authority had allowed the intervention as necessary parties – Home buyers and eventually, IA 1571 was dismissed after hearing the respondents herein. This order was challenged by the Applicant before Hon'ble NCLAT and Hon'ble Supreme Court by way of Appeals, which were dismissed vide orders dated 23.8.23 and 6.9.2023 respectively. Hence, the Applicant cannot say that the respondents are not home buyers. W.r.t Respondent No. 3, when Applicant has admitted in paragraph 22 of the Application that a sum of Rs. 9,96,50,000/- has been received by the CD through banking channels.



22) The Respondents have a continuous cause of action as their Agreements have clause for damages for the delayed period of possession. As per RERA approval, the project was to be completed by 30.6.2022 (Annexure R- 2/11). Hence it is denied that the claim of respondents is time barred.

23) It is wrong to say that the respondents are shell companies merely on the ground that their name has been struck off by the RoC. Under Section 250 of the Companies Act, even if a company is dissolved under section 248, it can still realise the amount due to the company and for the payment or discharge of the liabilities or obligations of the company.

ANALYSIS AND FINDINGS

24) We have heard the parties and perused the record including the Written Submissions filed by both the parties. Through the present Application the Applicant who is member of Suspended Board of Directors has challenged the constitution of COC, i.e., inclusion of Respondent No.2 and 3 in the CoC

25) The Applicant has contended that the claim of the Respondents ought to be rejected as the same was not reflected in the Audited Balance Sheet of the Corporate Debtor. We would like to examine this contention of the Applicant. At this juncture we refer to Regulation 8A of CIRP Regulations which deals with manner of proving the claims by creditors in a class. It reads as under:

- “(1) A person claiming to be a creditor in a class shall submit claim with proof to the interim resolution professional in electronic form in Form CA of the Schedule.*
- (2) The existence of debt due to a creditor in a class may be proved on the basis of-*
 - (a) The records available with an information utility, if any; or*
 - (b) Other relevant documents, including any-*
 - (i) Agreement for sale;*
 - (ii) Letter of allotment;*
 - (iii) Receipt of payment made; or*
 - (iv) Such other document, evidencing existence of debt.*
- (3) A creditor in a class may indicate its choice of an insolvency professional, from amongst the three choices provided by the interim resolution professional in the public announcement, to act as its authorised representative.”*



26) We do not find any merit in the submission of the Applicant that the claim of the Respondent Nos. 2 and 3 are liable to be rejected as the same do not appear in the audited balance sheets. Balance sheet is not the sole basis for proving or admission of claim. Hence, mere non reflection of the claim amount in the Balance Sheet cannot be the sole ground of rejection.

27) The Applicant has contended that the respondent no. 2 & 3 are business partners, developers, speculative investors and interested only in the profit the project and are not homebuyers by referring to the Agreements dated 24.6.2011 and 26.3.2012 with Respondent No. 2 and Agreement dated 26.6.2029 & 29.8.2014 with Respondent No. 3. From these Agreements, it transpires that the units purchased by the Respondents will be constructed/developed by the CD and the said Respondents could sell/market the units and received consideration.

28) We would like to examine the contention that whether the claim of the Respondents can be rejected merely on the ground of being speculative Investor. In this context we refer to the Judgement of Hon'ble NCLAT in the matter of **Everlike Real Estate & Developers Pvt. Ltd. Vs. Mr. Mohit Goyal, CA(RP) and Anr. (2024) ibclaw.in 429 NCLAT**, wherein it has been held as under:

"The Hon'ble Supreme Court of India in Pioneer Urban Land (2019) ibclaw.in 13 SC held that the allottee, who has given advance or paid money to the Real Estate Developers is a Financial Creditor. The issue regarding the genuine Homebuyers v/s Speculative Homebuyers is relevant only at the stage for the admission of CIRP under Section 7 of the Code. Thus, it becomes clear that the Hon'ble Supreme Court of India held the position of speculative investors only for seeking unnecessary insolvency of the Corporate Debtor. The Hon'ble Supreme Court held that any allottee who paid for purchasing units will be treated as having effect of commercial borrowing and consequently such unit purchaser will be treated as Financial Creditors. (p49)

Thus, it becomes clear that whether the homebuyer/ allottee is genuine homebuyer or genuine allottee or speculative homebuyers/ allottee but if he has paid the money for acquisition of such properties or given the advance, such allottee/ homebuyer shall be treated as Financial Creditor in terms of Section 5(8)(f) of the Code. Hence, the pleadings of the Respondent No. 2 in this regard that the Appellant is speculative investor will not affect the rights of the Appellant to be treated as the Financial Creditors. (p50).



29) From perusal of the above it is observed that even though the allottee may be falling under the category of speculative investor, it will still be considered as Financial Creditor. In our view the Speculative Investor is barred from initiating the CIR Process. However, we don't find any impediment to treat the Allottees, even if they are speculative investors, from filing their claim and admission of their claim as Financial Creditor in a class. The claim of an allottee cannot be extinguished merely because of being a Speculative Investor. Hence, we reject this contention of the Applicant.

30) Another allegation has been levelled that That Respondent No. 2 and 3 are related parties of CD. Mr. Gurcharan Batra is the erstwhile Director of CD in the year 2014 hence, are related parties. In this regard, it would be apposite to refer to the Reply of Respondent No. 1 as under:

24. That the contents of this para are wrong and denied. The claimants are not related parties in terms of Sections 5(24) and 5(24A) of the Code. This has been duly informed to the Applicant vide e.mail dated 30.7.23, relevant part of which is reproduced as under:

"3. Furthermore, concerning the relationship between Mr. Amit Puri and Mr. Gursharan Batra, records indicate that Mr. Gursharan Batra ceased to be a shareholder of the Corporate Debtor from 2014 onwards. He also relinquished his position as a director on 15th December, 2014. The relationship of Mr Amit Puri / Accord Infra Developers Private Limited with the company was also considered while verifying the claim, which is not covered by definition of "related party" under the Code.

Further, after receipt of information from you regarding Accord Infra Developers Pvt Ltd I immediately took up the matter with Mr. Amit Puri. Mr Puri has sent a detailed reply to my email. Both the emails are attached herewith for your reference."

31) That the test of related party has to be seen as on the date of CIRP as held by the Hon'ble Supreme Court in **Phoenix ARC Private Limited v Spade Financial Services Limited & Ors (Civil Appeal No. 2842 of 2020 with Civil Appeal No. 3063 of 2020)**. The relevant excerpts of the Judgement reads as under:-



94. Thus, it has been clarified that the exclusion under the first proviso to Section 21(2) is related not to the debt itself but to the relationship existing between a related party financial creditor and the corporate debtor. As such, the financial creditor who in praesenti is not a related party, would not be debarred from being a member of the CoC. However, in case where the related party financial creditor divests itself of its shareholding or ceases to become a related party in a business capacity with the sole intention of participating the CoC and sabotage the CIRP, by diluting the vote share of other creditors or otherwise, it would be in keeping with the object and purpose of the first proviso to Section 21(2), to consider the former related party creditor, as one debarred under the first proviso.

32) The Applicant has not said anything contrary to the Reply. Further the Reply of the Respondent suggest that they ceased to be the related party in the year 2014 and the CIRP was initiated much after that. Hence we do not find any force in the allegation of the Applicant.

33) The Applicant has further alleged that the claims of Respondent Nos. 2 and 3 are barred by limitation. In this regard, Respondent No. 2 in its Reply has annexed Annexure R-2/1 which is a Reply on behalf of Corporate Debtor in CP(IB) No. 210/Chd/Hry/2020 filed before this Adjudicating Authority in a petition u/s 7 filed by home buyers wherein, both Respondent nos. 2 and 3 are Petitioners. In the said Reply, the CD has taken a categoric stand as under:

"i. On 14.3.2014, in Civil Writ Petition No. 4856 fo 2014 titled as Rupinder Kaur & Ors. Vs. State of Punjab & Ors., Division Bench of Punjab & Haryana High Court was pleased to pass a 'Status Quo' order on the project. That the said litigation finally came to end on 16.1.2018. Therefore, in view of the order of injunction/stay granted by Division Bench of Punjab and Haryana High Court, the date of handing over possession of the Project gets automatically extended and there is no cause of action to file the present petition.

ii. New management took over the Project under a 'Share Purchase Agreement' and thereafter infused funds/resources in the Project. After the Litigation of the High Court got over in 2018, new promoters under RERA laws submitted the plans and competition date, which is accepted by the authorities that is in June 2022 (subject to COVID related delays. Thus, there is no cause of action to file the present petition."

34) The allegation regarding the claims being barred by limitation is in the teeth of the above stand of the CD before this Tribunal. Admittedly the date of completion has



been extended to 30.6.2022 as per Registration approval dated 17.10.2017 granted by RERA, Punjab (Annexure R-2/11). Hence, there is no merit in the allegation that claims of the Respondent Nos. 2 and 3 are time barred.

35) The Applicant has raised another ground that as per MCA data, Respondent Nos. 2 and 3 have been struck off under Section 248 of the Companies Act, 2013 and hence, their claim cannot be accepted. It is been stated by the Respondents that under Section 250 of the said Act, even if a company is dissolved under Section 248, there is no bar from realizing the amount due to the company and for the payment or discharge of the liabilities or obligations of the company. It has recently been held by the Hon'ble High Court of Delhi in the matter of **A.B. Creations and Anr. V. Bhan Textiles Pvt. Ltd., (2024) ibclw.in 1155 HC** as under:

“12. What, therefore, follows on a careful reading of the words in Section 250 of the Act by invoking the golden rule of construction that the words in the statute should be interpreted in their ordinary, normal and grammatical meaning, is that even if the name of a company is struck off from the register, it remains operational in so far as it can pursue legal remedies for realisation of the ‘dues’ of the said company against its debtors, which have either crystallised or remain uncrystallised, arising from any liability or obligation of its debtors to the company, but even the creditors can pursue legal remedies against the said company for the payment and discharge of its liabilities or obligations arising from any contract or statutory implications.”

36) In the light of discussion and reasons recorded hereinbefore the application being bereft of merits deserves dismissal. As a result **the IA- 2105 of 2023 is accordingly dismissed with no order to costs.**

-Sd-

(SHISHIR AGARWAL)
MEMBER (T)

July 02, 2025

Japneet

-Sd-

(HARNAM SINGH THAKUR)
MEMBER (J)