

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Interlocutory Application No.7853 of 2024

In

Company Appeal (AT) (Insolvency) No. 2002 of 2024

IN THE MATTER OF:

Harpal Singh Chawla
(Suspended Director of Spaze Towers Pvt. Ltd.) ... Appellant

Versus

Vivek Khanna & Ors. ... Respondents

Present:

**For Appellant/
Applicant : Mr. Mukul Rohatgi, Sr. Advocate and Mr. Arun
Kathpalia, Sr. Advocate with Mr. Sumesh
Dhawan, Ms. Vatsala Kak, Mr. Shaurya Shyam,
Mr. Raghav Dembla, Ms. Ankita Bajpai, Mr.
Devansh Srivastava and Mr. Naman Gupta,
Advocates.**

**For Respondents : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Guneet
Sidhu, Mr. Pushpendra S. Bhadoriya and Mr.
Saikat Sarkar, Advocates for R-1 to 26.**

Mr. Rishabh Jain, Advocate for RP.

**Mr. Krishnendu Datta, Sr. Advocate with Mr.
Chitranshul A. Sinha, Ms. Pallavi, Mr. Shivam
Shorewala, Ms. Rakshita Bhargava, Ms. Alina
Merin Mathew, Advocates in IA No. 8253/2024**

**Mr. Gaurav Mitra, Mr. Abhirup Dasgupta,
Advocates for Applicant in IA No.8241 of 2024.**

Mr. Aditya Diwan, Advocate for Intervenor.

**Mr. Pratyush Parasanna, Advocate in IA Nos.
8027, 8029, 8030, 8032, 8034, 8036, 8273, 8028
and 8033 of 2024**

**Mr. Abhimanyu Bhandari, Sr. Advocate with Ms.
Nattasha Garg, Advocate for Intervenor (IA
No.7995, 8215 of 2024.**

Mr. Malak Bhatt, Advocate for Intervenor.

J U D G M E N T

ASHOK BHUSHAN, J.

IA No.7853 of 2024

IA No.7853 of 2024 has been filed by the Applicant/ Appellant praying for following reliefs:

- “a) modify the Order dated 28.10.2024 passed by this Hon'ble Adjudicating Authority in the Company Appeal (AT)(Ins) No. 2002 of 2024 to the effect that the CIR Process of the Corporate Debtor may be confined to the single Project namely 'Spaze Arrow' for which the Section 7 Petition was filed before the Ld. Adjudicating Authority and the Committee of Creditors be constituted for the said Project only; and
- b) such other and further orders be passed as facts and circumstances of the case may require.”

2. Company Appeal (AT) (Ins.) No.2002 of 2024 has been filed by the Suspended Director of the Corporate Debtor - Spaze Towers Pvt. Ltd. challenging order dated 21.10.2024 passed by National Company Law Tribunal, New Delhi Bench, Court-IV admitting Section 7 Application filed by Respondents (Respondent Nos.1 to 26 – Financial Creditor in a class). The Respondents – Financial Creditors in a class being allottee of a Project namely ‘Spaze Arrow’ located at Sector 78, Gurugram filed Section 7 Application claiming a default on the Corporate Debtor (“**CD**”) seeking initiation of Corporate Insolvency Resolution Process (“**CIRP**”) against the CD. The Adjudicating Authority after hearing the parties by order dated 21.10.2024 admitted Section 7 Application. Aggrieved by the said order,

this Appeal was filed by Suspended Director of the CD. In the Appeal, following order was passed on 28.10.2024:

“28.10.2024: Issue Notice.

2. Let Reply be filed within three weeks.
3. Intervenors are permitted to file the Intervention Application before the next date fixed.

List this Appeal on **16th December, 2024.**

In the meantime, insolvency in pursuance of the Impugned Order shall go on which will be abide by the result of the Appeal.

Let the CoC be constituted.”

3. The Appellant aggrieved by the order dated 28.10.2024 passed by this Tribunal in the present Appeal filed **Civil Appeal No.12189 of 2024 – Harpal Singh Chawla vs. Vivek Khanna & Ors.**, which Civil Appeal has been disposed of by order of the Hon’ble Supreme Court dated 08.11.2024. Order passed by Hon’ble Supreme Court on 08.11.2024 is as follows:

“The grievance raised by the appellant, Harpal Singh Chawla (a suspended Director of Spaze Towers Pvt. Ltd.), is that there are twelve completed projects and the Corporate Insolvency Resolution Process should not be initiated in respect of those projects.

We make no comments in this regard, as the matter is sub-judice before the National Company Law Appellate Tribunal. We leave it open to the appellant, Harpal Singh Chawla, to approach the National Company Law Appellate Tribunal by way of an appropriate application pointing out the relevant facts and consequences for consideration.

We clarify that we have not made any observations on the merits of the case and the contentions raised by the parties.

The appeal and pending application(s), if any, shall stand disposed of.”

4. After the above order of the Hon'ble Supreme Court, present IA No.7853 of 2024 has been filed by the Appellant on 08.11.2024 itself, praying for reliefs as noted above. In IA No.7853 of 2024, learned Counsel for the Respondents took time to file reply to the Application, which was allowed on 21.11.2024. Reply has been filed by the Respondent, to which a rejoinder affidavit has also been filed by the Appellant in pursuance of the liberty granted on 28.11.2024. Several Intervention Applications have been filed by the allottees in the present Appeal, which shall be noticed hereinafter.

5. We have heard Shri Mukul Rohatgi, learned Senior Counsel appearing for the Appellant/ Applicant; Shri Abhijeet Sinha, learned Senior Counsel appearing for Respondent Nos.1 to 26 (Financial Creditors in a class); Shri Rishabh Jain, learned Counsel for Resolution Professional ("RP"); Shri Abhimanyu Bhandari, learned Senior Counsel appearing on behalf of Intervenor in IA Nos.7995 and 8215 of 2024; Shri Gaurav Mitra, learned Counsel appearing for Applicant in IA No.8241 of 2024; Shri Krishnendu Datta, learned Senior Counsel appearing in IA No.8253 of 2024 and other learned Counsel appearing for the Intervenors.

6. Shri Mukul Rohatgi, learned Senior Counsel appearing for the Applicant/Appellant submits that CIRP against the CD be confined to Project namely – 'Spaze Arrow' only. It is submitted that Respondent Nos.1 to 26, creditors in class are of the Project Spaze Arrow and to initiate CIRP against the CD, filed Application under Section 7, which relate to only one Project namely – Spaze Arrow. Hence, the CIRP, be confined to only one

Project, i.e. Spaze Arrow. It is submitted that CD is a reputable developer in the National Capital Region and has completed 12 Projects in and around Gurugram region. Learned Counsel for the Applicant has referred to Annexure-2 to the Application, which contains the details of 12 Projects with regard to which Occupancy Certificates have been received. With regard to 05 Projects out of 12 Projects, Completion Certificates have also been received, details of which are mentioned in Annexure-2. It is submitted that some Projects were completed ten years ago. It is submitted that the Projects, which have already been completed, need not be taken in the CIRP. The Projects being complete, most of the allottees have already been handed over possession, who are living in their units. Initiation of CIRP with regard to 12 completed Projects, shall be prejudicial to the interest of the allottees and put the Projects in jeopardy, which have already been completed. It is submitted that CIRIP of the CD at best could have been restricted to the single Project, i.e. Spaze Arrow. The learned Counsel for the Appellant/ Applicant submits that Appellant has filed Civil Appeal against the order dated 28.10.2024 passed by this Tribunal and the Hon'ble Supreme Court had granted liberty to the Applicant to move appropriate Application before this Tribunal. Hence, this Tribunal may modify its order dated 28.10.2024 and confine the CIRP to only single Project, i.e. Spaze Arrow. It is submitted that the Appellant is not shying away from its obligation to complete the development of the said Project, however, due to the non-cooperation of the Co-Promoter, Mr. Ishan Singh by initiating various proceedings against the CD, various order has been obtained including an interim order against the CD. Hence, the CD could

not complete the construction of the Project. It is submitted that projected yield returns from the Projects Spaze Arrow is about Rs.250 crores and there being 325 unsold units, Project can very well be completed. The Co-Promoter obtained a status quo order on 02.12.2019, vide which the construction of the troubled Project was halted and could not be completed by the CD. It is submitted that in 12 completed Projects, approximately 6700 units have been successfully constructed and out of total number of units, 6653 have been sold to third party allottees and in most of the cases, possession of the same have been either given or have been offered to the respective allottees. The troubled Project Spaze Arrow is also feasible and viable.

7. Shri Abhijeet Sinha, learned Senior Counsel appearing for Respondent Nos.1 to 26 (the Financial Creditors in a class), who initiated proceedings, submits that the prayer made in the Application, cannot be granted. It is submitted that the CD abandoned the Project Spaze Arrow and according to own case of the Appellant/ Applicant, due to dispute raised by the land owners and due to interim orders passed against the CD, the Project could not be completed. It is submitted that in pursuance of the order dated 21.10.2024 passed by Adjudicating Authority, the IRP has already issued publication, in pursuance to which Committee of Creditors (“**CoC**”) has already been constituted, which consist of 100% creditors in a class. It is submitted that IRP has received the claims from the allottees of nearly all Projects. The IRP has admitted claims worth Rs.72 crores from 228 allottees from across all Projects of the CD. The IRP has sent letter dated 13.11.2024 for constitution of the CoC and an Agenda

was also issued for the first Meeting of the CoC to be held on 19.11.2024. It is submitted that the CD earlier also had been admitted to CIRP vide order dated 28.10.2021 passed by NCLT, New Delhi in CP(IB) 889 of 2020, which Application was filed by the allottees of Project 'Spaze Corporate Park' under Section 7, in which the claims of Rs.610 crores were collated by the IRP from the Financial Creditors. The CD ultimately settled with the original petitioners and the CIRP was set aside by the Hon'ble Supreme Court vide its order dated 18.11.2021 in Civil Appeal No.6798 of 2021. It is submitted that on account of failure of the CD to abide by the undertaking, the Hon'ble Supreme Court has already issued notice on 17.09.2024 to the CD in Contempt Petition No.683 of 2024. The CoC having already been constituted, comprising of 228 allottees across all Projects, confining CIRP to only Spaze Arrow Project would amount to denial of rights to Financial Creditors, who have already filed their claims, which have been admitted by the IRP. It is submitted it is for the CoC to take a decision as to whether Resolution Plan be invited for each real estate Project or a group of Projects of the CD. It is submitted that an Arbitral Award has been passed on 14.09.2022 in arbitration proceedings initiated by CD, according to which the CD is unable to carry on any construction. The CD's objection against Arbitral Award has also been dismissed. It is further submitted that Department of Town and Country Planning, Haryana vide order dated 01.07.2024 has suspended the Project's license.

8. Shri Abhimanyu Bhandari, learned Senior Counsel appearing for Ishan Singh, the land owner, referring to his IA No.7995 of 2024 (for Impleadment) and IA No.8215 of 2024 (to initiate criminal proceedings

against the CD) contends that CD has no right to carry on any construction on the Project land. Shri Ishan Singh, who is the land owner, who has initially entered into Collaboration Agreement with the CD in the year 2010, had already cancelled the Collaboration Agreement and there is an Arbitral Award dated 14.09.2022, under which the CD has no right to carry out any work in pursuance of Collaboration Agreement. The CD has unsuccessfully challenged the Arbitral Award dated 14.09.2022 by filing Section 34 Application, under Arbitration and Conciliation Act, 1996, which has also been dismissed. It is submitted that CD has no right to carry out any construction on the Project land, which is undisputedly owned by Ishan Singh. It is submitted that the Appellant has concealed various relevant facts in the Appeal and the IA. It is submitted that CD was also earlier subjected to CIRP by an order passed by Adjudicating Authority on Applications filed by allottees of Project 'Spaze Corporate Park', which ultimately was settled by the CD before the Hon'ble Supreme Court. The Appellant has made various false averments and there are huge dues of DTCP on the CD, which have not yet been paid.

9. Large number of Intervention Applications have been filed in the Appeal by several unit holders of Project 'Spaze Corporate Park' like IA No.8024 of 2024 and IA No.8021 of 2024 – Vandana Raheja and 33 others, who had earlier filed Section 7 Application against the CD being CP(IB) No.889 of 2020, which was admitted on 28.10.2021. Another IA No.8217 of 2024 filed by Lalita Mehta, who claimed that possession and Conveyance Deed have been granted with regard to Spaze Corporate Park. Other IAs, like IA No.8253, 8273, 8030 and 8031 of 2024 have also been filed by

different Applicants. With regard to other Projects also, large number of IAs have been filed. IA No.8241 of 2024 has been filed with regard to Project 'Spaze Tristaar'. IAs, which have been filed for intervention, can be divided in two sets. One set of IAs are with regard to claims filed before the IRP in pursuance of publication issued by the IRP and they are Financial Creditors, belong to different Projects, including Spaze Arrow and Spaze Corporate Park. Other set of IAs are filed by those Applicants, who claim that they are in possession of the units. Some of them have also claimed that Conveyance Deed has been executed in their favour. Several Intervenor have also filed claims before the IRP, only claiming for execution of Conveyance Deed in their favour.

10. We have considered the submissions of learned Counsel for the parties and have perused the records.

11. The submissions of learned Counsel for the Appellant is founded on the ground that CD has completed 12 Projects, apart from Spaze Arrow, with regard to which Section 7 Application was filed. Hence, CIRP be confined to only Spaze Arrow Project. In Annexure-2 to the Application, the Appellant has given the details of 12 Projects, dates of issuance of Occupancy Certificates and Completion Certificates. It is useful to extract Annexure-2 to the Application, which is as follows:

- "1. Spaze Towers Private Limited starting its operation and executed 13 Projects, out of which 12 Projects have been delivered and the occupation certificates have been received. The only 1 Project which is left namely "Spaze Arrow" situated at Sector 78, Gurugram, Haryana under dispute with Land Owner Mr. Ishan Singh.

Complete details of all the 12 Projects completed by Spaze Towers Private Limited are attached for your kind perusal.

Projects Delivered by Spaze Towers Private Limited

(except ARROW)

BUZINESS PARK

S. No.	Particulars	Details
1.	Name of the Project	Buziness Park [Commercial]
	Address	Located at Sector – 66, Golf Course Extension Road, Gurugram, Haryana
	OC	30.04.2019
	CC	17.02.2021

CORPORATE PARK

S. No.	Particulars	Details
2.	Name of the Project	Corporate Parkk [Commercial]
	Address	Located at Sector 69, Gurugram, Haryana
	OC	28.01.2020
	CC	25.06.2021
	RERA Registration	Regd. No.393 of 2017 – MEMO No. HRERA-188/2017/2527

I-TECH PARK

S. No.	Particulars	Details
3.	Name of the Project	I-Tech Park [Commercial]
	Address	Located at Sector 49, Gurugram, Haryana
	OC	11.03.2013

BOULEVARD-I

S. No.	Particulars	Details
4.	Name of the Project	Boulevard – I [Commercial]
	Address	Located at Sector 47, Gurugram, Haryana

	OC	27.07.2020
	RERA Registration	Regd. No.04 of 2018 – MEMO No. HRERA/178/2018/27

BOULEVARD-II

S. No.	Particulars	Details
5.	Name of the Project	Boulevard – II [Commercial]
	Address	Located at Sector 47, Gurugram, Haryana
	OC	27.07.2020
	RERA Registration	Regd. No.387 of 2017 – MEMO No. HRERA/178/2017/2459

PLATINUM -II

S. No.	Particulars	Details
6.	Name of the Project	Platinum Tower [Commercial]
	Address	Located at Sector 47, Gurugram, Haryana
	OC	02.03.2015

SPAZE PLAZO

S. No.	Particulars	Details
7.	Name of the Project	Spaze Plazo [Commercial]
	Address	Located at Sector 69, Gurugram, Haryana
	OC	03.05.2018
	CC	30.04.2019

SPAZEDGE

S. No.	Particulars	Details
8.	Name of the Project	Spazedge [Commercial]
	Address	Located at Sector 47, Gurugram, Haryana
	OC	09.03.2010 (Block A & B) and 27.12.2013 (Block C)
	CC	03.03.2014

TRISTAAR

S. No.	Particulars	Details
9.	Name of the Project	Tristaar [Commercial]
	Address	Located at Sector 92, Gurugram, Haryana
	OC	03.05.2021
	RERA Registration	Regd. No.247 of 2017 – MEMO No. HRERA – 152/2017/198

PRIVY THE ADDRESS

S. No.	Particulars	Details
10.	Name of the Project	Privvy The Address [Residential]
	Address	Located at Sector 93, Gurugram, Haryana
	OC	29.07.2018

PRIVY 72

S. No.	Particulars	Details
11.	Name of the Project	Privvy 72 [Residential]
	Address	Located at Sector 72, Gurugram, Haryana
	OC	12.09.2018

PRIVY 84

S. No.	Particulars	Details
12.	Name of the Project	Privvy 84 [Residential]
	Address	Located at Sector 84, Gurugram, Haryana
	OC	11.11.2020
	RERA Registration	Regd. No.385 of 2017 – MEMO No. – HRERA – 179/2017/2320”

12. A perusal of above Annexure indicate that the CD has obtained Occupancy Certificate and out of 12 Projects, for 05 Projects the CD has

obtained Completion Certificate. ‘Occupancy Certificate’ is dealt in Clause 4.10 of The Haryana Building Code, 2017, which is as follows:

“4.10. Occupation Certificate

(1) Every person who intends to occupy such a building or part thereof shall apply for the occupation certificate in **Form BR-IV(A) or BR-IV(B)**, which shall be accompanied by certificates in relevant **Form BR-V(1) or BR-V(2)** duly signed by the Architect and/ or the Engineer and along with following documents:

- (i) Detail of sanctionable violations from the approved building plans, if any in the building, jointly signed by the owner, Architect and Engineer.
- (ii) Complete Completion drawings or as-built drawings along with completion certificate from Architect as per **Form BR-VI**.
- (iii) Photographs of front, side, rear setbacks, front and rear elevation of the building shall be submitted along with photographs of essential areas like cut outs and shafts from the roof top. An un-editable compact disc/ DVD/ any other electronic media containing all photographs shall also be submitted.
- (iv) Completion certificate from Bureau of Energy Efficiency (BEE) Certified Energy Auditor for installation of Rooftop Solar Photo Voltaic Power Plant in accordance to orders/ policies issued by the Renewable Energy Department from time to time.
- (v) Completion Certificate from HAREDA or Bureau of Energy Efficiency (BEE) Certified Energy Auditor for constructing building in accordance to the provision of ECBC, wherever applicable.
- (vi) No Objection Certificate (NOC) of fire safety of building from concerned Chief Fire Officer or an officer authorized for the purpose.

(2) No owner/ applicant shall occupy or allow any other person to occupy new building or part of a new building or any portion whatsoever, until such building or part thereof has been certified by the Competent Authority or by any officer authorized by him in this behalf as having been completed in accordance with the permission granted and an 'Occupation Certificate' has been issued in **Form BRVII**. However, Competent Authority may also seek composition charges of compoundable violations which are compoundable before issuance of **Form BRVII**. Further, the water, sewer and electricity connection be released only after issuance of said occupation certificate by the Competent Authority.

(3) The 'Occupation Certificate' shall be issued on the basis of parameters mentioned below:-

(i) Minimum 25% of total permissible ground coverage, excluding ancillary zone, shall be essential for issue of occupation certificate (except for industrial buildings) for the first time or as specified by the Government: Provided, in case of residential plotted, minimum 50% of the total permissible ground coverage shall be essential to be constructed to obtain occupation certificate, where one habitable room, a kitchen and a toilet forming a part of submitted building is completed.

(ii) The debris and rubbish consequent upon the construction has been cleared from the site and its surroundings.

(4) After receipt of application, the Competent Authority shall communicate in writing within 60 days, his decision for grant/ refusal of such permission for occupation of the building in **Form BR-VII**. The E-register shall be maintained as specified in Code-4.8 for maintaining record in respect of Occupation Certificate.

(5) If no communication is received from the Competent Authority within 60 days of submitting the application for "Occupation Certificate", the owner is permitted to occupy building, considering deemed issuance of "Occupation certificate" and the application **Form BR-VII** shall act as "Occupation Certificate". However, the

competent authority may check the violations made by the owner and take suitable action.

(6) If the owner or Architect or Engineer or Consultant as mentioned in **Code 4.11(1)(i), (iv), (v) and (vi)** as the case may be, submits a wrong report while making application under this Code or if any additional construction or violation is reported to exist at site or has concealed any fact or mis-represented regarding completion of construction of building along with its eligibility for seeking occupation certificate or before the completion of such report, he shall be jointly and severally held responsible for such omission and complaint against the Architect for suspension of his registration and the owner shall be liable to pay for the penalty as may be decided by the competent authority after giving an opportunity of hearing. Further, if it is emerged that the information is concealed by Engineer/ Consultant/ Owner, necessary penal proceedings will be initiated along with debarring Engineer/ Consultant/ Architect from practicing in the State of Haryana.”

13. The ‘Completion Certificate’ is dealt in The Haryana Development and Regulation of Urban Areas Act, 1975. Rule 16 deals with ‘Completion Certificate/ Part Completion Certificate’, which is as follows:

“16. Completion certificate/Part Completion Certificate [Section 24].— 139[(1) After the colony has been laid out according to approved layout plans and development works have been executed according to the approved designs and specifications, the coloniser shall make an application to the Director in Form LC-VIII alongwith a demand draft on account of Infrastructure Augmentation Charges as per the rates prescribed in the Schedule-B of these rules if not paid earlier in accordance with the provision of Section 3(7) of the Act.]

(2) After such [scrutiny], as may be necessary, the Director may issue a [completion certificate/part completion certificate] in form LC-IX or refuse to issue such certificate stating the reasons for such refusal:

Provided that the colonizer shall be afforded an opportunity of being heard before such refusal.”

14. The above statutory provisions provide for issuance of Occupancy Certificate and Completion Certificate and the Appellant’s case is that for all 12 Projects, he has obtained Occupancy Certificate and for 05 Projects Completion Certificate. Clause 4.10 as noted above provide that every person who intends to occupy a building or part thereof shall apply for the Occupation Certificate, which shall be accompanied by relevant certificates. Occupation Certificate is, thus, a pre-condition for occupying a premises or building. The facts, which have been brought on record, indicate that in pursuance of CIRP commencement against the CD, the claims have been filed by the allottees of Spaze Arrow and other different Projects. The Respondent has brought on record the list of unsecured Financial Creditors of real-estate allottees as Annexure-B. The Appellant in his rejoinder affidavit has also brought the same list of creditors as on 13.11.2024 as Annexure-30. A perusal of the list of creditors indicate that real-estate allottees, who have filed the claim from Sl. No.1 to 38 are with regard to Project Spaze Arrow and Sl. No.39 to 98 are claims regarding Project Corporate Park. Sl. No.99 to 105, are claims with respect of Business Park and Sl. No.106 to 168 are claims from the Project Tristaar. Sl. No. 169 to 180 are from Project Privy AT 4 and Sl. No.181 to 194 are claims for Project Privy The Address. Sl. No.195 to 202 are claims for Platinum Tower Project and Sl. No.203 to 216 for Project Tech Park. Sl. No.217 to 220 are claims for Project Boulevard-I and Sl. No.221 to 227 are for Project Plazo. Sl. No.228 is a claim for Spaze Delhi. From the list of

creditors, it is clear that the claims filed by the allottees were to an amount of Rs.1,819,796,643/-. Out of which, the IRP has admitted claim of Rs.727,507,352/- and claims of Rs.868,961,658 is under verification.

15. The Respondents, who had filed Application under Section 7, relate to Project Spaze Arrow, with regard to which claims have already been filed as noted above. The next Project for which several claims have been filed is the Project 'Corporate Park'. We need to notice certain facts and pleadings pertaining to Corporate Park. As per Annexure-2 to the Application, the Occupancy Certificate for Corporate Park was obtained on 28.01.2020 and Completion Certificate was obtained on 25.06.2021. It is on the record that Company Petition No. IB 889/ND/2020 was filed by Vandana Raheja and 39 Ors. of "Project Corporate Park", which was admitted by NCLT, New Delhi, Court No.IV by order dated 28.10.2021. Thus, the CIRP against the CD commenced on 28.10.2021, i.e., subsequent to Occupancy Certificate or Completion Certificate as was obtained by the CD for Project Corporate Park. Against the order dated 28.10.2021, an Appeal was filed before this Tribunal, in which no interim order was passed. Hence, Civil Appeal No.6798 of 2021 was filed before the Hon'ble Supreme Court, challenging order of this Tribunal, which Appeal was disposed of on account of settlement between the contesting parties. The order of the Hon'ble Supreme Court dated 18.11.2021 passed in Civil Appeal No.6798 of 2021 has been brought on record as Annexure-E to the reply filed by Respondent Nos.1 to 26.

16. With regard to Project Corporate Park, IA No.8024 of 2024 and IA No.8021 of 2024 was filed by Vandana Raheja and Ors., who had earlier initiated Section 7 Application against the CD in CP(IB) No.889 of 2020. The Applicant – Vandana Raheja in its IA seeks intervention and in IA No.8024 of 2024 detailed facts are mentioned. It is pleaded that Project Spaze Corporate Park developed by the CD is incomplete. Reference to Writ Petition (C) No.8523 of 2020 – Vandana Raheja & Ors. vs. Union of India & Ors. has also been made, where Delhi High Court has appointed Local Commissioner on 09.02.2021 to inspect the construction. The Local Commissioner has also submitted a Report on 22.02.2021, which has also been brought on the record along with IA No.8024 of 2024. It is relevant to notice that CIRP against the CD for Project Corporate Park had commenced on 28.10.2021, i.e. date subsequent to CD having obtained Occupancy Certificate and Completion Certificate. The said proceedings were ultimately set-aside on account of settlement before the Hon'ble Supreme Court on 18.11.2021. Large number of Claimants have filed claim arising from the Project Corporate Park, as noticed above.

17. When CIRP was commenced against the CD, all Financial Creditors are entitled to file claim as per the Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons) Regulations, 2016. The claim is defined in Section 3, sub-section (6) of the IBC, which is as follows:

“30(6) “claim” means –

(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured, or unsecured;

(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;

18. The real-estate allottees are Financial Creditors as per provisions of the IBC and in event any real-estate allottee has a claim against the CD, he is fully entitled to file a claim on commencement of the CIRP against the CD.

19. It is true that when a unit holder is handed over possession and a Conveyance Deed has also been executed, no claim survives of such unit holders. Whether a claim filed by a Financial Creditor in a class, deserves admission, is a question, which need to be first looked into by the RP as per the statutory regulations governing the collation and verification of the claim. At this stage, whether the claim filed by a particular Financial Creditor in a class before the RP is admissible or not is a question, which need to be looked into by the IRP and thereafter by the Adjudicating Authority and any aggrieved person has ample remedy by filing application under Section 60 sub-section (5), if any claim has wrongly been admitted, which ought not to have been admitted by the RP.

20. As noted above, when the Claimants have filed claims for the Project Corporate Park, which we have noted above and who have pleaded that the Project is not complete despite Occupancy Certificate and Completion Certificate, by confining the CIRP to only one Project – Spaze Arrow, shall tantamount to excluding the claims filed before the RP from different Project. We, thus, after considering the facts and circumstances, which

have been brought on the record by the parties, are of the view that at this stage, we are not persuaded to pass an order, confining the CIRP to only one Project, i.e. Spaze Arrow, as prayed in the Application filed by the Appellant/ Applicant. The prayer made in the IA No.7853 of 2024 cannot be allowed. IA No.7853 of 2024 is rejected.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

NEW DELHI

17th December, 2024

Ashwani