

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 383 of 2025

[Arising out of the Order dated 06.02.2025, passed by the
'Adjudicating Authority' (National Company Law Tribunal, New Delhi
Bench) in IB-237(ND)/2023]

IN THE MATTER OF:

Expert Realty Professionals Private Limited

Through Neeraj Gusain Pro. C-31, G/F,
Natthu Singh Market, Masoodpur, New Delhi,
Email: expertrealtyprofessional@gmail.com

...Appellant

Versus

1. **Logix Infrastructure Private Limited**

Through RP Mr. Pawan Kumar Goyal
304, DR Chambers 12/56 DB Gupta Road
Karol Bagh, Delhi
Email: legal@logixinfrastructure.com

...Respondent No.1

2. **Ankoor B Sarkar**

R/o I- 1907 Logix Blossom County,
Sector 137, Noida, UP

...Respondent No.2

3. **Varun Kumar Bala**

R/o M-1501 logix blossom county,
Sector 137, Noida UP

...Respondent No.3

Present:

For Appellant : Mr. Sunil Fennandes, Sr. Advocate with Mr. Ketan Madan and Ms. Muskan Surana, Advocates

For Respondent : Mr. Gaurav Rana and Mr. Ajitesh Kumar, Advocates for R-2 & 3.

Mr. Rishi Singhal, Mr. Pawan Kr. Goyal and Ms. Reena, Advocates for RP/R-1.

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

The present Appeal arises out of the order dated 06.02.2025 passed by the Hon'ble National Company Law Tribunal, New Delhi Bench, in *CP(IB) No. 237/2023*.

Brief facts of the case

2. Respondent No. 1, Logix Infrastructure Pvt. Ltd., is engaged in real estate development and launched a residential project, *Blossom County*, in Sector 137, Noida. The project comprised 17 towers with 2,384 units, originally scheduled for completion in 2013. However, construction remained incomplete in several towers. On 20.10.2020, Respondent No. 1 entered into an agreement with the Appellant, Expert Realty Professionals Pvt. Ltd., under which a total built-up area of 1,37,918 sq. ft. was agreed to be sold under a buy-back arrangement. Pursuant to this, the Appellant infused ₹15 crore between October 2020 and February 2021 through banking channels. This investment facilitated further construction activity at the project site. Subsequently, a sum of ₹12,88,04,535/- became due and payable to the Appellant, and the minutes dated 15.12.2021 recorded the parties' mutual understanding regarding the same. Owing to non-payment of the said amount, the Appellant filed a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 before the Hon'ble NCLT, which was registered as *CP(IB) No. 237/2023*.

3. During the pendency of the proceedings, an objection was raised by a homebuyer association (*Logix Blossom County Apartment Owners Association*) by filing an interlocutory application being IA No. P26 of 2023 alleging collusion between the parties. However, this objection was rejected by the Hon'ble NCLT vide order dated 04.07.2023 as being misconceived. After hearing the parties and considering the materials on record, the Hon'ble NCLT

admitted the petition under Section 7 on 14.07.2023 and appointed Mr. Pawan Kumar Goel as the Interim Resolution Professional (IRP).

4. A constituent member of the Logix Blossom County Apartments Owners Association filed an application titled *Aniket Tyagi & Anr.*, being IA No. 4531 of 2023, under Section 65 of the Insolvency and Bankruptcy Code, seeking dismissal of the CIRP on grounds similar to those previously raised in IA No. P26 of 2023.

5. The Respondent No. 2 and 3 filed IA No. 6541/2023 dated 13.12.2023 under Section 65 of the IBC alleging that the Appellant/FC and the CD, M/s Logix, are related parties under Section 5(24) and that the Section 7 proceedings were fraudulently initiated. The Impugned Order dated 06.02.2025 allowed the application, recalled the admission order dated 14.07.2023, and imposed a penalty of Rs. 55 lakhs, which has been stayed by this Tribunal while issuing notice.

Submission of the Appellant

6. The application under Section 65 of the Insolvency and Bankruptcy Code, 2016, was filed only on 13.12.2023, i.e., five months after the admission of CIRP (14.07.2023) and eight months after the filing of the Section 7 petition (06.04.2023), indicating a clear after thought.

7. Section 65 penalizes initiation of insolvency proceedings for fraudulent or malicious purposes. In the present case, the Section 7 petition was filed on the basis of a duly executed loan agreement dated 20.10.2020, with all relevant details furnished in the application. The Section 65 application fails to plead or prove any fraudulent or malicious intent. The Adjudicating

Authority had already applied its mind and admitted the Section 7 petition after examining all relevant facts and documents. Reversing such a reasoned order amounts to a review in the guise of a fresh determination, which is impermissible.

8. The sole basis for allowing the Section 65 application is the finding that Mr. Hemant Sharma and Mr. Neeraj Gusain are related parties under Section 5(24) of the Code due to their association in an LLP since July 2020. However, this fact alone does not prove any fraudulent or malicious conduct. Merely being a related party is not sufficient to attract Section 65. The IBC disqualifies related parties from being part of the CoC (Section 21(2)) and from submitting a resolution plan (Section 29A), but nowhere equates related party status with fraud or malice. It is therefore submitted that the impugned order proceeds on an erroneous interpretation of law, in the absence of any substantive evidence or pleading under Section 65, and deserves to be set aside.

Submissions of R2 and R3

9. That the sole purpose behind the filing of the fraudulent, malicious and concocted insolvency application by the Appellant against the Corporate Debtor was to evade the Corporate Debtor's obligations towards the Noida Authority, liabilities towards genuine homebuyers who have been granted compensation/refund of their investment as per UP RERA and Consumer Forum and derail in the registration process of the apartments allotted to the genuine homebuyers. All the units of the project of the Corporate Debtor were sold to all the allottees and the payment towards the same had already been

made to the Corporate Debtor, thereby confirming that the Corporate Debtor had recovered all the funds as planned against the said project. However, the deliberate non-payment of statutory dues by the Corporate Debtor and the same leading to non-registration of units by the Noida Authority in favour of the genuine homebuyers, duly reflects the misappropriation of funds done by the promoters of the Corporate Debtor. The insolvency application was preferred solely to cover up such misappropriation.

10. From the bare perusal of the response filed by the Corporate Debtor to the Section 7 Application of the Appellant, it is evident that the prompt response of the Corporate Debtor in admitting to the said liability of the Appellant reflects the malicious and fraudulent approach adopted by the parties to release the Corporate Debtor of its obligations to other creditors and allottees.

11. One Mr. Hemant Sharma i.e. Director of the Corporate Debtor has been holding the position of Additional Director in the Appellant Company from 12.05.2020 to 05.09.2020. It is submitted that soon after leaving the Appellant Company, Mr. Hemant Sharma was appointed as the Director of the Corporate Debtor. One Mr. Neeraj Gusain was also appointed as Director in the Appellant Company from 30.09.2020 and is still associated with the Appellant Company. The conjoint understanding of the appointments of the aforementioned individuals with the MoU dated 20.10.2020 executed between Appellant and Corporate Debtor (which was signed by Mr. Hemant for Corporate Debtor and Mr. Neeraj for Appellant) reflects that the alleged loan transaction was pre-planned by the parties. Solely to avoid any related party

transaction Mr. Hemant Sharma had resigned a month prior to the alleged transaction and immediately joined the Corporate Debtor.

12. The nexus between Mr. Hemant and Mr. Neeraj can also be seen as both were designated partners of a common entity namely New Greens Landkart LLP.

13. The relationship between the parties must be examined at all three critical stages under the Insolvency and Bankruptcy Code, 2016 (the “Code”)—namely, the existence of a debt, the debt being due, and the occurrence of default. If the applicant is found to be a related party at any of these stages, it casts doubt on the legitimacy of the insolvency proceedings, especially where such facts are not disclosed to the Adjudicating Authority.

14. In the present case, it is submitted that the Financial Creditor (FC) and the Corporate Debtor (CD) were related parties at the time of execution of the MoU and other related documents. Recent judicial pronouncements, including those affirmed by the Hon’ble Supreme Court, hold that any attempt to sever such a relationship solely to circumvent the provisions of the Code is impermissible.

15. It was argued that the non-disclosure of the related party status was deliberate and formed part of a larger scheme to misuse the CIRP process. The Adjudicating Authority was, therefore, justified in piercing the corporate veil to reveal the real intent behind the initiation of proceedings, which was found to be collusive and aimed at defeating the rights of other creditors.

16. The Respondent submits that key individuals the FC and CD, being partners in an LLP, remained connected throughout, and actively participated in the Committee of Creditors (CoC) despite being ineligible, holding a significant voting share of 21%.

17. Adjudicating Authority, while lifting the Corporate Veil of the Corporate Debtor for unearthing such fraudulent and malicious transaction, took note of the fact that neither the MoU dated 20.10.2020 nor the alleged minutes dated 15.12.2021 wherein the Corporate Debtor has undertaken to pay the amount to Appellant has been executed on stamp paper thereby raising the question of its validity. Appellant failed to show any document which substantiated the execution of the said documents on their respective dates. Accordingly, the Adjudicating Authority has rightly allowed the application of the Answering Respondents under Section 65 of the Code and rejected the insolvency commencement order dated 14.07.2023, which was initiated fraudulently and maliciously with ulterior motives.

18. Adjudicating Authority has rightly considered the evidence relating to the fraud and connivance of the Appellant and Corporate Debtor in seeking the benefit of insolvency and moratorium and debarring the genuine creditors of their legitimate rights. Corporate Debtor had deliberately withheld from conducting its duties even after receiving complete funds against, the units allotted in its housing project.

19. To evade the threshold criteria and to have a distinct identity in the CIRP of the Corporate Debtor, the Appellant has concocted and portrayed the

said transaction as a financial debt. It is submitted that the Appellant was completely aware that it would not have voting percentage in CoC if it becomes homebuyer in class, the alleged transaction was maliciously and fraudulently portrayed as financial debt before the Adjudicating Authority.

20. The purpose and intent behind the enactment of Section 65 of the Code by the legislature is evidently to protect and preserve the interest of the legitimate creditors of the Corporate Debtor. Section 65 of the Code entrusts a duty upon the Ld. Adjudicating Authority to deliberate on the actions undertaken and the intent behind the filing of the insolvency petition by the Applicant therein.

21. Appellant is also challenging the timing of passing the said order under Section 65 of the Code i.e. delay of alleged 140 days from the date of reserving orders in IA No.6541 of 2023 and the CIRP of Corporate Debtor was running at full throttle during the said period. But the provisions of Section 65 of the Code explicitly empower the Adjudicating Authority to set aside the admission order if it is proved and established through documents that the CIRP against the Corporate Debtor is initiated in a fraudulent and malicious manner and with ulterior motives.

22. In light of the above, the Respondent No. 2 & 3 pray that the appeal be dismissed with exemplary costs, being a clear abuse of the process intended to mislead the Tribunal and waste its valuable time.

Appraisal

23. Heard the counsels of both sides and also perused the material placed on record.

24. We note that this Tribunal had on 05.03.2025 ordered as follows:

“Issue notice. Learned counsel for the Resolution Professional is present and accepts notice. Learned counsel for the Respondent No.2 and 3 also accept notice. No notice needs to be issued. Let Reply be filed by the Respondents within two weeks. Rejoinder be filed within two weeks thereafter. List this Appeal on 17.04.2025 for admission/disposal. In the meantime, penalty of Rs.55 Lakhs imposed on the Appellant shall remain stayed. In the meantime, no third party rights shall be created in the assets of the Corporate Debtor.”

25. Main issue before us is whether NCLT correctly identified financial debt to be fraudulent and malicious and misjudged or not while observing collusion and whether order for recall of the Section 7 proceedings is maintainable or not.

26. We first look into as to how and in what circumstances the section 7 proceedings in the present case was initiated and admitted and whether they were initiated fraudulently or maliciously.

27. The Appellant herein – M/s Expert Realty – is the original Section 7 Applicant before the Adjudicating Authority, who filed CP (IB) No. 237/2023 before the NCLT, New Delhi Bench-III, which was admitted vide order dated 14.07.2023. Subsequently, an IA No. 6541/2023 dated 13.12.2023 was filed u/s Section 65 of the IBC by R2 & R3 herein claiming that the Appellant/ FC-Expert Realty herein and the CD-Logix are related parties u/s 5(24) and that the Section 7 Application so filed and allowed, was a fraudulent initiation of proceedings. The Impugned Order allows the said application and recalls

admission order dated 14.07.2023 by virtue of the "Impugned Order" vide order dated 06.02.2025.

28. Before proceeding further, it will be instructive to note the relevant provisions relating to Section 65 which are extracted as below:

“Section 65. Fraudulent or malicious initiation of proceedings.

(1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.

(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.

(3) If any person initiates the pre-packaged insolvency resolution process-

(a) fraudulently or with malicious intent for any purpose other than for the resolution of insolvency; or

(b) with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.”

29. We note that Section 65 of the Insolvency and Bankruptcy Code, 2016, provides for penalties in cases where proceedings under the Code—such as those under Section 7 or Section 9—are initiated for a “fraudulent” or “malicious” purpose. In the present case, the Section 7 application was filed on the basis of a loan agreement dated 20.10.2020, and all material particulars relating to the financial debt arising from the commercial transaction between the parties were set out in Part IV of the said application. We now look into the circumstances under which the financing arrangements

were worked out, which ultimately led to Section 7 proceedings against the CD M/s. Logix.

Binding understanding of 20.10.2020

30. One of the main planks of the Appeal is the binding understanding between FC – Expert Realty and CD – Logix Infrastructure Private Limited which is dated 20.10.2020 which is extracted as below:

CONFIDENTIAL

Binding Understanding

The binding understanding agreement ("MOU") dated 20th October 2020 summarizes the principal terms with respect to the sums of INR 15,00,00,000/- (INR Fifteen Crores Only) advance to Logix Infrastructure Private Limited, a private limited company incorporated under the laws of Republic of India (CIN No. U72200DL2008PTC172835) having its office at Logix Blossom County, GH-02, Sector 137, Noida – 201305 (the "Logix"), by Expert Realty Professionals Private Limited (the "Expert") a private limited company incorporated under the laws of Republic of India (CIN No. U70101DL2009PTC196962) having its office at C-31, G/F, Nathu Singh Market, Masoodpur, New Delhi-110070. Logix and Expert are collectively referred to as "Parties" and individually as "Party". The intent of the MOU (which is legally binding, except as expressly set for the herein) is to describe, the key terms of the proposed agreement amongst the Parties "(Proposed Transaction")

1. Transaction

Company	Logix Infrastructure Private Limited
Investor / Lender	Expert Realty Professionals Private Limited
Type of securities	Advanced against sale of property
Investment Commitment:	INR 15,00,00,000/- (INR Fifteen Crores Only)
Consideration:	Allotment of units as per Annexure 1 in Logix Blossom County, a real estate project, located at plot no. GH-02, Sector – 137, Noida and registered under RERA vide registration number UPRERAPRJ4466 & UPRERAPRJ4411 . The same would be done through a binding builder buyer agreement (BBA). Please refer Annexure 1, which outlines the details of the units to be allotted to Expert ("Units")
Payment Schedule:	The entire amount of INR 15,00,00,000/- shall be paid to Logix by February '2021.

2. TERMS AND CONDITIONS :

- (a) **Parties' Commitment:** The Parties agrees and acknowledge to close the entries transaction, as prescribed under this MOU, on or before February'2021 or any date as may be mutually agreed between the parties in writing ("the Closing Date")

For EXPERT REALTY PROFESSIONALS PV

- (b) **Conditions to closing:** This MOU and the closing of the above mentioned transaction is subject to release of all charges over the units being transferred to Expert through BBA as stated in Para 1 above. The area so transferred should be free of all charges.
- (c) **Conditions precedent:** The proposed Transaction would be subject to the satisfaction of various conditions precedent which shall include, but not limited to:
- (i) Execute of Builder Buyers Agreement (with no condition to cancel the same expect unless requested by Expert) for identified units as stated in Annexure 1 to this MOU. The terms of BBA shall provide for Payment Option by Expert on 50:50 payment plan. vis a vis the inclusive cost (including GST and any other charges) agreed with Expert for the units stated in Annexure 1 is INR 2,200 per sq. feet. Amount of INR 15,00,00,000/- (INR Fifteen Crores Only) so paid by Expert to Logix would be adjusted accordingly. Thus, the balance amount of INR 1,100 per sq. feet would be paid to Logix as per the terms of BBA/payment plan before registering the flat unit in its own name (Expert) or in the name of buyers so identified by Expert, at its own accord with no recourse of Logix.
 - (ii) Execution of Power of Attorney (POA) in the name of a representative of Expert, allowing him to represent Logix in the registrar's office to register the property in their name. Thus post execution of the above POA, Expert shall be eligible to register the property on its own, without any assistance needed from Logix. However, registry can be done only when the entire consideration of INR 2,200 per sq. feet the unit has been paid to Logix (for unit being registered). Once INR 2,200 per sq. feet consideration has been paid to Logix for a particular unit, then Logix can under no condition object to any registration being undertaken by Expert for that particular unit. Terms of the POA to ensure that the above aspect is duly captured.
 - (iii) The first blank transfer document to be given to Expert & the same would be free of charge.
 - (iv) Amount of INR 15,00,00,000/- (INR Fifteen Crores Only) so received by Logix from Expert would be shown advance from customers in the books of Logix.
 - (vi) Board resolution of the Logix accepting the MOU.
- (d) **Other Commitments:** Logix shall commit to provide all necessary support, to provide all required information and to complete the all required documentation on or before the closing date and thereafter as and when needed by Expert.

Expressway, Sector - 137, Noida

- (e) **Encumbrances:** Logix represents that the units as described herein above are free from any mortgage, lien, charge, pledge, encumbrances.
- (f) **Swapping of units:** Swapping of units would be allowed by Logix to Expert. However, same would be permitted upon request of Expert only and should be honoured by Logix within 3 working days of receipt of required. However, swapping of units can only be requested by Expert and not Logix and would be done at same price of INR 2,200 per sqft & with the same payment terms.
- (g) **Transfer charges:** In case of any transfer charges are levied on any transfer of BBA (by Logix, Noida etc.), by whatever name called, then the same (for 1 transfers) would be borne by Logix only with no recourse to Expert or to its customers.
- (h) **Flow of funds:** The flow of funds would be as below :
 - (i) Expert has agreed for a sale price of INR 2,200 (all-inclusive sale price)
 - (ii) Payment of 50% of the agreed value would be paid by Expert. Rest 50% (INR 1,100) respectively would be paid to Logix as per the terms of BBA/ payment plan before registration of the units (by Expert or the customers identified by Expert).
 - (iii) Once Expert identify a buyer to buy the said units allotted to it, then it would intimate Logix of the same. Upon such intimation being received, Logix would execute adequate agreement to undertake a buy back of such units from Expert @ INR 3,800 per.sq.ft.
 - (iv) The amount @ INR 3,800 per.sq.ft (Net off 50%, that needed to be retained at Logix as stated above) would be paid by Logix to Expert.
 - (v) Balance amount, if any, over and above the amount @ INR 3,800 per.sq.ft so agreed to be paid by customer to Logix would be paid to Expert as brokerage.
 - (vi) Each party would be responsible for its own taxes.
 - (vii) The pay out if also explained below in detailed for ease of understanding
 1. Say the unit is agreed to be sold by Expert for an amount @ INR 4,000 per.sq.ft by Expert to a buyer.
 2. Expert has already paid INR 1,100 per.sq.ft to Logix for the same and INR 1,100 per.sq.ft would be by the customer directly to Logix.
 3. Expert would then approach Logix and request for cancelling the BBA under a buy back for INR 3,800 per. Sq. Ft.

4. Customer would pay amount @ INR 4,000 per.sq.ft to the Logix.
5. Payment to Expert would be as below :
 - a. Amount @ INR 1,100 per.sq.ft would be paid back to Expert as repayment of earlier booking amount.
 - b. Amount @ INR 1,600 per.sq.ft would be paid as a premium on buy back.
 - c. Amount @ INR 200 per.sq.ft would be charged as brokerage by Expert (inclusive of GST)
 - d. So total amount to be paid to Expert would be amount @ INR 2,900 per.sq.ft
6. Payment of amount @ INR 1,100 per.sq.ft, the balance amount would be paid directly by the customer to Logix as per the terms of the BBA.

(i) **Representations and warranties:** The definitive agreement would include the standard representation and warranties from Logix, including but not limited to :

1. That there is no injunction or other legal bar on allotment of units;
2. That all information provided to Expert is materially correct and up to date and that nothing material has been withheld;
3. That Logix has no outstanding charge on its assets or assets of the share holders and that no litigations is pending or threatened that may materially impact the proposed transaction.

(j) **Confidentiality:** The parties here to agree and acknowledge that any and all information disclosed pursuant to the purpose as contemplated under this MOU ("Confidential Information") shall be treated as confidential. Provided that if such confidential information is disclosed: (i) in writing or in any other tangible form, it shall be clearly marked as "Confidential" or with similar legend at the time of disclosure ; and / or (ii) orally, visually or in any other intangible form, it shall be orally identified as being confidential at the time of disclosure. However, the confidential information shall not include any of the following: (a) Information that is or becomes part of the public domain without violation of this MOU by the receiving party; (b) Information that was known to or in the possession of the receiving party on a non-confidential basis prior to the disclosure thereof to the receiving party by the disclosing party; (c) Information that was developed independently by the receiving party, without use of or reference to the confidential information; (d) Information that is disclosed to the receiving party by a third party under no obligation of confidentiality to the disclosing party and without violation of this MOU by the receiving party; or (e) Information that is disclosed pursuant to any other or requirement of such disclosure by any judicial, administrative or governmental entity with jurisdiction over it. The obligation of the receiving party to protect the confidential information under this MOU shall survive for a period of one (1) year from the effective date of this MOU.

- (k) **Governing Law & Jurisdiction:** Any dispute, controversy or claim arising out of or relating to this MOU or the interpretation, breach, termination or validity thereof, shall be subject to the exclusive jurisdiction of the courts of New Delhi, India (the "Delhi Court"), and the parties hereto hereby submit to the exclusive jurisdiction of the Delhi Court for this purposes. Each party here to waives any objection to the proceeding in the Delhi court on the ground of venue or on the ground that the proceedings have been brought in an inconvenient forum, or to claim that the Delhi Court does not have jurisdiction.
- (l) **Survival:** Termination of this MOU for any cause shall not release a party from any liability which at the time of termination has already accrued to another party or which there after may accrue in respect of any at or omission prior to such termination.

This terms and conditions under this MOU hereto shall be binding upon the parties signed hereto and any failure to observe to perform any provisions in this MOU shall constitute a breach of the provisions of this MOU.

Company

For and on behalf of

Logix Infrastructure Pvt Ltd.
For Logix Infrastructure Pvt. Ltd.


Authorized Signatory

(Mr. Hemant Sharma)
DIN:07872659

Investor

For and on behalf of

Expert Realty Professionals Pvt Ltd.

For EXPERT REALTY PROFESSIONALS PVT LTD.


Authorized Signatory

(.....)
(Authorized Signatory)

Place of Agreement:

New Delhi

Date of Agreement:

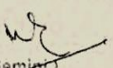
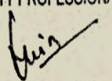
20th October 2020

31. Perusal of binding understanding as reproduced above herein shows that this is an unregistered agreement and the common thread in this MOU is Mr Hemant Sharma, Director of CD-Logix, who is also director in another LLP- New Greens Landkart wherein Mr Niraj Gusian, the Director of FC is also a Director. So as per Section 5(24) both FC and CD are related parties. Further this is an 'MoU' / Agreement for the sale of 1,37,918 sq. ft, of built-up area in the Logix Blossom Country project, Sector 137, Noida, under a buy-back

arrangement, with the Appellant infusing about ₹15 crores between 20.10.2020 and 09.02.2021, as 'Advance against sale of Property'.

Meeting of 15.12.2021

32. We also note that another meeting took place between the Appellant-FC-Expert and the CD-Logix on 15th December 2021. The minutes of this meeting are extracted as below:

MINUTES OF MEETING DATED 15.12.2021 HELD BETWEEN M/s. LOGIX INFRASTRUCTURE PVT. LTD. & M/s. EXPERT REALITY PROFESSIONALS PVT. LTD.	
For Logix Infrastructure Pvt. Ltd. 1. Sh. Hemant Sharma, Director 2. Sh. Manu Gemini AR, (A.G.M legal) For Expert Reality Professionals Pvt. Ltd. 1. Sh. Neeraj Gusain, Director The meeting has been attended by the above Attendees on behalf of Logix Infrastructure Pvt. Ltd. and Expert Reality Professionals Pvt. Ltd. at the office of Logix Infrastructure Pvt. Ltd., at Plot No. GH-02, Sector 137, Noida, U.P. – 201301. It has been discussed between the parties: 1. In order to meet the shortfall of funds Logix had offered sale of 1,37,918 sq. ft. saleable area in its Project namely Blossom County at Sector 137, Noida. 2. The said saleable area has been sold to Expert Reality vide agreement dated 20.10.2020 for which Expert has paid Rs. 15.16 Cr. to Logix. 3. Logix confirms that as on that the units allocated to expert reality amounting to 1,37,918 sq.ft. has been sold to customers for a sale value of Rs. 46,94,58,306/- 4. Logix has paid 18,88,34,171/- to Expert and confirms to pay the balance amount of Rs. 12,88,04,535/- The same shall be released without any interest within a period of one month. 5. In case Logix fails to pay the balance within a period of one month, interest @ 18% per annum would be leviable on the balance payments that remain due to be paid. 6. The parties have settled their accounts as on 15.12.2021 and the above is on the basis of reconciled accounts and the figures are accepted and acknowledged to be correct and agreed.	ANNEXURE-A-4
For Logix Infrastructure Pvt. Ltd.  (Hemant Sharma, Director) DIRECTOR For Logix Infrastructure Pvt. Ltd.  (Manu Gemini) For Logix Infrastructure Pvt. Ltd.	For EXPERT REALITY PROFESSIONALS PVT. LTD.  (Neeraj Gusain) Authorised Signatory For Expert Reality Professionals Pvt. Ltd.

33. The minutes of this meeting records the decision that in order to meet the shortfall of funds Logix had offered the sale of 137918 Sq.ft. saleable area in its project namely Blossom County at Sector 137 Noida. This has been sold to Expert Realty vide agreement 20th October 2020 for which Expert has paid ₹15.16 Crs to Logix. It is also recorded that the units allocated to Expert Realty has been sold to customers for a sale value of ₹46.94 Crs approximately. It also records that Logix has paid about ₹18.88 Crs to Expert and confirms to pay the balance amount of ₹12.88 crores and the same was to be released without any interest within a period of one month. In case Logix fails to pay the balance within a period of one-month interest at the rate of 18% per annum would be leviable on the balance pay that remained due to be paid. By this decision the CD and FC converted advance against the units to simpliciter financial debt.

From the above minutes as also other material on record we note that:

- a. CD and FC converted advance against the units to simpliciter financial debt.
- b. Mr. Hemant Sharma acted on behalf for Corporate Debtor-Logix and Mr. Neeraj Gusain acted on behalf for FC/Appellant-Expert.
- c. Hemant Sharma and Neeraj Gusain were related parties as they were designated partner in an LLP named as New Greens Landkart LLP since July, 2020. Parties were related in terms of Section 5(24)(a) read with Section 5(24A) (b) and Section 5(24)(m)(iii).

d. The minutes crystalizing debt of more than ₹12 Crores was not accompanied with stamp paper.

e. Such an important decision didn't carry any Collateral or security or agreement for the loan amount.

All above issues emerging from the decisions in the meeting have a bearing in deciding the main issue before us.

34. For better appreciation of the nature of financial debt, part IV is reproduced as below from the Section 7 petition:

PART – IV
PARTICULAR OF FINANCIAL DEBT

Total amount of debit details of transactions on which debt fell due and	Rs. 15,29,55,385/- (Rupees Fifteen Crores Twenty Nine Lacs Fifty Five Thousand Three Hundred Eighty-Five Only) (Principle Amount alongwith 18% interest, along with further interest at the contracted rate till the date of actual payment of the entire Amount) BRIEF DETAILS OF THE TRANSACTION ARE AS UNDER: 1. That the Expert Realty Professional Pvt. Ltd (herein referred as "Financial Creditor") is into Real Estate Consultancy, Development and Construction and had entered into a business transaction with Logix Infrastructure Pvt. Ltd. (herein referred as "Corporate debtor") regarding the purchase of 1,37,918 square feet of area in the project namely Logix Blossom County at Sector 137 Noida, U.P. Accordingly the Expert Realty Professional Pvt. Ltd (herein referred as "Financial Creditor") admitted into MOU (Binding Understanding) dated 20th October, 2020 with Logix Infrastructure Pvt. Ltd. (herein referred as "Corporate debtor"). Copy of said MOU is being annexed herewith as Annexure A-3.
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	2. That Petitioner had agreed to invest in the said project at Rs. 2200/- per square feet and respondent had consented to transfer the sale proceeds over and above the said price of Rs. 2200 /- for the aforesaid area by way of return on investments made by applicant in the project. Accordingly, the Applicant/Financial Creditor as per agreed terms in MOU, advances were made by applicant from 22.10.2020 to 09.02.2021 to the corporate debtor and has thereby made total advance of Rs. 15,00,00,000/-. 3. That as per MOU allottee/buyer of the units sold by the applicant will make the full payment of the flat to the corporate debtor and thereafter the amount over and above Rs. 2200 per Sq. feet will be paid by Logix Infrastructure Pvt. Ltd. To Expert Realty Professionals Pvt. Ltd. as per the terms agreed between the parties. 4. That as per minutes of meeting dated 15.12.2021 Corporate Debtor confirmed that units allocated to Experts Realty Professional Pvt. Ltd. amounting to 137918 sq, ft has been sold to customers for sale value of Rs. 46,94,58,306/. However, after reconciliation of accounts reduced their liabilities and obligations in Minutes of Meetings dated 15.12.2021 whereby respondent had acknowledged their liability towards the applicant to the tune of Rs. 12,88,04,535/- (Rupees Twelve Crore Eighty Eight Four Thousand Five Hundred and Thirty Five) payable without interest within a period of 1 month and thereafter @ at 18% per month. Copy of Minutes of Meeting dated 15.12.2021 held between financial creditor and corporate debtor is being filed herewith as Annexure A-4. 5. That when the aforementioned amount was not paid by the Corporate Debtor, a demand notice dated 04.03.2023 was sent by the applicant which was duly served on corporate debtor. However, the corporate debtor has failed to pay any amount to the
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	Financial Creditor or reply to the said notice and did not offer any explanation towards non-payment. Copy of demand notice dated 04.03.2023 is being annexed herewith as Annexure A-5. 6. That corporate debtor has till date neither paid any amount nor given any explanation towards non-payment of Rs. 12,88,04,535 along with 18% interest p.a. which have been due and are payable as per the Minutes of Meetings held on 15.12.2021. Copy of the ledger account issued by the corporate debtor showing the said transaction entered into between the parties is being filed herewith as Annexure A-6. 7. That there is no justification for the corporate debtor to not to pay the amount due and acknowledged and it manifestly shows that the corporate debtor is not in a position to honor its financial obligation and thus the present petition is required to be admitted against the corporate debtor.
Date from which such date debt fell due.	15.01.2025
Amount claimed to be in default and the date on which the default occurred (Attach the workings for computation of amount and days of default in tabular form)	The total amount claims to be in default is Rs.12,88,04,535/- along with 18% interest p.a. payable on unpaid debt with effect from 15.01.2022 till realisation.

35. Perusal of particulars of debt in Part-IV of Section 7 Application (@189), indicates that as per MOU dated 20.10.2020 initially around ₹15 Crs was invested by the Appellant in the project and Respondent had consented to

transfer the sale proceeds over and above the said price of ₹2200/- for the aforesaid qua by way of return on investments made by the applicant in the project. Advances were made for ₹15 Crs. by the Applicant – FC-Expert.

36. But later on, as per decision taken on 15.12.2021 by the two parties, Respondent acknowledged their liability towards the applicant to the tune of ₹12.88 Crs. (Approx) payable without interest within a period of one month and thereafter @ 18% per month

37. By such a decision earlier investment was converted into a financial debt. If such transactions were at arm's length, both parties would have taken steps to safeguard their interests and one would have seen proper stamped agreement for such a loan and noted its genesis in detail, which is missing in the case at hand and strongly indicates collusion between the parties. When viewed in the present conspectus of the facts, it is unpalatable and indicates collusion. Hereinafter, we go into further details of the issue of related parties.

Issue of related party

38. We now briefly look into the issue of related parties as raised in this Appeal. For sake of convenience, we reproduce provisions relating to related party in the Code which are extracted as follows:

“5(24) related party, in relation to a corporate debtor, means--

(a) a director or partner of the corporate debtor or a relative of a director or partner of the corporate debtor;

(b) a key managerial personnel of the corporate debtor or a relative of a key managerial personnel of the corporate debtor;

(c) a limited liability partnership or a partnership firm in which a director, partner, or manager of the corporate debtor or his relative is a partner;

(d) a private company in which a director, partner or manager of the corporate debtor is a director and holds along with his relatives, more than two per cent. of its share capital;

(e) a public company in which a director, partner or manager of the corporate debtor is a director and holds along with relatives, more than two per cent. of its paid-up share capital;

(f) any body corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;

(g) any limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;

(h) any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act;

(i) a body corporate which is a holding, subsidiary or an associate company of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary;

(j) any person who controls more than twenty per cent. of voting rights in the corporate debtor on account of ownership or a voting agreement;

(k) any person in whom the corporate debtor controls more than twenty per cent. of voting rights on account of ownership or a voting agreement;

(l) any person who can control the composition of the board of directors or corresponding governing body of the corporate debtor;

(m) any person who is associated with the corporate debtor on account of--

(i) participation in policy making processes of the corporate debtor; or

(ii) having more than two directors in common between the corporate debtor and such person; or

(iii) interchange of managerial personnel between the corporate debtor and such person; or

(iv) provision of essential technical information to, or from, the corporate debtor;"

39. Appellant claims that Mr. Hemant Sharma served as an Additional Director with FC – Expert Realty from 12.05.2020 till 05.09.2020, i.e. for less

than 4 months. He subsequently became a Director in the CD – Logix from 11.09.2020 and Appellant claims that this brief tenure of less than 4 months was too short for him to influence or make policy decisions for the FC via the CD. It also claims that Mr. Hemant Sharma was not concurrently in charge of both companies at any point in time. But, we find that the facts materials placed on record say a different story. We note that Mr. Hemant Sharma (DIN: 07872659) was appointed as an Additional Director in the Appellant Company on 12.05.2020. However, as claimed by the Appellant, Mr. Hemant Sharma ceased to be an Additional Director in Appellant Company on 05.09.2020 and immediately thereafter, he was appointed as a Director in the Corporate Debtor on 11.09.2020 i.e. within a span of a week. However, we note that the Appellant Company has uploaded the Form DIR-12 regarding the cessation of Mr. Hemant Sharma only on 6.04.2021, which was digitally signed on 26.03.2021. We also note that as per Section 169 of the Companies Act, 2013, the Appellant Company was required to submit the said form with the RoC within 30 days of the cessation of Mr. Hemant Sharma from the post of Additional Director of the Appellant Company. Thus, in the facts and circumstances we find strong force in the argument of the R2 & R3 that the Appellant has filed backdated documents solely with the intention to support its contention to validate the alleged transaction between the Appellant and Corporate Debtor. We note that the Form DIR-12 regarding cessation has been signed in April 2021 i.e. after the execution of the MoU dated 20.10.2020. Therefore, Mr. Hemant Sharma was still a Director in Appellant Company and Corporate Debtor during the execution of the alleged MoU. Hence, we find that prima facie there has been back-dated filing of

documents. Moreover, both Binding Understanding of 20.10.2020 and Minutes of Meeting dated 15.12.2021 are not registered without any witness and will have very low credibility and strongly suggest to be forged and fabricated documents for validating a sham transaction and defrauding of the legitimate creditors of the Corporate Debtor.

40. We also find that the Appellant has not denied the fact that Mr. Hemant Sharma and Mr. Neeraj Gusain are designated partners of one LLP New Greens Landkart and their relationship existed since July, 2020, meaning they were related parties during the transactions between the FC and the CD. In any case MCA records @1149 APB confirm that.

41. Mr. Hemant Sharma, Director of CD-Logix, who is also director in another LLP- New Greens Landkart wherein Mr Niraj Gusian, the Director of FC is also a Director. So as per Section 5(24) both FC and CD are related parties. We thus find that Hemant Sharma and Neeraj Gusain are related parties in terms of Section 5(24)(a) read with Section 5(24A) (b) and Section 5(24)(m)(iii).

Financial statements

42. We now see whether the financial statements of the parties throw any light on the perpetuation of fraudulent CIRP Proceedings. We note that the Appellant-Financial Creditor-Expert in its balance sheet as on 31.03.2021 reflected the disbursement as 'Current Investments' (@1270, @1278). Neeraj Gussain, Appellant-Financial Creditor-Expert was having 50% shareholding. On the other hand, as per MOU/ Binding Understanding dated 20.10.2020, alleged debt is reflected as the advance against the sale of property.

43. Further perusal of the financial statements of FC-Expert Realty reveals that Liability of the CD-Logix, which was ₹21.16 crs as on 31.03.2021 has come down to 'NIL' on 31.03.2022 (@1278 and 1286, 1292 APB). It is also noticed that for the same debt, Section 7 petition was filed in the year 2023. Neeraj Gussain is still the shareholder holding 50% shareholding in the FC for both FYs ending 31.03.2021 and 31.03.2022 (@1273, 1289 APB). We note that on 06.04.2023 Appellant-FC-Expert filed a Section 7 Petition before the Adjudicating Authority alleging failure of Respondent No.1 to repay the due amount arising out of the MoU dated 20.10.2020 & Minute dated 15.12.2021, which didn't exist in the books of accounts. Also at the time of alleged disbursement, nature of debt was Real Estate Allottee but FC filed the petition as Financial Creditor by relying on alleged minutes dated 15.12.2021. We note that investment has changed its form from investment to financial debt basis minutes dated 15.12.2021.

44. The reply on behalf of the Respondent i.e CD-Logix in CP No. 237 of 2023 (@ page 226 APB) indicates that the Respondent CD has not been able to pay as per the MOU dated 20.10.2021 or as per the Minutes of meeting dated 15th December 2021 due to the financial difficulties faced by the Respondent and as such the Respondent is not in a position to honor its financial obligations. Furthermore, it is to be noted that Corporate Debtor-Respondent-Logix candidly admitted the debt and default without raising any objection. In the above background we are compelled to come to a conclusion that this is nothing else but collusion between Logix and Expert Realty.

How CIRP proceedings is fraudulent and malicious?

45. We note that under the Code, three critical stages must be satisfied for initiating the Corporate Insolvency Resolution Process (CIRP) the existence of a debt, the debt being due, and the occurrence of a default. At each of these stages, the relationship of the applicant with the Corporate Debtor (CD) assumes significant relevance. If the applicant is found to be a related party to the CD at any of those stages, it casts serious doubt on the bonafides of the initiation of insolvency proceedings and that also without disclosing the same to the Adjudicating Authority. In the present case as noted by us herein earlier at the time of execution of the MoU and alleged minutes, CD and FC were related parties. We also note that even if the parties relinquish their relationship just to avoid implication of related party, then same would not save them from the provisions of the Code. Being aware of the same they deliberately did not disclose the clear facts of the case to the Adjudicating Authority and participated in the CoC. Therefore, the Adjudicating Authority is fully empowered to pierce the corporate veil and examine the real intent behind the filing, and it rightly did the same. In present case we note that Mr. Neeraj and Mr. Hemant are the one who weaved the web and were related party throughout the process being partner in the LLP. Furthermore, on piercing corporate veil, NCLT found Section 7 proceedings to be collusive or for extraneous purposes, such as to defeat the rights of other creditors and manipulate the insolvency process.

46. We cannot agree with the argument of the Appellant that the Application under Section 65 and impugned order was filed at the fag end of

the CIRP and therefore it is not maintainable. We note that if there is fraud it will vitiate everything including order approving the resolution plan. Thus, the stage of CIRP is inconsequential, while considering the Section 65 application. Further, in the present case there is no resolution plan approved till date, even though FORM-G was issued way back on 14.10.2023.

47. We also note that it has not been denied that all the units of the project of the Corporate Debtor were sold to all the allottees and the payment towards the same had already been made to the Corporate Debtor, thereby confirming that the Corporate Debtor had recovered all the funds as planned against the said project. However, the non-payment of statutory dues by the Corporate Debtor would lead to non-registration of units by the Noida Authority in favour of the genuine homebuyers. Thus, in the facts and circumstances of the case we are inclined to agree that the Corporate Debtor was trying to evade the Corporate Debtor's obligations towards the Noida Authority, liabilities towards genuine homebuyers who have been granted compensation/refund of their investment as per UP RERA and Consumer Forum and derail in the registration process of the apartments allotted to the genuine homebuyers. The insolvency application was preferred solely to cover up such misappropriation.

48. Appellant argues that IBC disqualifies related parties from being part of the CoC (Section 21(2)) and from submitting a resolution plan (Section 29A), but nowhere does it equate related party status with fraud or malice. We find that is not borne out of the facts of the case as the CIRP proceedings have

been found to be basis collusion and is malicious with sufficient material on record.

49. We also note that fact related to common director was neither disclosed in the Section 7 petition by the FC nor in the reply to said petition by the Corporate Debtor before Adjudicating Authority. Thus, in this background, we find that the underlying loan agreement, commercial transaction, or financial debt was either “fraudulent” or “malicious” in nature. We find that there are clear fraudulent activities and collusion in the business transactions and order under Section 65 is maintainable.

50. It is to be noted that on 13.12.2023, an IA No. 6541/2023 was filed under Section 65 by two-unit holders- R2 and R3. FC filed its reply dated 15.01.2024 to this but did not object to factual aspects raised in the application even though it denied allegation of malicious and fraudulent initiation of CIRP.

51. We note that Adjudicating Authority allowed Section 65 application as per the impugned order, which is reproduced as follows:

“xvi. This Adjudicating Authority clearly observes that the Financial Creditor, M/s. Experts Realty Professionals Private Limited has used this forum for purposes other than the insolvency resolution of the Corporate Debtor with purported malicious intent, contrary to the objectives of the IBC, 2016.

xvii. Therefore, in view of our discussion, we have no hesitation in holding that the Financial Creditor has invoked the provisions of IBC against the Corporate Debtor with fraudulent, mala fide intention.

xviii. We are therefore of the considered view that the Section 7 application bearing IB-237(ND)/2023 filed by the Financial Creditor is a collusive application filed, in collusion with the Corporate Debtor with an ulterior motive.”

52. R2 and R3 has canvassed their case by placing reliance upon the following judgments:

Ashmeet Singh Bhatia Vs. Pragati Impex India Private Limited & Anr. [NCLAT New Delhi; CA (AT) (Ins) No. 1413 of 2023]:

“....

16. The power under Section 65 of the Code can be exercised by the Adjudicating Authority only after satisfying that grounds as mentioned exist, if the Adjudicating Authority come to the conclusion that insolvency proceedings have been initiated fraudulently or with malicious intent for any other purpose other than for the resolution of insolvency of the Corporate Debtor, it can impose penalty as provided in the provision. While exercising jurisdiction under Section 65, the Adjudicating Authority is also fully entitled to close CIRP process and pass all consequential order. The mere fact that Section 7 Application has been admitted does not denude the jurisdiction of the Adjudicating Authority to examine the application under Section 65 of the Code. The observations of the Adjudicating Authority are that the Appellant is opposing the admission of the proceeding which admission has been affirmed by the Appellate Tribunal. The above does not denude the jurisdiction of the Adjudicating Authority to examine the allegations made in the Section 65 Application even after admission of the proceedings under Section 7.”

18. Learned Counsel for the Respondent submitted that Application have been filed belatedly at the stage when Resolution Plan of the Corporate Debtor is under consideration. The mere fact that Application has been filed at the time when plan is under consideration does not take away the jurisdiction of the Adjudicating Authority to consider the allegations and find out the truth, if any.”

The above judgment supports the cause of the respondents R2 and R3 and the judgment squarely fits in the present facts of the case.

53. Reliance is also placed on **Hindalco Industries Ltd. V. Hirakud Industrial Works Ltd. & Ors. [NCLAT, New Delhi; Company Appeal (AT) (Insolvency) No. 42 of 2022]** wherein it was held that:

“110. Regarding the observations in the Pratap Technocrats judgment (supra) judgment, we are of the view that the present case is a case of fraudulent and malicious initiation of CIRP, and hence, when the basic edifice on which the resolution plan of the corporate debtor is based is non-est in law, the superstructure of the resolution plan cannot sustain itself maintain its existence.”

Both above judgments support the case of R2 & R3.

54. In the facts and circumstances of the case, for the reasons noted herein earlier, we do not find any infirmity in the orders of the adjudicating authority allowing the Section 65 application filed by the Respondents. For the reasons noted herein we find that reversing of Section 7 proceedings doesn't amount to a review in the guise of a fresh determination.

Conclusions and Order

55. The Appeal is, therefore, dismissed. All IAs stand disposed. No orders as to costs.

[Justice N Seshasayee]
Member (Judicial)

[Arun Baroka]
Member (Technical)

New Delhi.
September 08, 2025.

Pawan